

Further supplementary response in support of final authorisation of the DCCC arrangements

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1 Introduction – context for this further response

The Applicants acknowledge the general support that industry participants have provided to the efforts to improve throughput from the Dalrymple Bay Coal Terminal (DBCT) coal chain.

While a number of respondents have raised questions around the intended operation and scope of the DCCC, all appear to acknowledge that greater voluntary coordination within the coal supply chain was generally beneficial.

The Applicants have previously responded to a number of the specific issues raised in submissions filed in response to the request for interim authorisation, including in two earlier supplementary responses on 14 and 20 March 2014.

The primary purpose of this further response is to clarify aspects of the proposed DCCC arrangements and provide some practical examples of how the arrangements are intended to operate in practice. In doing this, the Applicants hope to reassure other users of the DBCT Coal Chain (or the Goonyella System) that the benefits arising from the DCCC do not occur by imposing 'losses' on other users of the coal chain or other systems or coal chains – i.e. improving throughput at DBCT is not a 'zero sum' outcome.

This is because:

- for those participants that do not wish to become Members, the DCCC arrangements will not detrimentally affect their current arrangements or throughput in any way. To the contrary, these participants are likely to receive indirect benefits from the proposed arrangements, as more efficient use of the existing DBCT Coal Chain infrastructure will lead to greater throughput, reduced demurrage, and lower capital charges (and expansion costs); and
- in any event, membership of the DCCC is open to all DBCT Coal Chain users – so any coal producer or rail operator that wishes to become a Member will receive the same benefits of the arrangements.

The Applicants acknowledge that particular industry participants take the view that an alternative industry structure might better achieve the objectives of the DCCC. To the extent that such a structure can be implemented quickly, with the support of all necessary industry stakeholders and at low cost (which is a key practical objective of the DCCC, given current market conditions), the Applicants would support such initiatives and welcome the opportunity to engage with those participants at a later stage.

However, for the purpose of the authorisation process, the Applicants submit that the DCCC structure provides for the maximum benefit to be made available to all stakeholders including non-Members, with no material anti-competitive detriment, quickly and at comparatively low cost.¹

If the real debate before the ACCC is therefore about the true size of the potential benefits to be delivered by the DCCC, rather than whether these benefits outweigh any public detriment, then the test for granting authorisation under the *Competition and Consumer Act 2010* (Cth) must be satisfied.

¹ The DCCC has been established substantially faster and at lower cost than larger and more formal industry structures, such as the ILC and HVCCC in Newcastle. The Applicants also expect the ongoing costs of operating the DCCC will also remain substantially less than these other entities.

2 Update on interim implementation – including immediate examples of coordination benefits from first Joint Scheduling Group meeting

2.1 Appointment of the Scheduling Coordinator and the Joint Scheduling Group process

The Applicants are pleased to inform the ACCC that David Wassell has been appointed the Scheduling Coordinator.

David has a strong background in Queensland coal supply chain logistics, having been a supply chain and logistics manager for Pacific National since 2008. Prior to that David worked with Aurizon as a tactical improvement manager, responsible for a number of performance monitoring and performance improvement initiatives for coal service delivery including train planning and operating systems design and development.

2.2 Engagement with potential new Members, other stakeholders and development of KPIs and integration of DCCC with existing processes

Since being granted interim authorisation, the Applicants have been in touch with all stakeholders who made submissions to discuss any concerns and provide more detail in relation to the DCCC.

The Applicants have also had fruitful discussions with Aurizon Network and DBCT Pty Ltd about how the DCCC can most effectively interface with their existing scheduling processes. The DCCC is also continuing to engage with Aurizon Network and DBCT Pty Ltd about the kind of metrics and reporting that might be established to assess the performance of the DCCC and the wider coal chain.

2.3 Management Committee meeting

The first monthly DCCC Management Committee meeting was held on 10 April 2014.

This was largely an administrative meeting, although the group resolved to contact Vale in relation to the concern it had raised regarding participation and voting in the DCCC and agreed to take steps to ensure that if Vale wished to participate, then it would be able to do so on a full voting basis.

2.4 Joint Scheduling Group meeting

The first Joint Scheduling Group meeting was held on 2 May 2014.

The primary information input into Joint Scheduling Group (**JSG**) meetings will be the DBCT 21 Day Plan, which is circulated by DBCT Pty Ltd each week to coal chain stakeholders (a copy of the DBCT 21 Day Plan as at 2 May 2014 is enclosed on a confidential basis with this response).

Rio Tinto has developed a slightly modified version of the DBCT 21 Day Plan, which reorganises the information to assist the DCCC with planning, and which will be used by the JSG to consider infrastructure and rolling stock demands, the shipping queue, coal availability and potential problems which could be assisted by coordinating orders. A copy of the reorganised DBCT 21 Day Plan will be circulated to the DCCC Members each Friday. A copy of the modified DBCT 21 Day Plan as at 2 May 2014 – and as used during the first JSG meeting – is also enclosed on a confidential basis with this response).

The Members will consider the 21 Day Plan and participate in a regular Monday afternoon meeting to discuss and settle a combined DCCC request, which will then be discussed with DBCT Pty Ltd (by David Wassell) before an order is submitted each Tuesday (in respect of the train services to commence on the following Monday).

The first JSG meeting (held on 2 May 2014) highlighted a couple of specific cases in which Members could coordinate their management of coal availability and infrastructure requests to try to avoid congestion arising from a 10-day maintenance shutdown at a Member's mine.²

Two examples of coordination/potential benefits identified in the first JSG meeting

1. Maintenance being carried out at a Member's Mine for 10 days is likely to lead to that Member having very strong demand for railings later in the month

A Member explained the context for its current railings demand (as shown in the 21 Day Plan) being that it has a shutdown at its mine for 10 days, following which it will be looking for strong volumes to help 'catch up'.

