

1. PREAMBLE

- (a) Queensland Rail (“QR”) has developed this Undertaking to provide a framework to manage negotiations with Third Party Operators for Access to Rail Infrastructure for the purpose of operating Train Services.
- (b) This Undertaking is a voluntary Undertaking as provided for in Section 136 of the *Queensland Competition Authority Act 1997*. The intent of the Undertaking is to:
 - (i) ensure that Access negotiations are conducted expeditiously on a commercial basis between QR and Third Party Operators;
 - (ii) provide a mechanism for the exchange of information between QR and Third Party Operators necessary to facilitate the negotiation process;
 - (iii) establish pricing principles to be employed by QR in negotiating Access and which provide guidance in the resolution of a pricing dispute;
 - (iv) ensure that Access is negotiated in a competitively neutral environment;
 - (v) outline the interface considerations to be addressed for Third Party Operators to obtain and maintain Access;
 - (vi) outline the principles to be incorporated in an Access Agreement; and
 - (vii) provide for a binding dispute resolution process to apply during negotiations for Access.
- (c) This Undertaking will be consistently applied to Access Applications where those applications are within the scope of this Undertaking as set out in Part 2.
- (d) For the purpose of assisting in the interpretation of this Undertaking, an Explanatory Guide is provided. The Explanatory Guide should not be relied upon as a complete and legally binding summary of the provisions of the Undertaking but should be referred to where the intent of a relevant provision of the Undertaking is not clear on its face. To the extent that there is any inconsistency between the Undertaking and the Explanatory Guide, the provisions of the Undertaking will prevail.
- (e) For further information on the negotiation of Access in accordance with the provisions of this Undertaking, contact:

Manager Business Development
 Network Access
 Queensland Rail
 21st Floor, 127 Creek Street
 Brisbane Qld 4000

Phone: (07) 3235 3144
 Fax: (07) 3235 3930

QCA’s Position

No discussion

The QCA accepts the Preamble in Part 1 of the Draft Undertaking.

2. SCOPE AND ADMINISTRATION OF UNDERTAKING

2.1 Scope

- (a) This Undertaking provides for the negotiation of Access required for the operation of Train Services by Third Party Operators over the Track, with details of the specified Train Services and the sections of Track defined during the Access negotiations. Access will include, in addition to access to the Track, the benefit of other Rail Infrastructure services essential to the use of the Track such as signalling, train control and associated communications and, if the Train Services require electric energy for traction, the provision of such electric energy. Paragraph 4.1.1(b) sets out the exception to this and identifies when negotiations for access to certain Rail Infrastructure is not subject to this Undertaking.

QCA's Position

FD, 107-13; DD, 145-156

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided paras 4.1.1 (a) and (b) of the Draft Undertaking are amended as indicated below.

- (b) This Undertaking does not cover the provision of Above Rail Services. Third Party Operators shall be responsible for the provision of any such Above Rail Services required for the operation of their Train Services.

QCA's Position

FD, 50; DD, 59-60

The QCA accepts this paragraph of the Draft Undertaking.

- (c) This Undertaking is not applicable to the negotiation of Access to Rail Infrastructure for the purpose of operating Train Services that are used for transportation between Queensland and another state and that utilise Standard Gauge Track and Standard Gauge Rollingstock ("Interstate Train Services"). Third Party Operators may negotiate Access for the operation of Interstate Train Services in accordance with the relevant access regime.

QCA's Position

FD, 50; DD, 59-60

The QCA accepts this paragraph of the Draft Undertaking.

- (d) Where the land upon which the Rail Infrastructure is situated is not owned by QR or subleased by QR from Queensland Transport and QR does not, through its arrangements with the owners of the land or pursuant to the *Transport Infrastructure Act 1994*, have the authority to authorise Third Party Operators to access that land, it is the responsibility of the Third Party Operator to obtain the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated. QR will provide reasonable assistance in identifying the relevant land owners.

QCA's Position

FD, 51-2; DD, 61-2

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that

QR commits to provide an access seeker, seeking access to rail infrastructure on land to which QR is not authorised to grant access, with:

- 1. the name, address and contact details of the relevant landowner;**
- 2. advice of the nature and extent of the rights, if any, which QR holds in relation to the infrastructure; and**
- 3. a letter indicating that the access seeker is negotiating with QR with respect to the use of QR’s rail infrastructure and whether or not QR has an objection to the third-party operator negotiating access to the land and in that event full details of the objections,**

within 14 days of the lodgement of the access application by the access seeker.

2.2 Duration of undertaking

- (a) This Undertaking will take effect on the date that it is approved by the QCA in accordance with Section 149 of the Act (herein referred to as the “Commencing Date”).

QCA’s Position

No discussion

The QCA accepts this paragraph of the Draft Undertaking.

- (b) This Undertaking will apply for a period of three (3) years from the Commencing Date unless withdrawn as provided for in the Act.

QCA’s Position

FD, 52-3; DD, 63

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that its term commences from the date of approval of the Undertaking by the QCA and expires on 30 June 2005.

2.3 Review of undertaking

QR and the QCA will meet approximately twelve (12) months after the Commencing Date to review the operation of the Undertaking. This review will identify those provisions (if any) of the Undertaking that are not operating to the satisfaction of either QR or the QCA. If this review identifies that amendments are required to the Undertaking, QR will submit a Draft Amending Undertaking following this process.

QCA’s Position

FD, 53; DD, 64

The QCA accepts this clause of the Draft Undertaking.

2.4 Contractual arrangements

This Undertaking applies only to the negotiation of new Access Agreements or the negotiation of Access Rights in addition to those already the subject of an Access Agreement. Nothing in this Undertaking can require a party to an existing Access Agreement to vary a term or provision of that agreement. In addition, nothing in this Undertaking can require a party to an existing rail haulage agreement to vary a term or provision of that agreement.

QCA's Position

DD, 66

The QCA accepts this paragraph of the Draft Undertaking.

Proposed new provision

The QCA proposes that the Undertaking addresses public reporting of QR's compliance with the Undertaking.

QCA's Position

FD, 55-6; DD, 67-8

The QCA considers it appropriate that the Draft Undertaking be amended such that QR reports to the QCA within the first half of each financial year, in respect of its previous financial year:

- 1. The number, and percentage, of requests for preliminary information responded to within the nominated timeframe.**
- 2. The number of additional days taken when QR fails to meet the specified timeframes for provision of preliminary information for each inquiry.**
- 3. The number, and percentage, of access applications acknowledged within the nominated timeframe.**
- 4. The number, and percentage, of access applications in which QR seeks an extension of time for provision of an indicative access proposal.**
- 5. The number, and percentage, of indicative access proposals provided within the nominated timeframe.**
- 6. The average number of days taken to acknowledge an access application, in those circumstances where QR has taken in excess of 7 days to respond to access seekers.**
- 7. The average number of days taken to provide the indicative access proposals, in those instances where QR has taken in excess of 30 days to provide the document to access seekers.**
- 8. The number, and percentage, of instances in which an access seeker has notified QR that it believes that the indicative access proposal has not been prepared in accordance with the Undertaking.**
- 9. The number of non-ring-fencing related disputes, regarding an alleged procedural breach of the Undertaking, that are referred to the**

dispute resolution process.

10. **The number of non-ring-fencing related disputes, regarding an alleged substantive breach of the Undertaking, that are referred to the dispute resolution process.**
11. **The number of disputes where QR was found to have committed a procedural breach of the Undertaking.**
12. **The number of disputes where QR was found to have committed a substantive breach of the Undertaking.**
13. **The number of complaints received regarding an alleged breach of QR's ring-fencing obligations.**
14. **The number of complaints where QR was found to have breached its ring-fencing obligations.**
15. **The time taken to negotiate each access application resulting in an agreement.**
16. **The time taken to negotiate each access application that does not result in an agreement.**
17. **The number of agreements concluded.**
18. **The number of variations to existing agreements concluded.**

The report would be required to be provided by a date to be agreed with the QCA.

Proposed new provision

The QCA considers it important that it has the power to request that QR gives it further information after the Undertaking is approved by the QCA.

QCA's Position**FD, 55-6**

The QCA considers it appropriate that the Draft Undertaking be amended such that:

1. **the QCA has the right, by written notice, to request that QR provide any information and documents the QCA requires for the purpose of performing its functions under the QCA Act or the Undertaking; and**
2. **QR undertakes it will comply with any such request, by the time stated in the notice, unless there is a reasonable excuse for non-compliance.**

3. RINGFENCING ARRANGEMENTS

3.1 Introduction

QR is an integrated provider of rail services and as such manages the Rail Infrastructure as a Railway Manager as well as operating Train Services as a Railway Operator. This Part outlines the processes and policies that ensure that Access can be negotiated in a competitively neutral environment. These processes and policies are intended to assist QR in meeting its obligations under section 104 of the Act.

