Attachment 8: HoustonKemp's Independent Expert Report on Contract Renewal Rights

DAU2 Renewal rights

A Final report for Queensland Rail

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HoustonKemp.com

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Executive Summary

Queensland Rail's present, Queensland Competition Authority (QCA) approved Access Undertaking (AU1) expires on 30 June 2020. The QCA has requested Queensland Rail submit a draft access undertaking (DAU2) that, if approved. would become AU2, and replace AU1 from 1 July 2020.

AU1 provides for 'renewal rights' for access holders. Queensland Rail is proposing to alter these renewal rights in DAU2 and in the Access Framework submitted as part of the QCA's declaration review.

A summary of the existing renewal clauses and Queensland Rail's proposed changes under AU2 and the Access Framework is summarised in Table 1 below.

Table 1: Summary of existing renewal clauses and proposed changes

	Arrangements under AU1	Proposed under AU2	Access Framework
Definition of Renewals	Access for the same origin destination, same or fewer train paths, and with access rights that are otherwise substantially equivalent	As AU1	As AU1
Right to Renew	One-off rights for all users that fit the definition of renewals .	One off right for Bulk and Coal Traffics. Where renewal rights have been exercised in AU1, the user will have deemed to have already exercised its one-off renewal right	Access holder is informed of competing application, but capacity is allocated based on the value to Queensland Rail.
Limits of Renewal Pricing	For all traffic not subject to a reference price, price changes are limited to changes in risk and cost. Limited to one renewal per undertaking.	For bu k minerals and coal traffic without a reference price, price changes are limited to changes in risk and cost. Limited to one renewal.	No restriction
Duration of renewed contract	No restriction	Maximum 5 years	No restriction

We have assessed the existing renewal rights by reference to whether they promote the objectives of the QCA Act, being the foundational reference point for decisions made by the QCA. These objectives include the promotion of:

- the three dimensions of economic efficiency – allocative efficiency, productive efficiency and dynamic efficiency;
- competition in upstream and downstream markets; and
- protection of the interests of Queensland Rail, existing access holders, and potential access seekers.

The renewal rights under existing AU1 arrangements are broadly defined, and place significant limitations on the ability to vary access charges for renewed contracts. In our opinion, these arrangements have the potential:

- to increase the losses Queensland Rail incurs from providing rail services, ie, allocative inefficiency, because access holders are only likely to renew an existing contract if they believe that the existing terms and conditions would be more favourable than those available under a renegotiation; and
- to have a detrimental effect on upstream or downstream competition, since renewal rights provide existing access holders with an advantage over new access seekers – this may create unnecessary barriers to entry and cause capacity not to be allocated to those who value it highest, thereby leading to allocative inefficiency.

In our opinion, the arrangements proposed for DAU2 better promote economic efficiency and the QCA's objectives than those applying under AU1. The proposed arrangements limit the impact of renewal rights by making it clear they are a one-off right that only applies to coal and bulk mineral freight. DAU2 also limits the length of the renewal contract. These changes will all improve allocative efficiency since they allow Queensland Rail to recover closer to its efficient costs (limiting the extent of government subsidy) and limit the barriers to entry that renewals can create. Further, the proposal in the Access Framework will provide additional benefit over DAU2 since the renewal rights are further reduced, thereby delivering greater efficiency benefits.

The move away from existing arrangements will alter the balance of access seekers' and holders' rights; however, the negotiate-arbitrate framework allows sufficient flexibility for access holders and Queensland Rail to agree a mutually acceptable contract length and appropriate renewal clauses. In other words, access holders or seekers that need long term certainty can seek terms that facilitate such outcomes, while Queensland Rail has the incentive to accept such terms where they improve its financial viability.

