

QRC

submission

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QRC submission to the QCA in response to
QR Network's September 2010 Draft Access Undertaking

Queensland Competition Authority
30 September 2010

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QR Network's September 2010 Draft Access Undertaking

Introduction

The Queensland Resources Council provides this submission to the Queensland Competition Authority in response to the third formal proposed replacement access undertaking (UT3.3) submitted by QR Network which has been released for stakeholder comment. QRC appreciates the opportunity to provide this response.

QRC is a non-government organisation representing the interests of companies involved in exploration, mining, minerals processing and energy production. QRC's membership is comprised of all Queensland coal producer companies, which have contributed the following to the State's economy:

QRC's Coal Producer Members' Contribution to Queensland	2009/10
<i>Entire Queensland coal production</i>	201.1 mt
<i>Every tonne of Queensland's coal exports</i>	182.1 mt
<i>Each of Queensland's export dollars from coal sales</i>	\$24.5 bn
<i>Employed directly at coal mine-sites</i>	19,782
<i>Generated indirect Queensland employment (of at least)</i>	79,127

In addition, QRC represents a number of emerging coal companies that are on the cusp of commencing production with advanced coal mine developments – most of which will be dependent on successful negotiations with respect to rail access and investment.

Regulatory rail risks to the Queensland coal industry are, in effect, risks to the wider Queensland economy.

In this context, the importance of the regulatory regime within which QR National's central Queensland coal network business (QR Network) will operate cannot be understated. Ineffective regulatory arrangements will have a detrimental impact on Queensland's largest export industry, undermine industry's international competitiveness and therefore attractiveness to global mining investment, and stymie the competitive environment which underpins industry's future growth prospects.

The State Government's policy position is that the QCA's ability to regulate against the perverse incentives of a privatised vertically-integrated rail business will be the regulatory protection to the central Queensland coal industry. As such, the QCA's role is expected to be elevated to a more active form of economic regulation.

It is important to acknowledge that QR Network has sought to constructively engage with industry on various aspects of the proposed regulatory arrangements, including

- During 2008 prior to the first formal 9 September 2008 submission (UT3.1)
- Prior to the QCA's first Draft Decision to reject UT3.1 (QCA December 2009 Decision)
- During the development of the revised UT3.2 application submitted on 15 April 2010
- Prior to the QCA's second (pricing – June 2010) and third (non-price – 21 September 2010) Decisions to reject UT3.2.

QRC notes that the future growth of QR National will be dependent on its ability to continue to meaningfully engage with its customers, and their representatives, in order to ensure all supply-chain participants are able to benefit from the from the continuing growth of the Queensland coal industry.



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→ ***QCA minded to approve UT3.3 and next steps***

In light of the QCA's stated intention to approve UT3.3, QRC accepts that this draft access undertaking will provide the regulatory framework applicable to the central Queensland coal network over the forthcoming regulatory period (noting that the draft undertaking contains numerous 'deferred processes' which will result in revision of the undertaking during the regulatory period).

QRC has not been able to complete any detailed due diligence on the proposed UT3.3 undertaking or standard access agreements, due to consultation timeframes. However, industry notes that a range of important matters will be addressed or revised during the forthcoming regulatory period by means of deferred processes. QRC looks forward to engaging with QR Network and the Authority on these important issues over the coming 12-15 months.

→ **QRC's Position on QR Network's proposed UT3.3 replacement undertaking:**

QRC Position

QRC accepts that UT3.3 will provide the regulatory framework to apply to QR Network's central Queensland coal network, subject to the outcome of a range of important deferred issues.



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→ **Deferred issues**

In the event that the QCA approves UT3.3, there will remain considerable uncertainties surrounding the detail with respect a number of proposed provisions of UT3.3 (in particular, the Investment Framework). While QRC supports the proposed deferred regulatory processes (as they are a necessary outcome of the timeframes for the QCA to approve a replacement access undertaking) it will be critical that the following work-program is effectively implemented over the following 12-15 months.