QCA's Position

No discussion

The QCA accepts this clause of the Draft Undertaking.

3.2 Organisational structure

- (a) QR has established its organisational structure to facilitate the separation of the management of Rail Infrastructure from the operation of Train Services. Paragraphs (b) to (d) of this Clause set out the organisational structure of QR at the Commencing Date which was developed in accordance with this objective. In the event that QR varies its organisational structure during the term of the Undertaking and such variation impacts upon the contents of this Clause 3.2, this Clause will be varied to reflect the implications of the restructure having regard to the objectives of this Part 3, through the submission to the QCA of a Draft Amending Undertaking prior to the restructure being implemented.

QCA's Position

FD, 60-2; DD, 80-93

The QCA refuses to accept this paragraph of the Draft Undertaking. The QCA considers it appropriate that the Draft Undertaking be amended such that if at any time during the life of an approved Undertaking, QR proposes to make any change to its organisational structure which would adversely affect the capacity of Network Access to perform its functions, including if:

- 1. Network Access is abolished;**
- 2. any of Network Access' current functions, including the scheduling and train control function, is reassigned to any other QR business group;**
- 3. any construction, maintenance or associated functions performed by Infrastructure Services Group are assigned to the above-rail business groups;**
- 4. any functions performed by Technical Services Group associated with the processing of access applications are assigned to the above-rail business groups;**
- 5. the Safety and Environment Strategy Group is subsumed within an above-rail business group,**

QR must then submit a draft amending undertaking to the QCA for approval.

- (b) Network Access has been established as a business group of QR, separate from those business groups within QR that operate Train Services. In addition, there are service groups whose purpose is to provide support activities for both Network Access and the business groups operating Train Services.

QCA's Position**No discussion**

The QCA accepts this paragraph of the Draft Undertaking.

- (c) The Group General Manager of Network Access reports directly to the Chief Executive. The function of Network Access is to manage the provision of Below Rail Services, with the exception of services associated with stations, platforms and selected marshalling yards. In performing this function, the responsibilities of Network Access will include:
- (i) negotiation and management of Access Agreements with Railway Operators;
 - (ii) development and management of agreements with Queensland Transport regarding the provision of Rail Infrastructure that is supported by Infrastructure Payments;
 - (iii) provision and/or procurement of appropriate levels of maintenance and investment for the Rail Infrastructure to ensure that the Rail Infrastructure is provided at the standard required to meet QR's obligations to Railway Operators;
 - (iv) assessment and management of Capacity and Available Capacity;

QCA's Position**No discussion**

The QCA accepts sub-paragraphs 3.2(c)(i)-(iv) of the Draft Undertaking.

- (v) procurement of appropriate train control, including specifying Scheduling and Train Control Protocols, and monitoring the provision of train scheduling and control to ensure that it is provided in accordance with the Scheduling and Train Control Protocols; and

QCA's Position**FD, 60-2; DD, 80-93**

The QCA refuses to accept this sub-paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

1. **QR assigns management and operational responsibility for the performance of the scheduling function and train control function to Network Access with the exception of the Brisbane Mayne (Citytrain) centre;**
2. **the Scheduling and Train Control Principles prepared by the QCA in relation to paragraph 6.1(d) should replace the Scheduling and Train Control Protocols.**

- (vi) procurement of traction power on electrified sections of the Track, including the management of power supply from other parties.

<i>QCA's Position</i>	No discussion
The QCA accepts this sub-paragraph of the Draft Undertaking.	

- (d) Operation of Train Services is undertaken by business groups within QR that are separate from Network Access. The managers of these operational business groups report directly to the Chief Executive. The responsibilities of these operational business groups include:

- (i) operation of Train Services and other Above Rail Services;
- (ii) provision and/or procurement of appropriate levels of maintenance of and investment for Above Rail Services;

<i>QCA's Position</i>	No discussion
The QCA accepts sub-paragraphs 3.2(d)(i) and (ii) of the Draft Undertaking.	

- (iii) the management of stations, platforms and selected marshalling yards;

<i>QCA's Position</i>	FD, 112-3; DD, 154-5
The QCA will accept this sub-paragraph of the Draft Undertaking as it is currently drafted provided sub-paragraphs 4.1.1(a) and (b) of the Draft Undertaking are amended as indicated below.	

- (iv) provision or procurement of appropriate levels of maintenance and investment for stations, platforms and selected marshalling yards; and

<i>QCA's Position</i>	No discussion
The QCA accepts this sub-paragraph of the Draft Undertaking.	

- (v) provision of train scheduling, train control and associated incident management services on behalf of Network Access and in accordance with the Scheduling and Train Control Protocols specified by Network Access.

<i>QCA's position</i>	FD, 60-2 DD, 80-93
The QCA refuses to accept this sub-paragraph of the Draft Undertaking because it is inconsistent with the QCA's position in relation to sub-paragraph 3.2(c)(v) above.	

- (e) Within three (3) months of the Commencing Date, QR will develop Scheduling and Train Control Protocols which will specify:
- (i) the practice for determining train priority;
 - (ii) the practice for management of out-of-course running;
 - (iii) incident management practices;
 - (iv) Train operation information and communications practices; and
 - (v) the practice for train scheduling.

These Scheduling and Train Control Protocols, once developed, will be made available to the QCA for review if the QCA so requires.

QCA's Position

FD, 179-81; DD, 271-3

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that the Scheduling and Train Control Principles prepared by the QCA in relation to paragraph 6.1(d) should replace the Scheduling and Train Control Protocols and be incorporated as a schedule to the Undertaking.

3.3 Accounting arrangements

- (a) QR will establish and maintain a separate set of financial accounts in respect of those Below Rail Services provided by Network Access, as identified in Paragraph 3.2(c), separately identifying in respect of those services a profit and loss statement and a balance sheet. Where possible, these financial accounts will be based on costs, revenues and assets uniquely associated with Below Rail Services provided by Network Access. Otherwise, these financial accounts will be based on an allocation of costs associated with staff and assets which provide functions jointly for Below Rail Services provided by Network Access and for any other services.

QCA's Position

FD, 147-8; DD, 238-9

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

- 1. QR commits to report to the QCA within the first half of each financial year (at or by a time to be agreed with the QCA) in respect of its previous financial year:**
 - a statement of assets, a statement of earnings before interest and tax and a statement of investments, aggregated for the declared services, prepared using generally accepted accounting principles and in accordance with QR's normal external reporting format;**
 - a statement of assets, a statement of earnings before interest and tax and statement of investments aggregated for operations on the Blackwater, Goonyella, Newlands and Moura coal**

systems, prepared using generally accepted accounting principles and in accordance with QR's normal external reporting format; and

2. QR undertakes to publish all material discrepancies, including asset values and depreciation discrepancies, for those services for which access charges are based on the ceiling of stand alone cost, in the instances where relevant asset values for pricing purposes depart from those published in financial statements. Such publication to be at a time or times to be agreed with the QCA.

- (b) QR will allocate any costs associated with staff or assets that provide functions jointly for both Below Rail Services provided by Network Access and for any other services in accordance with the methodology set out in the Cost Allocation Manual referred to in Clause 5.5.

QCA's Position

No discussion

The QCA accepts this paragraph of the Draft Undertaking.

- (c) QR will publish, in its annual report, the profit and loss statement and balance sheet for Below Rail Services provided by Network Access developed in accordance with Paragraph (a) of this Clause.

QCA's Position

FD, 147-8; DD, 238-9

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate the Draft Undertaking be amended such that QR commits to report to the QCA within the first half of each financial year, in respect of its previous financial year, the variables proposed by the QCA in relation to paragraph 3.3(a). The obligation to report will be by a date to be agreed with the QCA.

3.4 Internal access arrangements

3.4.1 Internal Access Agreements for Existing QR Train Services

- (a) QR will develop internal Access Agreements in respect of all existing QR Train Services. These Access Agreements will be between Network Access and the business group that is operating the relevant Train Services.

QCA's Position

No discussion

The QCA accepts this paragraph of the Draft Undertaking.

- (b) These internal Access Agreements will be developed according to the timetable set out in Schedule A.