In our opinion, the economically preferred approach under DAU2 would be to remove the renewals process completely, as envisaged in Queensland Rail's separately developed Access Framework[1] – since this reduces the risk of increasing allocative inefficiency and barriers to entry. Queensland Rail's recommended approach in DAU2, whilst not going as far as that contemplated in the Access Framework, balances the meeting stakeholders' expectations with achieving greater economic efficiency. DAU2 reduces the negative impacts of the renewals process by limiting renewal rights to being one-off rather than one per undertaking, limiting the traffics to which it applies (coal and bulk minerals) and limiting the renewal term to five years. We believe this is a reasonable approach given the stakeholder context.

[1] Queensland Rail, draft Access Framework, 18 June 2018, available at: www.qca.org.au/getattachment/d8f71dec-445d-49ab-986d-33bcc30aa668/Queensland-Rail-Proposed-New-Access-Framework.aspx

1. Introduction

The Queensland Competition Authority (the QCA) regulates third party access to certain infrastructure in Queensland, including Queensland Rail's network. Potential access seekers have the right to seek access to Queensland Rail's network under the terms and conditions approved by the QCA.

The access regime for Queensland Rail's network reflects a negotiate-arbitrate framework, under which Queensland Rail and access seekers are encouraged to negotiate on price and non-price terms, with a third-party arbitrator being used to settle disputes where those terms cannot be agreed.

To facilitate the negotiations, Queensland Rail is required to prepare an access undertaking, which sets out, among other things:

- the process for seeking access;
- the pricing rules for determining access charges;
- reporting obligations and dispute resolution; and
- a standard access agreement.

The QCA is responsible for approving the access undertaking. The current access undertaking, Access Undertaking 1(AU1), expires on 30 June 2020. In light of its scheduled expiry, the QCA has issued Queensland Rail with an initial undertaking notice, requiring Queensland Rail to submit Draft Access Undertaking 2 (DAU2). DAU2 is due for submission by 31 July 2018 and, once approved by the QCA, will become AU2 and be effective from 1 July 2020.

Under AU1, certain users have a right to the renewal of the arrangements under which they obtain access under certain conditions. We have been engaged to prepare an expert report setting out the economic impact of the existing renewals provisions and evaluating Queensland Rail's proposed approach in DAU2.

The remainder of this report is structured as follows:

- section 2 describes the context and outlines the current and proposed renewal provisions; and
- section 3 provides an economic assessment of the current and proposed provisions.

2. Background and context

2.1 Queensland Rail's network

Queensland Rail's network extends 6500 kilometres across Queensland. The rail network is diverse both in its task and use, and includes:

- intermodal and general freight on the North Coast Line;
- bulk minerals on the Mount Isa Line;
- coal on the West Moreton line; and
- passenger services predominantly in south east Queensland.

Figure 1: Rail networks in Queensland

2.2 Characteristics of Queensland Rail's market and access framework

In contrast to other regulated infrastructure sectors, such as electricity and gas networks and water services, Queensland Rail does not recover sufficient revenue from access charges to recover its costs. With the exception of the Mt Isa System, Queensland Rail's entire network is supported by Transport Services Payments from the Queensland government. Without these payments, large parts of Queensland Rail's network would be financially unviable.

One of the reasons that Queensland Rail does not generate sufficient revenue is that it competes with road transport for a material proportion of its freight traffic. In other words, road transport is a viable substitute for rail, particularly for trips involving short to medium distances. It follows that Queensland Rail's ability to set access charges is constrained by the cost of road freight – Queensland Rail cannot charge more than the cost to transport the freight by road, since its users would otherwise switch to road transport.

2.3 Renewal rights in AU1

The renewal rights encapsulated in AU1 are complex and given effect by a number of different provisions. Appendix 1 contains the relevant clauses from AU1. The definition of renewals, the right to renew, and the price paid under a renewed contract are briefly summarised below.

2.3.1 The definition of renewal and right to renew a contract

Through the definition of renewals in AU1 (section 7.1), an access holder with an expiring access agreement is considered to be renewing its existing agreement if the new access application is for:

- the same origin and destination;
- the same or fewer train paths; and
- for access rights that are otherwise substantially equivalent to the expiring access agreement.

