

File Ref: 183064

29 June 2007

Mr John Prescott AC
Chairman of the Board
Queensland Rail
GPO Box 1429
Brisbane QLD 4001

Dear Mr Prescott

Approval of Draft Amending Access Undertaking - Relinquishment Fees

Background

QR's 2006 Access Undertaking was approved by the Authority and came into effect in June 2006. Once approved, aspects of the undertaking may be subject to amendment through a draft amending access undertaking process as specified under the QCA Act. Prior to any such amendments being approved or rejected, the Authority consults with stakeholders on the matters.

QR's Application

On 18 April 2007, QR submitted a voluntary draft amending access undertaking (DAAU) to the Authority which sought to provide new arrangements for relinquishment fees for access agreements signed on or after the commencement date of the approved access undertaking.

QR submitted this DAAU conditional on approval of its Proposed Schedule F Amendment, and requested that both the approval and the effective date of the approval be concurrent with that of the Proposed Schedule F Amendment.

Stakeholder Comments

Interested parties were invited to comment on QR's DAAU by 2 May 2007. In response, the Authority received submissions from the Queensland Resources Council, Pacific National and Rio Tinto Coal Australia.

While raising concerns regarding the effect of having different arrangements for new and existing access holders, stakeholders generally supported moving towards the proposed relinquishment fee arrangements. In particular, stakeholders anticipated that the proposed arrangements would discourage customers from contracting capacity beyond their reasonable expected needs and also appropriately compensate the system for capital and operating costs of capacity provided to meet contracted capacity that is then not required due to relinquishment.

Authority's Decision

Section 138(3) (when read in conjunction with section 143) of the QCA Act states that the Authority may approve a DAAU if, and only if, it:

- is satisfied the undertaking is consistent with any access code for the service;
- has published the undertaking and invited persons to make submissions on it to the Authority within the time states by the Authority; and
- has considered any submissions received by it within the time.

In regard to section 138(3), the Authority notes that:

- rail services are currently not subject to an access code;
- a public consultation process has been conducted, with submissions provided by 3 interested parties; and
- the Authority took into consideration all submissions provided by interested parties.

Section 143 of the QCA Act states that the Authority may approve a DAAU if, and only if, it considers it appropriate to do so having regard to:

- the legitimate business interests of the owner of the service;
- the public interest, including the public interest in having competition in markets (whether or not in Australia);
- the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the service are adversely affected; and
- any other issues the Authority considers relevant.

The Authority agrees that QR's access undertaking should include incentives to encourage above-rail operators to contract in line with their demand expectations. The Authority considers that relinquishment fees are one of a number of tools that could support this objective.

The Authority notes that stakeholders generally supported the new relinquishment fee arrangements, subject to concerns that the arrangements may disadvantage new access seekers compared to existing contract holders.

The Authority notes that QR's proposal provides for different arrangements for new and existing access holders. While this may not be ideal, the Authority is nevertheless satisfied that QR's proposal is, on balance, appropriate. In particular, the Authority anticipates that, as access holders take up new contracts, the extent to which new access holders are disadvantaged by the new arrangements will diminish. In addition, given the amendments introduced as part of the change to the form of regulation, when access rights are transferred, the relinquishment fee arrangements of the original contract will be maintained.

Therefore, based on public consultation and its own consideration, and in accordance with section 143 of the QCA Act, the Authority approves QR's DAAU.

Yours sincerely,



Brian Parmenter
Chairperson