

Queensland
Competition
Authority

Competitive Neutrality Complaint

**Complaint by Coachtrans Australia
Against Queensland Rail**

FINDINGS AND RECOMMENDATIONS

June 1998

Principle of Competitive Neutrality

The principle of competitive neutrality is that a government agency carrying on a significant business activity should not enjoy a competitive advantage, solely because of the government ownership or control of the agency, over competitors or potential competitors in a particular market.

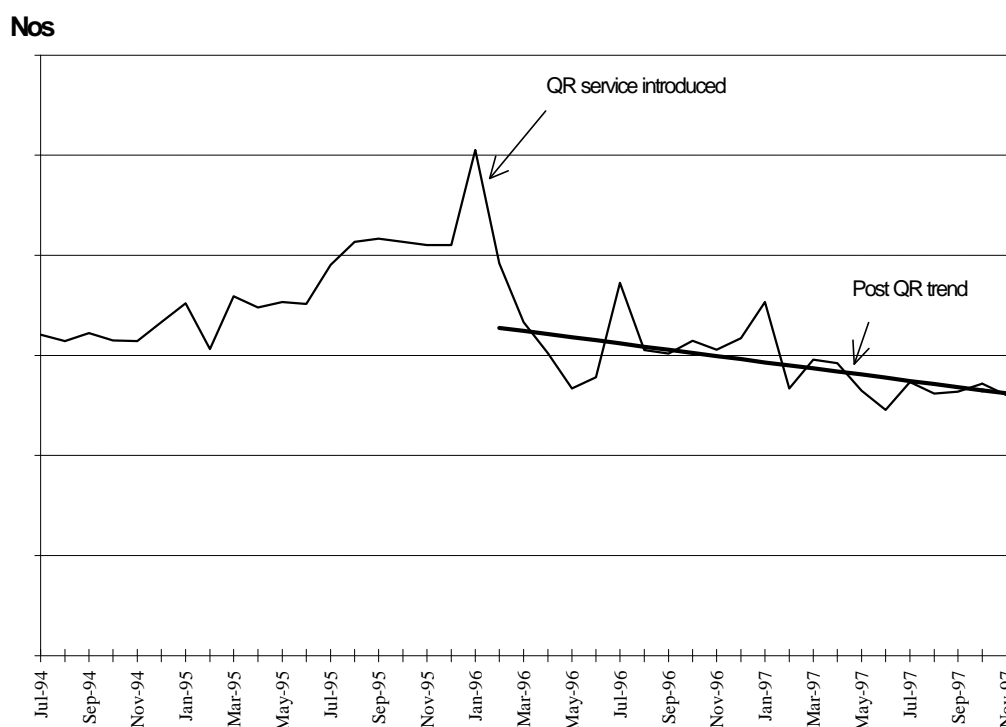
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BACKGROUND

1. On 26 February 1996, Queensland Rail (QR) introduced a rail passenger transport service from Brisbane to Helensvale as part of the Queensland Government's response to the forecast population growth in the Brisbane to Gold Coast corridor¹.
2. In effect, QR's operating costs are subsidised by the Queensland Government through a Community Service Obligation (CSO)². In 1996/97, the subsidy for the Citytrain network, of which the Brisbane to Gold Coast service is part, amounted to \$369 million. QR charges a fare of \$7.20 per single adult fare for the Brisbane to Helensvale service. That fare does not recover operating costs nor provide a return on capital.
3. At the time QR introduced the service, Sita Queensland Pty Ltd, trading as Coachtrans Australia (Coachtrans), provided a bus service from Brisbane to Helensvale at \$11.00 per single adult fare. Coachtrans advised that, upon the introduction of QR's service, it reduced its fares for multiple trip tickets from Brisbane to Helensvale by between 30 and 52 per cent in an effort to maintain passenger numbers. Coachtrans also advised that following the introduction of QR's service, Coachtrans' patronage dropped substantially. Figure 1 depicts its total passenger numbers over the relevant period.

Figure 1: Coachtrans Passenger Numbers



Source: Coachtrans Australia

¹ See Appendix 1 for a brief outline of the historical background to this initiative and other relevant developments.

² Community service obligations are services which a firm would not undertake if considering its own commercial interests, and which the Government considers necessary to achieve particular community goals.

COMPLAINT

4. Coachtrans Australia lodged a complaint with the Queensland Competition Authority (QCA) against QR alleging a breach of the principle of competitive neutrality, misuse of monopoly powers and severe market distortion.
5. Of the issues raised in the complaint, the Authority has jurisdiction only over matters relevant to competitive neutrality and, accordingly, the matters raised by Coachtrans have been reviewed from that perspective.
6. Coachtrans alleged that the principle of competitive neutrality had been breached by:
 - the prices that QR was charging for the Brisbane to Gold Coast passenger rail service; and
 - procedural and regulatory advantages enjoyed by QR.
7. Coachtrans advised that, as a result of the alleged breaches of the principle of competitive neutrality, its viability was diminished and that its parent company was underwriting losses pending resolution of the complaint. Coachtrans also submitted that, unless the breach of competitive neutrality was remedied in the short term, almost 450,000 passengers per annum would be without public transport if Coachtrans was forced to discontinue its services.

DECISION TO INVESTIGATE

8. Under the provisions of the QCA Act, the Authority is required to investigate a complaint about an alleged breach of the principle of competitive neutrality if:
 - the activity which is the subject of the complaint has been declared to be a significant business activity by the Ministers (the Premier and the Treasurer);
 - the complainant is, or seeks to be, in competition in a particular market with the significant business activity;
 - the complainant is, or may be, adversely affected by the competitive advantage enjoyed by the significant business activity;
 - the complainant has made a genuine attempt to resolve the matter of its complaint with the government agency;
 - the complainant satisfies certain procedural requirements outlined in the QCA Act.
9. The Authority decided to investigate the complaint as it considered the essential legislative requirements for an investigation were satisfied, in particular that:
 - all the business activities of QR were declared as significant business activities from 1 July 1997;

³ Further details of the submissions to the Authority and its position in respect to these matters appear in Appendix 2.

- QR and Coachtrans were, prima facie, in competition in the provision of public transport services between Brisbane and the Gold Coast;
 - Coachtrans suffered a decline in patronage after the introduction of QR's service and, as the QR service was substantially subsidised, it was possible that the decline was caused by the competitive advantage the subsidy provided;
 - Coachtrans had made a genuine attempt to resolve the matter of its complaint with QR and other relevant government agencies.
10. The Authority consulted relevant parties and sought submissions on an issues paper and a draft Report to facilitate consideration of all relevant matters.

DECISION

11. The Authority has concluded that:
- the fares charged by QR for its Brisbane to Gold Coast services breach the principle of competitive neutrality; BUT
 - QR does not enjoy any procedural or regulatory advantage in respect of Brisbane to Gold Coast services which breach the principle of competitive neutrality.

REASONS

12. Submissions were received that QR was not in breach of the principle of competitive neutrality because it was operating in a fully commercial manner in that it was only providing the service at the direction of government and, when account was taken of the subsidy that it received for operating the service, it was covering its full costs, including a return on capital. It was also submitted that the subsidy arrangement was not related to government ownership or control but rather to the provision of a rail service and that a subsidy would have been paid had someone other than QR supplied the service.
13. The principle of competitive neutrality requires that, to the extent QR and Coachtrans compete in the provision of passenger transport services between Brisbane and the Gold Coast, QR should not enjoy a competitive advantage over Coachtrans, solely because of government ownership or control of QR.
14. In essence, therefore, the Authority was required to consider whether:
- (a) QR and Coachtrans are in competition in a market;
 - (b) QR enjoys a competitive advantage over Coachtrans in that market; and
 - (c) the competitive advantage is the result of the government ownership or control of QR.

15. With respect to competition, the Authority found that QR and Coachtrans are in competition in the public transport passenger market from Brisbane to the Gold Coast. In coming to this conclusion, the Authority particularly noted that, following the introduction of services by QR, Coachtrans suffered a significant loss of passengers. The Authority also noted that internal documentation of QR, Queensland Transport and Coachtrans accepted that there was competition between QR and Coachtrans and that each party acted accordingly.
16. With respect to competitive advantage, the Authority found that QR has a competitive advantage over Coachtrans in respect of prices in the Brisbane to Gold Coast public transport passenger market. QR is in receipt of substantial subsidies from the Queensland Government and, as a result, is able to set prices which are below its operating costs and which make no return on its own capital costs. On the other hand, Coachtrans is in receipt of no subsidies or other assistance from the Queensland Government and is required to meet all its costs, including a return on its own capital if it is to remain viable over the longer term.

In addition, QR fares from Brisbane to the Gold Coast make no contribution towards the cost of the permanent way (ie track etc) while available evidence suggests that bus operators (in general) fully recover the capital cost of road infrastructure to government.

In other words, it does not matter that QR may be acting commercially by ensuring that it only provides an unprofitable service when it gets an appropriate subsidy from government. It is sufficient that the subsidy provides QR with a competitive advantage.

17. With respect to the subsidy arrangement which enables QR to enjoy a competitive advantage over Coachtrans, the Authority found that the approach adopted is directly based on the fact that QR is owned or controlled by government.

That is not to say that the Government might not have provided a subsidy to a commercial operator if it had been operating a rail passenger service to the Gold Coast. However, the Authority considers that any arrangements would be less generous and require greater accountability than the current external subsidy arrangements with QR.

18. The Authority also noted that the means by which QR prices were set and approved may not accord with the requirements of the Government Owned Corporations (GOC) Act 1993 in that, under the Authority's interpretation of the requirements of the Act, any Community Service Obligations (CSOs) should have been negotiated with the shareholding Ministers at the time that QR was corporatised. Similarly, while CSOs continue to be funded under the budget process, these arrangements should not substitute for the stronger accountability requirements evident in the GOC Act.
19. Coachtrans also raised a range of other matters related to actions by government agencies which it alleged breached the principle of competitive neutrality. The Authority found that these matters did not breach the principle of competitive neutrality either because they did not provide QR with a competitive advantage over Coachtrans or because they did not arise as a result of the government ownership or control of QR. An assessment of these matters and the reasons for the Authority's conclusions is outlined in Appendix 2.
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IS THE BREACH WARRANTED?

20. Having found that the prices charged by QR provide it with a competitive advantage solely as a result of its government ownership or control, the Authority considered whether there are any reasons which justified the breach of competitive neutrality (consistent with the requirements of the QCA Act).
21. In particular, the Authority sought to determine whether there existed appropriate evidence that economic, social and environmental costs, such as air pollution, reduced road congestion, increased safety, reduced expenditure on road capacity and the provision of alternative transport means at reasonable cost, may justify the current price differential between QR and Coachtrans services.
22. The Authority's conclusions in respect to these matters are based on available information (detailed in Appendix 3) which the Authority acknowledges is not specific to the Brisbane to Gold Coast corridor. It is for this reason that further analysis is considered necessary to determine the most appropriate means of overcoming the failure to comply with the principle of competitive neutrality.
23. A consideration of the available material revealed that, in general, rail is superior to buses with respect to air and noise pollution and in alleviating road traffic congestion (particularly as a result of its reliance on dedicated transport corridors), but the available information on safety was inconclusive. Overall, however, available quantifiable estimates of these factors did not significantly alter the relative total costs associated with these services. In addition, the Authority noted that there was no objective information available on the relative contribution of the different modes to social goals.
24. Consistent with these findings, and subject to the caveat in paragraph 22, the Authority concluded that:
 - (a) the current price relativities between rail and bus operators do not promote the long term efficient allocation of resources in the public transport market or promote ecologically sustainable development;
 - (b) the current arrangements do not promote competition;
 - (c) there are no government policies, guidelines, directions, or laws which would obviate the requirement that the principle of competitive neutrality should apply to QR; and
 - (d) there are no social welfare, equity, occupational health, safety, industrial relations, economic or regional development matters, or matters related to the availability of goods and services to consumers or interests of consumers or any class of consumers which justify this breach of the principle of competitive neutrality.

In addition, the Authority noted that no claim had been made that QR suffered a competitive disadvantage as a result of its government ownership or control, nor was the Authority aware of any such disadvantages which might be relevant to this matter.