QCA's Position**FD, 98-9; DD, 125-8**

The QCA refuses to accept this sub-paragraph of the Draft Undertaking and proposes that the Draft Undertaking should be amended such that:

- 1. in developing internal access agreements for existing train services, the term of internal access agreements be the same as the term of the relevant external agreement between QR and its private customers;**
- 2. in developing internal access agreements for existing community service obligation train services, the term of internal access agreements be the same as the term of the relevant external agreement between QR and Government for the above-rail component of the service;**
- 3. for general freight and freight forwarding services, applied a maximum transitional term of two years for internal access agreements unless there is a longer external agreement in place, and following this transitional period provided that internal access agreements would be set for a commercially realistic term. The two year transitional period would start from the date of release of the QCA's Final Decision on QR's Draft Undertaking; and**
- 4. for new tonnages of bulk commodities not covered by an existing contract, the internal access agreement should be linked to the term of the new contract.**

The two year transitional period would start from the date of release of the QCA's Final Decision on QR's Undertaking.

- (c) These internal Access Agreements, once developed, will be made available to the QCA for review if the QCA so requires.

QCA's Position**No discussion**

The QCA accepts this paragraph of the Draft Undertaking.

3.4.2 Internal Access Agreements for New or Renewed QR Train Services

- (a) Irrespective of the timetable identified in Schedule A, in the event that QR (as a Railway Operator) is developing new or renewed rail haulage arrangements, the following will apply in respect of the associated Access Rights:
- (i) internal Access Agreements will be developed on a basis consistent with the principles outlined in the standard Access Agreement summary which is contained in Schedule E;
 - (ii) pricing principles will be applied to Access for QR Train Services in a manner consistent with Part 5;

- (iii) interface standards will be applied to Access for QR Train Services in a manner consistent with Part 7; and
 - (iv) Capacity Entitlements will be developed for QR Train Services in a manner consistent with Part 6.
- (b) These internal Access Agreements will be made available to the QCA for review if the QCA so requires.

QCA's Position**FD, 101-2; DD, 134-6**

The QCA refuses to accept sub-clause 3.4.2 of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

1. **internal access agreements for new or renewed train services developed following the completion of, and in accordance with, the standard access agreement for coal haulage services and approved reference tariffs, will not be subject to s104 and s125 of the QCA Act;**
2. **prior to the completion of the development of the standard access agreement for coal haulage services, internal access agreements for new or renewed train services will not hinder or restrict access to the declared service in any way contrary to s104 and s125 of the QCA Act;**
3. **QR must disclose coal access agreements and internal access agreements between Network Access and the QR Business Group that operates coal train services; and**
4. **QR commits to provide its internal access agreements for non-coal train services to the QCA for review.**

3.5 Ringfencing Guidelines

- (a) In order to ensure that the processes and policies set out in Clauses 3.2, 3.3 and 3.4 are effective in assisting QR to meet its obligations under section 104 of the Act, QR will, within three (3) months of the Commencing Date, develop Ringfencing Guidelines. The Ringfencing Guidelines will reflect the principles and address the issues identified in Schedule B.
- (b) The Ringfencing Guidelines will be made available to the QCA for review if the QCA so requires. The QCA may require QR's performance in complying with the Ringfencing Guidelines to be audited on an annual basis.

QCA's Position**FD, 91-6; DD, 114-9**

The QCA refuses to accept clause 3.5 of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

1. **the procedures for the protection of confidential information proposed by the QCA in relation to clause 4.2 should be provided for; and**

2. the following procedures regarding ring-fencing breaches should be provided for:

Ring-fencing breaches

3. QR to report immediately to the QCA any actual or alleged breach of the ring-fencing provisions of the Draft Undertaking and any response by QR;
4. QR to establish an initial internal review process for alleged ring-fencing breaches such that:
- the internal review is completed and the access seeker notified in writing of the findings of the review within 28 days of the alleged breach being brought to QR’s attention in writing;
 - an access seeker could refer a dispute over the findings of the internal review to the QCA at the end of the 28 day period; and
 - the results of the subsequent QCA review provide a basis for compensation;
5. a contractual liquidated damages clause of \$10,000 is to apply where confidential information is disclosed to an above-rail business group in breach of the ring-fencing provisions of the Draft Undertaking;
6. an access seeker can seek recourse through the courts if it can demonstrate that an alleged breach of the ring-fencing provisions of the Undertaking has caused damage in excess of \$50,000. In addition to any remedies available at law or in equity, the access seeker should also be able to seek injunctive relief against QR;
7. in the event of confidential information falling into the hands of a person within QR who did not reasonably require access to it, places the onus of proof on QR to demonstrate that this did not occur as a result of a breach of the Undertaking’s confidentiality obligations; and

Audits

8. annual compliance audits of the ring-fencing provisions of the Draft Undertaking;
9. the QCA has a right to decide whether an internal or external compliance audit of the ring-fencing provisions of the Draft Undertaking should be conducted and in the case of an external audit, to choose the identity of the auditor;
10. in the case of an external audit, the process would be as follows:
- QR and QCA agree a list of three auditors. Failing agreement, QCA will nominate a number sufficient to constitute a panel of three;
 - each auditor selected to the panel must – acknowledge that if

appointed they are to act for the QCA; that they owe their duties to the QCA under the terms of the Undertaking; and that they will accept instructions on the subject matter of the audit from the QCA;

- QR then chooses the auditor to undertake the audit from the list. That auditor will undertake the audit and may be directed by the QCA as to matters that are to be looked at and reported on;**
 - the report of the auditor is to be given to the QCA with a copy to QR;**
 - QR commits to provide all information requested by the auditor within specified time frames determined at the time of the auditor’s appointment audit; and**
 - QR commits to pay for the audit.**
- 11. the scope of an audit will relate to QR’s compliance with its ring-fencing obligations and associated procedures, including reporting on any inappropriate transmission of access seekers’ confidential information;**
 - 12. the process adopted in respect of each audit is to be published with the audit report;**
 - 13. QR commits to provide compliance audit reports to the QCA; and**
 - 14. the QCA can publish, as appropriate, QR’s compliance audit reports.**

4. NEGOTIATION FRAMEWORK

4.1 Framework

This Undertaking specifies the process which will be followed to enable a Third Party Operator to gain Access. The framework provides for:

- (i) preliminary meetings and an initial exchange of information;
- (ii) submission of an Access Application by the Third Party Operator;
- (iii) preparation of an Indicative Access Proposal by QR; and
- (iv) negotiations to develop an Access Agreement for execution.

<i>QCA's Position</i>	No discussion
The QCA accepts this clause of the Draft Undertaking.	

4.1.1 Parties to Negotiation

- (a) Except as provided for in Paragraph (b) of this Subclause, negotiations for Access with Third Party Operators will be undertaken by Network Access. Where Access is required for Below Rail Services provided by a facility that is not managed by Network Access, Network Access will negotiate for Access to that facility by the Third Party Operator as agent for the business group that manages that facility.

<i>QCA's Position</i>	FD, 107-11; DD, 145-51
The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:	
<ol style="list-style-type: none"> 1. management responsibility for QR's infrastructure is assigned in accordance with the line diagrams incorporated in the QCA's Draft Decision; and 2. the following principles for the assignment of management responsibility for QR's rail infrastructure is incorporated as a schedule to the Undertaking: 	
<u>Principles</u>	
The overall objective of the assignment process is to ensure that access seekers are not forced to negotiate with QR's above rail business groups for access to declared rail transportation services. This objective requires the following outcomes from the assignment process:	
<ol style="list-style-type: none"> 1. Network Access should operate as a stand-alone provider of declared rail transportation services. The onus of proof in justifying a departure from this principle rests with QR. 2. Existing market shares of QR's above rail business groups should not be a factor in the assignment of management responsibility for 	

declared services.

