
DECLARATION REVIEWS: SUBMISSIONS ON INITIAL SUBMISSIONS – STAFF QUESTIONS

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Background

On 30 May 2018, the period for making initial submissions ended. On 1 June 2018, the QCA published stakeholder initial submissions received in respect of the Declaration Reviews and invited stakeholders to make any submissions on initial submissions by 16 July 2018.

QCA staff have developed the below set of questions to assist stakeholders in preparing submissions on the initial submissions. While these questions highlight some matters related to the initial submissions, they do not seek to comprehensively cover all the matters included in the initial submissions. Hence, interested parties should rely on their own analysis to determine whether there are additional matters in the initial submissions on which they wish to comment. Stakeholders will have a further opportunity to make submissions following the release of the QCA's Draft Recommendations.

DBCT

Criterion (a): Deed poll and Access Framework

DBCT Management (DBCTM) proposes that in a future without declaration, 'access seekers will have recourse to a binding and effective negotiate/arbitrate access framework (the DBCT Access Framework), as set out in Appendix 1 and Appendix 7, as well as Appendix 3' (paragraph 264 of the DBCTM submission). DBCTM has prepared an irrevocable deed poll as set out in Appendix 8, 'to ensure that the Access Framework will be binding and enforceable' (paragraph 318 of the DBCTM submission).

Questions

In relation to this proposal:

- (1) Would there be any material differences between the operation of the proposed deed poll and DBCT Access Framework, and the operation of the access regime under Part 5 of the Queensland Competition Authority Act?**
 - (2) How would the proposed deed poll and DBCT Access Framework affect competition in a market other than the market for the service, compared to the access regime under Part 5 of the Queensland Competition Authority Act? In responding to this question, stakeholders are invited to have regard to aspects of DBCTM's proposal, for example:**
 - (a) The manner in which the terms of access, in particular the terminal infrastructure charge, would be negotiated and determined compared with the manner in which those terms are negotiated and determined under a QCA-approved access undertaking.**
 - (b) The extent to which the proposed arbitration mechanism would be effective in constraining DBCTM's ability to set terms of access, including pricing.**
 - (c) The effectiveness of the proposed mechanism in constraining DBCTM's ability to unilaterally amend the DBCT Access Framework. In this context, are amendments to the proposed Framework subject to any oversight by an independent arbitrator, and is that relevant?**
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- (d) The extent to which the proposed deed poll and access framework would provide certainty about the terms and conditions of access.
- (e) The extent to which terminal users would be treated equally.

Stakeholders are invited to provide supporting evidence to the extent that they have views on these questions. In doing so, staff are particularly interested in the impact, if any, on markets related to the development of new mines and trading of mining entitlements.

Criterion (b): relevant market

In describing the relevant market in which DBCT operates, DBCTM's submission said:

Over the period for which the service would be declared, HoustonKemp identifies this area as the region within which mines would prefer to use coal handling services provided at the Port of Hay Point. It describes this as the region from which future customers of DBCT may be drawn by reference to economic considerations. HoustonKemp identifies those mines that would prefer to use coal handling services provided at the Port of Hay Point as compared with coal handling services provided at other locations, assuming there were no constraints from existing supply contracts. HoustonKemp describe this as 'the market for coal handling services for mines that are proximate to the Port of Hay Point'.

HoustonKemp considers that the expected production from a mine is in this market if:

- *it is physically feasible for that mine to use coal handling services at the Port of Hay Point; and*
 - *it is financially preferable for that mine to use coal handling services at the Port of Hay Point, given:*
 - *the coal handling options available to that mine; and*
 - *the rail and port charges involved with exercising each of these options.*
- [paragraphs 119 and 120 of DBCTM's submission¹]

Questions

Staff invite submissions on the following matters:

- (3) If mines in the market described by DBCTM would 'prefer to use' DBCT, why have some mines in the market described by DBCTM contracted for capacity at other terminals? Would this suggest that there are other factors that would affect their ability to use the coal handling service at DBCT?
- (4) Staff note that for mines to use DBCT to meet their coal handling requirements, they must utilise the Goonyella system. To what extent, if any, is the capacity of Aurizon Network's Goonyella system, or other Aurizon Network systems, relevant to the QCA's considerations?

In considering the above matters, please provide information on whether it is physically feasible for the Goonyella system to accommodate the transport requirements of mines in the market described by DBCTM, such that those mines would prefer to use DBCT for all of their coal handling requirements.

¹ Footnotes not included.

Aurizon Network

Criterion (d): Access Undertakings and the Public Interest

Aurizon Network said that ‘there are substantial costs from declaration under the QCA Act and those costs materially exceed the expected benefits from allocative efficiency. These costs are largely associated with the design and performance of the current regulatory framework.’ [page 33 of the Aurizon Network submission]

Questions

- (5) **Stakeholders are invited to comment on the extent to which an assessment of the effectiveness of the current regulatory regime² (including a cost versus benefits comparison) is relevant to the QCA’s assessment of criterion (d)?**

² Including the approval and administration of access undertakings
