

“MINISTERS’ DECISION NOTICE”

under section 57(3) of the *Queensland Competition Authority Act 1997* on a competitive neutrality complaint lodged by the Australian Livestock Transporters’ Association on behalf of a confidential complainant against Queensland Rail.

The complaint

Pursuant to section 46 of the *Queensland Competition Authority Act 1997* (the QCA Act), the Queensland Competition Authority (QCA) decided on 22 May 2000 to investigate a complaint lodged by the Australian Livestock Transporters’ Association on behalf of an anonymous complainant. The complaint related to a perceived breach of competitive neutrality by Queensland Rail’s (QR) livestock transport service, *Cattletrain*.

QR is a declared significant business activity (SBA) for the purposes of the application of competitive neutrality principles pursuant to Part 4 of the QCA Act.

The QCA investigated the complaint both under the provisions of the QCA Act which applied prior to amendments on 26 May 2000 and also under the provisions following the amendments on 26 May 2000. The concept of competitive neutrality following the 26 May 2000 amendments requires a government agency carrying on a SBA not to have any net advantage or disadvantage over competitors or potential competitors in a particular market solely because the SBA’s activities are not subject to one or more of the following:

- full Commonwealth or State taxes or tax equivalents systems;
- debt guarantee fees directed toward offsetting the competitive advantages of government guarantees; or
- procedural or regulatory requirements of the Commonwealth, the State or a local government on conditions equivalent to the conditions to which a competitor or potential competitor may be subject, including, for example, requirements about the protection of the environment and about planning approval processes.

Prior to the 26 May 2000 amendments, the principle of competitive neutrality required that a government agency carrying on a SBA should not enjoy a competitive advantage over agency competitors or potential competitors in a particular market solely because of the government ownership or control of the agency.

The complainant alleged QR breached the principle of competitive neutrality in Central Queensland because it:

- (a) priced its *Cattletrain* livestock rail transport services below a level which a commercial private sector organisation could attain, and in particular:
 - (i) offered ‘more favourable’ prices to selected customers to attract them to use the QR livestock transport service; and
 - (ii) discounted livestock freight rates to particular businesses; and

(b) enjoyed a procedural and operational advantage as a result of animal welfare transport standards. It was alleged QR influenced the development of the animal welfare standard for livestock transport thus giving *Cattletrain* an advantage over its private sector competitors.

The QCA's findings

The QCA found the complaint (a), that QR enjoyed a competitive advantage because of its government ownership or control by pricing its *Cattletrain* livestock rail transport services below a level which a commercial private sector organisation could attain in the transport of livestock between Richmond Shire (via Winton) and Rockhampton, to be substantiated. Further, the QCA found the breach of competitive neutrality was not warranted.

The QCA noted Queensland Transport's advice that, historically, government funding was provided to QR on a whole of agency basis with no detailed specification of the services QR was to perform in return. Further, the QCA noted QR's advice it was unaware of any direct or indirect community service payments for its livestock services. The QCA concluded the nature of the financial arrangements and payments from the Queensland Government to QR followed from QR's government ownership and control.

In relation to specific volume pricing matters, the QCA found QR provided slightly more favourable prices to certain clients in the form of volume discounts. The QCA considered QR did not have the necessary financial information to support such discounting. The QCA concluded such discounting could only be sustained by an entity which did not cover its costs: that is, by an entity which was government owned or controlled.

In relation to specific operational pricing matters, the QCA found QR's discounts to its customers in exchange for operational efficiencies under commercial agreements with those customers did not result from government ownership or control. Further, the QCA noted such practices are applied by commercial operators.

The QCA concluded QR did provide lower prices in the form of discretionary discounts off QR's standard rate schedule but this practice was no longer in effect at the time of the complaint.

The QCA also concluded the substitution of larger wagons for smaller wagons at the same price arose due to operational requirements, rather than as a result of government ownership or control.

In relation to complaint (b) which related to animal welfare issues, the QCA found the complaint was not substantiated. The QCA did not consider QR enjoyed any advantage from the application or development of the Livestock Code which could be solely attributed to QR's government ownership. In this regard, the QCA noted the Livestock Code applied to both public and private rail operators. The QCA also noted the Livestock Code is not mandatory. Further, the QCA did not consider that any influence exerted by QR arose due to its government ownership as the Livestock Code standards were established by an independent body well-removed from any source of undue influence.

The QCA's recommendations

To remedy the breach in relation to complaint (a), the QCA recommended the open-ended financial arrangements between QR and the Queensland Government, which prevailed at the time of the complaint, cease or be amended to ensure that no competitive advantage is provided to QR unless there is a demonstrable public benefit in doing so.

In this regard, the QCA noted advice from the Queensland Government that the open-ended funding of QR had ceased. Queensland Transport and QR are currently developing a Regional Rail Service Agreement for the transport of general freight which reflects this. The QCA considered as the source of the past breach relating to complaint (a) has been removed, no further remedy is necessary.

Ministers' decision on the QCA's finding on the complaint

As the Ministers responsible under the QCA Act, pursuant to section 57(1)(a), in relation to the complaint against QR by ALTA acting on behalf on an anonymous complainant, we accept the QCA's finding that the complaint in relation to (a) above as it pertains to volume pricing is substantiated.

Reasons for the decision

In reaching our decision in relation to complaint (a) above, pursuant to section 57(1)(a) of the QCA Act, we accept the QCA's finding. The QCA found the complaint by ALTA on behalf of a confidential complainant to be substantiated because QR applied volume discount pricing to its *Cattletrain* livestock rail transport services between Richmond Shire (via Winton) and Rockhampton below a level which a commercial private sector organisation could attain. We note in this regard, at the time of the complaint, the QCA considered QR did not have the necessary financial information to support such discounting and the government funding arrangements which applied at the time of the complaint allowed QR to apply volume discounting.

We note the QCA's finding that complaint (b) which relates to animal welfare issues has not been substantiated.

Ministers' decision on QCA's recommendation to remedy the breach of competitive neutrality

Pursuant to section 57(1)(b) of the QCA Act, we accept the QCA's finding that the source of the past breach of the principle of competitive neutrality has been removed and no further remedy is necessary in this regard.

Evidence and material on which the decision was based

In arriving at our decision, we had before us the following material:

- the *Queensland Competition Authority Act 1997*;
- the QCA's report dated July 2001 on the matter; and
- a memorandum from the Director-General of the Department of the Premier and Cabinet and the Under Treasurer.



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PREMIER AND MINISTER FOR TRADE



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