25. The above assessment relates to the relative prices between QR and Coachtrans and does not represent an assessment of the benefits or costs of the relativities between the price of rail and private vehicle costs, or the overall strategic approach adopted by the Queensland Government to meet the region's growing population requirements.

COMPLIANCE

26. To the extent that a breach of competitive neutrality is not justified by reference to the issues considered above, as is the case with this matter, the Authority is required to make recommendations on how the government agency's failure to comply with the principle of competitive neutrality could be overcome. Typically, the enjoyment of a competitive advantage can be overcome by:
- (a) removing the source of the advantage to the government agency; or
 - (b) conferring a benefit, equivalent to the advantage enjoyed by the government agency, upon the agency's competitor(s).
27. From an economic perspective, it is preferable to remove the source of the advantage enjoyed by rail over buses. In this instance, it is that portion of the subsidy to QR that can not be justified by reference to the relative contributions of the two modes to broader economic, environmental and social goals. The removal of the advantage would restore competitive neutrality to bus/rail competition. However, in the absence of compensating cost savings in QR or the introduction of measures which require private vehicle users to meet the full economic cost of their road usage, including congestion costs, private vehicle usage of the Brisbane to Gold Coast corridor would increase, to the detriment of the community.
28. Accordingly, a CSO framework needs to be established which results in the "efficient" relative price for rail and bus services. Such a framework should reflect the relative contribution of the various public transport modes to the broader goals, regardless of whether the services are in public or private ownership (i.e. it must be competitively neutral).
29. The framework should also provide for competition between public transport service providers to ensure that costs to the community of providing these services are minimised, and to promote innovation and improvement in the quality of transport services over the longer term.
30. Under such an approach, it is open to the government to set prices for public transport services which do not necessarily reflect their full economic cost but which will reflect the optimal allocation of resources within the public transport market.
31. From the viewpoint of an overall efficient allocation of resources, the framework should also reflect the contributions of public transport relative to private road usage to the transport needs of the region. However, such a recommendation would go beyond that necessary to remove the breach of competitive neutrality, which relates to competition between bus and rail and not to the correct level of public transport usage in the corridor.
32. The development of a framework of the nature identified in paragraph 28 above for public transport in the Brisbane to Gold Coast corridor requires a detailed understanding and knowledge of:
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- (a) QR and Coachtrans' service structure, patronage and operating costs for Brisbane to Gold Coast services;
 - (b) the responsiveness of demand of each mode of transport to prices of other modes of transport and for changes in its own price; and
 - (c) the relative net economic, social and environmental benefits of the alternative public transport modes.
33. In the absence of such information it is not possible to make specific recommendations in this instance. A significant effort is required to define and quantify the relevant elements of the CSO framework identified above. Such an analysis needs to be conducted in a manner which meets the requirements of all relevant agencies.
34. At the same time, the Authority notes that Coachtrans viability appears to have been impaired by the current non-compliance with competitive neutrality and action may be needed prior to the introduction of the new framework if buses are to continue to contribute to the public transport solution in the corridor. In this regard, the Authority noted that the Brisbane to Gold Coast rail service carries 1,200,000 passengers at a capital cost to government of about \$380 million and a significant annual subsidy, while Coachtrans carried about 360,000 passengers in 1996/97 on route services between Brisbane and the Gold Coast (at no direct cost to the Queensland Government).
- In view of the time required to establish the CSO framework, an interim arrangement appears justified to ensure that passengers currently travelling by bus retain access to those or equivalent public transport services. A number of options are available to the Queensland Government in this respect. They include a capital grant to assist Coachtrans to restructure, an ongoing subsidy to that company, improved rail/bus service co-ordination, and extension of Coachtrans' current services.
35. There have been concerns expressed at the possible wider financial implications of these recommendations as a result of any precedent that may be established. However, the Authority must deal with the merits of the specific complaint at hand.

RECOMMENDATIONS

36. The Authority recommends that:
- 1. A CSO framework be developed for the Brisbane to Gold Coast public transport service which:
 - (i) complies with the principle of competitive neutrality;
 - (ii) achieves an efficient resource allocation within the public transport market in South East Queensland;
 - (iii) promotes competition in the public transport passenger market;
 - 2. Until such time as the appropriate framework is established and implemented, the Queensland Government should, within six months of the release of this Report, ensure that passengers currently travelling by bus retain access to those or equivalent public transport services; and
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3. Queensland Transport and QR establish a framework to facilitate adherence to the protocols required under the Government Owned Corporations Act 1993 in respect of the establishment of prices for QR services and the payment of CSOs.

37. In the interests of an overall efficient allocation of resources, the Authority suggests that the framework adopted in due course to remedy the breach of competitive neutrality should also reflect the contribution of public transport relative to private transport to the transport needs of the region.

APPENDICES

APPENDIX 1**HISTORICAL BACKGROUND**

- 1.1 The Integrated Regional Transport Plan for South East Queensland (IRTP) emphasised the challenges of managing sustained population growth into the next century. The projections underlying the plan indicate that for the 20 years between 1992 and 2011, population in the region will increase by 60 per cent⁴.
- 1.2 The most obvious result of population growth is an increase in transport activity. The number of person trips taken each day is estimated to increase by 70 per cent, and because urban areas are spreading out further in a dispersed settlement pattern, the total amount of car travel on the region's roads is estimated to increase by nearly 100 per cent.
- 1.3 With extensive urban development and geographic constraints, few corridors have been identified as being available to construct major new roads, and it is noted that the community is increasingly reluctant to tolerate intrusions of motor traffic through developed areas.
- 1.4 A key aim of the IRTP is to moderate rather than satisfy unrestrained traffic growth. To achieve this, it establishes targets for increased use of public transport. If successful, the overall market share of public transport will increase from 7.0 per cent in 1992 to 10.5 per cent of all trips, compared to a decline to about 6.3 per cent if present trends continue⁵.
- 1.5 *Inter alia*, the IRTP seeks to ensure there is a 'seamless' public transport system which combines all available public transport operations and provides a range of alternatives to car travel. In turn this is seen to require an upgrading of the traditional line haul public transport (rail and bus) systems to cope with significant peak period increases⁶.
- 1.6 Queensland Transport is responsible for providing the direction and policy framework for the Government's provision of transport infrastructure and services. It is also responsible for the administration of transport related community service obligations (CSOs).
- 1.7 QR was constituted as a government owned corporation as of 1 July 1995 pursuant to the Government Owned Corporations (Queensland Rail) Regulation 1995. The previous corporation, known as Queensland Railways, had been constituted under the Transport Infrastructure (Railways) Act 1991.
- 1.8 The decision to construct a rail line to the Gold Coast was made by the Queensland Government in the mid-1980s (before QR was corporatised) as part of its strategic land use and transport planning for South East Queensland. The line was constructed with funding provided by both the Commonwealth and Queensland Governments.

⁴ pvi - Integrated Regional Transport Plan for South East Queensland (IRTP).

⁵ pX - IRTP

⁶ piX - IRTP

- 1.9 In October 1988, the Queensland Government announced that it intended to remove market entry restrictions on seven long distance transport routes, including the Brisbane-Gold Coast corridor. As a consequence, the number of bus operators providing services over the full length of the Brisbane-Gold Coast corridor increased during 1989 from two to six.
- 1.10 The two largest licenses were held by one company trading as “Skennars” and another trading as “Pacificwest”. Coachtrans Australia Pty Ltd (“Coachtrans”) entered the market, initially by purchasing Skennar’s Brisbane-Gold Coast services in its own right (19 December 1989) and then Pacificwest through a separate company, Harlingdale Pty Ltd (5 March 1991). By virtue of these acquisitions, Coachtrans was able to assume a dominant role in the market for public passenger transport between Brisbane and the Gold Coast.
- 1.11 On 8 September 1995, the complainant, Sita Queensland Pty Ltd acquired the business assets of Coachtrans/Pacificwest, including the trading name “Coachtrans Australia”. The only operators providing alternative bus services in the corridor are now Greyhound/Pioneer, Kirklands and McCafferty’s each of whom carries only a small number of passengers between Brisbane and the Gold Coast enroute to and from Sydney. In any case, McCafferty’s, the largest of these service providers on-sells many of its Gold Coast passengers to Coachtrans’ services.
- 1.12 On 26 February 1996, inter-modal competition was re-introduced into the corridor when rail services commenced on the new Beenleigh to Helensvale rail line. Connecting bus services at Helensvale Railway Station are provided by Surfside Buslines Ltd (“Surfside”) who were awarded an exclusive contract under the Transport Operations (Passenger Transport) Act to provide local route services for the whole of the Gold Coast in August 1995.
- 1.13 Paralleling these developments, in 1994 following a review of policy, the Queensland Government introduced legislation (the Transport Operations (Passenger Transport) Act 1994 refers) to support the introduction of a concept of service contracts for particular urban areas (and under some conditions for particular route services).

Under these arrangements, licence holders were requested to amalgamate their activities in particular urban areas (including the Gold Coast) with a view to meeting defined performance standards in order to obtain the right to service those local areas. CSOs continued to be paid for those services (capped at the 1994/95 level) and protection was also afforded against competition.

Coachtrans does not currently hold any exclusive local service contract for an urban area although it does have the rights to service Coolangatta Airport and theme park visitors residing in accommodation houses and private houses on the Gold Coast, and accommodation and private houses not serviced by route services provided by Surfside.

- 1.14 QR and Coachtrans are currently the most significant providers of passenger transport services between Brisbane and the Gold Coast.

APPENDIX 2**COMPETITIVE NEUTRALITY****DECISION TO INVESTIGATE**

- 2.1 Under the provisions of the QCA Act, the Authority is required to investigate a complaint about an alleged breach of the principle of competitive neutrality if:
- the activity which is the subject of the complaint has been declared to be a significant business activity by the Ministers (the Premier and the Treasurer);
 - the complainant is, or seeks to be, in competition in a particular market with the significant business activity;
 - the complainant is, or may be, adversely affected by the competitive advantage enjoyed by the significant business activity;
 - the complainant has made a genuine attempt to resolve the matter of its complaint with the government agency;
 - the complainant satisfies certain procedural requirements outlined in the QCA Act.

Declared Significant Business Activity

- 2.2 Section 39(1) of the QCA Act defines a significant business activity as a “*business activity carried on by a government agency and declared to be a significant business activity by the Ministers [the Premier and the Treasurer] by gazette notice*”.
- 2.3 All the business activities of Queensland Rail were declared as significant business activities for the purposes of section 39 of the QCA Act 1997 on 30 June, 1997.
- 2.4 The definition of a “business activity” under the QCA Act only requires trading in goods or services. Trading is not limited to buying and selling at a profit. Provision on a regular basis of services to the public in exchange for a fee clearly constitutes trading in those services, even if the trading is not for profit.
- 2.5 Accordingly, even business activities which are supported by CSOs must comply with the principle of competitive neutrality and fall within the jurisdiction of the Queensland Competition Authority.
- 2.6 Citytrain (and in particular the Brisbane to Gold Coast rail service) complies with this definition of a business activity under the QCA Act in that it provides passenger transport services for a fee on a regular basis.
- 2.7 The Authority received submissions that QR’s Citytrain service is exempt from the application of the principle of competitive neutrality for the following reasons:
- the *Competition Principles Agreement*⁷ states that principles of competitive neutrality do not apply to non business, non profit activities, and that

⁷ The Competition Principles Agreement between the Commonwealth, State and Territory Governments outlines the basis for the application of National Competition Policy in Australia.

competitive neutrality should only be applied where the benefits to be realised from implementation outweigh the costs;

- it is explicit Queensland Government policy⁸ that non business, non profit or social policy functions which publicly owned entities engage in on behalf of Government are not subject to competitive neutrality requirements.

In this respect, it has been submitted that the Brisbane to Gold Coast service provided by QR receives CSOs and that passenger rail services to the Gold Coast, and the majority of other urban passenger train services for that matter, are not provided for the purpose of making a profit for government. And further, that throughout the world, urban rail services are generally unprofitable⁹ and require subsidies. It was contended that they are provided primarily to provide a socially acceptable alternative to private motor vehicles.