If these criteria are met, an access application from an existing access holder with an expiring agreement would be considered to be a renewal.

In AU1, certain access holders have the right to renew a contract under certain conditions, even if another access seeker has submitted an access application for the same capacity. The rights only apply in certain conditions, which are:

- the renewal application is for at least the term sought by the access seeker or ten years, whichever is smaller, or for the life of the relevant mine; and
- there have been no previous renewal applications for the relevant capacity.

We have been advised that the one off renewal right applies to all users, and not just to coal and bulk mineral services.

Queuing rights do not apply for renewal applications. Queensland Rail can only executive an access agreement with another access seeker if the existing access holder has not submitted an access application within the appropriate timeframe or negotiation with the existing access holder for renewal have ended.

2.3.2 The price paid when renewing a contract

AU1 also sets out how pricing for renewal applications should be determined – clause 3.3 of DAU1. If there has not been a renewal application submitted within the term of the current undertaking and if no reference tariffs apply, then clause 3.3 states that:

> the methodology, rates and other inputs for calculating access charges for the renewed access will be the same as the methodology, rates and other inputs for calculating access charges in the

> expiring Access Agreement (existing inputs) other than to reasonably reflect differences in the cost or risk to Queensland Rail.

In short, Queensland Rail can only adjust the applicable charge where it can demonstrate there is a change in cost or risk, and in areas where a reference tariff does not apply.

QCA's rationale for supporting renewal rights and specific renewal pricing is to recognise the sunk cost that access seekers have incurred to use Queensland Rail's network. [2] In other words, some users need certainty in terms of access rights and access price, so that they can recoup their upfront, sunk investment.

Notwithstanding, we have been advised that the way that AU1 is drafted means that the renewal price framework applies to all contract renewals, rather than for users with a high proportion of sunk costs, ie, coal and bulk mineral users.

2.4 Queensland Rail's proposal

Queensland Rail has expressed its future preferred approaches to renewals in two separate contexts, as described below.

2.4.1 Proposed approach in the New Access Framework

Queensland Rail has submitted a draft Access Framework[3] in the separate context of the QCA's declaration review.

The approach taken in the Access Framework is to remove limits on the pricing of renewal services. Queensland Rail will inform an access holder if another access seeker is applying to contract for the capacity it holds, upon expiry of its access agreement. In that circumstance, Queensland Rail will allocate the capacity on the basis of the user that will deliver the highest present value of risk adjusted future returns to Queensland Rail.

The rationale for this approach is that it assists in allocating capacity to the access seeker with the highest willingness to pay and would help Queensland Rail to recover its efficient costs, both of which are likely to improve economic efficiency.

2.4.2 Proposed approach in DAU 2

Queensland Rail's proposed approach in DAU2 is that:

- renewals apply only to coal and minerals traffic, whereas the existing renewals provisions apply to all traffics;
- there is a one-off renewal only, rather than one per undertaking (as noted above the pricing renewal provisions apply once each undertaking period); and
- there will be a maximum renewal period of five years.

These arrangements mean renewals will be only a one-off right, applying only to coal and minerals traffic and then for a limited duration.

Similar to the approach under the Access Framework, this approach means that Queensland Rail will be able to reallocate capacity to non- coal and mineral users that place a higher value on the access and would help Queensland Rail recover its efficient costs. The key difference is that DAU2 continues to provide coal and mineral traffic with rights to renewal, and so is more closely aligned to the existing AU1 arrangements.

[2] QCA, Queensland Rail's Draft Access Undertaking, June 2016, page 43

[3] Queensland Rail, Queensland Rail's Access Framework, 18 June 2018, available at www.qca.org.au/getattachment/d8f71dec-445d-49ab-986d-33bcc30aa668/Queensland-Rail-Proposed-New-Access-Framework.aspx

3. Economic assessment of renewal rights

In this section we provide an economic assessment of the effect of renewal rights.

3.1 QCA's assessment framework

The QCA Act is the foundational reference point for decisions made by Queensland Competition Authority.

