

**QUEENSLAND
COMPETITION
AUTHORITY**

File Ref: 204628

17 December 2007

Mr John Prescott
Chairman of the Board
Queensland Rail
GPO Box 1429
Brisbane Qld 4000

Dear Mr Prescott

QR's Voluntary Draft Amending Access Undertaking – CPI Adjustment Application

On 16 October 2007, Queensland Rail (QR) sought the Authority's approval to amend its current access undertaking so that system allowable revenues and revenue cap adjustments reflect actual CPI changes, not a forecast change of 2.5% per annum.

On 22 November 2007, the Authority released its draft decision to not approve QR's proposal and provided QR and other stakeholders with the opportunity to respond to matters raised in it. The Authority received submissions from the Queensland Resources Council (QRC) and QR.

In accordance with its obligations under the *Queensland Competition Authority Act 1997* (the QCA Act), the Authority has considered QR's proposal and the submissions made in response to its draft decision.

The Authority's final decision is to not approve QR's application. In making this decision, the Authority notes that stakeholders generally accepted the draft decision on this matter and did not provide any further information which convinced the Authority to depart from its draft decision.

As indicated in the draft decision, the Authority considers that regulatory certainty is very important for all parties (including QR Network Access, QR National, other access holders, access seekers and end users) and should not be compromised by re-opening the access undertaking part-way through its term unless there has been a substantial change in circumstances. The Authority considers that the current circumstances are insufficient to justify such action.

Decision

The QCA Act requires the Authority to consider a Draft Amending Access Undertaking (DAAU) submitted to it for the purpose of amending an approved access undertaking having regard to s.138(2) of the QCA Act. Under s.138(2), the Authority may approve a draft access undertaking only if it considers it appropriate to do so having regard to:

- the legitimate business interests of the owner or operator of the service;
- the public interest, including the public interest in having competition in markets;
- the interests of people who may seek access to the service; and
- any other matter the Authority considers relevant.

In arriving at its decision, the Authority has considered QR's proposal and supporting information and submissions from stakeholders. It has also undertaken its own analysis.

QR's Proposal

QR proposed to amend its approved access undertaking to provide for system allowable revenues to be escalated consistent with the actual CPI movement which is currently applied to reference tariffs, and thus to QR's total actual revenue. To do this, QR sought to adopt a 'minimalist approach', which involves amending:

- the definition of system allowable revenue (cl.5.2 of Part A of Schedule F) – to allow for system allowable revenues to be adjusted in line with actual CPI movements; and
- provisions relating to variations to reference tariffs (cl.3.3.7 of Part A of Schedule F) – to allow system allowable revenues to be adjusted by actual CPI in determining the revenue cap adjustment amount and subsequent reference tariffs.

QR also proposed to make adjustments to its reference tariff model to align the escalation of system allowable revenue with total actual revenue.

Stakeholders' Comments

Stakeholders' initial responses to QR's proposal were mixed. Asciano and the Australian Rail Track Corporation (ARTC) broadly supported QR's proposed amendments. However, the QRC did not, and raised concerns about QR's apparent approach to the regulatory process. Asciano shared some of the QRC's concerns and also raised QR's apparent approach to the regulatory process as a key concern. In particular, Asciano was concerned with QR's 'almost continual' amendment of the approved access undertaking.

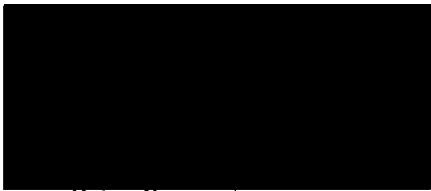
In responding to the draft decision, the QRC reiterated its concerns about QR's approach to the regulatory process and considered the Authority's decision appropriate in the circumstances. In doing so, the QRC emphasised the importance of regulatory certainty and noted that QR's 'recent succession of applications seeking amendments creates considerable uncertainty for stakeholders'.

QR addressed the issue of regulatory certainty in its response to the draft decision and, in doing so, maintained the view that its proposed amendments were appropriate given the circumstances. However, QR at the same time accepted that there was an alternate view on the matter and indicated that it would accept the Authority's final decision.

Authority's Considerations

As outlined in that draft decision, the Authority is of the view that regulatory certainty and stability are important to all parties affected by an access undertaking, including QR Network Access, QR National, other access holders, access seekers and end customers. Accordingly, the Authority considers that it is inappropriate for QR to seek to continually amend its approved access arrangements, although it recognises that there may be circumstances that justify amendments to an undertaking part-way through its term.

However, under the QCA Act, QR is entitled to submit a voluntary DAAU at any time – and the Authority must consider it on its merits, having regard to the matters mentioned in s.138 of the QCA Act. Having done so in this case, the Authority has decided that circumstances do not justify the amendment that QR has proposed.



Brian Parmenter
Chairperson