2.8 Government policies and issues of the nature identified in the above submissions to the Authority, are relevant when Ministers are considering whether to declare a business activity to be a significant business activity under section 39 (2) of the Act. Had the Ministers wished to limit the scope of “business activity” as defined in the Act to certain activities only, that discretion would have been exercised in the declaration of 30 June 1997. The Ministers have not so limited the definition of “business activity” and therefore it extends to the full meaning as provided under the Act.

2.9 In respect to this legislative test, therefore, the issue confronting the Authority is not whether Citytrain, and, in particular the Brisbane to Gold Coast rail service, should be declared a significant business activity for the purposes of section 39 (2), but whether the activity constitutes a “business activity” under the Act. For the reasons outlined in 2.4 above, the Brisbane to Gold Coast rail service is considered to be a “business activity”. All of QR’s business activities have been declared as “significant business activities” for the purposes of this Act and, must therefore comply with the principle of competitive neutrality.

Competition Requirement

2.10 Section 46(1)(a) requires the Authority to investigate a complaint if the complaint is, or could be, “*in competition in a particular market with the government agency carrying on the significant business activity*”.

2.11 Coachtrans submitted that it is competing with QR in the public transport services market between Brisbane and the Gold Coast. Coachtrans provides regular scheduled passenger services between Coolangatta and Brisbane. The services typically operate half hourly, 21 hours per day, seven days per week.

2.12 The Authority recognises that within this market there exist a number of segments: peak/off-peak, weekday/weeknight/weekend, commuters/non-commuters. The complainant has not sought to focus on any particular segment nor have QR or Queensland Transport in submissions regarding the complaint.

⁸ p26 – Competitive Neutrality and Queensland Government Business Activities. A Queensland Government Policy Statement – July, 1996.

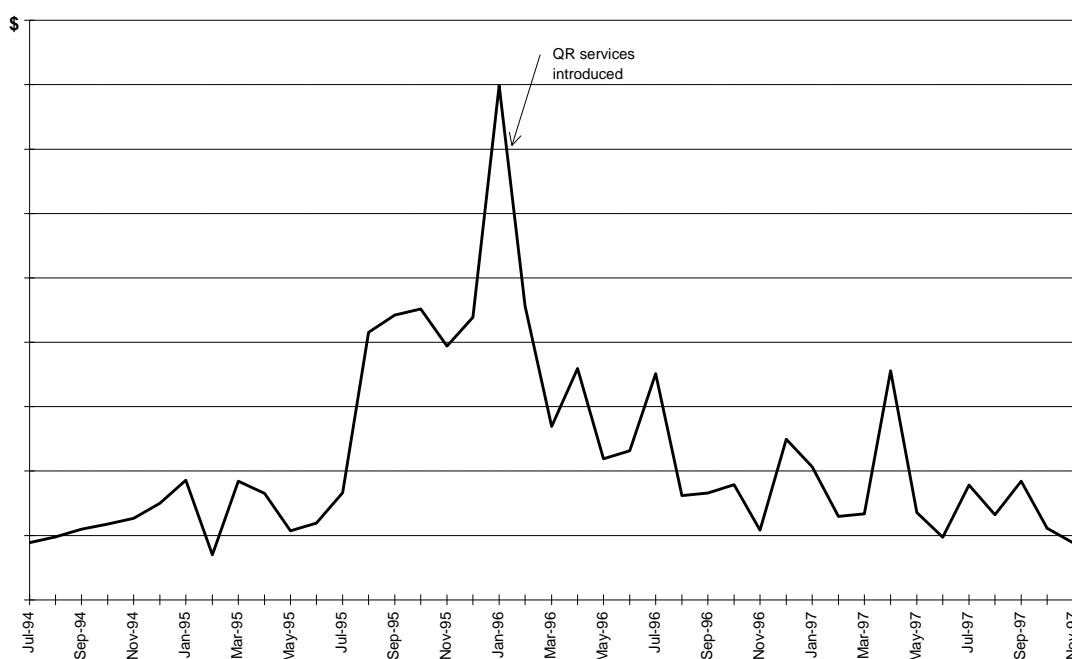
⁹ Queensland Treasury’s submission to the Commonwealth Grants Commission on its Urban Transit Assessment (February 1997) also recognises that no urban rail services in Australia are profitable.

- 2.13 The Authority was cognisant of the effects of QR's entry into the market on Coachtrans's revenues (see figure 2.1) and passengers numbers (see figure 2.2) in deciding to investigate the complaint.

Adverse Effect

- 2.14 Section 46(1)(b) of the QCA Act requires the Authority to investigate a complaint if the complainant is, or could be, "*adversely affected by the alleged non-compliance by the government agency with the principle of competitive neutrality*".
- 2.15 Coachtrans submitted information to the Authority, which the Authority accepted as sufficient to initiate investigations. Among the identified impacts were a reduction in patronage, in revenues, curtailment of services to certain local areas and the deferral of investment in new fleet vehicles. The impact of QR's services on Coachtrans' revenue derived from the Brisbane to Gold Coast service appears in figure 2.1.

Figure 2.1: Coachtrans' Revenue



Source: Coachtrans Australia

- 2.16 Coachtrans submitted that as a result of competition from QR it suffered significant revenue losses approaching \$1.3 million in the twelve months from March 1996, compared with the corresponding period commencing March 1995. No estimates are currently available which relate the extent of the loss to pricing factors identified with QR's non-compliance with competitive neutrality.
- 2.17 There are a number of related issues which have been raised in submissions to the Authority and require comment.

- 2.18 It was submitted that the overall viability of Coachtrans has not been affected as Coachtrans holds exclusive rights under licences acquired from Coachtrans/Pacificwest to scheduled passenger services between the Brisbane Domestic and International Airport Terminals and Brisbane Transit Centre, and other licences for scheduled passenger services between Coolangatta Airport and accommodation houses on the Gold Coast.

The Brisbane to Gold Coast market is a significant market in its own right and prices should comply with the principle of competitive neutrality in that market.

- 2.19 Secondly, it was submitted that the decision to proceed with the development of the Brisbane to Gold Coast rail service occurred in the 1980s and prices were announced prior to the purchase of Coachtrans by Sita Qld. Accordingly, Sita Qld should not be considered to have been adversely affected by these prices.

Adoption of an approach which places the onus on the purchaser of a business (such as Sita Queensland) to adjust its behaviour to suit any non-compliance with the principle of competitive neutrality by a declared significant business activity would disadvantage the previous owner and, more importantly, institutionalise the non-compliance. Such an interpretation is not consistent with the declaration of all the business activities of QR for the purposes of compliance with the principle of competitive neutrality.

- 2.20 Finally, it was submitted that Coachtrans' financial difficulties may have been exacerbated by its own actions as a result of substantial increases in services from the pre-rail level of 80-90 timetabled services per day, initially to 118 services per day in December 1995, reducing to 96 services per day in early February 1996. Coachtrans' total revenues have continued to deteriorate since February 1996 when Coachtrans' service levels were initially reduced.

Genuine Attempt to Resolve

- 2.21 Section 46(1)(c) of the QCA Act requires the Authority to investigate a complaint if the complainant has made "*a genuine attempt to resolve the subject matter of the complaint with the agency carrying on a significant business activity*". Coachtrans has submitted a substantial record of correspondence which indicates that Coachtrans has made several attempts to resolve the difficulties it is experiencing in competing with QR.

Other Matters

- 2.22 In considering whether to investigate the complaint the Authority was not aware of any laws, government policies, market issues or other matters which could impede investigation of the complaint.

KEY LEGISLATIVE TESTS

- 2.23 Section 38 of the Queensland Competition Authority Act (1997) defines the principle of competitive neutrality as requiring that a "*government agency carrying on a significant business activity should not enjoy a competitive advantage, solely because of the government ownership or control of the agency, over competitors or potential competitors in a particular market*".

- 2.24 In this case, the principle of competitive neutrality requires that, to the extent that QR and Coachtrans compete in the provision of passenger transport services between Brisbane and the Gold Coast, QR should not enjoy a competitive advantage over Coachtrans, solely because of government ownership or control of QR.
- 2.25 In essence, therefore, the Authority was required to consider whether:
- (a) QR and Coachtrans are in competition in a market;
 - (b) QR enjoys a competitive advantage over Coachtrans in that market; and
 - (c) the competitive advantage is the result of the government ownership or control of QR.

The Market

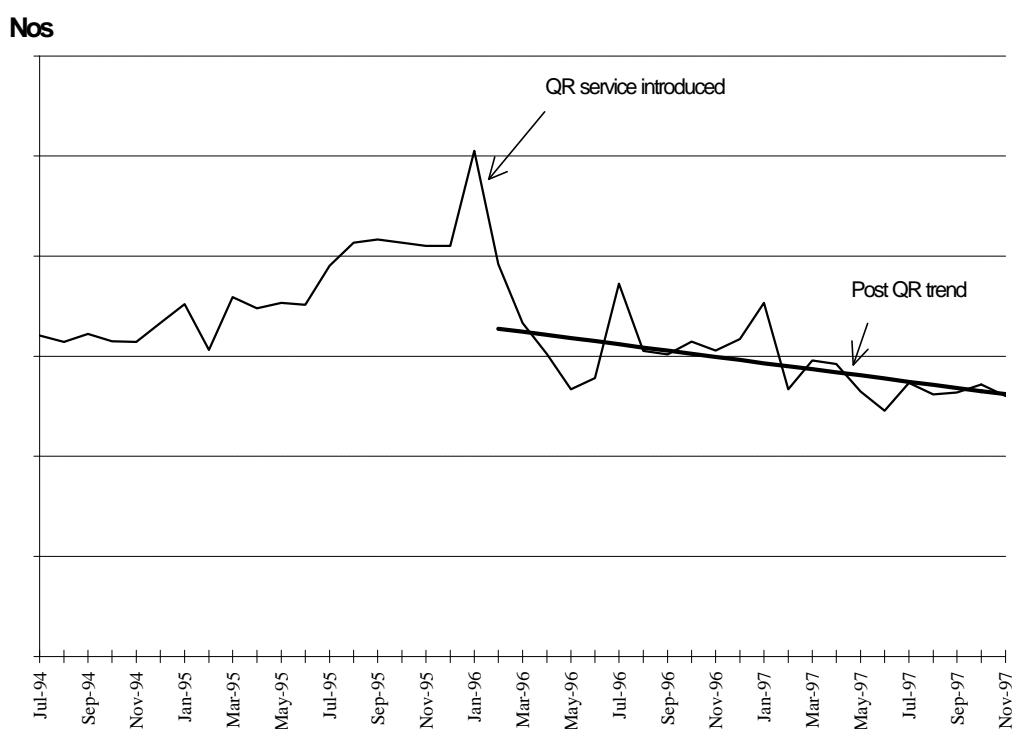
- 2.26 A market is defined in section 71 (1) of the QCA Act to relate to goods and services “that are able to be substituted for, or are otherwise competitive with, other goods and services” in Australia or a foreign country.
- 2.27 In support of its claim that its services operate in the same market as QR, Coachtrans submitted:
- that since the introduction of rail services in February 1996, the market for bus services between Brisbane and the Gold Coast has declined;
 - a QR memorandum to the Minister for Transport which acknowledges that QR’s proposed fare structure was submitted on the basis that it could “attract patronage away from bus/coaches”;
 - that senior executives of Queensland Transport (QT) have noted the substitutability of “one mode of inter-city public transport with another”;
 - details of a Freedom of Information exemption obtained for QR on the basis that it might give Coachtrans (referred to by QR’s Freedom of Information officer as “an obvious competitor”) an unfair competitive advantage over QR and any other public transport providers;
 - publicly funded television commercials used by QR showing Coachtrans buses stalled in heavy traffic and a Gold Coast train, speeding off into the distance;
 - a copy of a study by Uniquet which notes that “rail and bus/coach services to and from the Gold Coast are, for many consumers, effective substitutes for the use of private motor vehicles and for each other”¹⁰.
- 2.28 QR and Queensland Transport submitted that QR and Coachtrans operate in different sub-markets and are therefore not substitutable or competitive as:
- they have different service characteristics in that QR operates a fixed route and that Coachtrans has more service stops;

¹⁰ p1 - Report on Coachtrans on Certain Matters Concerning the South East Queensland Passenger Transport Market: Uniquet - T. Kolsen, Dr R Copp and Mr W Stewart.