The act requires that the QCA make decisions in a manner that is consistent with the QCA Act. In relation to the approval of access undertakings, the QCA's assessment criteria are:[5]

(a) promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets

(b) the legitimate business interests of the owner or operator of the service

(c) if the owner and operator of the service are different entities – the legitimate business interests of the operator of the service are protected

(d) the public interest, including the public interest in having competition in markets (whether or not in Australia)

(e) the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the services are adversely affected

(f) the effect of excluding existing assets for pricing purposes

(g) the pricing principles … that the price should:

   a. generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved

   b. allow for multi-part pricing and price discrimination where it aids efficiency

   c. not allow a related access provider to set terms and conditions that discriminate in favour of the downstream operations of the access provider or a related body corporate of access provider or a related body corporate of the access provider, except to the extent the cost of providing access to other operators is higher; and

   d. provide incentives to reduce costs or otherwise improve productivity and

(h) any other issues the authority considers relevant

Efficiency is a key concept underpinning the QCA's assessment criteria. 'Efficiency' is a term of art in economics and is widely accepted by economists as having three distinct dimensions, being: [6]

- **productive efficiency**, ie, production using a least-cost combination of inputs;
- **allocative efficiency**, ie, production of an optimal set of goods and services, which is allocated so as to provide the maximum benefit to society; and

[5] QCA, Queensland Rail's Draft Access Undertaking, June 2016, page vii

[6] For further discussion of the dimensions of efficiency and their relation to public policy see Productivity Commission, *On efficiency and effectiveness – some definitions*, May 2013.

- **dynamic efficiency**, ie achieving productive and allocative efficiency over time, in the face of changes in technology and consumer preferences.[7]

Each of these dimensions of efficiency is reflected in the architecture of the QCA's assessment, particularly criteria (a) and (g). By way of explanation:

- the reference to efficient 'operation of' and 'investment in' significant infrastructure refers to the productive dimension of efficiency, ie, this is promoted if decisions made by the QCA promote the supply of infrastructure services using the least cost combination of both capital and operating inputs;
- the reference to efficient 'use of' significant infrastructure refers to the allocative dimension of efficiency, ie, this is promoted if decisions are made that give rise to a level and structure of prices that both recover the cost of making infrastructure services available and maximise the extent to which infrastructure services are allocated to those consumers that derive the greatest benefit from them without discrimination, so as to maximise the benefit to society; and
- dynamic efficiency is the promotion of productive and allocative efficiency over time, ie, this is promoted if decisions are made that balance the pursuit of productive and allocative efficiencies for current consumers with the requirement to invest for productive and allocative efficiency gains in the long term.

Criterion (a) also makes explicit reference to promoting efficient competition in upstream and downstream markets. QCA decisions should therefore avoid outcomes that may have a detrimental effect on competition outcomes in related upstream and downstream markets.

The final relevant part of QCA's assessment criteria is to protect the interests of the owners and operators, and of potential access seekers. We note that these criteria make no distinction between existing access holders or new access seekers.

3.2 Assessment framework

We have assessed the existing renewal rights by reference to whether they promote the objectives of the QCA Act identified above, ie, whether they promote:

- the three dimensions of efficiency;
- competition in upstream and downstream markets; and
- protect the interest of Queensland Rail, existing access holders, and potential access seekers.

3.2.1 Renewal rights reduce Queensland Rail's ability to recover its efficient costs, and so lead to allocative inefficiency

Renewal rights provide access holders with the option of seeking to maintain their existing pricing terms. However, access holders also have the option of renegotiating the access price. It follows that access holders are only likely to invoke their right to renew the contract if they believe that the existing terms and conditions would be better than those available under a renegotiation.

