

**Submission to the
QCA Final Decision on QR
Network's 2010 DAU and
QR Network Resubmitted Access
Undertaking**

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Table of Contents

1	Introduction	3
2	General Comment on the QCA Final Decision.....	3
	Attachment 1: Specific Comment on the QR Network Access Undertaking and Attached Agreements.....	5

1 INTRODUCTION

Asciano welcomes the opportunity to respond to the Queensland Competition Authority (QCA) Final Decision on the QR Network 2010 Draft Access Undertaking (2010 DAU) and the resubmitted QR Network Access Undertaking.

This response does not seek that the QCA not approve the resubmitted Access Undertaking, rather the intent of this response is to identify broad issues which should be at the centre of regulatory focus over the forthcoming regulatory period. In addition Attachment 1 identifies some issues of detail, which, in the event the Access Undertaking is not approved, could be addressed in the finalisation of the Access Undertaking and associated documents.

Asciano notes that the role and powers of the QCA have been broadened and strengthened by both this 2010 Access Undertaking and by recent amendments to Queensland legislation. Asciano seeks that the QCA use these powers to ensure it continues to promote competition in markets which depend on access to the below rail assets of QR National ("QR Network").

This submission is public.

2 GENERAL COMMENT ON THE QCA FINAL DECISION

Asciano welcomes the Final Decision's focus on addressing concerns arising from the vertically integrated nature of QR National, particularly the concern that a vertically integrated QR National will use its ownership and operation of below rail monopoly infrastructure to favour its above rail competitive business to the detriment of competitors.

Asciano particularly supports the QCA requirements relating to:

- the need for arms-length negotiations between QR Network and related parties;
- the prevention of anti-competitive cost shifting, cross subsidisation and margin squeezing;
- the prevention of unfair discrimination;

- restrictions on the flow of confidential information between QR Network and related parties;
- the increased scope of auditing and reporting; and
- retention of arrangements that allow assets to be transferred to QR Network upon request by an access seeker.

While Asciano is broadly supportive of the Final Decision, Asciano believes that in future reviews of the QR Network Access Undertaking further improvements may be made in relation to several issues previously raised by Asciano, including effective separation of QR Network (including the independence of QR Network directors and chairman) and enforcement of sanctions in the event of non-compliance or non remedied breaches.

Improvements in relation to these issues will further ensure that continuing concerns arising from the vertically integrated nature of QR National are managed in such a way to ensure the QR National ownership and operation of its below rail monopoly infrastructure is not used to favour its above rail competitive business. Asciano seeks to work constructively with the QCA and QR Network over the forthcoming regulatory period to progress these issues.

Asciano notes that the Access Undertaking includes some areas where work remains to be completed by QR Network in the near term, including the development of the incentive regime, access agreements, system rules, investment frameworks and user funding agreements, maintenance cost reports, supply chain assumptions and KPI revisions. While Asciano will work constructively with the QCA and QR Network to address these issues, Asciano considers that the Final Decision should address all issues in order to make the best decision possible. Asciano has concerns that by deferring resolution of these matters, and potentially making decisions on these matters in isolation, the single and integrated nature of decision making in relation to the 2010 Access Undertaking has the potential to be diluted. Asciano has a preference that in future reviews of the QR Network Access Undertaking that decision-making in relation to specific undertaking components not be deferred or otherwise separated.

ATTACHMENT 1: SPECIFIC COMMENT ON THE QR NETWORK ACCESS UNDERTAKING AND ATTACHED AGREEMENTS

Asciano generally supports the changes to the Access Undertaking which were required by the QCA. Asciano recognises that if there are no major issues raised by other respondents to this consultation process then the Undertaking will be approved and there will be very limited scope to address other issues.

The comments below are intended to raise issues of detail which, in the event the undertaking was not approved, could be addressed in the further finalisation of this documentation, or otherwise considered in further reviews.

In making these comments Asciano has sought to limit the comments to additions and deletions that have occurred in the latest round of 2010 Access Undertaking review.

Access Undertaking - Non-Discriminatory Treatment 2.2 a)

The term “unfair” could be defined.

Access Undertaking - General Principles of Non Discrimination and Independence 3.2 c) and audits 3.7 a)

Terms such as “cost shifting”, “cross subsidies” and “price and margin squeezing” could be defined. Asciano’s concern is that without definitions it may be problematic for an auditor to assess these issues. Alternatively the QCA may be able to define these terms under any specific request it provides to an auditor under 3.7 ii).

Access Undertaking – Clause 11.4

Asciano is concerned that this clause effectively allows QR Network to avoid compliance with clause 11.3. In particular this clause raises concerns as the QR Network has the option of deciding whether to comply with certain sections of the Undertaking.

Access Undertaking – Schedule G Network Management Principles Appendix 2 Contested Train Path Decision Making Process

Asciano has concerns that the new wording added to Schedule G Appendix 2 clause d) now entrenches an advantage to the access holder who holds the greatest number of train service entitlements, and as such this wording acts against smaller operators and new entrants. Asciano believes deleting the final sentence may

address this issue as this means that the concept of the favouring one party and then the other is established but the actual application of the concept is flexible.