At present, the position of the other Member is well aligned with these requirements – with plans to rail strongly during the shutdown period, but this is tight and so will need to be watched closely.

Another Member has stock at its mine and numbers are currently low in relation to railings from it and other users to DBCT next week (with no apparent constraints) and so the Member should be well positioned to bring forward railings. It was therefore agreed that it made sense for it to do so. This should assist to limit congestion later in the month (and a risk of either party not being able to obtain services or being pushed back in the vessel queue because of a lack of coal availability) once the current maintenance outage was completed.

2. Two producers identify scope for approaching DBCT Pty Ltd about a Member's single product vessel that can facilitate early railings and redundancy in loading order of a planned vessel.

The DBCT 21 Day Plan highlighted a large vessel which is scheduled to take product from mines of one of the Members. This vessel is also scheduled to load other product which could potentially have cargo constraints.

Given potential difficulties with cargo, the DCCC Members can identify an alternative 'single product' vessel of the same Member which could be swapped at short notice to ensure that the majority of planned railings can be maintained to optimise haulage availability and to ensure that product can be shipped early in the month to avoid congestion issues when the other Member's mine returns from maintenance. This will also avoid potential delays to Member and non-Member producers where they are reliant on co-shipping.

The Members in assessing this potential vessel swap are mindful that this capacity may also be used for non-Members if they are earlier arrived vessels, but seeks to utilise all available rail capacity for the terminal by providing qualitative options to assist in planning. Any swap would be subject to approval by DBCT Pty Ltd – however because it involves two ships of the same Member, and in this situation it appears no other user would be detrimentally affected by the change in order, the change should be of benefit to DBCT and all system users.

² To assist the ACCC, these have also been highlighted in notes included with the enclosed confidential spread sheet ("JSG 21 Day Plan – 2 May 2014").

The nature of the information which was able to be discussed illustrated the way in which the JSG can provide much better context for orders and assist with a better and more coordinated order being placed with DBCT Pty Ltd, as well as identifying risks and opportunities to align production and railing with the shipping queue.

Based on the DBCT 21 Day Plan, the first JSG meeting also highlighted that a “queue vacancy” had occurred for approximately 12 hours on 1 May – during this period there was no ship being loaded at the port, despite a queue of ships and rail capacity being available. This is an example of the kind of ‘lost’ system capacity which the DCCC is targeting through better coordination by producers and rail operators – enabling them to assist DBCT Pty Ltd to identify potential risks to the existing queue.

2.5 Some other practical ‘case studies’ highlighting potential benefits

To assist stakeholders and the ACCC with understanding the nature of the potential benefits which are being targeted by the DCCC, two further case studies are set out below. These are in addition to the actual case studies outlined above.

Other potential DCCC case studies

1. DCCC members identify and respond to a risk that a stockpile is likely to become ‘stocked out’

The Members identify during the weekly JSG meeting that Producer A may run out of capacity at a particular mine stockpile early in the month, but should recover its stock levels later in the same week. It has a ship scheduled to require loading late in the week.

The JSG discuss ordering and stock levels for the week and agree that the optimum rail orders involve another Producer (B) taking train paths early in the week, with recognition that it suits Producer A to obtain paths later in the week, when its stock is available and in time for it to load.

The Scheduling Coordinator reflects the agreed and optimal timing of paths, and coordinates above rail availability between Producer A and Producer B in the order request which is then made to DBCT Pty Ltd by the DCCC.

2. The DCCC helps to coordinate a ‘workaround’ with Members over a short timeframe to minimise the impact of a derailment

A derailment at the mine of a non-Member has the effect of shutting one of the branch spurs on the Goonyella line. Aurizon Network and DBCT Pty Ltd contact the Scheduling Coordinator directly about what alternative scheduling arrangements could be implemented for DCCC Members to help mitigate the impact on the system. Previously, Aurizon Network would have had to contact all of the producers individually – or would have only dealt with the rail operators and port to respond to the issue.

The Scheduling Coordinator calls an urgent phone hook-up of the JSG which discusses what the DCCC Members might be able to do to best respond to the issue. The JSG agree an alternative path order for the remainder of the week which provides for Members with mines that do not use the branch spur and have stock available to have their paths brought forward to this week, with those Members that have mines that use the spur affected by the outage given recognition in the DCCC scheduling discussions next week, so that they are able to minimise impacts on their throughput.

The amended order requests that are prepared by the Scheduling Coordinator for the following two weeks reflect this reordering, to try to optimise and manage around the outage in the orders placed with DBCT Pty Ltd and Aurizon Network.

3 The public benefits associated with the DCCC are both realistic and real

A number of the benefits from coordination are already becoming apparent, or can be readily identified, as set out above.

However, the Applicants also wish to briefly respond to a number of the submissions made which question the extent or nature of the benefits which are likely to be obtained from operation of the DCCC.

3.1 Submission: That the full public benefit of the proposed DCCC arrangements requires all users and rail operators to join

Some respondents (Anglo American³ and Aurizon Network⁴) queried whether all users or participants in the DBCT coal chain should – or needed to – participate in any coordination arrangements in order for sufficient public benefit to be generated.

The Applicants acknowledge that the extent of benefits that will derive from coordination depends on how many industry participants become DCCC Members – that is, the greater the number of Members, the greater the efficiencies that are able to be achieved. However, the DCCC arrangements are not intended as some form of de facto regulatory intervention and it is important that users are not forced to participate. The DCCC also does not override the scheduling or other operational freedom of any non-Members.

Since filing its application for authorisation, the Applicants have had discussions with other users of DBCT which have indicated a keen interest in joining the DCCC.