3. **Network Access should provide access - using its own infrastructure - to any private siding.**
4. **Network Access should provide access to: any end-user's facility not owned or leased by a rail operator; a facility where there is joint use by end-users.**
5. **Network Access should provide access to declared rail transport services that assist normal mainline operations. These operations include the following rail transport functions:**
 - **mainline running, including the use of passing loops;**
 - **loading and unloading at facilities other than freight centres and depots, undertaken as part of the normal operational cycle;**
 - **train queuing and staging for the following activities so long as they are undertaken as part of the normal operational cycle:**
 - **loading and unloading;**
 - **transit;**
 - **'on track' maintenance, provisioning and crewing activities;**
 - **train marshalling and shunting:**
 - **in preparation for transit;**
 - **in preparation before or after train loading or unloading;**
 - **in preparation before or after maintenance and provisioning.**
 - **short term train storage:**
 - **in a breakdown situation;**
 - **for short periods where product flow has been disrupted;**
 - **for short periods where the timetable does not allow use.**
6. **Disputes between an access seeker and QR with respect to a request for a re-assignment of management responsibility for a part of QR's rail infrastructure from an above rail business group to Network Access should be referred to the QCA for resolution. The QCA would adopt the following four step dispute resolution process:**
 - **the access seeker would write to QR seeking a re-assignment of management responsibility;**
 - **QR would be required to respond in writing within 30 days,**

providing an explanation of its decision;

- **if the access seeker did not accept QR's decision, the matter would be referred to the respective Chief Executive Officers of the two parties within 7 days for resolution. The Chief Executive Officers would have a further 14 days to resolve the dispute; and**
- **if there were no resolution after 14 days, the access seeker or QR would give notice to the QCA about the dispute and the QCA would then resolve the matter.**

- (b) Where a Third Party Operator is seeking Access to a station, platform or marshalling yard that is managed by a QR business group other than Network Access (referred to in this Paragraph as an “Operator Facility”), and the Third Party Operator’s sole purpose of seeking Access to the Operator Facility is to utilise an above rail facility that is managed by the same QR business group, Access to that Operator Facility will be negotiated directly between the Third Party Operator and the QR business group.

QCA’s Position

FD, 112; DD, 154-5

The QCA rejects this paragraph as it is currently drafted and considers it appropriate that it be amended such that:

- 1. management responsibility, including access negotiations, for track adjacent to all platforms/stations is assigned to Network Access;**
- 2. responsibility for access negotiations regarding declared services within stations and platforms is assigned to Network Access. Such negotiations should occur within the framework of the Undertaking; and**
- 3. Network Access is exempted from the requirement to obtain access seekers’ approval prior to passing its confidential information to an above-rail group for access negotiations regarding passenger services that utilise stations and platforms. All other protections for access seekers’ confidential information provided for in the Undertaking will apply.**

- (c) Where in this Undertaking reference is made to the negotiation of Access Agreements with Railway Operators or Third Party Operators, the terms “Railway Operator” and “Third Party Operator” shall be deemed to include a party with the capacity to secure the services of an Accredited organisation to operate the proposed Train Services, provided that only a party who is, or will become Accredited in respect of those Train Services may enter into an Access Agreement with QR.

QCA’s Position

FD, 114; DD, 159-61

The QCA refuses to accept this sub-paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that both accredited and non-accredited organisations can execute access

agreements with QR, provided that an appropriately accredited rail operator performs the train services.

4.1.2 Conditions to Negotiation

- (a) QR reserves the right to only negotiate with Third Party Operators who comply with the relevant obligations and applicable processes set out in this Undertaking. If a Third Party Operator does not comply with the relevant obligations and processes, and QR considers that such non-compliance is material, QR will not be obliged to continue negotiations regarding the provision of access for that Third Party Operator.

QCA's Position

FD, 116-7; DD, 164-71

The QCA accepts this sub-paragraph of the Draft Undertaking.

- (b) At any time, before or during the negotiation process, QR may require the Third Party Operator to demonstrate to QR's reasonable satisfaction that it is able to meet the prudential requirements set out in Paragraph (c) of this Subclause. In the event that the Third Party Operator cannot meet these prudential requirements, QR may refuse to commence negotiations or may cease negotiations with that Third Party Operator.

QCA's Position

FD, 116-7; DD, 164-71

The QCA refuses to accept this sub-paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that QR commits to enter into negotiations with an access seeker in order that it could establish whether the circumstances for a refusal to enter into an access agreement are met.

- (c) For the purpose of Paragraph (b) of this Subclause, the Third Party Operator will be required to meet the following prudential requirements:

- (i) the Third Party Operator must be Solvent; and

QCA's Position

FD, 116-7; DD, 166-8

The QCA will accept this sub-paragraph of the Draft Undertaking as it is currently drafted provided the definition of solvency is amended as indicated in Part 8.

- (ii) the Third Party Operator, or a Related Party of the Third Party Operator, must not currently be, or have been in the previous two (2) years, in Material Default of any agreement with QR, or any agreement in accordance with which access to rail infrastructure, not managed by QR, has been provided to the Railway Operator or a Related Party.

QCA's Position**FD, 116-7; DD 164-71**

The QCA refuses to accept this sub-paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that the onus is on QR to justify its refusal to enter into an access agreement by demonstrating there was no reasonable likelihood of the access seeker meeting the terms and conditions specified in its proposed access agreement in a material way.

(d) Where a Third Party Operator is:

- (i) seeking Access which will utilise Committed Capacity; and/or
- (ii) seeking Access that is required for Train Services carrying bulk consignments of commodities, where QR is of the reasonable belief that those bulk consignments will be otherwise carried by Train Services under an existing Access Agreement;

QR will only negotiate with that Third Party Operator with respect to that request for Access in the following manner:

- (iii) QR will prepare an Indicative Access Proposal as provided in Clauses 4.4 and 4.5; but
- (iv) QR will not be obligated to enter into further negotiations for the Access Rights unless and until it is apparent that there is a process or arrangement in place (for example, as anticipated by Paragraph 6.4(d)) to make the Committed Capacity available, or to ensure that QR only has one Access Agreement for Train Services carrying the relevant bulk consignments; and
- (v) QR will give priority to the preparation of Indicative Access Proposals for other Access Applications that relate to Available Capacity, and in doing so the preparation of the Indicative Access Proposal may exceed the time limits specified in Clauses 4.4 and 4.5.

QCA's Position**FD, 116-7; DD, 164-71**

The QCA refuses to accept sub-paragraph 4.1.2(d) of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that in negotiating for committed capacity, if QR can establish that an application is frivolous or vexatious, it is entitled to recover its costs. QR may seek acknowledgment of an access seeker's liability for costs in such a negotiation.

(e) If QR refuses to negotiate Access with a Third Party Operator in accordance with this Subclause, it shall provide written reasons to the Third Party Operator for its refusal.

QCA's Position**FD, 116-7; DD, 164-71**

The QCA refuses to accept this sub-paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that where QR establishes the circumstances for a refusal to enter into an

access agreement it should provide written reasons for its refusal to the access seeker within 14 days.

- (f) If the Third Party Operator considers that QR has unreasonably refused to commence or subsequently unreasonably ceased negotiations in accordance with this Subclause, then the Third Party Operator may refer the matter to the QCA in accordance with Subclause 4.9.4. If the QCA determines that QR has unreasonably refused to commence or subsequently unreasonably ceased negotiations, QR will recommence negotiations immediately.

QCA's Position

FD, 116-7; DD, 164-71

The QCA accepts this sub-paragraph of the Draft Undertaking.

- (g) If at any time QR is of the view that the Third Party Operator's request for Access is frivolous in nature then QR may refer the request to the QCA in accordance with Subclause 4.9.4 for a determination. If the QCA determines that the request is in fact frivolous then QR will be entitled to cease negotiations and will not be obliged to comply with this Undertaking in respect of the request.

QCA's Position

Reference: FD, 116-7; DD, 164-71

The QCA accepts this sub-paragraph of the Draft Undertaking.

4.2 Confidentiality

- (a) QR and the Third Party Operator will, at all times, keep confidential and not disclose to any other person, any Confidential Information exchanged as part of the negotiation for Access under this Undertaking, without the approval of the party who provided it, except where disclosure is in accordance with Paragraph (c) of this Clause. If required by either party, the parties shall enter into appropriate confidentiality arrangements to reflect this obligation.

QCA's Position

FD, 74-83; DD, 102-9

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that QR and the third party operator will, at all times, keep confidential and not disclose to any other person, any confidential information exchanged as part of the negotiation for access under this Undertaking or in the course of any access agreement, without the approval of the party who provided it, provided that such approval shall not be unreasonably withheld, except where disclosure is in accordance with paragraph (c) of this clause.

- (b) Both QR and the Third Party Operator will ensure that all Confidential Information provided by the other party is used only for the purposes for which the information was

provided. The Ringfencing Guidelines will assist QR in meeting its obligations under this Paragraph.

QCA's Position**FD, 74-83; DD, 102-9**

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided the reference to the Ring-fencing Guidelines is removed.