Deferred processes	Timing
→ Incentive Regime/Mechanism (clause 2.6).	→ Within 12 months from the approval date (est. October 2012) <ul style="list-style-type: none">QR Network to submit proposed incentive regime – process provides for consultation and QCA decision-making process.
→ System Rules - for the Goonyella System (clause 7.1(e)).	→ Within 9 months from the approval date (est. July 2012) <ul style="list-style-type: none">QR Network will submit to the QCA draft System Rules for the Goonyella System – process provides for consultation process.
→ Investment Framework (clause 7.6(a)) <ul style="list-style-type: none">Complete framework to be implementedStandard User Funding Agreement (SUFA)	→ Within 3 months from the approval date (est. January 2012) <ul style="list-style-type: none">QR Network to submit SUFA and other amendments required to implement the QCA Investment Framework (Schedule J) – process provides for consultation and QCA decision-making process.
→ Standard Rail Connection Agreement – ability to interconnect private rail enhancements with QR Network's network (clause 8.4)	→ Within 9 months from the approval date (est. July 2012) <ul style="list-style-type: none">QR Network will submit to the QCA draft Rail Connection Agreement.
→ New Form of Agreement – to enable coal producers to directly contract access rights (clause 5.2(n)).	→ Within 6 months from the approval date (est. April 2011) <ul style="list-style-type: none">QR Network to submit proposed new form of agreement – process provides for consultation and QCA decision-making process.
→ Network Condition Assessment - Maintenance (Part 13/Schedule A clause 5)	→ Within 3 months from the approval date (est. January 2012) <ul style="list-style-type: none">QR Network must procure a condition based assessment of the central Queensland coal network.
→ Regular review of capacity (clause 11.1.4)	→ Within 6 months from the approval date (est. April 2011) <ul style="list-style-type: none">QR Network to undertake a review of capacity – that is the difference between committed Capacity and Capacity.
→ Supply Chain Operating Assumptions (clause 11.1.3)	→ Within 6 months from the approval date (est. April 2011) <ul style="list-style-type: none">QR Network will develop Supply Chain Operating Assumptions for each of the individual coal systems – process provides for consultation process.



QR Network's September 2010 Draft Access Undertaking

→ Summary of industry's key assessment criteria

QRC's criteria for consideration of QR Network's proposed replacement Undertaking, as provided in the QRC's November 2008 submission, and the outcomes within UT3.3, are shown below. This highlights that progress that has been made within UT3.3 on a number of important issues, but that appropriate settlement of the 'deferred issues' is necessary in order to deliver an effective Undertaking. Therefore industry places a great deal of importance on developing improvements to the regime (in terms of implementation and process refinements) through these processes.

Industry's key assessment criteria:	UT3.3
→ Efficiency (of the network and of the coal industry)	
▪ Capacity expanded to meet demand within reasonable timeframes.	→ Some progress, Implementation issues remain
▪ Capacity expanded at an efficient cost (including optimal choice of expansion options).	→ Some progress – more work needed on CRIMP and proposed capacity assessment processes
▪ System operated efficiently to maximise use of the assets.	→ Implementation issue – performance regime and capacity assessment processes
▪ Services provided are based on an efficient cost (including a fair return to QR Network taking into account risk profile and performance).	→ Tariffs approved → Implementation issues with investment and performance framework
→ Transparency	
▪ Sufficient disclosure of information to support achievement of other key criteria.	→ Good progress
▪ Fair and transparent processes for capacity allocation.	→ Good progress
▪ Fair and transparent basis for charging for services and allocating risks.	→ Good progress – implementation issues around investment framework
▪ Risks arising from QR National structure including relationship with related operator addressed.	→ Good progress
→ Appropriate Incentives	
▪ Undertaking provides incentives (and avoids disincentives) for QR Network, operators and customers to act in the interests of the coal chain.	→ Implementation issue - proposed incentive regime
▪ Undertaking should seek to remove market distortions that are barriers to effective competition.	→ Good progress – proposed framework will need to be tested
→ Certainty	
▪ Requirements to obtain and retain access rights are understood.	→ Progress made although there are implementation issues
▪ Basis on which the cost of the service may vary is understood.	→ Good progress
→ Competition	
▪ Above rail competition is promoted through regulatory arrangements that ensure genuine contestability for above-rail haulage services.	→ Good progress – proposed framework will need to be tested
▪ Removing any unnecessary coupling of access and haulage components of rail services to ensure the benefits of competition are realised.	→ Implementation issue – deferred process to develop new form of agreement
▪ Access Rights can be secured with sufficient certainty to support the massive investments involved in mining projects.	→ Implementation and operational issues to be progressed
▪ Barriers to user funded investment are removed to ensure a genuine competitive finance market for below-rail investment.	→ Uncertain – proposed framework will need to be further developed and tested
▪ Transparency measures firmly within the scope of the undertaking.	→ Good progress – proposals will need to be tested