In this context, the Applicants accept that not all users of DBCT may become Members, and indeed Aurizon Operations indicated that it could not presently see itself becoming a Member, at least in the short term. However, regardless of the number of additional participants that become Members, the public benefits of the currently proposed DCCC arrangements remain substantial and outweigh any public detriments. As previously submitted, the Applicants anticipate that even with its current membership, the DCCC will result in a 1-3% increase in throughput during the first six months, equating to increased coal revenues for **all users** of the DBCT Coal Chain of up to \$22 million per month, or up to \$132 million during the first six month period.

The Applicants also point to other potential benefits that non-Members could receive from the proposed DCCC arrangements, including:

- “freed up” train paths to the extent that variability is better managed by Members and there are less cancelled train services;
- improved cycle times as a result of a reduction in dwell times at DBCT which will result in trains not being delayed at port;
- reductions in demurrage costs arising from the ability to have the terminal and vessel queue managed more flexibly;
- a reduction in below rail tariffs as a result of improved throughput across the DBCT Coal Chain; and

³ Section 6.

⁴ At page 4.

- savings arising from increased throughput reducing the need for further capital investment in port or rail infrastructure

3.2 Submission: Can the DCCC achieve any additional efficiencies, given that Aurizon Network has non-discriminatory scheduling obligations?

Aurizon Network has questioned the ability of the DCCC to achieve the claimed public benefits because of the regulatory and contractual rules that require it to take into account orders from all users of a coal system on an equitable basis.

The Applicants understand Aurizon Network's submission to be that it cannot guarantee Members any form of priority because of its obligations to treat all users of the Goonyella System equitably.

The Applicants acknowledge Aurizon Network's requirements and are not seeking to have them modified. This is reflected in clause 10.1(a)(iii) of the Charter which states that the Scheduling Coordinator is to act on behalf of the Members in "managing against the weekly train plan prepared by Aurizon Network (Optimised Weekly Plan) and any variations to that plan".

However, this submission misconstrues the way in which the DCCC is designed to operate. The DCCC does not – and will not – override the ultimate scheduling role of Aurizon Network. Rather, the benefits derived from the DCCC result from it coordinating the train paths that are ordered for Members by the Scheduling Coordinator **before those orders are placed** with DBCT Pty Ltd and Aurizon Network.

The DCCC accept that this will mean, from time to time, that Aurizon Network may prioritise orders of other non-DCCC members of the orders requested by the Scheduling Coordinator. Nonetheless, this pre-coordination has the following advantages over the current process:

- Currently, DBCT Pty Ltd and Aurizon Network schedule below rail train path orders with limited direct input from coal producers (and so limited visibility of their longer term production plans, rolling stock availability, mine stockpile levels etc).

The DCCC group has better visibility of the 'end to end' coal chain and facilitates the sharing of information – and this enables producers and rail operators to manage and coordinate paths that are ordered in a way that minimises waste and maximises throughput. It enables the 'pool' of DCCC paths to be used to respond to anticipated demands on the system and to respond to changes that would otherwise result in lost capacity and waste (e.g. through cancelled paths that cannot be used).

- As Aurizon Network itself acknowledges, it is required to schedule paths applying certain fixed principles in the regulatory framework. Each is also focussed principally on meeting its contractual obligations to users, which may not always facilitate maximum throughput.

While the DCCC is also committed to attempting to ensure that the contractual entitlements of Members are met, the group enjoys a higher degree of flexibility about how this is achieved. The case studies above highlight the ways in which DCCC Members may be able to agree how orders are going to be made each week in ways that would not be able to be done by Aurizon Network, given its strict contested train path protocols.

3.3 Submission: Some of the lower throughput at DBCT is not the result of “interface losses” associated with rail scheduling inflexibility

The Applicants agree with Aurizon Operations⁵ that rail scheduling inflexibility (and inefficiency) is not the sole form of “interface loss” in the DBCT Coal Chain.

Aurizon also referred to two other sources of inefficiency:

- coal not being available at a load point (i.e. a mine becoming ‘stocked out’) which Aurizon suggests is a common driver of cancellations; and
- unload pit diversions (i.e. train diversions at the port) which disrupt the rail plan in the day of operations.

Aurizon argued that the DCCC could do little, if anything, to respond to either problem and so was limited in the benefits it could derive from coordination.

The Applicants consider that this may reflect a lack of understanding of the intention of the DCCC, which goes beyond being a new input to rail scheduling. The DCCC is intended to improve short term operational coordination of the *whole supply chain* – from mine to ship.

Indeed, the Applicants consider that both of the examples above illustrate the way in which the DCCC **can** deliver benefits that go beyond what is able to be currently achieved by either Aurizon Network (through rail scheduling) or DBCT Pty Ltd (through port operations). As Case Study 1 highlights, the DCCC provides a forum in which Members can identify when they are at risk of ‘stocking out’ their stockpiles in circumstances that might otherwise lead to train cancellations, allowing producers to share this information on a 3-month, 1-month and 1-week ahead basis and to then use this information for developing rail orders. This reduces cancellations and therefore wastage. The Applicants agree with Aurizon that reducing cancellations arising from mine stockpiles being ‘stocked out’ presents an important benefit.

Similarly, while the DCCC is not able to control or coordinate train movements at the port (this is done by DBCT Pty Ltd), the DCCC provides a forum for producers and rail operators which can develop and test alternatives for Members so that the adverse effects of a modified railing plan can be minimised. The Scheduling Coordinator can also act / operate as a ‘single point of contact’ for Aurizon Network and DBCT Pty Ltd with Members, enabling a faster and more effective response to day of operations events. Again, the Applicants agree with Aurizon that while the DCCC may not have direct control over the port rail operations, it can provide a faster, more flexible and efficient response to events at the port that would otherwise lead to greater loss of throughput.