- (c) Paragraphs (a) and (b) of this Clause shall not apply to disclosure of Confidential Information by the party receiving the Confidential Information in any of the following circumstances:
- (i) any disclosure required by law, the listing requirements of a stock exchange or the lawful requirements of any Authority;
 - (ii) disclosure to the recipient's solicitors, barristers or accountants under a duty of confidentiality;
 - (iii) disclosure to the recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality undertaking in favour of the party who originally disclosed the Confidential Information (the "Information Provider"); and

QCA's Position**FD, 74-83; DD, 102-9**

The QCA accepts sub-paras 4.2(c)(i), (ii) and (iii) of the Draft Undertaking.

- (iv) any disclosure of Confidential Information to the recipient's consultant or independent adviser, other than of the type referred to in Subparagraphs (ii) or (iii) of this Paragraph, where such disclosure is approved in writing by the Information Provider, provided that such approval shall not be unreasonably withheld in the case of disclosure to a reputable consultant or independent adviser who has executed a legally enforceable confidentiality undertaking in favour of the Information Provider.

QCA's Position**FD, 74-83; DD, 102-9**

The QCA refuses to accept this sub-paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

- 1. QR commits to employ different external advisers for its above and below-rail business groups where there is a potential for a conflict of interest to occur (when the adviser is an individual);**
- 2. where Network Access intends to disclose an access seekers' confidential information to an external adviser (other than those specified in sub-paras 4.2(c)(ii) and (iii)), it must obtain the consent of the access seeker before disclosing confidential information to the**

adviser, that consent not to be unreasonably withheld. Consent cannot be unreasonably withheld where QR undertakes to contract with an external consultant on the following terms:

- specifying the person/s who may have access to the information;
- specifying that those person/s must not speak or disclose information to any QR staff, other than those within Network Access; and
- requiring them to execute a confidentiality deed in favour of the owner of the information (if required by the owner).

3. where an access seeker intends to disclose Network Access' confidential information to an external adviser (other than those specified in sub-paras 4.2(c)(ii) and (iii)), or to a customer, it must obtain the consent of the access seeker before disclosing confidential information to the adviser, that consent not to be unreasonably withheld. Consent cannot unreasonably be withheld where the access seeker undertakes to contract with the other party on the following terms:

- specifying the person/s who may have access to the information;
- specifying those persons must not disclose information to anyone else except on the same terms as the information was disclosed to them; and
- requiring them to execute an appropriate confidentiality deed in favour of the owner of the information (if required by the owner).

Proposed new provision

The QCA proposes a new provision to provide greater clarity regarding the status of confidential information.

QCA's Position

FD, 74-83; DD, 102-9

The QCA considers it appropriate that the Draft Undertaking is amended such that for clarity, information which was once considered to be confidential information, will only continue to be confidential information for as long as it retains its confidential nature as set out in the definition of confidential information in Part 8 of this Undertaking. In addition, the discloser and recipient of confidential information may agree in writing that specified confidential information is no longer required to be kept confidential.

Proposed new provision

The QCA proposes a new provision be incorporated in to the Draft Undertaking to outline the processes to apply to the flow of confidential information from Network Access to QR's internal advisers.

QCA's Position**FD, 74-83; DD, 102-9**

The QCA considers it appropriate that the Draft Undertaking be amended such that:

- 1. provision is made for a confidentiality deed to be executed between QR and an access seeker in favour of the owner of the confidential information at the commencement of an access negotiation. The deed would be as agreed between the parties, or as otherwise developed by the QCA;**
- 2. QR is obliged to establish an acknowledgment register for each access negotiation (including the application and, if relevant, agreement) to provide an ongoing record of those persons who are disclosed a third-party operator's confidential information outside of Network Access;**
- 3. QR employees receiving confidential information are reminded of their ring-fencing obligations and that confidential information not be disclosed to a person that has not undergone the education and acknowledgment process QR has proposed;**
- 4. the following persons and/or segments within QR are specified as segments of 'confidential information convergence' ie. approval from an access seeker is not required prior to disclosure of its confidential information:**
 - Chief Executive Officer and Board;**
 - Group General Manager Technical Services Group;**
 - Rollingstock Engineering Unit within Technical Services Group;**
 - Executive General Manager Safety and Environment Strategy Group;**
 - Safety and Environment segments within the Safety and Environment Strategy Group;**
 - Group General Manager Infrastructure Services Group; and**
 - Corporate Counsel;**
- 5. where reasonably practicable, no internal adviser be asked to advise Network Access and an above-rail group on the same or related matter;**
- 6. where an internal adviser is advising Network Access and an above-rail group on the same or a related matter, QR will advise a third-**

party operator before providing confidential information to that adviser, notwithstanding the adviser is within one of the areas that Network Access can otherwise provide confidential information to without the consent of the information owner;

7. an access seeker's approval for the release of its confidential information cannot unreasonably be withheld where:
 - if Network Access intends passing the confidential information to an internal adviser, it executes a confidentiality deed in an agreed form – or, failing agreement, in a form approved by the QCA from time to time - with the access seeker; or
 - the internal adviser being disclosed the confidential information has no direct or indirect involvement in advising an above-rail business group on that or related matters;
8. QR is required to advise an access seeker if the internal adviser has had a direct or indirect involvement in advising an above-rail business group on that or related matters;
9. management levels 2, 3 and 4 in Network Access cannot work on a matter they were directly or indirectly involved with in Network Access for three months after leaving Network Access;
10. only Network Access has access to the confidential information of a third-party operator in the Freight Management System;
11. there be a debriefing process for all Network Access staff prior to their departure to another QR business group to remind them of their confidentiality obligations.

4.3 Access application

- (a) Requests for Access are to be submitted to QR in the form of an Access Application.

QCA's Position

No discussion

The QCA accepts this paragraph of the Draft Undertaking.

- (b) In order for QR to assess requests for Access, certain information will be required to be provided by the Third Party Operator as part of the Access Application. Details of the required information are set out in Schedule C. Prior to submitting the Access Application, the Third Party Operator may seek initial meetings with QR to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and in particular the information requirements set out in Schedule C.

QCA's Position

FD, 119; DD, 174-5

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that access seekers should

have the right to revisit the Schedule C information that they provide as the negotiation process proceeds.

- (c) If requested by the Third Party Operator, QR will provide to the Third Party Operator information relative to the corridor of interest to assist in the formulation of the Access Application. The information provided to the Third Party Operator will be in the form of Preliminary Information and will include the information outlined in Part 1 of Schedule D, or such items of the information outlined in Part 1 of Schedule D as required by the Third Party Operator.

QCA's Position

FD, 74-83; DD, 102-9

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that:

- 1. QR is obliged to provide Schedule D preliminary information before it requires Schedule C information, provided the costs of provision are met;**
- 2. for rail corridors where no reference tariffs apply, incorporates in the Schedule D preliminary information, price and costing information consistent with ss101(2) and ss101(3) of the QCA Act;**
- 3. the Preliminary Information (Information Packs) provided by QR includes an outline of any unusual signalling features on a particular system.**

- (d) QR will use reasonable efforts to make the Preliminary Information available to the Third Party Operator within fourteen (14) days of QR receiving the Third Party Operator's request if the information contained in the Preliminary Information has been previously compiled, otherwise within thirty (30) days of QR receiving the request.

QCA's Position

FD, 120; DD, 181-4

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that QR will advise the access seeker of the expected delay in the provision of preliminary information if it is beyond 14 days and provide reasons for the delay.

- (e) QR will use reasonable efforts to ensure that any information provided under Paragraph (c) of this Clause will reflect the most current information available to QR. QR will identify the currency of the information provided.

QCA's Position

DD, 185

The QCA accepts this paragraph of the Draft Undertaking.

- (f) For the provision of Preliminary Information under this Clause 4.3, QR will be entitled to levy an appropriate charge commensurate with the cost of preparation and supply of the Preliminary Information.

QCA's Position**DD, 186-7**

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that guiding principles regarding the setting of fees are established in the Undertaking to the satisfaction of the QCA.

4.4 Acknowledgment

- (a) Upon receiving an Access Application from a Third Party Operator, QR must acknowledge the Access Application in writing to the Third Party Operator within seven (7) days of its receipt or such longer period as specified in accordance with Paragraph (b) of this Clause. Subject to Paragraph (c) of this Clause, QR will use reasonable efforts to provide the Indicative Access Proposal to the Third Party Operator within thirty (30) days of such acknowledgment.
- (b) Prior to acknowledging the Access Application, QR may seek:
- (i) additional information where QR can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal; or
 - (ii) clarification of the information that has been provided in the Access Application.

