

3 June 2008

Mr E. J. Hall
Chief Executive
Queensland Competition Authority
Level 19, 12 Creek Street
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Brisbane QLD 4001

Dear John,

QR's 'preliminary' 2008 replacement draft access undertaking

Thank you for the opportunity to provide comments on QR's 'preliminary' 2008 draft access undertaking ('QR's provisional 2008 Undertaking').

QRC notes that QR's provisional 2008 Undertaking will be withdrawn when QR Network is legally formed and is able to submit its own proposed undertaking for consideration by the QCA. As such, QRC may provide additional comments on the yet to be submitted QR Network 2008 draft access (QR Network 2008 Undertaking) during the public consultation processes to be conducted by the QCA.

Nonetheless, QRC presents its preliminary views as requested by the QCA in order to minimise any unnecessary delay in the appropriate assessment of QR Network's 2008 Undertaking which is expected to be submitted in the near future. The following comments are offered by the QRC following an initial consideration of QR's provisional 2008 Undertaking.

In general, industry concerns surround the timeframes for development of QR Network's 2008 Undertaking and the potential for important aspects to go unnoticed as a result of seeking to expedite this regulatory process, rather than focus on the resultant regulatory outcomes.

QRC supports the agreed approach outlined by QR and the QCA that the regulatory principles contained in QR's approved 2006 Access Undertaking be preserved in any proposed QR Network 2008 Undertaking. Stakeholders are currently focused on the development of the 2009 access undertaking (UT3) and are working to use this process as the primary vehicle for policy changes to improve the operation of the regulatory regime.

QRC notes that when QR Network and a QR Network related party (such as QR National) execute an Access Agreement (to replace the current internal access agreement) that future regulatory processes will be unable to remedy any issues arising from these contractual arrangements. That is, an access undertaking cannot impose legal obligations on a legal entity not party to the undertaking.

In order to highlight this issue, QRC made both QR and the QCA Secretariat aware of specific examples to highlight how such issues arise. While QR and QCA appear to have addressed the specific examples provided, QRC notes this fundamental concern requires further consideration in terms of the proposed replacement Access Agreement and the 2008 QR Network Undertaking.

While QRC notes that QCA has requested to review the proposed QR Network and related party Access Agreements prior to approving QR Network's 2008 Undertaking, QRC considers that this arrangement should be formalised within the proposed undertaking such that any new Access Agreement, or variation of an Access Agreement, between QR Network and a QR Network related party (such as QR National) during the remainder of the regulatory period is subject to approval by the QCA.

QRC considers that as the agreed objective of this process is to preserve the existing regulatory principles contained in QR's approved 2006 Undertaking, then this could be readily addressed by means of a general transitional agreement, between QR Network and related parties of QR Network, that enables currently unidentified issues to be accommodated – including those associated with Access Agreements that will be executed after the commencement of QR Network's 2008 Undertaking.

QRC notes that such transitional agreements would only be required during the intervening period prior to the commencement of the 2009 undertaking, as this UT3 process would enable a more thorough and complete consideration of all relevant issues.

In this regard, QRC notes that a range of transitional agreements are foreshadowed to be developed, between QR Network and related parties of QR Network, for consideration by the QCA to address known issues – specifically in relation to access to land, supply of electric energy and transfer of ownership of rail infrastructure assets.

QRC would welcome the opportunity to review any proposed transitional agreements in order to ensure industry confidence in these proposed arrangements. The development of a more general transitional agreement would provide QR Network and the QCA with a mechanism to address issues which have not yet been identified during the relatively short timeframes to consider the entire range of consequential issues which may arise.

For example, the proposed amendments to the undertaking that consider Access Agreements which provide for multiple Train Services, fails to recognise that there would be no legal obligation on a QR Network related party (such as QR National) to acknowledge that QR Network may be required, under its Access Undertaking, to treat each Train Service (origin/destination combination) as a separate Access Agreement in specific circumstances which are set out in the proposed undertaking. The development of a general transitional agreement would provide QR Network and the QCA with a mechanism to address such issues to enable QR Network to comply with its obligations under its Access Undertaking as amended from time to time.

In terms of process, the QRC supports the QCA's position that in the event of the QCA not approving a 2008 access undertaking by 30 June 2008, that QR's current undertaking will not be withdrawn until an appropriate replacement QR Network 2008 undertaking has been approved. To do otherwise could result in significant regulatory uncertainty for current access holders, access seekers and industry customers.

QRC looks forward to the further consideration of QR Network's 2008 Undertaking when it is made available for review.

Yours sincerely

Michael Roche
Chief Executive