Other areas where the DCCC is hoping to work with DBCT Pty Ltd to reduce interface loss at the port include:

- assisting to better coordinate vessel queuing to align with system and product constraints (within existing Terminal Regulation requirements);
- “day of operations” involvement – the Scheduling Coordinator will be able to provide planning solutions for Members disrupted with an aim of quicker recovery to plan, that is, redundancy planning around Cancellations and Diversions of services.

⁵ See section III(a).

The DCCC has already commenced engagement with Aurizon Network and DBCT Pty Ltd to explore ways in which it can best interface with their existing operational processes.

3.4 Submission: Aurizon offers flexibility to customers already through its competitive haulage arrangements, by which it addresses the misalignment of port and rail entitlements

The Applicants understand Aurizon Operations to be submitting that there is in effect no contractual misalignment between rail and port currently (at least for its customers) because:

- while a misalignment was created by the move to a cargo assembly operation when DBCT was expanded to 85Mtpa, UT3 gives above rail operators the ability to borrow and lend their customers' entitlements to provide operational and scheduling flexibility; and
- Aurizon has worked proactively with its customers to use that flexibility to optimise scheduling arrangements, minimise resourcing requirements and reduce variation to the agreed plan.

With respect, this submission highlights the competitive and supply chain problems caused by the current structure, and underscores the value of the DCCC.

The "flexibility" which Aurizon refers to is only available as between customers of the same rail operator – so that the rail operator can shift entitlement between *its* customers (under a single access agreement). There is no mechanism for a customer of Aurizon to borrow or lend entitlements to a customer of Pacific National or any other rail operator. In effect, each rail operator can act like its own 'rail scheduler' by pooling paths of its customers.

This means:

- the rail operator – and not the coal producer – controls the allocation and scheduling process, and there is no shared or transparent basis on which it is undertaken (indeed, this flexibility is sold by the rail operator as a "competitive offer" as noted by Aurizon); and
- the current structure favours large incumbent operators over new or small operators (including new entrants), given that a rail operator with a larger number of customers and paths will have a larger pool from which to schedule.

The central benefit of the DCCC is that it releases the same benefits identified by Aurizon (of working to mitigate contractual misalignment), but without the adverse effects that currently exist described above. This is because:

- producers and rail operators all participate directly in the DCCC scheduling and coordination process with a transparent and agreed set of principles; and
- the structure is open to all rail operators – and so does not favour larger operators.

In this way, the DCCC increases transparency and flexibility around scheduling for haulage customers and reduces barriers to entry into the haulage market.

4 Independence of the Scheduling Coordinator, confidentiality and the scope of information sharing

4.1 Introduction

Two submissions (Anglo American⁶ and Aurizon Operations⁷) raised concerns about the practical operation of the DCCC and whether it would undermine competition in the haulage market.

The Applicants understand these concerns to be the following:

- The involvement of Pacific National as the Scheduling Coordinator may give it a competitive advantage that undermined the operation of the haulage market.
- A concern that the extent of information sharing as part of the joint scheduling process may compromise confidentiality (particularly around the terms of haulage contracts).
- Concerns about the rigour of confidentiality within the DCCC arrangements.

The Applicants will briefly respond to each of these concerns (see also the Applicant's earlier responses to these concerns on 14 and 20 March 2014).

Before responding to the specific issues raised, however, the Applicants note that the issue of 'above rail' contestability should not be overblown. There is little, if any, haulage capacity associated with DBCT that is likely to become contestable during the proposed 5-year maximum term of the DCCC authorisation.

Most haulage contracts for DBCT are long term, take or pay agreements. While there remains some scope for new capacity to be agreed, the Applicants' understand, based on public announcements, that the overwhelming majority of haulage capacity on the DBCT Coal Chain, if not all of it, has already been contracted for the whole 5 year period sought for authorisation. As a result, there is no opportunity for the authorised arrangements to result in a substantial lessening of competition in the relevant haulage market.

Attachment A provides a summary of the publicly available information regarding haulage contracts and the media releases from which this information was drawn.

Nonetheless, the DCCC arrangements have been intentionally structured in order not to undermine competition in above rail arrangements and the Applicants will therefore respond directly to the issues and questions raised in submissions.

4.2 Pacific National as the initial Scheduling Coordinator

The reason why Pacific National has been appointed as Scheduling Coordinator for the first 12 months of the trial is because of its operational expertise (including its familiarity with the existing scheduling processes).

This gives it the ability to ensure the smooth and fast implementation of the DCCC, without the cost and delay which would otherwise be associated with establishing a dedicated new entity (together with retaining staff, premises etc).

⁶ See section 3 (although the concern appears to be focussed on the independence of the Scheduling Coordinator, without any clear connection to the haulage or any other market).

⁷ Section II.

At the end of the first 12 month period, the Members (through the Management Committee) can if they wish replace Pacific National – including with an independent scheduler (contemplated under clauses 10.1(c) and 10.7).

A minimum initial appointment period of 12 months was seen as reasonable because:

- The Members did not see Pacific National's participation as Scheduling Coordinator problematic for the reasons discussed at 4.3.
- A minimum period of 12 months allows sufficient time for implementation and 'ramp up' including the introduction of new Members.
- Pacific National has, and will continue to, commit resources to establishing the DCCC arrangements including appointing a dedicated person to the role of Scheduling Coordinator. It is not fair or feasible for it to put in place these internal arrangements if the role relates to a very short or uncertain timeframe.
- As noted, if Members decide to establish a new and separate entity (with staffing, premises and other costs), this is likely to require several months, in any event.

