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Dr Malcolm Roberts
Chairman
Queensland Competition Authority
GPO Box 2257
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Dear Dr Roberts

I refer to the Queensland Competition Authority's (QCA) recently released discussion paper *Capital Expansion and Access Pricing for Rail and Ports*, on which the Authority is seeking comment by 1 July 2013.

Queensland Rail wishes to provide the following observations for the Authority's consideration.

Case-by-Case Approach

The treatment of expansions is a critical issue for regulated rail and port facilities in Queensland. Consideration to the regulatory treatment of expansions is timely, as it allows for consideration to the issues generally, and outside of the specific constraints of a particular access dispute or undertaking approval process.

However, it is important to acknowledge that future access terms do need to be determined having regard to the specific circumstances of the relevant facility and the nature of the access being sought. The "key propositions" as set out in the discussion paper – which are largely based on a simple test of whether average costs are increasing or decreasing as a result of the expansion – must not be interpreted as universal rules, applicable in all circumstances.

Within the context of its below-rail operations, Queensland Rail could foresee circumstances in which, on efficiency and other relevant criteria, departures from these propositions could be appropriate.

The discussion paper generalises significantly the basis on which existing rail and port service providers contract with users, and could be read to infer that there are relatively standardised (regulated) terms which apply across the sector (see, for instance, the discussion at the top of page 17 of the discussion paper regarding this). In reality, access terms are diverse, reflecting historical and facility-specific matters, and only certain facilities are regulated by the QCA. Even within those regulated facilities different contractual and regulatory pricing models apply.

The paper is framed around three key criteria – economic efficiency, fairness and regulatory governance – which provide a basis for the discussion of alternative options. Acknowledging that these broad criteria are suitable for the purposes of the discussion paper, Queensland Rail has two broad concerns with them:

- the factors relevant to a future, specific access determination are potentially broader, and consideration must capture those factors specifically referenced in the *Queensland Competition Authority Act 1997*, including the legitimate business interests of the service provider; and
- throughout the paper, and indeed in the key propositions, there are references to outcomes which are "considered unfair" or "would be perceived as fair" – the concept of "fairness" is inherently subjective, and different parties may assess quite differently whether a particular outcome is "fair" to either or both parties to an access dispute.

This emphasises further that a generalised rule for expansion charging may not be appropriate in all circumstances.

Rebates for Existing Users

The Executive Summary (p. v), suggests that existing users may "consider that a levy should be paid to them in order to permit new capacity to be built incrementally onto the capacity they underwrote. This would be justified as compensation for ... the prior payment for excess capacity." Queensland Rail is concerned to confirm that this is not reflective of the Authority's views. This could be interpreted as existing users having a form of property right over future expansions, irrespective of funding arrangements for existing capacity. Queensland Rail considers that future capacity expansion rights are the preserve of the incumbent facility owner.

Queensland Rail appreciates the opportunity to comment on this paper. If you have any questions in relation to Queensland Rail's response please do not hesitate to contact Mr Douglas Jasch, Manager Regulation and Policy on (07) 3072 0544.

Yours sincerely

[redacted]

Jim Benstead
Acting Chief Executive Officer

27 June 2013