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Mr Michael Carter  
Executive Vice President and Chief Executive Officer  
QR National Network Services  
GPO Box 456  
Brisbane Qld 4001

Dear Mr Carter

**Final Approval: QR Network's September 2010 Voluntary Draft Access Undertaking**

The Queensland Competition Authority (the Authority) today issued its decision to approve QR Network's September 2010 draft access undertaking (DAU).

**Background**

The Authority's consideration of the September 2010 DAU follows a lengthy and comprehensive assessment process that commenced when QR Network submitted a DAU in September 2008.

In December 2009, the Authority issued a draft decision proposing to not approve the September 2008 DAU. QR Network withdrew the 2008 DAU in April 2010 and submitted a revised DAU, that addressed many, but not all, of the issues raised in the Authority's December 2009 draft decision.

In June 2010, the Authority issued a draft decision on the pricing aspects of the April 2010 DAU. On 21 September 2010, the Authority issued a final decision on all aspects of the April 2010 DAU. This decision focussed particularly on new issues that had been raised in the context of the April 2010 DAU, including ring-fencing arrangements, an investment framework, an incentive mechanism for maintenance and arrangements to facilitate coordination of the coal supply chain. The final decision also incorporated the June 2010 draft decision on pricing aspects.

On 22 September 2010, QR Network submitted a DAU that complied in all material respects with the Authority's final decision of 21 September. This DAU was amended, on 29 September 2010, to rectify a number of typographical errors.

On 23 September 2010, the Authority published, and sought public comments on, the September 2010 DAU. The Authority indicated it was minded to proceed directly to a final decision to approve the resubmitted 2010 DAU. The Authority also indicated it was particularly interested in any new or compelling reasons why it should not approve the September 2010 DAU.

The Authority adopted this approach, and a comparatively short response period, given the considerable consultation that had occurred prior to the submission of the September 2010 DAU and because the September 2010 DAU was consistent with the Authority's September 2010 final decision.

### **Submissions**

The Authority received three submissions (from Asciano, the Queensland Resources Council (QRC) and Xstrata) by the due date of 30 September 2010.

Stakeholders did not object to the Authority approving QR Network's September 2010 DAU.

Stakeholders' submissions focussed on the matters that are not fully settled in the September 2010 DAU and identified other matters that should be taken into consideration in future reviews of the QR Network undertaking.

The QRC identified a number of outstanding matters, in particular in relation to the investment framework and user-funded investments, that require a clear work program and meaningful engagement with QR Network to be effectively resolved. These sentiments were echoed by Asciano in its submission.

Xstrata argued that the undertaking needed to contain more details on how capacity assessments should occur, in particular in relation to developing supply chain operating assumptions and that feasibility studies should identify the smallest efficient expansion. Xstrata also said that the user-funding framework should be amended to provide for third party funding and to include more details on security matters.

Asciano reiterated its earlier views that the undertaking should provide for a more independent QR Network including independent QR Network's directors and chairman. Asciano accepted that, while these concerns were not addressed in the September 2010 DAU, they should be reconsidered in future reviews of the undertaking.

### **Final Approval**

In making its decision to approve QR Network's September 2010 DAU, the Authority has comprehensively canvassed the issues that the DAU covers. As required by the provisions of the *Queensland Competition Authority Act 1997*, the Authority considered QR Network's proposal and supporting information and submissions from stakeholders – and has also undertaken its own analysis. In doing so, the Authority had regard to the matters it considered in arriving at its decisions on QR Network's earlier DAUs. In this regard, the Authority:

- (a) is satisfied that QR Network's new DAU, as amended on 29 September 2010 for a number of typographical errors, is consistent in all material respects with Authority's September 2010 final decision; and
- (b) considers that stakeholders have not submitted any new or compelling issues that cause the Authority to change the position it took in the September decision.

The Authority's reasoning and conclusions remain consistent with its 21 September 2010 final decision. In particular, the decision seeks to constrain any motivation that the vertically integrated QR National may have to use its ownership of the monopoly below-rail infrastructure to favour its above-rail business relative to actual or potential third-party competitors. In addition, the decisions

seeks to ensure that investment in and maintenance of, the network are not constrained by the sale of QR Network.

The changes to the DAU that were included in the September 2010 DAU are aimed at addressing the Authority's own and other stakeholders' concerns with the April 2010 DAU. The September DAU has strengthened ring-fencing arrangements and exposes QR Network's decision making to greater scrutiny, by way of independent compliance audits or detailed public and regulatory reporting requirements.

The Authority also accepts stakeholders' comments that more needs to be done to make many aspects of the 2010 undertaking fully effective. The Authority believes that the 2010 undertaking provides QR Network with the opportunity to develop detailed frameworks to make the investment and user funding frameworks fully effective – and for the Authority to develop its own responses if QR Network's proposals are inadequate. The 2010 undertaking also provides for stakeholders to continue to develop solutions to improve the coordination of the coal supply chains and for these agreed positions to be included in the undertaking.

The Authority appreciates the efforts all stakeholders have made to the Authority's consideration of the replacement undertaking and looks forward to working with all participants to ensure that the outstanding matters, of which there are a large number, are resolved promptly.

Yours sincerely

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EJ Hall  
Chief Executive