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File Ref: 377796

13 April 2011

Mr Michael Carter
Executive Vice President and Chief Executive Officer
QR National Network Services
GPO Box 456
Brisbane QLD 4001

Dear Mr Carter

Standard User Funding Agreement and Investment Framework Amendments

On 1 March 2011, the Authority advised QR Network Pty Ltd (QR Network) and stakeholders of its decision to exercise its powers under clause 7.6(b) of QR Network's 2010 access undertaking (the undertaking) to develop a proposed standard user funding agreement (SUFA) and investment framework amendments to the undertaking.

At the same time, the Authority also advised QR Network and stakeholders of its intention to treat the draft amending access undertaking (DAAU) submitted by QR Network on 24 December 2010 as a DAAU submitted under section 142 of the *Queensland Competition Authority Act 1997* (the QCA Act), as requested by QR Network in its submission, and to consider it in accordance with the requirements of the QCA Act regarding consideration of DAAUs.

The Authority has subsequently been approached by stakeholders raising queries about the processes the Authority intends to follow in dealing with these two matters given that they partly involve assessment of the same or similar issues. As a consequence, the Authority is writing to stakeholders to clarify its intent in this regard.

To be clear, the Authority considers that the two matters are separate and intends to follow separate and independent processes in their assessment as is required by clause 7.6 of the undertaking and the provisions of the QCA Act respectively.

The Authority encourages stakeholders to consider the matters separately and to ensure that any submissions or comments made clearly address one matter or the other, or clearly specify where they are making the same submission in respect of both processes.

Drafting of SUFA and investment framework amendments by Authority

With regard to the drafting of a SUFA and investment framework amendments to the undertaking by the Authority, the Authority has commenced the process of developing drafts of these items. In developing these drafts, the Authority intends to take account of all relevant information available to it, including material provided in response to the DAAU process discussed below by QR Network and other stakeholders that clearly relates to a proposed SUFA and/or investment framework amendments to the undertaking.

As required by clause 7.6(c) of the undertaking, in due course, the Authority will:

- (a) publish its proposed SUFA and investment framework amendments on its website;
- (b) invite stakeholders to make submissions on the proposed SUFA and investment framework amendments within a reasonable period of time, which will be specified by the Authority; and
- (c) consider any submissions it receives within the time determined for (b) above.

The Authority also intends to release with its draft proposed SUFA and investment framework amendments an explanatory document to explain the Authority's reasoning in respect of the drafting of these documents.

Following consideration of submissions received, the Authority may then finalise and approve the SUFA and investment framework amendments.

The Authority will ensure that any finalised SUFA and investment framework amendments comply with the requirements of clause 7.6(d) of the undertaking, specifically that the Authority:

- (a) is satisfied that the investment framework amendments will fully implement the principles set out in Schedule J of the undertaking;
- (b) is satisfied that the SUFA is consistent with the undertaking (as proposed to be amended by the investment framework amendments);
- (c) considers it appropriate to approve the SUFA and investment framework amendments, having regard to the matters listed in section 138(2) of the QCA Act; and
- (d) has complied with the process required by clause 7.6(c) of the undertaking.

Again, the Authority intends to accompany publication of any final approved SUFA and investment framework amendments with an explanatory document explaining the Authority's reasoning.

Consideration of DAAU

With regard to the DAAU submitted by QR Network on 24 December 2010, the Authority is pursuing a separate process to either approve or refuse to approve it, in accordance with section 142(2) of the QCA Act. In pursuing this separate process, the Authority will be governed by the requirements of section 147A of the QCA Act, relating to the period for approving a DAAU.

As part of this process, on 5 January 2011, the Authority issued QR Network with a notice of investigation under section 146 of the QCA Act.

At the same time, the Authority published the DAAU on its website and sought submissions from stakeholders by 18 February 2011, which date was subsequently extended to 18 March 2011, in response to the impact on many stakeholders of the recent flooding events.

On 25 January 2011, QR Network provided a submission in support of the DAAU (described as 'Explanatory Notes'). In this regard, QR Network did not provide a supporting submission at the time it initially submitted the DAAU.

The covering letter submitted by QR Network with its DAAU on 24 December 2010 noted that QR Network's proposed SUFA 'does not fully implement provisions dealing with a Funding User's rights pursuant to clause 7.5.5(k)' of the undertaking ('step-in' rights) and indicated that QR Network would submit an addendum to the DAAU by no later than 25 February 2011 to address this issue. The Authority has not yet received such an addendum.

The Authority has received a total of 11 submissions from stakeholders in response to the DAAU. These submissions have been made publicly available via the Authority's website. The Authority is currently considering the issues raised in these submissions.

The Authority notes that minimal comment has been received from stakeholders in relation to the elements of the DAAU that do not relate to the proposed SUFA or the investment framework amendments. As a consequence, the Authority is proposing to develop, and in due course release for comment, an issues paper relating to these elements of the DAAU.

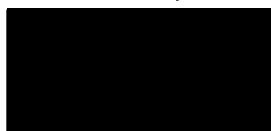
The Authority will then develop and release for comment its draft decision in relation to the DAAU. The Authority will consider issues raised in submissions received in response to the draft decision before developing and releasing its final decision.

As provided for in section 143 of the QCA Act, the Authority's draft and final decisions will be made having regard to the matters mentioned in section 138(2) of the QCA Act and having complied with the requirements of section 138(3) of the QCA Act. The matters which the Authority must have regard to in accordance with section 138(2) of the QCA Act include:

- (a) the object of Part 5 of the QCA Act ("to 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 (being QR Network);
- (c) the public interest, including the public interest in having competition in markets;
- (d) 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 service are adversely affected;
- (e) the effect of excluding existing assets for pricing purposes;
- (f) the pricing principles mentioned in section 168A of the QCA Act; and
- (g) any other issues the Authority considers relevant.

I trust this letter provides clarity in relation to the processes the Authority is undertaking to consider these issues. Any enquiries regarding these issues should be directed in the first instance to Leigh Spencer on 07 3222 0532.

Yours sincerely



EJ Hall
Chief Executive