The asymmetrical nature of this approach – if renegotiated access prices are lower than those that would apply under a renewal, the contract will not be renewed, but if the reverse was true a contract would be renewed – limits Queensland Rail's ability to achieve a reasonable return on its network without subsidy. The under-recovery of Queensland Rail's efficient costs (and so the need for a larger, ongoing subsidy than would otherwise be the case) leads to allocative inefficiency

Removal of the constraints applying to Queensland Rail in relation to renewal rights does not present any economic concerns given other aspects of DAU2. Under the existing and proposed future regulatory

[7] Transitional cost is also captured in the three dimensions of efficiency. Unnecessarily high, inefficient transaction cost could result in productive inefficiency, as it adds to the cost of production, or allocative inefficiency, as it could distort the allocation of goods and services and the combination of goods and services that is produced.

framework, Queensland rail cannot collect access charges that exceed a ceiling that reflects the efficient cost of providing the rail network, including a return on investment that is commensurate with the regulatory and commercial risks involved. The purpose of the ceiling limit is to ensure that Queensland Rail is not able to exercise any form of monopoly power by earning more than the efficient cost of providing the service.

3.2.2 Renewal rights advantage incumbents and reduce allocative efficiency

Another implication of current renewal rights is that they provide certain existing access holders with preferential treatment, as compared with those seeking access. Put another way, where existing capacity is either fully contracted or otherwise limited, existing access holders do not need to compete with other access seekers for the allocation of that capacity upon renewal of its contract. It follows that access is not necessarily allocated to the access seeker with the highest willingness to pay, even if these access seekers compete in the same end market. Such circumstances risk causing allocative inefficiency.

Whenever there are multiple access seekers seeking to utilise the same rail capacity, allocative efficiency will be promoted when that capacity is allocated to the access seeker with the highest willingness to pay. This is also consistent with ACCC's position, which acknowledged that:[8]

> resolving conflicting applications on the basis of highest present value of future returns would generally have the effect of allocating capacity to access seekers with the highest willingness to pay, and therefore should be efficient

3.2.3 Renewal rights may raise barriers to entry

New customers, such as a mine developer, will find it more difficult to acquire rail haulage in capacity constrained networks if there are renewal provisions. The renewal provisions have the effect of preventing a new entrant from competing for rail capacity that has already been allocated, giving the incumbent a significant advantage. Such conditions are present in the West Moreton System, ie, a combination of constrained capacity and the presence of renewal rights. It follows that the presence of renewal rights can only have a negative impact on downstream competition, such as in markets encapsulating coal mining activity, since they raise barriers to entry.

3.2.4 Access seekers and Queensland Rail can negotiate renewal rights when required

Some access seekers - such as coal producers and bulk freight service providers, may need long term certainty regarding access rights and price before undertaking new investments or expansions. In these circumstances, the use of long term contracts may be mutually beneficial to both Queensland Rail and the access seeker. [redacted]

Similarly, the rights to renew a contract could also be subject to negotiation between access seekers and Queensland Rail. This would be consistent with the negotiate-arbitrate framework, which is designed to encourage such negotiations to achieve commercial outcomes. In our opinion, the ability to enter into long term access contracts can accommodate the QCA's concern in relation to the protection of access seeker's sunk costs.

We note that Queensland Rail operates above rail passenger trains but not above rail freight trains. Given this, Queensland Rail's incentives in relation to rail freight are to maximise its profitability through increasing freight volume on its network. It has the incentive to engage with mining companies to ensure that each party has sufficient certainty to invest, thereby increasing freight volume on Queensland Rail's network.

[8] ACCC, Position Paper in relation to the Australian Rail Track Corporation's proposed Hunter Valley Rail Network Access Undertaking (December 2010), page 187; ACCC, Australian Rail Track Corporation Limited Hunter Valley Coal Network Access Undertaking - Draft Decision (March 2010), page 658.

3.2.5 Link between costs and access prices is unclear, so there is no clear basis for adjusting prices over time

AU1 allows Queensland Rail to adjust its access charge for contract renewals to reflect changes in costs or risks. However, we note that the access charges that Queensland Rail collects are often significantly below the total efficient cost of providing the service (the ceiling). In other words, Queensland Rail's access charges are not explicitly linked to the cost of providing its services, with the exception of the West Moreton line reference tariffs calculated to recover costs.

