



Submission to the Queensland Competition Authority

Response to the QR Network Draft Amending Access Undertaking 2008

June 2010

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1 INTRODUCTION

Asciano Limited (Asciano) welcomes the opportunity to provide comments on the QR Network 2008 Draft Amending Access Undertaking (2008 DAAU) which was submitted to the Queensland Competition Authority (QCA) by QR Network on 11 June 2010.

Asciano has concerns about the brief time frame provided for comment. Asciano does not believe that limiting the time frame for comment to ten days is conducive to achieving good regulatory outcomes.

In addition Asciano has concerns that the QR Network proposed 2008 DAAU gives effect to the tariffs proposed in the QCA's June 2010 Draft Decision, but this Draft Decision was itself not explicitly subject to any public comment.

In particular Asciano is concerned that it previously submitted comments with regard to QR Network's proposed 2010 DAU Schedule F which were not accepted in the June 2010 Draft Decision, but Asciano has had no formal opportunity to respond to the Draft Decision prior to the 2010 Draft Decision being incorporated into the 2008 DAAU. These comments related to issues such as pricing retrospectivity and cross system traffic.

This submission contains no confidential information and may be considered a public document.

2 KEY ISSUES

2.1 Potential for Avoidance of the of Access Undertaking Obligations

The DAAU includes a new clause 2.1 i) which specifies that any requirements placed on QR Network by the Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 (IIARD) take precedence over the Access Undertaking where there is a conflict.

Asciano understands that, to date, no material inconsistencies have been identified.

Asciano has concerns that this amendment gives the Queensland Government, and possibly QR Network, an opportunity to avoid potentially problematic Access Undertaking provisions. Asciano believes that the Access Undertaking, which is developed by an independent body via a public process, should not be able to be avoided without a high degree of transparency and independent review.

Asciano proposes that to the extent there is any inconsistency between any directions given under the IIARD and the Access Undertaking the inconsistency should be publicly noted and the QCA should review the inconsistency and provide its consent to any action which avoids Access Undertaking provisions. To the extent that such an action materially disadvantages an access holder or access seeker the QCA should be able to take actions to address that disadvantage. Such a process would provide a level of transparency and scrutiny to any decision making undertaken with regard to inconsistencies.

2.2 Retrospectivity of Tariffs

The DAAU includes several new or amended clauses addressing tariff retrospectivity including:

- a new clause 2.3 e) which specifies that the 2009-10 tariffs will be back-dated to 1 July 2009;
- a new clauses at 7.4.4 g) iv) B), and 7.4.4 g) v) A) and B) which ensure QR Network can recover retrospective tariffs when there is a customer-initiated capacity transfer; and
- Schedule F clause 2.3 seeks to clarify that an adjustment charge for a retrospective tariff includes interest based on the Bank Bill Swap Rate.

As previously submitted, Asciano opposes the proposed retrospective charging, particularly charging interest on retrospective charges. Access holders and operators have not been responsible for delays in the regulatory process and consequently they should not be required to pay for these delays, and in particular they should not be required to pay interest on retrospective tariff variations. Overall, retrospective charging provides little incentive for QR Network to engage in shorter regulatory processes, and consequently encourages inefficient regulatory processes.

Asciano is particularly concerned that comments it made with respect to Schedule F clause 2.3.9 were not accepted in the June 2010 Draft Decision. Asciano's position is that an adjustment charge which, under some circumstances, may apply to a party which did not operate the train service to which the adjustment charge relates is unacceptable. Asciano strongly believes that in the event that an adjustment charge is allowed, such charges should only apply to the access holders and / or operators that actually operated the train services to which the adjustment charge relates. Adjustment charges should not apply to new access holders or operators if they were not the operators of the relevant train.

Asciano recognises the QCA's position that¹:

clause 2.3.9 in schedule F, Part A only places the obligation on a new operator to collect retrospective access charges where both the new operator and the affected customer have agreed to the change.

However, this position makes assumptions regarding the agreements made between operators and customers.

2.3 Confidential Information

The DAAU includes new wording at clause 3.3 d) ii) dot point 12) and at Schedule B which specifies that confidential information can be disclosed by QR Network to another railway manager for the purpose of coordinating the negotiation or provision of access. The other railway manager is to keep the information confidential.

Asciano recognises that the QR restructuring will require confidential information flows between network providers for efficient operation, and as a temporary measure the suggested amendments may be acceptable. However, Asciano notes that protocols relating to confidential information flows between network providers are already used in other jurisdictions, and these should be considered prior to any final decision on the protocols relating to information flows following the QR restructuring.

¹ QCA 2010 Draft Decision QR Network's 2010 DAU - Tariffs and Schedule F June 2010 page 24

Asciano's broader concern in relation to this amendment is that by providing exceptions to the disclosure of confidential information there is greater potential for confidential information to be inadvertently passed to parties who have no right to the information. Furthermore such exceptions allowing disclosure may have the potential to create a culture where confidential information is not viewed as confidential by those handling the information.