

STAKEHOLDER NOTICE

29 October 2020

Determinations on proposed amendments to the DBCT terminal regulations

The DBCT Terminal regulations provide for conditions of access, scheduling and coal handling services for users at the terminal. The terminal regulations must be adhered to by all access holders and may be amended by the terminal operator with the consent of DBCT Management.

On 25 February 2020, pursuant to clause 6.2(a) of the 2017 DBCT access undertaking (2017 AU)¹, DBCT Management informed stakeholders that it had consented to proposed amendments to the DBCT terminal regulations.

Two parties objected to DBCT Management's consent to the proposed amendments and referred the matter to us.

We assessed each objection separately, focussing on the matters contested by the relevant objecting party (the objections converged on some, but not all, concerns), following processes set out in agreed directions. This included providing the objecting party and DBCT Management with the opportunity to make submissions and respond to issues raised, receiving submissions from other stakeholders and obtaining independent expert advice.

On 17 September 2020, we rejected both objections and advised DBCT Management and the relevant objecting party accordingly. In both cases we found that the criteria specified in clauses 6.2(c)(1) to 6.2(c)(4) of the 2017 AU were satisfied, in that:

- the proposed amendments relate to operational issues (cl. 6.2(c)(1))—as they give effect to changes to the processes involved in scheduling of access holders' railing in and handling of coal, as well as prescribing requirements for the order of loading of vessels
- the amended terminal regulations, as a whole, will operate equitably (cl. 6.2(c)(2))—as they are unlikely to result in an unfair outcome for a particular user (or group of users)
- the proposed amendments are consistent with the 2017 AU and the DBCT standard access agreements (cl. 6.2(c)(3))—as we did not identify any inconsistencies
- the proposed amendments are reasonably necessary for the operation of the terminal in accordance with good operating and maintenance practice (cl. 6.2(c)(4))—as it would be inappropriate to delay the implementation of changes that will improve transparency and accountability over rail scheduling processes (which has been independently identified as a likely cause of throughput losses at DBCT).

Our determinations were made in consideration of the relevant information available at the time. We would not necessarily form the same view should circumstances change, or should we be presented with different information or different concerns.

¹ For convenience, we have referred only to relevant provisions within the 2017 AU in this stakeholder notice. We recognise that the rights and obligations of the objecting parties and DBCT Management may also be governed by relevant provisions (pertaining to amendment of the Terminal Regulations) as set out within agreements between the respective objecting parties and DBCT Management.