In such circumstances, QR will advise the Third Party Operator of the additional information or the clarification required within seven (7) days of receipt of the Access Application. Upon receiving the required information or clarification from the Third Party Operator, QR must provide written acknowledgment of the receipt of the completed Access Application within seven (7) days.

- (c) In assessing an Access Application, QR may consider that, due to the complexity of the Access Application or due to other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within thirty (30) days of acknowledgment of the Access Application. In these circumstances, QR will advise of such in its acknowledgment and within a further seven (7) days will advise the Third Party Operator of its estimate of the time required to deliver the Indicative Access Proposal. Where the Third Party Operator is of the view that the time estimated for preparation of the Indicative Access Proposal pursuant to this Paragraph is excessive, then the Third Party Operator may refer the matter to the QCA for a determination in accordance with Subclause 4.9.4. QR will use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by QR or as otherwise determined by the QCA pursuant to this Paragraph.

QCA's Position**FD, 122; DD, 189-90**

The QCA accepts clause 4.4 of the Draft Undertaking.

4.5 Indicative access proposal

- (a) The Indicative Access Proposal will set out:
- (i) the Rollingstock and Rollingstock Configurations to which the Indicative Access Proposal applies;
 - (ii) a summary of the applicable operating characteristics (e.g. frequency, transit time, commodity carried);
 - (iii) an indicative assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights and, if not, either an outline of the works and an indicative estimate of the cost of such works, required to provide the additional Capacity necessary to accommodate the requested Access Rights, or an outline of the requirements for an investigation into the provision of sufficient Capacity for the requested Access Rights;
 - (iv) advice in respect of the existence of other Railway Operators who have submitted an Access Application (except an Access Application in respect of which the time period specified in Paragraph 4.6(a) has expired without a notification of intent having been received by QR) in respect of Access which, if it were to be provided, would limit the ability of QR to provide Access in accordance with the Indicative Access Proposal.
 - (v) a summary of the standard terms and conditions under which Access is offered, as set out in Schedule E;
 - (vi) an initial estimate of the Access Charge for the requested Access Rights, based on the pricing principles set out in Part 5; and
 - (vii) details of the additional information required for QR to progress the proposal and develop the Access Charge and terms and conditions for acceptance. Typical information requirements to be addressed are outlined in Paragraph 4.7.2(a).
- (b) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige QR to provide Access in accordance with the specific terms and conditions, including Access Charge, contained within it.
- (c) If, after thirty (30) days following QR's acknowledgment of the Access Application, or if applicable after expiration of the time estimated by QR or determined by the QCA in accordance with Paragraph 4.4(c), the Third Party Operator believes that QR is not making reasonable progress in the preparation of the proposal, then the Third Party Operator may refer the matter to the QCA for a determination in accordance with Subclause 4.9.4.

QCA's Position

FD, 122; DD, 189-90

The QCA accepts clause 4.5 of the Draft Undertaking.

4.6 Notification of intent

- (a) If the Third Party Operator intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Third Party Operator must notify QR of its intention in writing, within ninety (90) days of the date it receives the Indicative Access Proposal (or such other period of time that the parties agree). In the event that a notification is given after this period of time, QR will review the Indicative Access Proposal and, if considered necessary by QR, prepare a revised Indicative Access Proposal in accordance with Clause 4.5, and the negotiation process outlined in this Part 4 will recommence from that point.

QCA's Position

FD, 122; DD, 189-90

The QCA accepts this paragraph of the Draft Undertaking.

- (b) Should the Third Party Operator be of the view that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, then the Third Party Operator shall notify QR of its concerns in writing within thirty (30) days of the date of receipt of the Indicative Access Proposal.

QCA's Position

FD, 122; DD, 189-90

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that the notification time frame is extended to "60 days or as otherwise agreed".

- (c) QR will respond to these concerns including, where appropriate, the making of revisions to the Indicative Access Proposal, within a reasonable time frame. If the Third Party Operator is satisfied with the response received from QR, including any revision to the Indicative Access Proposal, it must notify QR of its intention to proceed with negotiations within thirty (30) days of receiving QR's response. In the event that the Third Party Operator is not satisfied with the response from QR, including any revision to the Indicative Access Proposal, the Third Party Operator may seek to resolve the dispute in accordance with the dispute resolution process outlined in Clause 4.9. The Third Party Operator must commence this dispute resolution process within thirty (30) days of receiving QR's response.

QCA's Position

FD, 122; DD, 189-90

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that:

- 1. QR will respond to concerns including, where appropriate, the making of revisions to the indicative access proposal, within a period of 30 days, under normal circumstances. If the required response is more complex, QR will advise the access seeker within 7 days of receipt of its written concerns regarding the time required to respond, consistent with the indicative access proposal process in paragraph**

4.4(c);

2. **the period within which the third-party operator must notify its intention to proceed with negotiations is extended to 60 days;**
3. **the period within which the third-party operator must commence dispute resolution is extended to 60 days of receiving QR's response; and**
4. **the words "or as otherwise agreed" are inserted after each of the proposed time frames above.**

- (d) Where a dispute is referred for resolution in accordance with Paragraph (c) of this Clause, then the Third Party Operator must notify QR of its intentions in writing within fourteen (14) days of resolution of the dispute if the Third Party Operator wishes to proceed further with its Access Application, on the basis of the arrangements outlined in the Indicative Access Proposal including any amendments made as a result of the referral.

QCA's Position**FD, 122; DD, 189-90**

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that the words "or as otherwise agreed" are inserted after the fourteen (14) day time frame.

4.7 Negotiation process**4.7.1 Negotiation Period**

- (a) If the Third Party Operator indicates its willingness to progress negotiations pursuant to Clause 4.6, then both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement.
- (b) The Negotiation Period shall commence upon the Third Party Operator providing a notification of intent pursuant to Clause 4.6.
- (c) The Negotiation Period will cease upon any of the following events:
 - (i) execution of an Access Agreement in respect of the Access sought by the Third Party Operator;
 - (ii) written notification by the Third Party Operator that it no longer wishes to proceed with its Access Application;
 - (iii) a reduction in Available Capacity resulting from another Railway Operator finalising an Access Agreement, where that reduction in Available Capacity adversely impacts upon QR's ability to offer Access to the Third Party Operator under the terms of the Indicative Access Proposal;

QCA's Position

FD, 183-5; DD, 282-5

The QCA refuses to accept this sub-paragraph of the Draft Undertaking because it is inconsistent with the QCA's position in relation to sub-clause 6.3.2.

- (iv) the expiration of nine (9) months from the commencement of the Negotiation Period, or if both parties agree to extend the Negotiation Period, the expiration of the agreed extended period, provided that agreement to extend the Negotiation Period is not unreasonably withheld by either party; or
- (v) if QR is of the view that the negotiations are not progressing in good faith towards the development of an Access Agreement within a reasonable time period and QR refers the application to the QCA in accordance with Subclause 4.9.4 for a determination, a determination by the QCA in QR's favour.
- (d) Upon cessation of the Negotiation Period, QR will be entitled to cease negotiations with the Third Party Operator.
- (e) If at any time during the Negotiation Period, a dispute arises between the parties which, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, then either party may seek to resolve the dispute in accordance with the dispute resolution process outlined in Clause 4.9.

QCA's Position

No discussion

The QCA accepts sub-paras 4.7.1(a), (b), (c) (i) (ii) (iv) and (v), (d) and (e) of the Draft Undertaking.

4.7.2 Issues to be addressed during Negotiation

- (a) During the Negotiation Period, QR and the Third Party Operator will negotiate and agree on the elements comprising the Access Agreement. In order to facilitate this process:
 - (i) QR will provide Additional Information relative to the corridor of interest to the Third Party Operator, which will include any information outlined in Part 1 of Schedule D not provided as part of the Preliminary Information and the information outlined in Part 2 of Schedule D, to the extent that such information is required either by the Third Party Operator or as part of the Access Agreement;
 - (ii) an Operating Plan is to be prepared by the Third Party Operator in accordance with Clause 7.2;
 - (iii) a Safety Risk Assessment is to be undertaken by the Third Party Operator, jointly with QR, in accordance with Subclause 7.3.1;
 - (iv) a Safety Risk Management Plan is to be developed and agreed in accordance with Subclause 7.3.2;

- (v) an Environmental Investigation is to be undertaken by the Third Party Operator in collaboration with QR in accordance with Subclause 7.4.1 and an Environmental Risk Management Plan is to be developed and agreed in accordance with Subclause 7.4.2;
- (vi) an Access Charge, determined in accordance with the principles set out in Part 5, is to be provided by QR;
- (vii) a Capacity Analysis and an investigation of operational impacts are to be undertaken by QR and necessary Capacity enhancements to accommodate Access by the Third Party Operator are to be advised by QR;
- (viii) the definition of the relevant Capacity Entitlement and advice of initial timetable are to be provided by QR, consistent with Part 6;
- (ix) the Third Party Operator is to demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are consistent with the Rollingstock Interface Standards in accordance with Clause 7.1;
- (x) an Interface Coordination Plan is to be prepared by QR in consultation with the Third Party Operator in accordance with Clause 7.6; and
- (xi) other terms and conditions comprising the Access Agreement are to be provided by QR.

