

7 November 2018

Mr Ravi Prasad
Queensland Competition Authority

Dear Ravi

DBCT Declaration Review – update on contract profile

I refer to the QCA's review of whether the coal handling service at Dalrymple Bay Coal Terminal (**DBCT**) should be declared following expiry of the declaration on 8 September 2020.

Relevant to that review, I am writing to provide an update on DBCT Management's (**DBCTM**) contractual position, which is a material factual development relevant to the QCA's review of coal handling services at DBCT. Failure to take this information into account in a draft recommendation would mean that such draft recommendation was not based upon current material facts.

DBCTM has recently completed a process of offering remaining capacity to the access queue. As a result, DBCT is now fully contracted.

Contracted capacity

Following some relinquishment of contractual capacity at DBCT in 2017 and early 2018, in May 2018 DBCTM notified the access queue that capacity was available to contract. Soon after receiving this notification, [REDACTED] informed DBCTM that it was ready to enter into an Access Agreement for [REDACTED], commencing June 2019. This notice triggered a three month regulatory process allowing Access Seekers ahead of [REDACTED] in the queue the option to contract the available capacity.

DBCTM received 8.22Mtpa of total demand from Access Seekers prior to the 24 August 2018 deadline, in the form of signed Access Agreements. [REDACTED].

Under the 2017 Access Undertaking (**2017 AU**) DBCTM is obliged to only contract terminal capacity up to the limit of system capacity.¹ The supply chain coordinator, the Integrated Logistics Company Pty Ltd (**ILC**), was appointed as an independent expert in determining the long term system capacity and assessed it to be 84.2Mtpa. A system capacity of 84.2Mtpa meant that DBCTM could contract with Access Seekers for 6.85Mtpa of the total 8.22Mtpa of demand. DBCTM is required to contract with Access Seekers in order of the earliest requested commencement date.² Since [REDACTED] requested commencement date for capacity was later than all other Access Seekers, DBCTM was unable to satisfy in full [REDACTED] capacity requirement of [REDACTED] for 10 years.

Access Seekers who submitted executed access agreements for capacity and were offered capacity included [REDACTED].

As a result of the process, DBCT will be contracted to full (system) capacity from July 2021.³

¹ 2017 AU, s5.4(f)(4)

² 2017 AU, s5.4(f)(3)

³ This assumes [REDACTED] accepts the available long-term capacity of 0.13Mtpa on offer to it

Relevance to declaration review

As explained below, the fact that DBCT is fully contracted is relevant to the QCA's consideration of access criteria (a) and (b).

Criterion (b)

The fact that DBCT is fully contracted means that any additional demand above 84.2Mtpa can only be served by either an expansion of DBCT, or by competing terminals at Abbot Point, Gladstone, and Hay Point. This means that the least cost analysis for criterion (b) must be undertaken by comparing the costs of expanding DBCT to the costs of utilising existing (and expanded) capacity at alternative terminals.⁴

The fact that ██████ took up ██████ of DBCT's capacity demonstrates that demand from ██████ forms part of the total foreseeable demand in the market in which the DBCT service is supplied.⁵ In addition, ██████ ██████ took a permanent assignment of ██████ in capacity from ██████, beginning in July 2019. The uptake of capacity by ██████ and ██████ (by assignment) contributed to a ██████ ██████ Access Seeker missing out on its desired capacity.

DBCT understands that ██████ now intends to use the coal handling services at Abbot Point. Further, DBCTM is aware that ██████ (which otherwise utilises DBCT) exported over 0.2Mt through Abbot Point in late 2018 and will likely continue to ship through Abbot Point in the near-term. This supports DBCTM's submissions as to the actual substitutability between DBCT and other existing Central Queensland coal terminals and the fact that those coal export facilities are together serving demand in the market in which DBCT operates.⁶

The fact that DBCT is fully contracted also supports DBCTM's position that the User Group's projection of foreseeable demand for the DBCT service in its submission of 30 May 2018 must be wholly disregarded as it is contrary to current unequivocal facts. To now rely upon the User Group's projection of foreseeable demand would be unreasonable and involve an error of law. As explained in DBCTM's submissions in response, the User Group failed to estimate total foreseeable demand in the *market* contrary to section 76(2)(b) of the QCA Act.⁷ Instead, the User Group estimated coal handling volumes that are expected to be served at DBCT. However, even on a DBCTM contracted basis, the User Group's estimates of total foreseeable demand are wrong, without factual foundation and should be disregarded by the QCA.⁸ This is further supported by the fact that DBCT is now fully contracted at 84.2Mtpa and could not satisfy recent capacity requests in the form of signed access agreements. In this regard, DBCTM observes that the User Group:

- presented as a 'credible forecast' of foreseeable demand a WoodMackenzie 'projection of demand at DBCT' of 63Mtpa in 2019, with a peak of 69Mtpa in 2024 and 2025;⁹
- presented as an 'aggressive or upper bound demand outlook' a forecast which projected 'demand' for DBCT to be 66Mtpa in 2019, with a peak of 84Mtpa in 2025;¹⁰

⁴ DBCTM Submission, 30 May 2018 at [227]-[228]

⁵ DBCTM Submission, 16 July 2018 at [124]-[129], [166]-[169]; DBCTM, Submission, 30 May 2018 at [155]-[167]

⁶ DBCTM Submission, 30 May 2018 at [126]-[143]; DBCTM Submission, 16 July 2018 at [120], [228]

⁷ DBCTM Submission, 16 July 2018 at [123], [154]-[170]

⁸ DBCTM Submission, 16 July 2018 at [171]-[217]

⁹ DBCT User Group Submission, 30 May 2018, p.59

¹⁰ DBCT User Group Submission, 30 May 2018, pp.59-60

- asserted that it was clear that foreseeable demand could be met by the existing terminal (without expansion) and that demand for DBCT during the period to 2030 would not exceed 85Mtpa.¹¹ In fact, DBCT is not able to meet current applications for capacity and those applications exceed 85Mtpa.¹²

Criterion (a)

The fact that DBCT is fully contracted is also relevant to criterion (a).

It means that criterion (a) must be assessed on the basis of a future without declaration in which users with existing contracts will be able to use the DBCT service under renewable access arrangements which account for all of DBCT's current capacity.¹³

The fact that DBCT is fully contracted also strengthens DBCTM's submissions in respect of the flaws in logic in the User Group's and Castalia's contentions regarding the tenements market.¹⁴ It means that given there is no existing capacity available at DBCT, only expanded capacity is relevant in assessing whether declaration would promote a material increase in competition in the tenements market. Accordingly, as explained in DBCTM's submissions and the HoustonKemp report in response, the potential for asymmetry between the price for existing capacity and the price for expanded capacity at DBCT exists both with and without declaration. The QCA, in sanctioning price discrimination as a result of an expansion priced on a differential basis, considered whether such an approach was likely to have anti-competitive effects and concluded that it did not.¹⁵ To now conclude otherwise regarding price discrimination between existing users and future users as a result of the deregulation of the terms of access to DBCT would be contradictory. Price discrimination between users as a result of differentially priced expansions or deregulated terms of access will not have an impact on the tenements market, and there is no evidence that declaration would promote a material increase in competition in respect of the acquisition of tenements.¹⁶

Given DBCT is contracted to capacity, it is unlikely that either new entrant miners or incumbents will be able to enter into contracts for existing capacity (irrespective of DBCT's declaration status). In the event DBCT was to be expanded, the price for capacity at DBCT is unlikely to be the same as that for existing capacity. In the future with declaration, access charges would most likely be differentiated between existing and new capacity under the expansion pricing principles in a QCA approved access undertaking, as this is the case under the current access undertaking.¹⁷ In the future without declaration, under the Access Framework an equivalent price ruling process and expansion pricing principles will be applied to determine whether an expansion will be socialised or differentiated (with an independent arbitrator performing the role of the QCA in making the determination).¹⁸

In its July submission, DBCTM included a chart showing its expected contract profile as at 1 July 2018 based on advice DBCTM received as to contract renewals from Access Seekers who were in contact with DBCTM at

¹¹ DBCT User Group Submission, 30 May 2018, pp. 55, 60 and 67

¹² DBCTM Submission, 16 July 2018 at [252]

¹³ DBCTM Submission, 16 July 2018 at [315], [322] and [408]

¹⁴ DBCTM Submission, 16 July 2018 at [293.4] and [408]; HoustonKemp, Review of the economic issues raised in relation to criterion (a), 13 July 2018, pp. 5-11

