



28 May 2010

**Mr John Hall**  
Chief Executive Officer  
Queensland Competition Authority  
GPO Box 2257  
Brisbane Qld 4001

Dear Mr Hall,

**Queensland Rail (QR) Network's 2010 draft access undertaking (UT3.2)**

I refer to the QCA's invitation to provide submissions regarding QR Network's proposed 2010 draft access undertaking (Draft Access Undertaking).

Vale Australia Pty Ltd (Vale) has been an active participant in the Queensland Resources Council's (QRC) efforts to develop an agreed industry position regarding this matter. We note that the QRC will be submitting an industry submission, from these discussions, to the QCA. Vale takes this opportunity to endorse the QRC's submission to the QCA.

You will note in the QRC's submission, however, that there are differing views amongst members concerning the operation of Part 11 Clause 11.3 (Contracting for Capacity in Coal Supply Chains) of the Draft Access Undertaking. Vale is very concerned about the practicable application of this clause and the potential impact and impediment on new and expanding users of the coal supply chains.

Under clause 11.3, Conditional Access Rights of a Conditional Access Holder are conditional on the completion of a particular Infrastructure Enhancement. If the expected Capacity of QR Network overall is less than anticipated after an Infrastructure Enhancement is completed (Reduced Capacity), then the Conditional Access Rights of each Conditional Access Holder (and Conditional Access Holders only) are reduced on a pro rata basis.

Vale's concerns with clause 11.3 are:

- the inconsistency between this clause 11.3 and the rights of Access Seekers and Access Holders under the Expansion processes set out in clause 7.5, particularly user funded Expansions;
- the lack of transparency of the QR Network decision making process in determining the scope and implementation of any Infrastructure Enhancements, or Expansions; and
- the continuously changing operating environment of the rail systems within coal supply chains.

Vale is concerned that, as currently drafted, clause 11.3 could result in new or expanding producers having their proposed capacity reduced even if the Infrastructure Enhancement /

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Vale Australia Pty Ltd ABN 17 062 536 270

Level 11, 100 Creek Street, Brisbane Queensland 4000  
GPO Box 731, Brisbane Qld Australia 4001

Tel +61 7 3136 0500 Fax +61 7 3136 0510

Expansion is not the cause of the Reduced Capacity. This could potentially preclude new entry. For example, a small new entrant could have its capacity reduced with the result that its mine is no longer commercially viable.

### **Infrastructure Enhancements and Expansions**

The Draft Access Undertaking defines Infrastructure Enhancement as new Rail Infrastructure or a modification to existing Rail Infrastructure. However, in Vale's view, "Infrastructure Enhancement" as used in clause 11.3 is more accurately an "Expansion". (QR Network appears to use the terms interchangeably (as can be seen in Volume 1, Policy Issues – see, for example, p. 34), but to do so in the Draft Access Undertaking can only cause confusion.) The Draft Access Undertaking sets out detailed provisions relevant to Expansions that Vale considers are relevant to the application of clause 11.3.

For example, before undertaking any Significant Investment, QR Network sets out a procedure to determine an aggregate minimum level of participation by Applicants (being those Access Seekers who are interested in obtaining Available Capacity) that it requires before it is prepared to proceed with the Significant Investment (see subclause 7.5.3(d)(ii)(B)). This suggests a level of commitment from QR Network to construct a Major Expansion (to which the definition of Significant Investment is linked) to a capacity that can accommodate that participation.

As another example, where a user has funded an Expansion that user has a first right of refusal to its proportion of the capacity arising from the user funded expansion (see subclause 7.5.4(d)(vi)).

Clause 11.3 then states that despite these endeavours, and the commitment sought by QR Network from Applicants / Conditional Access Holders, the access rights of the Applicants / Conditional Access Holders are reduced if upon completion of the Infrastructure Enhancement / Expansion there is Reduced Capacity. This is even if the reasons for the Reduced Capacity are unconnected with the Infrastructure Enhancement / Expansion. This is discussed further below.

Vale would expect from the process described that a planned Expansion could not result in a shortfall in Capacity unless the planning process was deficient or not followed.

### **Lack of Transparency of Scope.**

If QR Network intends there to be a difference between an Infrastructure Enhancement and an Expansion, then as currently drafted a new or expanding producer is not included in the development of the scope of any Infrastructure Enhancements and does not have an understanding of the tonnage risk of this scope. That is, there is no process which requires QR Network to consult or engage with Access Seekers and Users before it undertakes an Infrastructure Enhancement. Therefore, decisions can be made about the scope of an Infrastructure Enhancement which could adversely impact on the overall capacity that is not due to the capacity requests of Access Seekers but to how the Infrastructure Enhancement was constructed. For example, QR Network may not have taken into consideration adequately the existing access rights of users as part of the Infrastructure Enhancement.

If QR Network intends Infrastructure Enhancement and Expansion to be the same, Vale notes that QR Network, as owner of the infrastructure, reserves the right to build any Expansion to meet its commercial requirements. This means that even where QR Network consults with access seekers and users about a proposed Expansion, a completed Expansion may not meet the requirements of the Applicants despite the commitments contained in the Draft Access Undertaking. In these circumstances, Vale considers it inappropriate that Applicants / Conditional Access Holders must bear the consequences of any shortfall.

In Vale's view, and consistent with the commitments QR Network expects of Applicants, if QR Network agrees to construct an Expansion, it should do so to meet the requirements of the Applicants.

## **Operating Environment**

As the QCA is likely to be aware, the determination of existing system capacity is dependent on system assumptions. The construction of an Infrastructure Enhancement / Expansion, therefore, may not be the cause of the Reduced Capacity. Indeed, as noted above, if a planned Expansion is built as planned, then any shortfall that is experienced is unlikely to be due to that Expansion.

The construction of an Infrastructure Enhancement / Expansion can take 12 – 18 months to undertake and complete. Over that time, operating practices may have changed, developments at complementary infrastructure such as an export terminal may have experienced problems, a natural disaster may have occurred, any one or all of which may contribute to a shortfall in overall capacity and none of which can be attributed to an individual party.

To automatically attribute any shortfall to an Infrastructure Enhancement / Expansion, in Vale's view, does not accurately reflect the reality of how a system as complex as a rail system actually operates. QR Network is better placed to introduce processes and procedures by which it can identify the cause of a shortfall, if any, and allocate any reduction that may be required accordingly.

## **Suggested approach**

QR Network needs to be able to manage capacity shortfalls as and when they occur along its rail system. As already noted, it is Vale's view that a planned Expansion could not result in a shortfall in Capacity unless the planning process was deficient or not followed.

Vale suggests that QR Network develop a process by which, if a shortfall occurs at any time, it can identify the source of that shortfall and access rights are reduced accordingly. So, for example, if the cause of the shortfall is due to actions:

- of one producer, then that one producer ought to bear the burden of the reduction in access rights (unless to do so would mean that the mine would no longer be commercially viable);
- of one service provider who hauls coal for a number of producers, then the shortfall should be spread across those producers;
- the source of which cannot be identified, then the shortfall should be spread across all users.

Vale considers that adopting an approach such as this is the only means by which shortfalls can be managed equitably across the users of the network.

We appreciate the opportunity to provide these comments.

For further information regarding this advice please contact myself on (07) 3136 0911. .

Yours sincerely,



Bob Skuza  
General Manager Global Coal Logistics  
Vale Australia Pty Ltd