- QR does not access the more heavily populated coastal strip; and
- QR has attracted 1,211,000 commuters since it began operation, whereas Coachtrans has managed to maintain passenger numbers on the Brisbane to Gold Coast service following the introduction of QR services.

2.29 Coachtrans recognised that “Buses/coaches have different supply characteristics from rail due to inherent technological factors” with rail servicing “passengers along an exclusive locationally limited permanent way...in contrast to buses/coaches (which) provide smaller passenger transport units...with much greater accessibility to users than the rail track, (and) are able to provide supply where rail cannot”¹¹.

Figure 2.2: Coachtrans - Passenger Number



Source: Coachtrans Australia

2.30 Competition can occur for a number of reasons. Both price and non-price attributes of goods or services can provide the basis for rivalry and competitive advantage. The identified differences in the characteristics of the services reduce the substitutability of one mode of transport for another for certain classes of users. Indeed, it is evident from the increase in the total number of travellers now using public transport that QR and Coachtrans are not perfect substitutes as the introduction of the rail service has increased the total number of passengers using public transport. This has the effect of limiting the extent of competition rather than precluding its existence.

¹¹ p7 - ibid

International and national studies of the price sensitivity of rail and bus passengers to each others prices support this conclusion¹², but nevertheless also support the contention that they are indeed substitutable and that demand for the services is sensitive to each other's price.

- 2.31 The Authority concluded that QR and Coachtrans are in competition in the public transport passenger market from Brisbane to the Gold Coast. In coming to this conclusion, the Authority particularly noted that, following the introduction of services by QR, Coachtrans suffered a significant loss of passengers. The Authority also noted the internal documentation of QR, Queensland Transport and Coachtrans accepted that there was competition between QR and Coachtrans and that each party acted accordingly.

Competitive Advantage

- 2.32 Coachtrans Australia submitted that QR enjoyed a competitive advantage as a result of QR's government ownership in respect of the following:
- QR's prices;
 - (capital) expenditure on rail; and
 - certain procedural and regulatory matters.

QR Pricing

- 2.33 Recommendations to the Minister for Transport relating to the pricing for the Brisbane to Gold Coast rail service were made in January 1995 and announced in March 1995. Announcing the new Gold Coast rail fare structure, the Queensland Government emphasised that the one-way adult fare between Helensvale and Brisbane of \$7.00 "*compares more than favourably with current bus fares between Brisbane and the Gold Coast.*"
- 2.34 These decisions precede both the corporatisation of QR, the purchase by Sita Qld of the interests of the business activities of Coachtrans and the enactment of the QCA Act. Nevertheless, as the activities relevant to the alleged breach are current, they fall within the Authority's purview.

¹² International data (see "Establishing A Fare Elasticity Regime for Urban Passenger Transport : Non-Concession Commuters" by David Hensher, Institute of Transport Studies (1997)) indicates that cross elasticities for rail and bus with respect to bus and rail fares are very similar with an unweighted average value of 0.24 plus or minus 0.06. Information for New South Wales, however, indicates that the cross elasticities are substantially lower in that market. The Authority notes that the relevant (cross elasticity) information is not available for the Brisbane to Gold Coast corridor and there are significant shortcomings in relying on estimates obtained from other jurisdictions. Investigations to ascertain such information are considered necessary in determining the most appropriate means of overcoming the failure to comply with the principle of competitive neutrality.

- 2.35 The following table summarises currently prevailing prices of QR and Coachtrans services from Brisbane to Helensvale.

Table 2.1: Bus/Rail Fares, Brisbane to Helensvale

	QR Component (Roma Street to Helensvale)	Coachtrans (Pre-rail fares)	Coachtrans (Post-rail fares)
<i>Adults</i>	\$	\$	\$
Single	7.20	11.00	11.00
10 Trip	46.80	96.80	46.00
20 Trip	-	165.00	95.00
40 Trip	-	264.00	185.00
<i>Pensioner</i>			
Single	3.60	8.80	8.80
Return	7.20	17.60	17.60
<i>Student</i>			
Single	7.20	8.80	8.80
40 Trip	93.60	211.20	148.00

Source: Coachtrans Australia

- 2.36 It was submitted that bus prices set a “price” standard in the Brisbane to Gold Coast corridor which should have been adhered to by rail. Identity in prices between competing service providers is not a condition of compliance with the principle of competitive neutrality. The issue for the Authority is whether QR enjoys any competitive advantage in respect to its pricing.
- 2.37 While QR has been corporatised and introduced a tax equivalent regime, and has a requirement for a commercial rate of return, these factors are not manifest in the prices charged by QR for the Brisbane to Gold Coast service. In addition, prices for QR’s Brisbane to Gold Coast service do not cover operating costs¹³. Indeed, they were based on historical prices applied to other rail passenger services in Queensland rather than on a commercial basis.
- QR is in receipt of substantial subsidies¹⁴ which allow it to set prices which are below its operating cost and which make no return on its own capital costs.
- 2.38 Fares charged by Coachtrans are provided on a commercial basis, and to remain viable, Coachtrans must meet all its costs as well as achieve a rate of return if it is to remain viable in the longer term. It must also adjust its service levels and scale of operation in the light of the competition from QR. Coachtrans receives no contribution from government towards the provision of the bus service.
- 2.39 Accordingly, the Authority concluded that QR has a competitive advantage over Coachtrans in respect of prices in the Brisbane to Gold Coast public transport passenger market.

¹³ This has been confirmed by QR in correspondence to the Authority.

¹⁴ \$369 million in 1996/97 for Citytrain.

- 2.40 Of further relevance is whether the failure to set prices to cover these costs by QR stems solely from government ownership or control of QR - that is, whether QR's prices could not be kept as low as they have been if QR were not a government agency in receipt of government subsidies.

Commercial behaviour

- 2.41 Persistent non-commercial behaviour is one indicator of the effect of government ownership or control, and it is pertinent to consider whether QR has behaved in a commercial manner in its pricing policy.

- 2.42 It was submitted that without a requirement to provide the Gold Coast rail service at the level of service required by the Queensland Government it is unlikely that QR would wish to provide those services.

In such circumstances, a commercial operator would submit a price which reflects all costs and the operator's desired profit margin. This would allow the Government to consider the appropriate level of fares and the cost to the community of the service.

- 2.43 The evidence available to the Authority is that QR did not submit to the relevant Minister such a price for the particular service.

- 2.44 For the new Gold Coast service, the fares were determined on a consistent basis with similar services in the QR network, i.e. the Nambour services, rather than the commercial imperatives of the Brisbane to Gold Coast service.

- 2.45 The current level of fares throughout the network is the result of evolution over a lengthy period of time during most of which QR was a government department. For equity reasons, QR fares are generally set on a consistent basis for the suburban and interurban sectors of the service.

- 2.46 The adult single fare for travel between any two stations is essentially related to the distance of travel. However, there are some distortions due to historical factors, outcomes from various fare increase decisions by Government over the years, and adding interurban travel to the suburban fare system as the suburban network has expanded. All other fares, including concession, discount and periodical fares, are derived as a factor of the adult single fare.

- 2.47 It was submitted that the fare was considered after focus groups (market research) were conducted and this guided the "commercial" decision on this matter. However, commercial organisations also consider their financial constraints. No such considerations were evident in this case.

- 2.48 It was also submitted to the Authority that, as a result of the large fixed costs associated with providing rail infrastructure such as track, signalling and stations, and while passenger volumes are relatively low (at least compared with ultimate volumes), the cost per passenger-kilometre is relatively high compared with other modes. It was submitted that it is necessary, therefore, to initially set start-up fares to achieve an acceptable level of patronage.

The Authority accepts that this may be a viable and acceptable commercial strategy. Nevertheless, the Authority has not identified any evidence that such a strategy formed part of the decision-making process related to the current fare levels.

- 2.49 These considerations indicate that QR's prices for the Brisbane to Gold Coast rail service are not commercial in nature.

Requirements of the GOC Act in Respect of CSOs

- 2.50 The Government Owned Corporations (GOC) Act 1993 defines the protocols with which GOCs must comply when undertaking their commercial responsibilities. That Act requires a GOC's Board to establish to the satisfaction of the shareholding Ministers that the provision of a certain service is not in the commercial interests of the GOC to perform, and arises because of a direction, notification or duty to perform.
- 2.51 Such a requirement was not in place at the time the prices were being set as QR was only corporatised in July, 1995. Nevertheless, on the Authority's interpretation of these requirements, any CSOs should have been renegotiated and approved at the time QR was corporatised. The Authority is not aware of any attempt by the QR Board to comply with such requirements at that time.
- 2.52 The Authority is aware that the CSOs continue to be funded under the budget process. However, it seems inappropriate that these arrangements can be allowed to substitute for the stronger accountability requirements evident in the GOC Act. Should there exist any doubts about the procedures to be adopted, then these will need to be clarified by the relevant responsible agencies and adherence monitored.

Direction of CSOs

- 2.53 It is worth considering whether the Queensland Government distinguishes between public and private ownership (or control of an entity) in directing the payment of CSOs.
- 2.54 There exist many examples of CSOs provided to bus operators who provide local route services and who do not compete with QR (eg. Bowen, Bribie Island, Bundaberg, Cairns, Gladstone, Gympie, Harvey Bay, Innisfail, Mackay, Maryborough, Park Ridge, Rockhampton, Toowoomba, Townsville and Yeppoon).

Examples also exist where CSO payments are made to private bus operators whose services compete directly with Citytrain including Albany Creek/Arana Hills, Caboolture, Cleveland/Redland Bay, Ipswich, Logan and Redcliffe.

A CSO is also paid to Brisbane Transport which competes with Citytrain's services to the Brisbane City central business district from Algester/Runcorn/Sunnybank, Annerley, Brookfield, Coorparoo, Forest Lake/Inala, Oxley, Sandgate/Shorncliffe, Strathpine and Toombul.

- 2.55 Thus CSOs are provided to bus operators and QR without discrimination on the basis of their ownership. However, they are not provided to unregulated (that is, not government controlled) service providers such as the line haul bus operators. Line haul bus services have also been recognised as a key source of competition for QR.¹⁵

¹⁵ see p35 - QR 1996-97 Annual Report which states "...the future success of Citytrain will depend on the degree of competition from line haul bus services, the level of private car ownership and the extent to which Citytrain is able to pursue best practice efficiency levels".

- 2.56 The rationale for not providing CSOs to line haul bus operators is that these services are viable without such assistance and that any payments would represent an unnecessary burden on taxpayers. However, competitive neutrality is concerned with the relationship between competitors, not whether one competitor is viable. Viability does not obviate the need for compliance or justify non-compliance. In any case, viability may be a subjective judgement.
- 2.57 The Authority notes the differential treatment accorded to transport service providers who in the past were regulated by the Queensland Government and are not now viable, with the treatment accorded to Coachtrans. The Authority considers that this differential treatment reflects past government concerns for effective service delivery of services provided under the direct control of government, and provides a competitive advantage to those service providers over other competitors such as line haul bus operators.

Differences in Size of CSOs

- 2.58 Another suggested approach is to seek to discern whether the size of the subsidy differs between public and private service providers.
- 2.59 The Queensland Government provides CSOs to QR as well as private bus operators providing local urban services. QR (Citytrain) received \$369 million in 1996/97 for the carriage of approximately 41 million passengers. Brisbane Transport received \$29.5 million from the State Government (and a further \$30 million from the ratepayers of Brisbane) for the carriage of 48 million passengers. In total, other urban bus operators received \$15 million for the carriage of an estimated 45 million passengers.

The average passenger journey length is relevant to ensuring an appropriate comparison. In this regard QR has noted that QR's average passenger journey length is about 19km whereas QR understands that the average bus journey length is about 6km.

- 2.60 The difference in the size of the CSOs does not have a bearing on compliance with the principle of competitive neutrality. What is important is whether a private operator could be in receipt of a CSO of the magnitude provided to QR or whether the difference in CSOs reflects the broader benefits of the services.