4.3 The non-discriminatory behaviour of the Scheduling Coordinator is subject to extensive 'checks and balances' within the Charter and through the transparency of the weekly process

The Scheduling Coordinator's decision making will be fully exposed to all Members on a weekly basis (through the JSG) and scheduling decisions or approach can be escalated by any Member to the Management Committee at any time. This means that, at most, a Member that has concerns about discriminatory treatment adversely affecting the ordering of their train paths is only 'locked in' to the decisions made by the Scheduling Coordinator for one week ahead.

As the Applicants have previously submitted, there are also a considerable number of "checks and balances" in the Charter to ensure that there is no competitive advantage to the Scheduling Coordinator (if a Member) and that the DCCC achieves equitable, fair and non-discriminatory outcomes for the benefit of all Members.

For example:

- the Scheduling Coordinator is under an explicit obligation to act in a fair and impartial manner and in the interests of Members as a whole (clause 10.4);
- there is an explicit requirement in the Charter on any Member, including the Scheduling Coordinator, to disclose any material conflict of interest to the Members, which can then determine how it is to be managed (clause 5.8);
- under clause 10.2, the Scheduling Coordinator must undertake its activities in accordance with the Scheduling Principles (in clause 9.3) and the DCCC objectives (in clause 4.2 – which require amongst other things fair, equitable and non-discriminatory scheduling of entitlements);
- all of the activities of the Scheduling Coordinator are overseen by the Management Committee which retains the ultimate power to direct it as to how scheduling decisions are to be made (clause 9.4);
- the Scheduling Coordinator does not choose what haulage operator is used in relation to any scheduled path. The Member retains the responsibility of selecting which rail operator is used to haul; and

- the Scheduling Coordinator is required to sign a comprehensive Confidentiality Deed dealing with ring-fencing of the information and restricting its use to DCCC purposes.

If the Scheduling Coordinator breaches any of these important requirements, the Members may seek its removal (including within the initial 12 month period applicable to Pacific National).

Alternatively, if an individual Member is concerned they are being treated inequitably and have not been able to obtain relief through the Management Committee, they remain free to leave the DCCC at any time, at no cost.

4.4 Little, if any, ‘confidential’ information will be made available that is not already available to coal producers through existing industry processes

Given a number of the concerns raised (in particular by Anglo American⁸ and Aurizon Network⁹) relate to the amount and sensitivity of information shared through the DCCC, the Applicants wish to again clarify the information that is intended to be exchanged under the proposed DCCC arrangements.

The table below “maps” the information which is proposed to be shared by the JSG on a monthly and weekly basis, with industry sources of existing system information.

It demonstrates that the only areas where information exchange extends beyond existing arrangements involves information about production and mine stockpile levels (over a 3-4 month planning horizon), to enable operational issues and requirements to be identified.

Even this “new” production/coal availability information can largely be derived already from the visible sharing of available cargo information, such as the 21 Day Plan and Coal Availability provided on a rolling basis by DBCT Pty Ltd. The DCCC simply allows this information to be shared more openly, quickly and provides for it to be used to ensure better coordination of infrastructure requirements.

This is apparent from the discussion above at section 2 (together with the enclosed spread sheets) which highlight that the primary input to JSG scheduling discussions is the DBCT 21 Day Plan – which is currently made available to all coal chain stakeholders.

Information shared by DCCC (per clause 3, Schedule 6)	Current industry information sources that provide the information (or from which it can already be derived)
3-4 month production forecasts	New – although can be derived to some extent already from: <ul style="list-style-type: none"> • the DBCT 21 Day Plan and Coal Availability; and • DBCC 12 Week overview – This is a monthly report that provides an overview of system capacity. Each user provides long term shipping forecasts and DBCT Pty Ltd reviews this against Terminal and system capacity to determine a 3-month forecast.
Historical performance against the Weekly Indicative Plan	Weekly train order summary from Aurizon Network

⁸ Section 4.

⁹ At page 5.

The most current “21 day plan” produced by the DBCT Operator	This is the same 21 Day Plan and Coal Availability produced by DBCT Pty Ltd
Site issues around projected production, stocks and off-take	New - although can be derived to some extent already from the DBCT 21 Day Plan (and coal availability)
Shipping and co-shipper issues	The shipping stem published by DBCT Pty Ltd and the DBCT 21 Day Plan
System and site outages	Critical Asset Calendars published by Aurizon Network
Above rail fleet availability	Weekly train order summary from Aurizon Network
Track access availability	Critical Asset Calendars published by Aurizon Network and
Details of below rail and port access agreements (i.e. capacity and origin/destinations)	DBCC 12 Week overview ILC Capability Forecast (N.B the terms of access agreements themselves are largely standard form and published by both Aurizon Network and DBCTM under their respective undertakings)

The Charter makes explicit that matters such as customers, marketing and price will not be discussed in the JSG (see clause 3).

4.5 The DCCC will not involve the sharing of pricing or other commercial/competitive terms of haulage agreements

In coordinating orders the Scheduling Coordinator will **not** have any need to receive – and will not share – details of the terms and conditions of Members’ agreements with any other rail haulage providers.

This is apparent in the drafting of clause 3 of Schedule 6 which refers to each Member sharing “above rail fleet availability” and not anything to do with the commercial terms of haulage arrangements.

All that the Scheduling Coordinator requires in order to fulfil its function is confirmation from a Member of whether its rail operator has rolling stock available that week to fulfil the orders which are being made and, if it does, how much and when. After receiving this information the Scheduling Coordinator can then place orders on behalf of Members.

Other terms and conditions related to haulage, such as pricing or bespoke commercial positions negotiated between a particular haulage operator and its customers, will not be shared (and have no reason to be shared, given that they do not influence weekly path ordering or operational coordination).