It follows that it is extremely is difficult to link changes to costs and risks in the rail network to any methodology for the setting of access charges. Rather, the principal constraints on access charges are the price of road transport alternatives and/or an access seeker's ability to pay. Although Queensland Rail can in theory adjust access charges, it is far from clear how this would occur in practice. It follows that even in a situation where the costs of operating the network are increasing, it may not be possible to pass these costs onto access holders that have renewed their contract. In circumstances where the price of alternative road transport options is increasing, it would never be possible for Queensland Rail to seek higher access charges for its service.

Further, renewal rights may be sought for contracts that have been in place for a long period of time [redacted]

3.2.6 Conclusion

In our opinion, the current form of renewal rights under existing AU1 arrangements is the least preferred option from an economic perspective. It involves a broad definition of renewals and limits the extent to which Queensland Rail can alter its charge for renewed contracts. The existing arrangements therefore have the highest potential:

- to reduce Queensland Rail's ability to recover its costs, particularly given the uncertainty of how to link changes in costs to adjustments to access charges for renewed agreements; and
- to distort downstream or upstream competition and represent a barrier to entry, since existing access holders are provided with the option to renew their contract under certain conditions, which are not available to new access seekers.

The arrangements proposed under DAU2 seek to narrow the definition of renewals by making clear it is a one-off right that applies only to coal and bulk mineral freight. DAU2 has also limits the length of the renewal contract. Extending these reforms, the Access Framework effectively proposes the complete removal of any default renewal right.

In our opinion, the proposed arrangements under DAU2 would better promote economic efficiency and the QCA's objective under the QCA Act than those applying under AU1. This is because DAU2 limits the renewal rights to being a one-off, limits the renewal pricing constraints to bulk and coal traffic, and limits the term of the renewal to five years. Taken together, these changes will improve allocative efficiency as they allow Queensland Rail to recover a greater proportion of its efficient costs (thereby limiting the extent of future government subsidy) and limit the barriers to entry that renewals can create. Separately, the proposal in the Access Framework would provide additional benefit over DAU2, since those renewal rights would be further reduced, delivering yet greater efficiency benefits.

The move away from the existing arrangements will alter access seekers and holders' rights. However, the negotiate-arbitrate framework allows sufficient flexibility for access holders and Queensland Rail to agree a mutually acceptable contract length and appropriate renewal clauses. In other words, access holders or seekers that need the long term certainty can seek to negotiate this and Queensland Rail has every incentive to accept such arrangements since where they improve the long term certainty of its own investment decisions as well as the financial viability of Queensland Rail.

In our view the economically preferred approach would be to remove the renewals process as envisaged in the Access Framework since this reduces the risk of sustained allocative inefficiency and unnecessary barriers to entry. Queensland Rail's recommended approach in DAU2, whilst not going that far, seeks to balance stakeholder's expectations with economic efficiency. DAU2 strikes this balance by reducing the negative impacts of the renewals process on incumbent users by limiting the renewal right to being oneoff in nature rather than one per undertaking, limiting the traffics to which it applies (coal and bulk minerals) and limiting the renewal term to five years. We believe this is a reasonable approach given the objective of managing the process of changing stakeholder expectations.

Appendix 1: Renewal Clauses from DAU1

Renewals are defined in 7.1 as:

> **Renewals** means , in relation to an Access Holder's Rights that are to expire, the Renewal Access Seeker entering into an Access Agreement to hold or continue to hold Access Rights for a further term commencing immediately after the expiry of the relevant Access Rights that have the same origin and destination, require the same or less Train Path requirements and otherwise are substantially equivalent to the relevant Access Holder's Rights Access Rights immediately prior to their expiry, subject to any variation referred to in clause 3.3(f);