Overview of issues surrounding proposed UT3.3:

→ Areas of focus – implementation and clarification issues

While QRC members have been constrained in their ability to respond to a number of proposals contained within UT3.3, the overall the policy intent presented within the QCA’s Final Decision (September 2010) is sound. To the extent that this policy intent is achieved through the proposed clauses outlined within the proposed replacement undertaking, QRC seeks clarification around a range of implementation and interpretation matters.

During the preparation of this submission, QRC members have requested that the issues presented in the following table are particularly emphasised to the QCA.

Issue - QCA Decision September 2010	Undertaking Part/Clause	QRC Response
→ Investment Framework		
Interim Framework Process	Obligation for QR Network to provide a draft User Funding Agreement to users – within the context of the interim investment Framework.	<ul style="list-style-type: none"> → While an interim investment framework has been included within the proposed undertaking – to operate prior to the Schedule J framework being fully implemented – the provisions foreshadow the existence of a dispute process around User Funding Agreements. → However, there is no obligation for QR Network to provide a User Funding Agreement in order to dispute proposed terms – and there is currently no standard agreement developed until after the Schedule J principles are implemented.
Smallest efficient Extension	Part 7	<ul style="list-style-type: none"> → Clause 7.5.5 – What is the proposed process to be used by QR Network to determine the “smallest efficient Extension”? Is it intended that the project scope and governance arrangements will drive this process (clause 7.5.5(k)) – what are the limitations to apply to QR Networks discretion around scoping projects?
Access Conditions	Part 6. Pricing Principles	<ul style="list-style-type: none"> → QRC seeks clarification as to the public consultation process for the approval of Access Conditions – in particular, the level of information to be published and the distribution scope of this information. → Users not participating in the initial negotiations should have the ability to make representations such that their interests are not adversely affected by

		<p>the proposed Access Conditions (clause 6.5.4(f)(vi)).</p> <ul style="list-style-type: none"> → In terms of future Access Seekers, how would Access Conditions be able to identified? Published Reference Tariffs may not necessarily highlight the existence of such conditions clause 6.5.2(d)(ii). → What is the definition of 'stakeholder' for the purposes of clause 6.5.4(d)? → There appears to be circularity issue with clause 6.5.5(c) – that is, will the QCA approve a 'varied WACC' which is not justified on the basis of criteria outlined in 6.5.4(f)(iv), in the event that all Access Seekers have agreed to that such a Prohibited Access Condition – varied WACC? → Limitations provided with respect to clause 6.5.2(d)(iii) around tax or other financial benefit accruing to QR Network if risks have been transferred to an Access Seeker. Are these benefits dependent on a risk transfer?
<p>→ Chapter 2 - Scope and intent of the undertaking</p>		
<p>Decision 2.3 – General principles of non-discrimination and independence</p>	<p>Decision 2.3 – QCA notes that new provisions to prevent discrimination may be ineffective as they potentially allow QR Network to discriminate in favour of its related party access seeker/holder if discriminatory provisions can be included in the access agreements.</p>	<ul style="list-style-type: none"> → Clause 3.2(b) states that QR Network will ensure that all Access Seekers, irrespective of whether they are a QR Party or a Third Party and all decisions made under this Undertaking are made in a manner that is consistent between all Access Seekers and/or Access Holders in the same circumstances. → QRC seeks clarification as to whether this applies before an Access Agreement is executed. Given that clause 2.2(a)(v) provides an express exception to matters contained in Access Agreements (clause 3.2(a)) limited to discrimination relating to hindering or preventing access or terms of related party operators, is QR Network prevented from including discriminatory treatment within new Access Agreements which could be inconsistent with the Undertaking?