4.6 Confidentiality provisions in the Charter are sufficient and consistent with standard industry practice

Anglo submitted that the confidentiality provisions in the Charter were not sufficient and that some wider form of ‘ring fencing’ should be introduced.¹⁰ This was based on the

¹⁰ At section 4.

assumption that the sharing of information between Members creates a “*significant risk of coal availability and other commercially sensitive information immediately being leaked to the market and customers generally in an opportunistic way by competitors.*”

The Applicants previously responded to this concern in their response on 14 March 2014.

As noted at that time:

- Concerns about confidentiality assume that the information shared by the DCCC is not already available to users today – whereas the DBCT 21 Day Plan (which is the principal information input used for scheduling discussions) is published by DBCT Pty Ltd to a large number of stakeholders.
- The information shared and used by the JSG relates only to operational activities. Commercial information related to matters such as customers, marketing and price will not be shared or discussed;
- In any event, it is not clear on what basis, or how, operational or coal availability information being leaked opportunistically by competitors would give rise to any anti-competitive detriment. To the extent that this occurs (which is doubtful), it would cause only commercial damage to a Member which can be adequately addressed through enforcing confidentiality protocols under the Charter.
- Confidentiality Covenants in Schedule 4 of the Charter are significant and consistent with standard commercial arrangements. Anglo has not identified any specific failings with the proposed arrangements.

5 The proposed DCCC arrangements will help to *improve* contestability for rail haulage services

5.1 The DCCC increases transparency for coal producers around the scheduling process (without forcing them to use a particular haulage provider to obtain scheduling flexibility), which should improve competition in the haulage market

As noted above at section 3.4 the current closed structure of the scheduling process gives rail operators an effective monopoly on the ability to pool and reallocate scheduled paths between their customers – an outcome that clearly favours larger operators. Indeed, Aurizon Operations makes clear in its submission that it uses this preferential role in the scheduling process as a form of competitive advantage.¹¹

By providing direct transparency and flexibility around scheduling for haulage customers, without forcing them to be tied to a particular haulage provider in order to obtain that scheduling flexibility, the DCCC reduces barriers to entry into the haulage market.

At the same time, it does not affect competition in other legitimate areas, such as pricing and quality of service, other than to improve the degree of transparency around how effectively the coal chain operates – which might be expected to improve service levels over the long run.

5.2 The proposed arrangements do not lessen competition in the haulage market

The proposed DCCC arrangements will not lessen competition for the provision of rail haulage services. The proposed arrangements:

¹¹ Section III(b).

- do not have the intention, do not facilitate and will not result in the coordination and standardisation of rail haulage arrangements;
- do not restrict Member producers acquiring haulage services from non-Member rail operators and do not contain any scope for the Scheduling Coordinator or JSG to bind other stakeholders;
- require the Scheduling Coordinator to:
 - undertake its role in a manner consistent with the objectives of the DCCC in clause 4.2 of the Charter which includes maximising throughput and facilitating the fair, equitable, transparent and non-discriminatory scheduling capacity entitlements held by Members (clause 10.2);
 - disclose any material conflict of interest to Members (clause 5.8);
 - optimise haulage arrangements by Members by seeking to achieve the optimal availability and efficient utilisation of rolling stock underpinning rail haulage capacity held by Members in respect of the Nominated Coal Throughput (see clause 9.3(d)); and
 - act in good faith and in an impartial and fair manner, in the interests of Members as a whole (see clause 10.4(b) of the Charter);
- do not allow the Scheduling Coordinator to choose what haulage operator is used in relation to any scheduled path – this remains the choice of the Member;
- are structured such that all of the activities of the Scheduling Coordinator are overseen by the Management Committee which retains the ultimate power to direct the Scheduling Coordinator as to how scheduling decisions are to be made (clause 9.4);
- ensure that only information of Members (or information which is disclosed to the DCCC by other parties, such as Aurizon Network or DBCT Pty Ltd, for coordination purposes) will be shared and used in undertaking scheduling and other activities – no information of other coal producers or rail operators is required or disclosed; and
- allow Members to exit the DCCC at any time at no cost.

5.3 The DCCC will not facilitate the coordination and standardisation of commercial rail haulage arrangements

Aurizon Operations raises a concern that competition would become subdued in the haulage market if the DCCC led to the standardisation of commercial haulage terms.

The DCCC is focussed on operational coordination (not commercial coordination) and will operate *within* existing contractual processes and will not facilitate the exchange of confidential information between producer Members that will result in the standardisation of haulage terms or quality of service.

As noted above, the only aspect of haulage which is relevant to the DCCC scheduling process is the availability of a Member's rolling stock. The proposed DCCC arrangements do not require Members to exchange confidential information regarding the terms or pricing of their haulage contracts.

The scope of the authorisation sought for the DCCC does not extend to collective bargaining or joint buying, so any attempt by one or more Members to use the DCCC to discuss and agree standardised commercial terms for haulage services would risk a serious contravention of the CCA.

5.4 The DCCC does not impose restraints on Member producers acquiring rail haulage services from non-Member rail operators

Aurizon Operations¹² expresses a concern that the proposed DCCC arrangements seek to limit producer members from holding competitive tenders for their rail haulage requirements. Aurizon argues that the proposed arrangements contain mechanisms that:

amongst other things, restrict members from entering into contracts with third parties, where those contracts would put the Member 'in conflict' with the DCCC Charter (clause 6.3). (emphasis added)

The Applicants submit that Aurizon's interpretation of clause 6.3 of the Charter is based on a misreading of the clause that gives it a much broader scope than is actually provided for. Rather than restricting each Member from entering into arrangements with third parties that puts the Member in conflict "with the DCCC Charter", clause 6.3 simply restricts each Member from entering into arrangements with third parties that puts the Member in conflict "**with their obligations under this Charter**".