Differences in Approaches to CSOs

- 2.61 In terms of approaches to CSOs, it is noted that:
- Queensland Government CSOs to private sector operators of urban bus services were capped at 1994/95 levels. As part of an ongoing reform agenda, commercial service contract holders were required to increase services and have been paid a diminishing CSO; and
 - to assist private sector bus operators to maintain their financial position, a policy allowing operators to increase their fares by up to 10% every 6 months has been introduced.

- 2.62 CSO payments to QR represent a “shortfall” between revenue and cost. QR also continues to announce price discounting in its fare structure. The lack of a “commercial” basis for QR’s CSO contrasts with the detailed agreements applied to private sector urban bus service providers¹⁶. Contracts with Brisbane Transport have also been subject to a strict reform agenda to reduce CSOs and improve services over time.
- 2.63 It is evident that QR as a Queensland Government owned transport service is as yet subject to less rigorous performance assessment than other transport service providers.

Broader Goals

- 2.64 It was submitted that QR prices were deliberately set below full cost recovery to reflect the social and environmental benefits of the service. These externalities have been identified to include reduced air pollution, reduced road congestion, reduced expenditure on road capacity, and provision of alternative transport means at reasonable cost for those without access to a private vehicle.
- 2.65 As noted above, the prices set for the Brisbane to Gold Coast service reflect fares determined on a basis with similar services in the QR network, i.e. the Nambour services. No particular adjustment was made to reflect the particular environmental or social circumstances which prevail in the Brisbane to Gold Coast transport corridor. No support exists in documentation available to the Authority that such an intent existed.

The issue of the effect of broader economic, social and environmental goals on the pricing of services is described further in Appendix 3.

Conclusions

- 2.66 With respect to the subsidy arrangement which enables QR to enjoy a competitive advantage over Coachtrans, the Authority found that the approach adopted is directly based on the fact that QR is owned or controlled by government.

That is not to say that the Government might not have provided a subsidy to a commercial operator if it had been operating a rail passenger service to the Gold Coast. However, the Authority considers that any arrangements would be less generous and require greater accountability than the current external subsidy arrangements with QR.

¹⁶ See the Queensland Transport’s Instrument of Agreement and General Conditions pertaining to the Commercial Service Contract. The Agreement requires specification of the route network, timetables and annual kilometres, details of fares, and fleet details. It contains terms and conditions relating to the period for which it is to apply, requirements for quality assurance, customer service standards and processes, management information and financial statements and a range of other matters.

Capital Expenditure

- 2.67 The difference in (capital) expenditure on rail and bus infrastructure is relevant to competitive neutrality if it confers an advantage to a declared significant business activity in a particular market, and when that advantage stems from government ownership.
- 2.68 Such an advantage can manifest itself if the capital expenditure is undertaken without regard to the net benefits to the community, and if the price charged for the use of the capital does not reflect its cost. Thus, neither the relative quantum of past expenditure on rail as opposed to bus related infrastructure, nor the future Queensland Government commitment to the construction of busways and HOV (high occupancy vehicle) lanes, are relevant in themselves to the principle of competitive neutrality.
- 2.69 The Authority notes that a commercial provider of infrastructure services would only commit to such capital expenditure after a comprehensive assessment of the financial merits of its provision. The Authority has not been able to obtain any specific financial assessment of the rail service by the relevant agencies¹⁷, or any assessment of the public benefit test of the Gold Coast rail service. However, this project was initiated by government in the late 1970s with responsibility for its progress initially given to the then Metropolitan Transit Authority (MTA). While no evidence of such an analysis has been sighted, the relevant agencies have indicated that the MTA undertook various studies/investigations.
- 2.70 In respect to the arrangements for payment of the infrastructure, it is evident from preceding sections that QR prices do not cover either the operating or capital costs involved in the delivery of its services.
- 2.71 It has been submitted that the “road users are not completely neutral (when compared to rail) because they do not pay their full share of road infrastructure costs”. Road usage charges for heavy vehicles, including buses, are set by the National Road Transport Commission (NRTC), an independent body established following the Intergovernmental Agreement on Heavy Vehicles (1991) to develop nationally consistent regulation of road transport. The NRTC is required to set charges which fully recover distributed road costs, while minimising over-recovery from any vehicle class. The NRTC charges are applied by the Queensland Government, with an additional surcharge to cover all administrative costs.
- 2.72 The NRTC charges comprise a fixed annual charge, made up of a mass-distance charge and an access charge (collected by States and Territories at the time of registration or renewal), and a road charge notionally set at 18 cents per litre of the Commonwealth diesel fuel excise. The Commonwealth diesel excise currently is 42.797 cents per litre, including a “safety net” surcharge of 8.1 cents per litre to replace the lost State and Territory fuel franchise fee revenue¹⁸. As Queensland did not impose a fuel franchise fee, subsidy arrangements were put in place by the

¹⁷ The Authority has seen a study (Planning and Evaluation of A High Speed Brisbane-Gold Coast Rail Link) by the University of Queensland (December, 1974) on this matter which concluded that it would be financially viable under certain conditions. There is no evidence available to conclude that the particular study contributed to the decision-making related to the extension of the service.

¹⁸ On 5 August 1997 the High Court found that NSW tobacco franchise fees were invalid under section 90 of the Australian Constitution. This decision also cast doubt on the collection of fuel and liquor franchise fees by the States and Territories.

Queensland Government to refund the additional excise paid so that the excise remained unaffected. Accordingly, the effective diesel excise rate in Queensland remains 34.697 cents per litre.

- 2.73 It must be acknowledged, however, that the NRTC charges, although set to fully recover costs, include only a subset of charges imposed by Governments on the road transport sector. Indeed, payments for road use include a variety of taxes and fees¹⁹, and analysis undertaken by the Bureau of Transport and Communications Economics (BTCE)²⁰, supports the contention that revenues from road transport exceed road expenditure by Commonwealth, State and local Governments by a factor of 2.2. Tables 2.2 and 2.3 below refer.

Table 2.2: Motor Vehicle Taxes and Fees^(a) \$million actual levels

Item	1992/93	1993/94	1994/95
<i>Commonwealth Government</i>			
Petroleum Products excise ^(b)	6,049.8	7,117.9	7,927.1
Federal Interstate Registration Scheme	16.7	19.7	20.6
Subtotal	6,066.5	7,137.6	7,947.7
<i>State Government</i>			
Vehicle Registration Fees	1,765.0	1,901.0	1,972.0
Stamp Duty on Vehicle Registration	750.0	872.0	987.0
Drivers' Licence Fees	187.0	240.0	288.0
Fuel Franchise Taxes/Fees	1,174.0	1,346.0	1,427.0
Road Transport and Maintenance Taxes	79.0	93.0	111.0
Tolls ^(c)	118.7	134.4	149.5
Subtotal	4,073.7	4,586.4	4,934.5
Total Revenue	10,140.1	11,724.0	12,882.2

Source: BTCE Transport and Communications Indicators, March quarter 1996.

Notes:

- (a) Excludes some taxes/fees on motor vehicles such as sales taxes and customs duty.
 (b) Estimated excise component attributed to motor vehicles.
 (c) Comprises tolls collected from the Gateway Bridge, Logan Motorway and the Sunshine Motorway in Queensland and from the Sydney Harbour Bridge, the Sydney Harbour Tunnel and the Waterfall/Bulli freeway in New South Wales.

Table 2.3: Government Funding of Road Related Expenditure (\$ million)

Item	1992/93	1993/94	1994/95
Commonwealth	2,177	1,552	1,535
State	2,088	2,440	2,599
Local	1,717	1,667	1,710
Total	5,982	5,659	5,844

Source: BTCE - Public Road Related Expenditure and Revenue in Australia, Information Sheet 9 (1997).

¹⁹ Submission to Queensland Competition Authority by Coachtrans [Analysis by Professor T Kolsen and Dr R Copp].

²⁰ BTCE Transport and Communications Indicators, March quarter 1996 (provided by Apelbaum Consulting Group Pty Ltd).

- 2.74 As the NRTC charges are based on averages for particular vehicle classes, they do not necessarily reflect actual costs associated with individual vehicles. Similarly, regional differences in road pavement standards and deterioration rates may mean that charges either under- or over-recover for particular vehicle classes on specific roads. The Authority notes the road between Brisbane and the Gold Coast is used by a large number of different vehicle types and a “division of the costs incurred jointly for all classes would be necessary to determine whether buses did or did not meet their share of total costs”²¹.
- 2.75 The Authority considers that in all probability commercial bus operators, in general, fully recover the capital cost of road infrastructure to government and that they would need to reflect these charges in their pricing structures.

Procedural and Regulatory Advantages

- 2.76 It was submitted that QR’s regulatory powers have been removed and that QR cannot breach the principle of competitive neutrality in this respect. The QCA Act²² cites as an example of a regulatory advantage, an exemption “from planning and approval procedures that (apply) to a person making a complaint”. This indicates that the relevant agency does not have to be the source of the regulation.
- 2.77 Accordingly, the Authority has considered it necessary to investigate the matters identified by Coachtrans as being potentially relevant to regulatory (or procedural) advantages.
- 2.78 Coachtrans have identified a range of actions by government agencies which have reinforced QR’s relative capacity to compete in a manner which breaches the principle of competitive neutrality.

Variable Message Signs

- 2.79 Real-time motorist information displays, particularly variable message signs, are playing increasingly important roles in attempts to improve highway safety, operation, and use of existing infrastructure. Highway variable message signs are traffic control devices used for warning, regulating, routing and management of traffic, and are designed to affect the behaviour of motorists and, thus improve the flow of traffic, by providing real-time highway related information.

The signs, for some brief periods during the investigation, conveyed messages about the completion of major new rail facilities, as a means of improving road traffic conditions.

- 2.80 Coachtrans had indicated that the variable message signs were being used to promote rail services but not bus services and that this was evidence of a preference accorded to QR because of QR’s government ownership. Main Roads which manage the signs is not a gazetted significant business activity, nor in competition with Coachtrans and there is no issue of a competitive neutrality complaint against Main Roads.

²¹ T. Kolsen and R.Copp: Analysis - op cit.

²² p118 - QCA Act

- 2.81 Coachtrans requested district offices of Main Roads to agree to the use of their electronic signs to advertise. The replies to the company from those district offices advised that Main Roads' policy about advertising precluded advertising particular companies as the primary task of the signs is to promote road safety relevant to freeway conditions. The replies also noted that the Department would consider displaying a message promoting public transport in general, now that roadworks had commenced on the Pacific Motorway project. For a period after this, the signs when mentioning rail also mentioned bus transport.
- 2.82 The Authority requested a copy of the policy in relation to the usage of the signs from Main Roads head office. Main Roads responded by supplying a copy of a draft policy which had been in place for only a short time, reflecting the newness of the signs. Further advice from Main Roads indicated an active review of the policy was underway and that this would, among other things, address content matters which may involve mention of government business operations for which there are private sector competitors.
- 2.83 Main Roads also indicated that to the extent its policy on advertising commercial organisations on its electronic signs may change in the future, such decisions will probably be commercially based on a range of factors including broadly based community benefits. The extent to which potential commercial benefits and considerations impact upon future policy is to be resolved, but will be a significant issue in its development.
- 2.84 Accordingly, the Authority has concluded that content of the signs to which Coachtrans referred were due to:
- (i) the lack of a specific request to Main Roads by Coachtrans for equal exposure, as distinct from the request made for advertising. The Department has quite specific policies on advertising due to issues of safety, community standards and supply and demand and the response was one likely to be given to anyone asking to advertise on Main Road signs; and
 - (ii) the stage of development of the Department's policy on content of electronic signs beyond basic traffic and safety issues.

The Authority has therefore concluded that there is no evidence of Main Roads wishing to promote QR because of its government ownership.

Service Contract Areas

- 2.85 Coachtrans submitted that practices such as the application of a 10 percent surcharge on fares charged by line haul bus operators within certain areas and the introduction of the service contract areas represent further examples of a bias against Coachtrans to the advantage of QR.