Renewal Access Seeker is defined in 7.1 of DAU1 as

> Renewal Access Seeker means, in relation to an Access Holder's Access Rights that are to expire:
>
> (a) The Access Holder;
>
> (b) An Access Holder's Rolling Stock Operator; or
>
> (c) Another Rolling Stock Operator competing for the relevant Access Rights

The renewal rights are given effect by 2.9.3 Renewals, which states that:

(a) Where an Access Seeker (who is not a Renewal Access Seeker) submits an Access Application for Access Rights concerning the Available capacity that will arise when an existing Access Agreement expires, Queensland Rail will notify:

  (i) the Access Holder for that Access Agreement;

  (ii) that Access Holder's Customer (if any); and

  (iii) the relevant Renewal Access Seeker (if any)

  Of Queensland Rail's receipt of that Access Application, as soon as reasonably practicable after receiving it.

(b) Despite any other provision in this Undertaking to the contrary and subject to clause 2.9.3 (c) Queensland Rail will not execute an Access Agreement with the Access Seeker referred to in clause 2.9.3(a) until the earlier of:

  (i) Renewal Access Seeker fails to, or cannot, submit a relevant Renewal Application to Queensland Rail in respect of the relevant renewal within the Renewal Timeframe; or

  (ii) where a Renewal Application has been submitted within the Renewal Timeframe:

    (A) The negotiations with the Renewal Access Seeker have ended in accordance with clause 2.7.1(b) (subject to any extension of time agreed in accordance with clause 2.7.1(b)(ii)(C) (which will apply))

(c) Clause 2.9.3(b) only applies where

  (i) the relevant existing Access Agreement concerns coal carrying Train Services or bulk mineral carrying Train Services

  (ii) the Relevant Renewal Application is for a term of

    (A) At least the lessor of the period for which the Access Seeker referred to in clause 2.9.3(a) is seeking Access Rights and ten years; or

(B) The remaining life of the relevant mine as notified in writing to Queensland Rail by the Renewal Access Seeker (where it has no Customer) or otherwise the relevant Customer; and

(iii) clause 2.9.3(c)(ii)(B) has not previously applied for any past Renewal Application in connection with the relevant Access Rights, unless Queensland Rail agrees otherwise

(d) Nothing in this clause 2.9.3 obliges Queensland Rail to enter into an Access Agreement with a Renewal Access Seeker or to do so on the same terms as the relevant existing Access Agreement for the relevant existing Access Rights.

(e) For the avoidance of doubt, when a Renewal Application is submitted the queuing provision (clause 2.9.2) does not apply.

In Clause 3.3 Limits on price differentiation, 3.3 e to g apply to Renewal Applications

(e) Subject to clauses 3.3(f) and (g), if in respect of a Renewal Application:

(i) there has not already been a renewal Application submitted in relation to the proposed Renewal after the Approval Date of this Undertaking; and

(ii) No Reference Tariff applies to the setting of Access Charges for the proposed Train Services under the Renewal Application,

then the methodology, rates and other inputs for calculating Access Charges for the proposed Train Services in the renewed Access Agreement (renewed inputs) will be the same as the methodology, rates and other inputs for calculating Access Charges in the expiring Access Agreement (existing inputs) other than to reasonably reflect, on a unit rate basis, over the term of the renewed Access Agreement, differences in the nature of, or actual changes in, the cost or risk to Queensland Rail of providing Access to the proposed Train Service under the renewed Access Agreement compared to the expiring Access Agreement.

(f) If the proposed Renewal Application would be for a Renewal except for a variation due to operational or supply chain improvement, clause 3.3 (e) will be applied in relation to setting the Access Charges in relation to the proposed Train Service under the Renewal Application but a contribution to Common Costs as a renewed input to reflect those operation or supply chain improvements will also be provided such that it does not result in Queensland Rail being any financially worse off relative to the contribution to Common Costs from the existing inputs.

(g) Clauses 3.3(e) and (f) do not apply to the extent that the expiring Access Agreement is inconsistent with those clauses.

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