QCA's Position**FD, 183-5, 223-6; DD, 278-9, 307-9**

The QCA refuses to accept paragraph 4.7.2(a) of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that paragraph 4.7.2(a) reflects the QCA's proposed amendments in relation to Parts 6 and 7 of the Draft Undertaking.

- (b) Where the Additional Information (or part thereof) is not available at the time of commencement of the Negotiation Period, QR will use reasonable endeavours to supply the information required by the Third Party Operator (to the extent the information required is consistent with Schedule D) as soon as practicable. QR will use reasonable efforts to ensure that any information provided will reflect the most current information available to QR. QR will identify the currency of the information provided.
- (c) For the provision of Additional Information under this Subclause 4.7.2, QR will be entitled to levy an appropriate charge commensurate with the cost of preparation and supply of the information.
- (d) In respect of the details required to be developed by the parties in accordance with Paragraph (a) of this Subclause, the parties may agree to finalise certain aspects after the execution of the Access Agreement. In such circumstances the parties may choose to address the issue in question in a preliminary manner only during the Negotiation Period and then provide a mechanism to address any subsequently identified cost or operating impact after execution of the Access Agreement.
- (e) QR will be responsible for the investigation and design of any necessary enhancements for the Rail Infrastructure. However, if prior to entering into an Access Agreement the Third Party Operator requires detailed scoping of the enhancements which are required

directly to facilitate the Access Rights under negotiation, QR will be entitled to require that the Third Party Operator provide funding in respect of such investigation and design.

- (f) In the event that, at any time prior to the execution of an Access Agreement with the Third Party Operator, another Railway Operator (other than a Railway Operator that was the subject of advice provided in the Indicative Access Proposal pursuant to Subparagraph 4.5(a)(iv)) submits an Access Application where that Access would limit the ability of QR to provide Access in accordance with the Access Rights being negotiated, QR will notify the Third Party Operator of the existence of the Access Application prior to the provision of an Indicative Access Proposal to the other Railway Operator.

QCA's Position

DD, 186-7

The QCA accepts sub-paras 4.7.2(b) - (f) of the Draft Undertaking.

Proposed new provision

The QCA considers that QR should provide relevant environmental information to access seekers to assess the environmental risks of their proposed operations.

QCA's Position

FD, 265; DD, 351

The QCA considers it appropriate that the Draft Undertaking be amended such that QR commits to provide to a third-party operator on a timely basis during the negotiation period, all relevant information reasonably available to it, and necessary for the operator in question to address a real or potential environmental risk. The relevant information could include environmental reports, relevant licence conditions, currently applicable noise levels or binding noise limits, particulars of noise complaints, any enforcement actions and a copy of the QR Code of Practice for Railway Noise Management.

Proposed new provision

The QCA considers the Draft Undertaking should include provisions committing QR to provide to a third-party operator information relevant to the interface risk management process and to provide a 'reasonable endeavours' commitment to assist in training requirements for third-party operator's staff.

QCA's Position

FD, 240; DD, 323-5

The QCA considers it appropriate that the Draft Undertaking be amended such that:

- 1. QR commits to provide to a third-party operator, on a timely basis, all information reasonably available to it that is relevant to the interface risk management process during the negotiation period;**
- 2. QR commits to provide a 'reasonable endeavours' commitment to assist a third-party operator meet any training requirements for its**

staff identified during the interface risk management process, where the operator cannot otherwise reasonably attain that training; and

3. **QR is able to recover the reasonable costs associated with such training.**

4.8 Access agreement

- (a) The granting of Access will be underpinned by an Access Agreement which will be developed and finalised as part of the negotiation process. The parties to the Access Agreement will be QR and the Railway Operator for the relevant Train Services.

QCA's Position

FD, 114; DD, 159-61

The QCA refuses to accept this sub-paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that both accredited and non-accredited organisations can execute access agreements with QR, provided that an appropriately accredited rail operator performs the train services.

- (b) The Third Party Operator need not have received Accreditation as a Railway Operator prior to execution of the Access Agreement but must obtain such Accreditation prior to the commencement of Train Services and subsequently maintain its Accreditation for the duration of the Access Agreement.

QCA's position

No discussion

The QCA accepts this paragraph of the Draft Undertaking.

- (c) The Access Agreement must, unless otherwise agreed between QR and the Third Party Operator, be consistent with the principles outlined in the standard Access Agreement summary which is contained in Schedule E. The summary of the standard Access Agreement does not provide an exhaustive list of the issues that may be included in an Access Agreement.

QCA's Position

FD, 272-4

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that the access agreement must, unless otherwise agreed between QR and the third party operator, be consistent with:

1. **the principles outlined in the standard access agreement summary which is contained in Schedule E; or**
2. **where the QCA has approved the terms of a standard access agreement or a particular service or services as being consistent with those principles, the terms of the standard access agreement as**

approved; and

3. **recognising that there will be more than one detailed form of words which would be consistent with the principles set out in Schedule E, where a dispute arises about whether an agreement which purports to give detail to the broad principles contained in Schedule E is fair and reasonable, the parties may seek arbitration under the QCA Act.**

- (d) Once the Third Party Operator has notified QR that it is satisfied with the terms and conditions of the Access Agreement as drafted, QR will, as soon as reasonably practicable, provide a final Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) to the Third Party Operator for execution.
- (e) The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after its completion by QR.

QCA's Position

No discussion

The QCA accepts paras 4.8(d) and (e) of the Draft Undertaking.

4.9 Dispute resolution

4.9.1 Disputes

- (a) If any dispute or question ("Dispute") arises under this Undertaking or in relation to the negotiation of Access between a Third Party Operator and QR then, unless otherwise expressly agreed to the contrary by both parties, such Dispute shall be resolved in accordance with this Clause 4.9 and either party may give to the other party to the Dispute notice in writing ("Dispute Notice") specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 4.9.
- (b) Disputes in relation to an Access Agreement once executed shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking.

QCA's Position

FD, 123; DD, 193

The QCA accepts sub-clause 4.9.1 of the Draft Undertaking.

4.9.2 Chief Executive Resolution

Unless otherwise agreed by both parties or provided for in this Undertaking, any Dispute shall be referred in the first instance and in any event within seven (7) days of the Dispute Notice to the Chief Executive of QR (or their nominee) and the Chief Executive of the Third Party Operator (or their nominee) for the purposes of this Subclause 4.9.2 for resolution. Failing such resolution within fourteen (14) days, the relevant Dispute may, by agreement between QR and the Third Party Operator, be referred for resolution by an expert in accordance with Subclause 4.9.3. Failing such agreement, either party may refer the dispute to the QCA in accordance with Subclause 4.9.4.

QCA's Position**FD, 123; DD, 193**

The QCA will accept this sub-clause of the Draft Undertaking as it is currently drafted provided it is amended such that an access seeker/third-party operator has a right to go straight to arbitration if QR puts forward a nominee in place of the Chief Executive that is unacceptable to the access seeker/third-party operator.

4.9.3 Expert Resolution

Where a matter is referred to an expert then the following shall apply:

- (a) An expert shall be appointed by the parties, or where agreement cannot be reached by the parties within fourteen (14) days, in the case of financial matters, by the President for the time being of the Australian Society of Certified Practising Accountants and, in the case of non-financial matters, the President for the time being of the Institution of Engineers, Australia.
- (b) In any event the expert shall:-
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty before his or her appointment; and
 - (iii) not be an employee of the Third Party Operator or QR or of a Related Party of either of them.
- (c) The expert appointed pursuant to this Subclause shall not act until the expert has given written notice of the acceptance of his or her appointment to both parties.
- (d) Any determination made by an expert in relation to a Dispute must be consistent with the provisions of this Undertaking.
- (e) The expert will provide both parties with a copy of the determination in relation to the Dispute within a reasonable time after his or her appointment.
- (f) The expert appointed pursuant to this Subclause shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties.
- (g) Any person nominated as an expert hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990 (Qld)*, as amended, shall not apply to the expert or to the determination or to the procedures by which the expert may reach that determination.
- (h) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties. If a party believes that there has been a manifest error it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error, then the parties may agree to refer the dispute to another expert in accordance with

this Subclause 4.9.3, or failing such agreement, either party may refer the dispute to the QCA for resolution in accordance with Subclause 4.9.4.