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- 2.86 Coachtrans operated services to, and within, both Logan and the Gold Coast region. The rights to these services were purchased rights and appeared on the licence documents. Following the awarding of service contract areas in certain urban centres in 1995 (pursuant to legislative changes introduced in 1994) and the concurrent deregulation of the long distance passenger services, an agreement existed between line haul operators and operators providing local services that fares offered by line haul operators, such as Coachtrans, were to charge 10 per cent above the fares of the service contract holder when “picking up” and “setting down” passengers within a service contract area.
- 2.87 A complaint was directed against Coachtrans that it was in breach of the 10 per cent surcharge rule and Coachtrans was directed by Queensland Transport to increase its prices. Coachtrans objected to the direction on the grounds that it was a deregulated supplier of public transport services.
- 2.88 Following a number of complaints of this nature the Queensland Government introduced a regulation which made it illegal for line haul bus operators to continue to “pick up” and “set down” within those areas. Accordingly, the 10 per cent rule no longer applies as the practice of “picking up” and “setting down” passengers within contract service areas is prohibited.
- 2.89 The arrangements relating to the 10 per cent rule were established as a means of protecting local service operators’ rights. The relationship between these arrangements and competition between Coachtrans and QR is remote and it is, therefore, not valid to deduce that these arrangements provided QR with an advantage over Coachtrans as a result of government ownership of QR.
- 2.90 Coachtrans has also contended that the current service operators have been granted monopoly rights and further distorted the market in a manner which has compromised the financial position of Coachtrans and further damaged its ability to compete in the Brisbane to Gold Coast market. This distortion is alleged to have particular relevance to Logan City (with a particular concern relating to services between Brisbane and the Logan Hyperdome) and the Gold Coast (with a particular concern relating to the Helensvale bus station) service contract areas.
- 2.91 The concerns in relation to access to Logan Hyperdome and Helensvale bus station emanate from the ownership of the previous rights and the entitlements which have passed to the new contract service holders. They involve a prohibition under current arrangements that joint business arrangements, such as ticket sales and service coordination at Helensvale, should only be entered into with the local commercial service contract holder which precludes Coachtrans.
- They stem in large part from the effect of the recent removal of the right to “pick up” and “set down” within those areas. The Authority notes that some of these issues are presently the subject of judicial review, in respect to Helensvale, and claims for compensation.
- 2.92 The policy of amalgamating previous licences into service contract areas serviced by a single operator who is accountable for providing minimum levels of services in return for a CSO payment and protection from open market competition was introduced on the basis that:
-

- the public interest will best be served by ensuring that the providers of public passenger transport operate within a framework characterised by accountability, competition and contestability; and
 - market entry should only be restricted when it will result in a better level of service delivery than would otherwise be attained through unrestricted competition.
- 2.93 Of particular relevance, is the effect of these arrangements on the relative competitiveness of Coachtrans and QR. In this respect the Authority notes that restricting the ability of Coachtrans to increase its inter-urban passenger numbers does impede the overall viability of Coachtrans in that it restricts its ability to increase capacity utilisation rates.
- 2.94 There is no evidence, however, to suggest that the arrangements directly advantage QR. Nor is it evident that government ownership of QR is a factor in these arrangements. These arrangements are specific to the bus sector, and reflect matters particular to buses and competition within the bus sector, rather than competition between buses and rail. They are not considered therefore to confer any advantage on QR from the perspective of competitive neutrality.
- 2.95 In general, a policy of franchised local service areas can promote competition and efficiency in service delivery. It is consistent with the recommendations of the Industry Commission in its review of urban transport²³ provided it is contestable and encourages the entry of new entrants on a periodic basis. Nevertheless, the arrangements do impact adversely on Coachtrans along with all other bus operators not holding a local bus service contract with the government. It has been submitted that these arrangements require passengers to travel backwards to travel forwards in a network with the effect of limiting the use of public transport in the region²⁴. These arrangements are to be reviewed²⁵ as part of the legislative review program required under Commonwealth/State agreements relating to national competition policy.

Integrated Ticketing and the Co-ordination of Services

- 2.96 Coachtrans submitted that public transport should be enhanced through the integration of the ticketing system and co-ordination of services. Coachtrans considers that current progress on the establishment of an integrated ticketing system needs to be accelerated and identifies difficulties in progressing negotiations on this matter with QR.
- 2.97 Past efforts at introducing integrated ticketing were concluded in June 1995, before the transfer of ownership of Coachtrans. It has been submitted that these efforts failed due to disagreement between QR and Brisbane Transport. Failure to agree on ticketing arrangements adversely affects both parties and it is difficult to conclude that the failure to agree was a direct attempt to create an advantage for these organisations over private line haul bus operators.

²³ p24 - Urban Transport: Overview, Findings and Recommendations. Industry Commission. February 1994.

²⁴ p4 - Coachtrans Submission to the Public Works Committee Re-Evaluation of the South East Transit Project and Queensland Transport Submission to the same inquiry (p22).

²⁵ The review is due to commence in mid-1998.

- 2.98 It was submitted that a large part of the funds for researching the merits of the integrated ticketing were directed towards QR and Brisbane Transport with no funding entitlements made available for the private operators. As both these agencies are owned by governments it is not unreasonable for government to wish to expend funds on these organisations for this purpose. The principle of competitive neutrality would only be breached if the prices for their respective services did not reflect such expenditure.
- 2.99 Current efforts at improved integrated ticketing were instigated in October 1997 by Queensland Transport and are accessible to all potentially interested parties through a specific Working Group on this matter.
- 2.100 There is no evidence to suggest that the current process favours QR because of its government ownership. The Queensland Government has provided undertakings that the fare box revenue of all participants will be “underpinned” to ensure no revenue losses will be suffered by any participant (irrespective of their ownership) as a result of the introduction of integrated ticketing.
- 2.101 Coachtrans also submitted that insufficient progress has occurred with respect to the greater co-ordination of service delivery. As with integrated ticketing arrangements, greater co-ordination of services would promote the commercial interests of both parties. There is no evidence that QR is retarding any efforts at greater service co-ordination in reliance on its government ownership.

Access to Key Decision - Making Processes

- 2.102 Coachtrans cited its lack of involvement in the Southern Gold Coast-Tweed Corridor Study conducted by Queensland Transport as an example of systematic disadvantage suffered by Coachtrans in its efforts to compete with QR. Coachtrans also questioned the conclusions of that study and requested the Authority to investigate “why alternative transport modes were not considered in the study process?”
- 2.103 The particular study in question had not been finalised at the time of the completion of this Report although the Authority does note the predisposition of the Issues Paper to focus on rail transport solutions. Discussions with the representatives of the relevant agencies and the consultants have indicated that alternative modes of transport are to be considered.

Fixed rail or high capacity, high frequency buses operating on priority systems are key options which have been identified in the terms of reference as requiring attention. The economic and financial evaluation of the eventual proposals is also a key requirement of the Study. In the absence of the final report for the Study, it is not possible to draw any conclusions in relation to the findings and their implications for the principle of competitive neutrality or in respect to their compliance with the brief provided.

- 2.104 The Authority also sought to investigate whether QR was provided with an advantage to influence the results in a manner which could place Coachtrans at a competitive disadvantage.

- 2.105 It is evident from documentation made available to the Authority by Queensland Transport that the project managers were directed to consult with all stakeholders, interested local organisations and the general public. The explicit directions of the study brief required the consultants to: identify stakeholders that would be consulted during the study; establishment of early stakeholder awareness to attract input; to provide ample opportunity for all stakeholders to comment, to prepare brochures, newsletters, public displays, media releases, media advertising; and, to invite submissions from all interested parties.
- 2.106 Information available to the Authority indicates that a comprehensive program of external consultation was undertaken in accordance with the brief although no particular bus operator was approached for direct input. The lack of consultation with Coachtrans, a major operator in the region, has been acknowledged as an “oversight” by Queensland Transport. Coachtrans has recently had discussions with the consultants in respect to the study (although this has occurred more than 12 months after its initiation).
- 2.107 QR’s inclusion in a Reference Group does in the first instance seem unusual to the Authority in the absence of any representation by bus operators, even though the study is primarily aimed at setting broad strategic land use and transport planning options for the Queensland Government to consider. Nevertheless, the role of the Reference Group has been to provide independent monitoring of progress in respect of the study and therefore QR does not have direct access to the consultants or the project co-ordinator. QR’s inclusion in the Reference Group is to provide technical and operational advice.
- 2.108 In view of the role of the Reference Group, the wide range of interests represented on the group, and the wide community consultation program, the Authority has concluded that QR has not been provided with a competitive advantage over Coachtrans in this particular matter although it would have been fairer if Coachtrans or another representative of the bus operators in the region had been accorded a higher profile in the process. Any arrangements for the introduction of a new public transport service will need to address the need for compliance with the principle of competitive neutrality.

Conclusions - Regulatory and Procedural Advantage

- 2.109 Additional matters raised with the Authority and not addressed above include:
- the advertising of Coachtrans services in Citytrain which has been resolved with Coachtrans having an advertisement accepted in the timetable; and
 - other claims regarding hypothetical variations in circumstances which do not warrant specific review by the Authority.
- 2.110 Overall, the Authority has not been able to identify a pattern of consistent discrimination against Coachtrans within the context of the principle of competitive neutrality. It is noted, however, that Coachtrans, along with all other bus operators not holding a local bus service contract with the government, have been disadvantaged as a result of a number of these procedural and regulatory matters.

APPENDIX 3**IS THE BREACH WARRANTED?**

- 3.1 Section 49 of the Act requires the Authority to have regard to a number of specific matters in determining whether the principle of competitive neutrality needs to be adhered to, and whether any breach of the principle is warranted. The Authority's views on these matters are outlined below.

The Principle of Competitive Neutrality

- 3.2 The Act²⁶ requires the Authority to consider “*the need to ensure compliance with the principle of competitive neutrality*”.
- 3.3 Submissions were received by the Authority questioning the need for QR to comply with the principle of competitive neutrality. These submissions raised a number of distinct issues.
- 3.4 Firstly, the nature of the relationship between the Queensland Government, Queensland Transport and QR was submitted as being relevant. In particular, it was submitted that QR should be viewed as a “contractor” to Queensland Transport who simply complies with lawful policy decisions of government that these rail services should be the subject of CSOs and that using and subsidising QR is the best vehicle for doing so.
- 3.5 Section 42²⁷ of the QCA Act requires the Authority to determine whether or not a government agency which carries on a significant business activity enjoys a competitive advantage, solely because of the government ownership or control of the agency over competitors or potential competitors in a particular market.
- 3.6 These provisions do not require the identification of some act on behalf of the government agency which “breaches” a statutory provision requiring it to observe competitive neutrality. In other words, a government agency can enjoy a competitive advantage because of the action of another arm of government, with or without its cooperation or indeed against its will.
- 3.7 Examples of a competitive advantage by reason of exemption from taxes, exemption from planning approval procedures or the granting of preferred access to government information, which are singled out in the definition of “competitive advantage” in the dictionary to the Act, are all examples where a competitive advantage is conferred upon an agency, either by other arms of government or indeed by the Parliament itself, and are not dependent upon any act or omission of the government agency.
- 3.8 Furthermore, it was submitted that a breach of competitive neutrality could not be sustained if consideration of issues in Section 49 was not conclusive. Section 49 of the QCA Act sets out a number of matters to which the Authority must have regard in conducting an investigation of a competitive neutrality complaint, other than the need to ensure compliance with the principle of competitive neutrality. That is, the fact that there may be good social policies or equity considerations which support maintenance of the enjoyment of the competitive advantage cannot influence whether the complaint itself has been substantiated.

²⁶ Section 49(1)(a) of the QCA Act refers.

²⁷ When read against sections 41 and 38 of the QCA Act.

- 3.9 A significant issue relating to this matter and discussed in Appendix 2 was whether the existence of CSOs precluded a requirement to comply with the principle of competitive neutrality. The Authority reviewed the QCA Act and concluded that QR's Brisbane to Gold Coast service qualifies as a "business activity" and is therefore subject to this legislation.
- 3.10 Another relevant matter was whether QR was required to comply in view of the fact that prices were set prior to the corporatisation of QR, the enactment of the QCA Act or the purchase of Coachtrans by the present owner Sita Qld. Compliance is required provided that the activities are current.
- 3.11 All the business activities of QR must, therefore, comply with the principle of competitive neutrality.