Clauses 6.1 and 6.2 respectively set out each Member's general obligations and their obligations in respect of Member Representatives. Neither of these clauses can be read as having the intention or effect of limiting producer members from holding competitive tenders for their rail haulage requirements. To the contrary, clause 6.1(c) provides that:

Each Member must, in its capacity as a Member:...

(c) *at all times act in good faith in relation to that Member's activities **and dealings with the other Members and other parties** in connection with this Charter. (emphasis added)*

Therefore, as well as it not actually being the intention of the Applicants to limit producer Members from holding competitive tenders for their rail haulage requirements, if the Applicants attempted to impose such a limitation it would put each of them at material risk of breaching clause 6.1(c) of the Charter.

6 Other issues

6.1 The proposed DCCC arrangements will have a positive effect on co-shipping and shipping queue flexibility

Aurizon Operations¹³ appears to suggest in its submission that the DCCC may adversely affect existing co-shipping arrangements at DBCT, although it does not make clear how this will occur.

The Applicants do not agree and note that, insofar as it relates to shipping, the DCCC will work with DBCT Pty Ltd to better align and coordinate:

- short to medium term prioritisation of vessels relative to system and product constraints (in line with existing Terminal Regulations);

¹² Section II(b).

¹³ Section II(c).

- order requests to assist DBCT Pty Ltd and Aurizon Network schedulers in achieving an optimised train plan, ensuring more even, reliable and timely delivery of coal to port, better load rates, and a reduction in port dwell times; and
- “day of operations” involvement – the Scheduling Coordinator will be able to provide planning solutions for Members disrupted with an aim of quicker recovery to plan, that is, redundancy planning around Cancellations and Diversions of services.

The proposed DCCC arrangements will operate strictly *within* the scope of the existing regulatory and contractual framework. Therefore, the proposed arrangements will operate consistently and in full compliance with the DBCT Terminal Regulations and final decisions about the shipping queue will continue to be made by DBCT Pty Ltd.

As Aurizon Operations recognises, clause 10.1 of the DBCT Terminal Regulations provides DBCT Pty Ltd with sufficient discretion to allow the DCCC members to adjust the vessel queue subject to the adjustments not having a material adverse effect on any Access Holder.

Indeed, since being granted interim authorisation, the DCCC has commenced engagement with DBCT Pty Ltd to identify how best for it to interface as part of the existing process.

It is correct that Members may share information about the timing of their shipping arrivals and it is also possible that the ease of coordination between Members may increase the ability of Members to efficiently manage co-shipping within the DCCC. Far from giving rise to detriment, this would present a significant benefit of membership – and this is acknowledged by Aurizon Operations.¹⁴

However, any increased flexibility or ease of co-shipping which exists for Members because of the DCCC will not have any material adverse effect on non-Members, but is likely to generate benefits for the whole coal chain as:

- the position of non-Member vessels in the queue will not be changed as a result of these adjustments; and
- any adjustments to the vessel queue that arise from the DCCC will have the effect of improving the efficiency of the port operations and result in the vessel queue moving faster. This will have the benefit of reducing demurrage costs for all producers, not just producer Members.

6.2 The process for resolving conflicts between Members

Some respondents asked how scheduling conflicts between Members was intended to be resolved within the DCCC.

The Applicants have sought to develop a process that enables the weekly DCCC order request to be developed in a workable and timely way (i.e. there will not generally be time for individual disputes to be escalated prior to being implemented), but which remains flexible and has scope to evolve and ‘learn’ from experience.

Under the Charter, the process for resolving scheduling conflicts therefore involves the following:

¹⁴ Section II(c).

- All scheduling issues will be discussed by the Joint Scheduling Group on a weekly basis (or more regularly, if required).
- When determining the weekly rail order for the DCCC, if an agreed position cannot be reached, then the order request will be determined by the Scheduling Coordinator – applying the principles set out in clause 9.3 of the Charter.
- If a Member is unhappy with the outcome of this process (or any other issue), it can escalate the matter to be resolved by the Management Committee.
- Under clause 9.4, the Management Committee can determine any scheduling dispute escalated to them by modifying the scheduling principles governing the issue in the future, which would then bind the Scheduling Coordinator and JSG.
- Evidently, if the Management Committee determines that the Scheduling Coordinator has not complied with the scheduling principles (or otherwise with the Charter), then other action may be taken – including having the Scheduling Coordinator removed.

As well as the formal process, the practical fact that each planning cycle is limited to one week and is fully transparent to all Members will have the practical effect of ensuring that any detrimental effect on a Member from any individual decision is extremely limited and is open to future discussion and correction.

6.3 Further detail of the Scheduling Principles

Anglo has also raised a concern as to the level of detail contained in the Scheduling Principles set out in the Charter¹⁵.

As the Applicants have previously submitted, the Scheduling Principles intentionally describe key outcomes which are sought from the scheduling process (such as optimising use of capacity), rather than a rigid set of protocols that “bind” the group and reduce flexibility. This reflects the fact that a rigid set of operating protocols is seen by the Applicants as part of the current problem at DBCT which is preventing more flexible and coordinated operations.

If more detail is seen to be needed, or helpful, in the future then the JSG and Management Committee have flexibility under clause 9.3 of the Charter to expand them accordingly.

The level of detail provided in the Charter (notably clause 9.3) is however sufficient to demonstrate that the activities of the DCCC (and Scheduling Coordinator) must occur to meet contracted entitlements, while maximising throughput and the efficient utilisation of each part of the coal chain – and must do so in a fair and non-discriminatory basis.