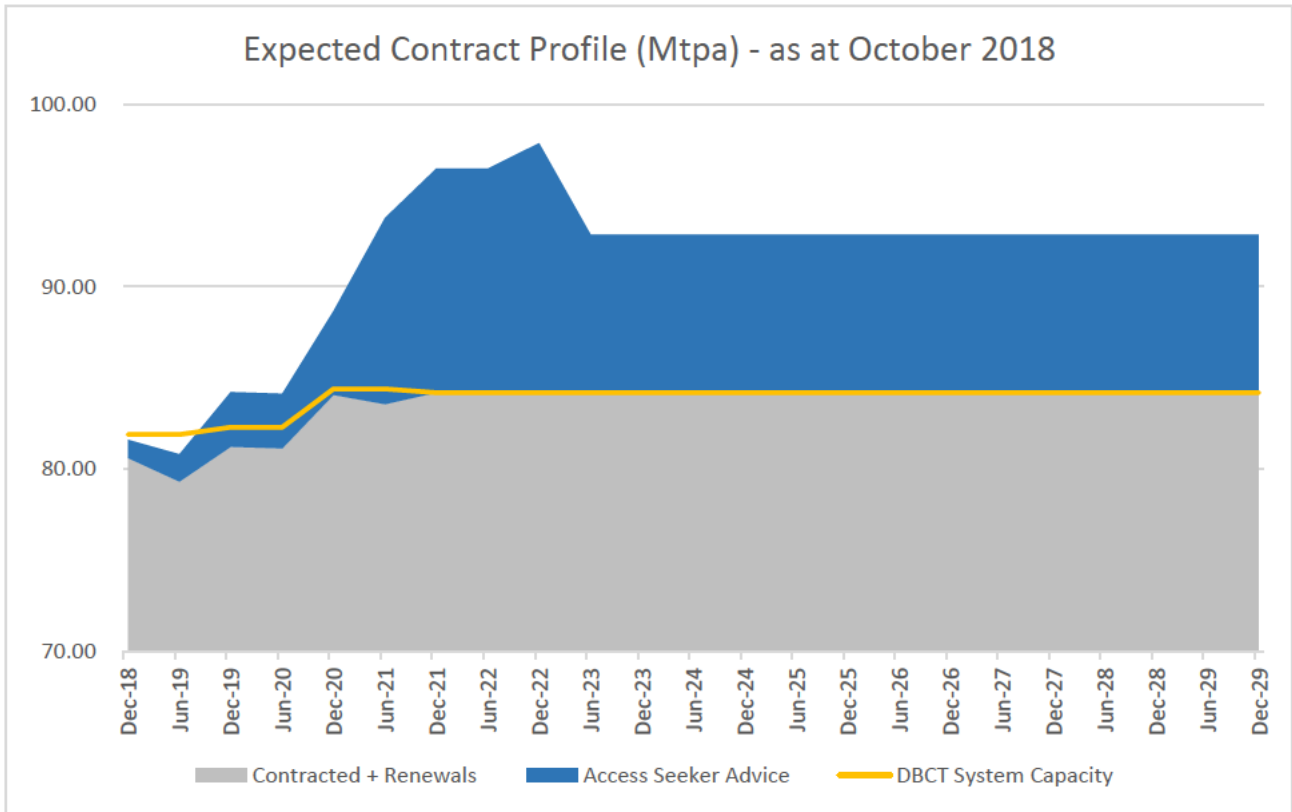
¹⁵ DBCTM Submission, 16 July 2018 at [409]-[411]; QCA, Final Decision - DBCT Management Differential Pricing Draft Amending Access Undertaking, August 2015, pp. iv and 18

¹⁶ DBCTM Submission, 16 July 2018 at [408]-[413]; HoustonKemp, Review of the economic issues raised in relation to criterion (a), 13 July 2018, pp. 5-11

¹⁷ DBCTM Submission, 16 July 2018 at [408]

¹⁸ DBCTM Submission, 16 July 2018 at [412]

the time regarding capacity requirements.¹⁹ The following is an updated version of that chart which shows that DBCTM currently expects that existing user agreements will take up all of DBCT's current capacity over the declaration period.



Included in the 'Access Seeker Advice' above is demand in excess of current capacity, comprised of:

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Please contact me if you have any queries.

Yours sincerely

Jonathan Blakey
 General Manager — Commercial & Regulation
 DBCT Management

¹⁹ DBCTM Submission, 16 July 2018, figure 13 at [408]. Note for the reasons explained in DBCT's submissions in response, this chart does not represent total foreseeable market demand for the DBCT service for the purpose of the criterion (b) assessment: DBCTM Submission, 16 July 2018 at [186]-[195]