Efficient Resource Allocation

- 3.12 The Act²⁸ requires the Authority to consider "*the need for efficient resource allocation*".

Efficient Pricing

- 3.13 The efficiency with which goods and services are allocated is measured by the degree to which prices reflect their marginal social cost. That is, the business activity must cover all the costs of production of the marginal unit of the service of the business activity and any social costs. Under some circumstances, it may be considered "efficient" to only recover the marginal cost of operating a service, that is, past capital costs are "sunk" and not considered as part of the cost of the service.

Thus, efficient pricing is not simple cost recovery but rather involves charging a price that presents the traveller with the true cost to society of making a journey at the time of making it. The significance of this concept is that if travel were properly priced, then all the components (total travel demand, mode choice, locational and land-use choices etc) would tend towards an economically efficient outcome²⁹.

- 3.14 The introduction of first best pricing would help achieve an optimum outcome³⁰. Such an approach would, for example, require road usage charges to vary according to the time of use to fully cover the cost of the congestion caused by the use of the road. In its absence, alternative arrangements which reflect the optimal allocation of resources within the public transport market are necessary.
- 3.15 Submissions to the Authority contend that the economic, environmental and social costs of motor vehicles, buses and rail were well known and of an order of magnitude which may justify the current price differential between QR and Coachtrans services, even though no objective measure of the full costs was undertaken by either Queensland Transport (responsible for the provision of CSOs) or QR (responsible for recommending prices for its services) at the time prices were set. The Authority has sought to review the available authoritative material on this matter.

²⁸ Section 49(1)(b) of the QCA Act refers.

²⁹ p7 - South East Queensland Passenger Transport Study (1991).

³⁰ A more detailed discussion of relevant options appears in the recent Report of the Queensland Commission of Audit (see pp 141-144, Volume II).

Economic and Environmental Goals

- 3.16 The goals to which QR contributes with respect to the Brisbane to Gold Coast transport corridor have been identified to include reduced air pollution, reduced road congestion, increased safety, reduced expenditure on road capacity, and provision of alternative transport means at reasonable cost for those without access to a private vehicle. Social issues are discussed in 3.69 to 3.74 below.

Air and Noise Pollution

- 3.17 The data in Table 3.1 show that:
- rail is more energy efficient than bus (and therefore less polluting); and
 - rail is becoming relatively more energy efficient in Brisbane over time probably due to both increasingly congested roads upon which buses operate, and advances in rail technology.

Table 3.1: Modal Efficiency: Buses v Rail

City	Modal Efficiency Buses (Megajoules/Passenger Kilometre)			Modal Efficiency Rail (Megajoules/Passenger Kilometre)		
	1960	1970	1980	1960	1970	1980
Brisbane	1.12	1.09	1.37	4.88	1.03	0.98
Melbourne	1.03	1.33	1.98	0.24	0.26	0.57
Sydney	1.06	1.21	1.40	0.26	0.22	0.30
London	0.60	0.91	1.03	0.44	0.42	0.44
New York	1.03	1.54	2.00	1.11	1.15	1.34

Source: Provided by Queensland Transport. Excerpt from Cities and Automobile Dependence.

- 3.18 A recent review of urban transport by the Industry Commission provided an analysis of air and noise pollution costs for bus and rail.

Table 3.2: Capital, Operating and External Costs of Transport Modes in Australian Capital Cities (*cents per passenger km 1991*)

Cost item	Rail	Bus	Car
Air pollution	0.00	0.25	0.43
Noise pollution	0.00	0.20	0.08

Source: Urban Transport: Volume 1 - Industry Commission (1994) - p246.

- 3.19 The Authority also notes other Industry Commission data as follows:

Table 3.3: Carbon Dioxide and Carbon Monoxide Emissions by Mode

Mode	Carbon dioxide	Carbon monoxide
	<i>(grams per passenger kilometre)</i>	
Car	210	33
Bus	120	20
Rail	150	nil
Bicycle	nil	nil

Sources: Urban Transport: Volume 1 - Industry Commission (1994) - p246

- 3.20 This data generally supports the contention that rail contributes to the identified goals in a superior manner in respect to air and noise pollution than do buses.

Road Congestion

- 3.21 It was submitted by the relevant agencies that:
- there is evidence to suggest that rail has nearly twice the cross elasticity (of private car/rail relative prices) than that of bus according to work by the Independent Pricing and Regulatory Tribunal (IPART) in NSW. This means that it is significantly easier to attract travellers from car to rail than from car to bus as a result of relative price changes
 - rail also has a number of non price attributes which make it a better attractor of private car users than bus, such as speed, comfort and reliability. Importantly, for the Gold coast corridor, rail is able to avoid peak hour congestion delays which affect bus transport.
- 3.22 The Authority generally accepts that rail performs in a superior manner when it comes to alleviating road traffic congestion, particularly as a result of its reliance on dedicated transport corridors, but notes that if buses are afforded similarly dedicated infrastructure then road and rail may perform equally on this factor.

Safety

- 3.23 It was submitted by Queensland Transport that the costs of accidents in Brisbane will increase by 44% (i.e. \$77m) by 2011 and that rail can be demonstrated to be a far safer mode of transport than bus, primarily as a result of its separation from roads and private motor vehicle activities, and increased safety requirements. It was further submitted that based on statistics available which relate to Queensland, rail accident's rate is about 0.03 fatal accidents per million passengers trips (including passenger train related deaths at level crossings). The bus fatal accident rate is about 0.12 fatal crashes per million passenger trips.
- 3.24 The Authority notes the following Industry Commission information:

Table 3.4: Fatality Rates for Different Modes of Travel, Australia, 1988

Mode of Transport	Fatality Rate <i>(per 100 million passenger kms)</i>
Rail	0.2
Bus	<0.1
Rigid Truck	0.4
Car	0.9
Articulated truck	0.9
Bicycle	4.7
Motorcycle	14.0

Source: Urban Transport: Vol 1 - Industry Commission (1994)

3.25 In addition, the Commission has provided the following data:

Table 3.5: Capital, Operating and External Costs of Transport Modes in Australian Capital Cities (cents per passenger km 1991)

Cost item	Rail	Bus	Car
Fatalities	0.12	0.03	0.35
Injuries	0.00	0.00	0.11
Property damage	0.01	0.00	0.18

Source: Urban Transport: Vol 1 - Industry Commission (1994) - p246

3.26 The Authority notes the diversion of estimates between these sources on this matter.

Total Externalities

3.27 The Authority notes the following attempt at summarising the various costs associated with the different transport modes.

Table 3.6: Capital, Operating and External Costs of Transport Modes in Australian Capital Cities (cents per passenger km 1991)

Cost item	Rail	Bus	Car
Capital and operating	27.06	21.51	26.65
Depots/Car parking	na	1.09	3.42
Roads	na	na	8.89
Road maintenance	na	0.03	0.00
Fatalities	0.12	0.03	0.35
Injuries	0.00	0.00	0.11
Property damage	0.01	0.00	0.18
Air pollution	0.00	0.25	0.43
Noise pollution	0.00	0.20	0.08
Total	27.19	23.11	40.11

Source: Urban Transport: Vol 1 - Industry Commission - p246

3.28 In general, this analysis supports the notion that externalities associated with rail and buses do not significantly alter the overall costs associated with these services. And, given the small contribution of externalities to overall costs, the same conclusion would most probably apply if it were considered that past capital costs were “sunk” and should not be included in estimating the relevant “efficient” price. Differences in their ranking are therefore not in aggregate sufficient to justify the current differential between rail and bus price to cost ratios.

Had the relative contribution of rail over bus to alleviating the economic, environmental and social costs caused by private vehicle usage been of a sufficient order of magnitude then non-compliance with the principle of competitive neutrality may have been justified.

3.29 The analysis in table 3.6 is deficient in respect of whether road users pay sufficient to cover the costs of the damage to the road surface (note the lack of information on rail and bus in respect to road costs). This matter was raised in Appendix 2 where it was concluded that road users are considered to more than doubly cover the costs of road infrastructure.

- 3.30 Of particular note is that efforts undertaken by the Industry Commission, and in Queensland under the auspices of the South East Queensland Passenger Transport Study (1991), indicate that it is possible to develop such relativities in a professional manner and one which could achieve general acceptability.
- 3.31 Such detail is not relevant to counter a breach of the principle of competitive neutrality but will be essential if competitive neutrality is to be achieved in a manner which also promotes efficiency in resource allocation.

Efficiency over the Long Term

- 3.32 It was submitted that to accommodate growth in South East Queensland it was necessary to consider the construction of infrastructure and encouragement of services from a long term perspective.
- 3.33 The arguments revolve around the perceived strategic importance of the Gold Coast-Brisbane Corridor based upon its growth prospects. The anticipated rates of growth, referenced above in Appendix 1, are based upon the SEQ2001 project, its successor the Regional Framework for Growth Management (RFGM), in the Integrated Regional Transport Plan (IRTP) as well as by the former Albert Shire's Albert Corridor Development Control Plan (DCP) and more recently, the City of Gold Coast's Draft Strategic Plan released in September 1997.
- 3.34 Future planning involves a hierarchy of centres for the corridor. Beenleigh and Robina are seen as key regional centres. These centres are each expected to serve a population catchment of between 200,000 and 250,000 people and will ultimately provide the majority of services.

Investment in Rail

- 3.35 Rail has been considered by Queensland Transport to provide the best option for these purposes and it has been submitted that this is evidenced by the following benefits of the decision to deliver rail services along the Brisbane to Gold Coast rail corridor:
- the project has clearly demonstrated that all levels of government are very serious in their commitment to planning for future growth in the area;
 - future urban growth can now be planned with more certainty;
 - buffers, housing styles and other urban design elements can now be planned and built with the full impact of the rail corridor known;
 - families moving to the area can plan for some of their trips to be undertaken by public transport, thus potentially avoiding the need to buy an extra car;
 - the rail corridor has become the catalyst for an enhanced public transport network on the Gold Coast. The Gold Coast City Council has signalled their intention to focus strongly upon public transport; and
 - the rail link provides a second transport link that can help to ensure movement in times of highway construction or when the highway is blocked due to accidents and major catastrophes.
-

- 3.36 Rail services with their fixed infrastructure are considered by Queensland Transport to provide the greatest certainty to local government planning and developers alike. The Gold Coast City Council's proposed planning arrangements around rail stations in the corridor are submitted as a significant case in point where the presence of rail has positively influenced the proposed location of different types of development which now will be highly accessible by means other than the car.
- 3.37 The principle of competitive neutrality seeks to ensure that there exist no distortions which are a result of government ownership. The key issue has not been the suitability of rail for the purpose for which it is proposed but rather whether in providing the service, QR is enjoying a competitive advantage over its competitor Coachtrans.

Investment in Buses

- 3.38 The IRTP seeks to actively encourage and facilitate private sector investment in transport infrastructure and services consistent with government objectives³¹.
- 3.39 Coachtrans submitted that, in support of this objective, prior to the effects of the QR prices on its financial viability, Coachtrans intended to introduce new "Supercoaches" to the route and replace the existing Coachtrans fleet with state of the art vehicles not yet operating in Australia.
- 3.40 The introduction of QR services has impacted on the revenues of Coachtrans and consequently there would appear to be a significant disincentive for private sector investment in bus services in this corridor. In this regard, the Authority notes that Coachtrans is the only line haul bus service provider expressly engaged in this market. Others providing services do so as an adjunct to interstate bus services or services to other parts of Queensland.
- 3.41 The Authority notes the Industry Commission conclusion that innovation in the public transport market is required³², particularly if the sector is to play a larger role in the overall transport market and considers that greater attention to compliance with the principle of competitive neutrality through an appropriately structured CSO and pricing framework would instil greater confidence in the private bus operator market.

Conclusion

- 3.42 The Authority is aware of concerns that the current planning arrangements for South East Queensland have been agreed to by the Queensland Government, the Commonwealth Government and 18 local governments in South East Queensland. The Authority does not envisage compliance with competitive neutrality as disruptive to the IRTP. Rather, a remedy needs to be defined which promotes resource allocation within the region within the broad context established under the IRTP.