6.4 2 Mtpa threshold for Management Committee voting rights

The Applicants fixed the voting right threshold at 2 Mtpa because it was, in their view, a tonnage level that balanced two competing concerns:

- Each Member needed to have enough ‘skin in the game’ to ensure that they could not disrupt the objectives of the DCCC by contributing only enough of its tonnage to enable it to gain a vote, but then use that vote to undermine its operations.

¹⁵ Section 7.

- A straight 'tonnage' based voting mechanism would enable the DCCC decision making to be dictated by a small number of larger producers/rail operators – undermining the collaborative objective.

Interestingly, two different submissions in response to the DCCC have criticised the structure for not adopting each of the above, which highlights the challenge of striking the right balance.¹⁶

The Applicants have sought to achieve the balance through a combination of:

- imposing the 2Mtpa threshold; and
- establishing a regime of standard and super-majority decisions, which avoid the need for any unanimous decision-making.

The Applicants acknowledge the particular and unique position identified by Vale in its submission and have already approached Vale to identify how best to facilitate its involvement using the flexibility within the existing framework (most likely through the agreement of the Management Committee for Vale to be given a vote, if it joins).

6.5 Amendments to the Charter

The Applicants wish to provide further clarification on the operation of clause 11.2(b) of the Charter. The clause allows the Management Committee, by Super-Majority Decision, to vary the terms of the Charter provided that:

- the effect of the variation does not have any retrospective effect or impact on a Member's ability to exit the DCCC (and contractual commitments in the Charter) upon implementation of the variation; and
- if the variation requires authorisation from the ACCC under the CCA (whether on an interim basis or final), the variation is conditional on receipt of that authorisation.

In drafting this clause, the Applicants deliberately did not attempt to prescribe the circumstances in which a variation to the Charter would require authorisation. The Applicants have taken this approach because they consider that it strikes the appropriate balance between not obliging them to seek authorisation for all variations, but at the same time requiring them to seek authorisation for any material variation to the Charter, where this takes conduct outside the scope of that which is authorised.

For example, any variation to the Charter that sought to permit Members to engage in conduct that is outside the scope of the authorisation and not contemplated by the Charter and the agreements and arrangements contemplated by the Charter would require at least a minor variation to any authorisation granted to the DCCC, or, potentially, a revocation and substitution.

By way of illustration, if Members proposed a variation to the Charter to allow them to engage in collective bargaining, then a new modified authorisation would be sought.

The Applicants do not consider that the addition of a Member would be a change for which they would seek a minor variation or revocation and substitution of any authorisation granted. This is for 3 reasons:

¹⁶ Anglo argues that the DCCC governance structure is flawed because voting is not linked to tonnage (section 8). Vale argues that the governance structure places too much emphasis on tonnage, through the minimum 2Mtpa threshold.

- In their application forms the Applicants have sought authorisation for themselves and any future Members of the DCCC.
- As already noted above, the Applicants consider that the more DCCC Members there are, the greater the benefits arising from the arrangements as greater efficiencies and savings will arise with each new Member.

If the ACCC considers it necessary, the Applicants would be prepared to discuss the possibility of them providing the ACCC with an annual summary of the variations made to the Charter.

After having had the opportunity to review the summary, if the ACCC formed the view that the variations made to the Charter over the previous year had resulted in a material change of circumstances (and the Applicants had not pro-actively sought a variation to or revocation and substitution of the authorisation), then the ACCC could exercise its powers under the CCA to consider whether the authorisation should be revoked.

Attachment A: summary of rail haulage contracts from publicly available information

Producer	Mine	Haulage Provider	Contract Commencement	Contract Duration (Years)	Contracted Tonnage (mtpa)
Anglo American Metallurgical Coal	Foxleigh	Pacific National	1 July 2012	9.5	3.5
Anglo American Metallurgical Coal	German Creek	Pacific National	1 Jan 2012	Not Disclosed	10.9
Anglo American Metallurgical Coal	Moranbah North	Aurizon	FY2009/10	10	5.75
BHP Billiton Mitsubishi Alliance (Indirectly)	Goonyella Riverside	Aurizon	1 July 2016	12	65
BHP Mitsui Coal (BMC)	Goonyella System	Aurizon	1 July 2016	12	65
BHP Mitsui Coal (BMC)	Undisclosed	Pacific National	Not Disclosed	Not Disclosed	4.2
Jellinbah Resources	Lake Vermont	Aurizon	Not Disclosed	10	6
Peabody	North Goonyella Eaglefield Millenium	Aurizon	Not Disclosed	Not Disclosed	9

Producer	Mine	Haulage Provider	Contract Commencement	Contract Duration (Years)	Contracted Tonnage (mtpa)
	Burton				
RTCA	Hail Creek	Pacific National	1 Nov 2013	10	8
RTCA	Kestrel	Pacific National	1 Nov 2013	10	0.5
RTCA	Clermont ¹⁷	Aurizon	July 2013	Not Disclosed	12
	Clermont	Aurizon	Jan 2012	10	3
Vale Australia	Isaac Plains Pty Ltd [Joint venture of Vale & Aquila]- Mine at Isaac Plains	Pacific National	1 July 2010	10	1.1
Bowen Central Coal	Isaac Plains	Pacific National	1 July 2010	10	1.1
Xstrata Coal Queensland	Oaky Creek	Aurizon	Not Disclosed	Until September 2021	Not Disclosed

¹⁷ Note that on 25 October 2013, Rio Tinto announced that it had reached a binding agreement for the sale of its majority stake in Clermont to Glencore. The transaction has not yet closed, but is expected to do so during Q1 2014. See http://www.riotinto.com/documents/131024_Rio_Tinto_agrees_sale_of_interest_in_Clermont_Mine.pdf