³¹ p2 - Queensland Transport Submission to Queensland Competition Authority.

³² p159 - Urban Transport : Vol 1 op cit.

Promoting Competition

- 3.43 The Act³³ requires that the Authority must consider “*the need to promote competition*”.
- 3.44 In a recent review by the Industry Commission of Urban Transport, it was recognised that “virtually every aspect of public transport is regulated by Government”³⁴. And further that “there is little direct competition in public transport due to the practice of granting what are effectively managed rights over particular routes. Regulation has accelerated the loss of public transport’s share of the urban travel market to the private car”³⁵.
- 3.45 The Industry Commission has also noted that “substantial efficiencies can be made by opening up the rights to provide public transport for competition from other operators”³⁶.
- 3.46 The Authority does not recommend that efforts at greater integration and co-ordination of services and land use planning be abandoned as these initiatives will tend to lower the cost of public transport. However, greater degrees of competition based on adherence to the principle of competitive neutrality would also promote public transport patronage, as well as promoting comprehensiveness in the availability of services and greater innovation in their delivery.

Policies or Guidelines

- 3.47 The Act³⁷ requires the Authority to consider “*any government policies or guidelines about the application of the principle of competitive neutrality*”.
- 3.48 Submissions have been presented to the Authority that the Transport Operations (Passenger Transport) Act 1994 requires that CSO payments are applied in an efficient, cost effective and equitable manner and that this is similar to a requirement to comply with the principle of competitive neutrality. Under such an approach, QR should have been complying with the relevant principles when setting the prices for its Brisbane to Gold Coast service.
- 3.49 The Authority considers that QR is bound to comply with the principle of competitive neutrality because all its business activities have been declared as significant business activities by the Queensland Government and because the Brisbane to Gold Coast service meets the definition of a “business activity” under the QCA Act. It is, therefore, not necessary to consider the effect of the Transport Operations (Passenger Transport) Act.
- 3.50 Submissions to the Authority claiming that existing policy statements may preclude compliance of QR with the principle of competitive neutrality have been addressed in Appendix 2 of this Report.

Nevertheless, the Authority has considered the matters raised in the event that they are relevant to whether QR should have been required to comply with the principle of competitive neutrality.

³³ Section 49(1)(c) of the QCA Act refers.

³⁴ p3 - Urban Transport: Overview (1994).

³⁵ p4 -ibid

³⁶ p5 -ibid

³⁷ Section 49(1)(d) of the QCA Act refers.

3.51 Firstly, Competition Principles Agreement (CPA)³⁸ states that:

“The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership”.

3.52 The elimination of distortions to resource allocation is thus a significant objective of applying competitive neutrality which needs to be pursued whenever “the benefits to be realised from implementation outweigh the costs”³⁹. The CPA⁴⁰ also requires that whenever the “benefits of a particular policy or course of action are balanced against the costs of the policy or course of action” are being considered several matters, including CSOs⁴¹, will need to be taken into account. It does not raise CSOs as a factor which would preclude consideration of a competitive neutrality issue but rather as one matter requiring attention. The QCA Act⁴² operates in a similar manner.

3.53 Secondly, the National Competition Council has expanded on this issue and noted that:

“CSOs are relevant in considering competitive neutrality reform because they can provide both a competitive disadvantage and a competitive advantage⁴³... (and that) ... competitive neutrality reform does not mean that government businesses should not provide CSOs. However, the way that governments identify, cost and fund CSOs are important competitive neutrality issues, and there is benefit in continued examination of jurisdictions’ approaches to these matters. Specifically, the funding of CSOs via cross-subsidies depending on restrictions to competition needs to remain a central focus.”⁴⁴

3.54 Rather than excluding matters affected by CSOs from the ambit of competitive neutrality due to their existence, the Council’s comments emphasise the need to assess the effect of a CSO regime in respect of its impact on competitive neutrality - hence the Authority’s concern with the manner of application and impact of CSOs in earlier sections and the recommendations.

3.55 Thirdly, the Authority is aware that clause 3(1) of the CPA also states that the principle of competitive neutrality only applies to the “business activities of publicly owned entities, not to the non-business, non-profit activities of these entities”.

³⁸ Clause 3(1) of the Competition Principles Agreement refers.

³⁹ Clause 3(1)(6) of the Competition Principles Agreement refers.

⁴⁰ Clause 1(3)(a) of the Competition Principles Agreement refers.

⁴¹ Clause 1(3)(e) of the Competition Principles Agreement refers.

⁴² Section 49(1)(i) of the QCA Act refers.

⁴³ p20 - Competitive Neutrality Reform: Issues in implementing Clause 3 of the Competition Principles Agreement. January 1997. National Competition Council.

⁴⁴ p21 - *ibid.*

- 3.56 This is amplified by the Queensland Government policy statement *Competitive Neutrality and Queensland Government Business Activities*. The statement notes that “business activities” must meet a substantial part of their operating costs or earn a substantial part of their operating revenue from user charges and have a predominant commercial or profit-making focus. They do not include activities which have as their prime function responsibility for providing a community service obligation or social policy function. Functions which fulfil these criteria are listed in the above referenced policy statement. QR is not included in this list.
- 3.57 CSOs are paid in respect of the total Citytrain service, but not for particular services (such as the Brisbane to Gold Coast service) within Citytrain. Nevertheless, Citytrain did raise significant revenues in 1996/97 (\$63 million)⁴⁵ to maintain the service. Total CSOs in 1996/97 were \$369 million⁴⁶ (up from \$277 million in the previous year). In 1997/98 revenues are expected to exhibit strong growth⁴⁷ and government funded CSOs are expected to fall. Fare revenues will thus contribute an increasing part of the cost of the service.
- 3.58 In addition, the Authority notes that QR is required by legislation to act “on a commercial basis and in a competitive environment” (Department of Transport Submission) and QR acknowledges that it is required to act commercially in carrying out its activities and efficiently in the delivery of its community service obligations.
- 3.59 The Authority has concluded that there exists no issue within the Competition Principles Agreement or the Queensland Government’s guidelines which should deter QR from being required to comply with the principle of competitive neutrality. Rather, the concerns of the National Competition Council give prominence to the need to develop an effective, competitive neutrality compliant, CSO regime.

Directions regarding the Application of Competitive Neutrality

- 3.60 The Act⁴⁸ requires the Authority to consider “*any directions about the application of the principle of competitive neutrality given to the government agency by the Government*”.
- 3.61 The Authority considers that the GOC Act under which QR operates and the recent declaration of QR business activities for the purpose of compliance with the principle of competitive neutrality are consistent and require compliance. The Authority is not aware of any directions issued to QR by the Queensland Government which would remove the need for QR’s price from complying with the principle of competitive neutrality.
- 3.62 The direction that prices be set at a certain level and a compensating CSO be paid, does not alleviate the need for compliance with the principle of competitive neutrality. The Authority believes that an arrangement can be developed which meets the Queensland Government’s objectives and which is competitively neutral.

⁴⁵ p33 - Queensland Rail: 1996-97 Annual Report.

⁴⁶ p62 - Queensland Rail: 1996-1997 Annual Report.

⁴⁷ p35 - *ibid*.

⁴⁸ Section 49(1)(e) of the QCA Act refers.

Arrangements regarding Competitive Disadvantage

- 3.63 The Act⁴⁹ requires the Authority to consider “*any arrangements between the Government and the government agency about the competitive disadvantage suffered by the agency because of government ownership or control of the agency*”.
- 3.64 The Authority has noted that no claim has been made that QR suffered a competitive disadvantage as a result of its government ownership or control, nor was the Authority aware of any such disadvantages which might be relevant to this matter.

Laws relating to Compliance with Competitive Neutrality

- 3.65 The Act⁵⁰ requires the Authority to consider “*any laws about the application of the principle of competitive neutrality*”.
- 3.66 The Authority is not aware of any further Commonwealth or Queensland Government laws on this matter which could provide assistance or direction in its determination.

Ecologically Sustainable Development

- 3.67 The Act⁵¹ requires the Authority to consider “*any legislation or government policies relating to ecologically sustainable development*”.
- 3.68 The Authority is unaware of any legislation or policies in this area that impact differently on the private versus public sectors’ involvement in the delivery of public transport services relevant to this objective.

The arguments relating to the relative impact of the different transport modes on the environment have been addressed above.

Social Welfare and Equity

- 3.69 The Act⁵² requires the Authority to consider “*social welfare and equity considerations including community service obligations and the availability of goods and services to consumers*”.
- 3.70 In submissions to the Authority, the social objective of the lower QR prices has been defined as the provision of alternative transport at reasonable cost for those without access to a private vehicle.
- 3.71 There is no evidence to support the notion that “social welfare issues and equity” were considered at the time fares were being set. Nor is there any objective information available on the relative contribution of the different modes to this goal in this region.

⁴⁹ Section 49(1)(f) of the QCA Act refers.

⁵⁰ Section 49(1)(g) of the QCA Act refers.

⁵¹ Section 49(1)(h) of the QCA Act refers.

⁵² Section 49(1)(i) of the QCA Act refers.

- 3.72 Bus services are generally more accessible and readily available to those without vehicles because of the geographic network involved. Coachtrans provides bus services to many of the intermediate local communities along the corridor. The integration of bus/train services overcomes this disadvantage of rail at least in those urban centres where such integration exists (but at the cost of additional travel in some instances).
- 3.73 Untargeted subsidisation of public transport is not an efficient way of helping those in need. Assistance should be carefully specified and targeted and directed to meet objectives. The current approach to CSOs using subsidies for QR does not appear to meet such criteria.
- 3.74 The issue of CSOs has been addressed in previous sections. The Authority is not aware of any legislative impediment to providing CSOs to line haul bus operators - recent amendments to the Transport Operations (Passenger Transport) Act (section 143B (1) refers) have removed any limitations that may have previously existed in this regard.

Occupational Health and Safety

- 3.75 The Act⁵³ requires the Authority to consider “*any legislation or government policies relating to occupational health and safety or industrial relations*”.
- 3.76 The Authority is unaware of any legislation or policies in this area that impact differently on the private or public providers of transport services. No representations have been made to the Authority on this matter.

Economic and Regional Development

- 3.77 The Act⁵⁴ requires the Authority to consider “*economic and regional development issues, including employment and investment growth*”.
- 3.78 No submissions have been directed to the Authority regarding the relative contribution of one mode of transport over the other in respect of economic and regional development issues. Observations earlier in this report have indicated the importance of rail to the long term development of this region.
- 3.79 Coachtrans have submitted that as a result of QR’s competition, it has suffered significant revenue losses approaching \$1.3 million in the twelve months from March 1996, compared with the corresponding period commencing March, 1995. In addition, it has recently been forced to reduce service levels (Cabbage Tree Creek, Jacobs Well and several other local services), defer service extensions and, reduce staffing through redundancies.
- 3.80 From an overall regional perspective, the additional QR services have been well patronised and employment by QR has increased.
- 3.81 Overall, the regional impact of the introduction of QR services would appear to be beneficial but not to the extent that would justify the overturning of competitive neutrality principles.

⁵³ Section 49(1)(j) of the QCA Act refers.

⁵⁴ Section 49(1)(k) of the QCA Act refers.

Interests of Consumers

- 3.82 The Act⁵⁵ requires the Authority to consider “*the interests of consumers or any class of consumers*”.
- 3.83 The issues of accessibility, availability and patronage have been addressed above.
- 3.84 There exists no reason, discernible by the Authority, why any category of users could be adversely affected by achieving a competitively neutral pricing and CSO regime.

⁵⁵ Section 49(i)(l) of the QCA Act refers.

GLOSSARY

ABS	Australian Bureau of Statistics
BTCE	Bureau of Transport and Communications Economics
Coachtrans	Sita Queensland Pty Ltd trading as Coachtrans Australia
CSO	Community Service Obligation
GOC	Government Owned Corporation
HOC	High Occupancy Vehicle
IRTP	Integrated Regional Transport Plan for South East Queensland
MTA	Metropolitan Transit Authority
NRTC	National Road Transport Commission
QCA or the Authority	Queensland Competition Authority
QR	Queensland Rail