- (i) The costs of the expert and any advisers shall be borne by the parties in such proportions as determined by the expert.

QCA's Position

No discussion

The QCA accepts sub-clause 4.9.3 of the Draft Undertaking.

4.9.4 Determination by the Queensland Competition Authority

- (a) If a Dispute is referred to the QCA in accordance with this Clause 4.9, or as otherwise specified in accordance with this Undertaking, then Division 5 of Part 5 of the Act shall apply subject to any determination by the QCA being consistent with the provisions of this Undertaking.
- (b) Except in the circumstances outlined in Paragraph 4.9.3(h), if a Third Party Operator does not comply with a decision of an expert pursuant to Subclause 4.9.3 then the Third Party Operator will not be entitled to refer that dispute to the QCA and QR will no longer be obligated to continue negotiations regarding the provision of Access for that Third Party Operator.
- (c) If a Third Party Operator does not comply with a decision of the QCA pursuant to this Subclause, then QR will no longer be obligated to continue negotiations regarding the provision of Access for that Third Party Operator.
- (d) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute for the purposes of Division 5 of Part 5 of the Act, then the QCA will make a determination through any process that it considers appropriate, subject to any determination by the QCA being consistent with the provisions of this Undertaking.

QCA's Position

No discussion

The QCA accepts sub-clause 4.9.4 of the Draft Undertaking.

5. PRICING PRINCIPLES

5.1 Pricing Objectives

In developing Access Charges, QR's overriding objective is, over time, to achieve revenue adequacy (as defined in Subclause 5.1.1). In order to do this, QR will endeavour to maximise the commercially viable utilisation of the Rail Infrastructure through observing the processes identified in Subclause 5.1.3, however, within this context, QR will observe the constraints on price differentiation identified in Subclause 5.1.2.

5.1.1 Revenue Adequacy

- (a) QR will be entitled to earn revenue from the provision of Access, including both Access Charges and Infrastructure Payments, that is sufficient to achieve full recovery of reasonable costs, including a commercial rate of return on the value of assets reasonably required for the long term sustainable provision of Rail Infrastructure.

QCA's Position

FD, 128-9; DD, 198-200

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that revenue adequacy is considered in the context of efficient operations and the efficient level of assets actually required to provide the service.

- (b) In order to achieve the objective identified in Paragraph (a) of this Subclause, QR is entitled to target earning a revenue stream such that:
- (i) QR is able to recover all costs incurred in the provision and management of the Rail Infrastructure (including business and corporate overheads), provided that such costs reflect the reasonably expected improvements in efficiency that QR should achieve; and
 - (ii) QR is able to, on average, earn a risk-adjusted commercial rate of return on the value of all assets reasonably required for the provision of Access, taking account of the investment requirements for Rail Infrastructure enhancements and, where there is an ongoing requirement for the Rail Infrastructure, asset replacement.

QCA's Position

FD, 128-9; DD, 198-200

The QCA will accept paragraph 5.1.1 (b) of the Draft Undertaking as it is currently drafted provided it is amended such that QR's targetted revenue stream is considered in the context of efficient operations and the efficient level of assets actually required to provide the service.

5.1.2 Limits on Price Differentiation

- (a) Subject to Paragraph (c) of this Subclause, where Railway Operators are directly competing with each other for the purpose of providing a specified transport service, these Railway Operators will be offered consistent Access Charges when they negotiate for Access. A specified transport service is one which carries a specified commodity between a specified origin and destination. For the purpose of this Paragraph, Access Charges are considered to be consistent when differences in the Access Charges only reflect differences in the costs or risks to QR of providing Access as a result of, for

example, the standard or type of Train Service, the Rollingstock used or the conditions of Access.

- (b) Subject to Paragraph (c) of this Subclause, where Railway Operators are not directly competing with each other as contemplated in Paragraph (a), but are providing Train Services for the same commodity type within the same Geographic System, when these Railway Operators negotiate for Access, QR will take a consistent approach to the determination of Access Charges for such Train Services, taking into account the characteristics of the Rail Infrastructure and the Train Services operating on that Rail Infrastructure.

QCA's Position

FD, 134-6; DD, 202-6

The QCA refuses to accept sub-paras 5.1.2(a) and (b) of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

- 1. price differentiation is subject to a test in which all railway operators for a traffic in a geographic area would be subject to price differentiation on cost and risk differences or market circumstances changing (whether or not they are competing head-to-head) with QR bearing the onus of justifying price differences;**
- 2. QR is required to set access charges in a way that did not distort competition in an above rail or end user market and does not hinder access;**
- 3. price differentiation should not distort competition in an above-rail or end user market or hinder access within a market; and**
- 4. QR has an obligation to ensure its own traffics pay access charges that are as high as apply to third party operators for similar traffics.**

- (c) Access Charges may vary over time. Paragraphs (a) and (b) of this Subclause relate to Access negotiations that occur at a similar time and does not require QR to develop Access Charges in a current negotiation with regard to Access Charges incorporated in existing Access Agreements. Rather, QR will give Railway Operators the opportunity to incorporate rate review provisions in Access Agreements to reflect, for example, changes in an applicable Reference Tariff.

QCA's Position

FD, 134-6; DD, 202-6

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

- 1. rail operators are given the option of rate review provisions in access agreements if an operator is able to demonstrate that QR has sold a like train path to another operator for a lower price than applies to that operator; and**
- 2. rail operators are given the option of rate review arrangements in their access agreements.**

5.1.3 Rail Infrastructure Utilisation

- (a) Railway Operators serve a number of different Markets which have different abilities to support Access Charges that contribute in excess of the Incremental Cost and towards the Common Costs of providing the Rail Infrastructure. Accordingly, QR will be entitled to establish Access Charges with different levels of contribution to Common Costs for Railway Operators serving different Markets in order to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs of providing the Rail Infrastructure.

QCA's Position

FD, 134-6; DD, 202-6

The QCA refuses to accept this paragraph of the Draft Undertaking because it is inconsistent with the QCA's position in relation to sub-paras 5.1.2(a) and (b) above.

- (b) Capacity will be allocated in accordance with Clause 6.3. Capacity will be augmented where QR reasonably considers that the achievable Access revenues are sufficient to commercially justify the required expenditure.

QCA's Position

FD, 137; DD, 207

The QCA will accept paragraph 5.1.3(b) of the Draft Undertaking as it is currently drafted provided that it is amended such that QR's assessment of the commercial justification for expansions of its network focuses on the net additional revenue it expects to earn.

- (c) Where Available Capacity is limited QR may establish an Access Charge based on the highest Access Charge it is likely to achieve from potential Railway Operators, i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure. This Access Charge may then be quoted to all Railway Operators seeking Access in respect of that Available Capacity, irrespective of a particular Railway Operator's ability to contribute to the Common Costs of providing the Rail Infrastructure or the Access Charges payable in existing Access Agreements for similar Train Services.
- (d) In assessing Access Charges for the purposes of Paragraph (c) of this Subclause, where Infrastructure Payments are made conditional upon the benefit of those Infrastructure Payments being available only for Train Services serving a specified Market, the Access Charge assessable in respect of Train Services serving that Market will be identified by adding together the Access Charges actually paid in respect of those Train Services and the proportion of the Infrastructure Payments that is directly related to those Train Services.

QCA's Position**FD, 188; DD, 282-5**

The QCA refuses to accept paras 5.1.3(c) and (d) of the Draft Undertaking because they are inconsistent with the QCA's position in relation to sub-clause 6.3.2 below.

5.2 Pricing limits**5.2.1 Definition of Pricing Limits**

Pricing limits will be applied in respect of the following elements:

- (i) upper and lower limits for Access Charges for individual Train Services, established at levels which ensure there is no Cross Subsidy between individual Train Services; and
- (ii) upper and lower limits for Access Charges in respect of combinations of Train Services, established at levels which ensure that there is no Cross Subsidy between combinations of Train Services.

QCA's Position**No discussion**

The QCA accepts sub-clause 5.2.1 of the Draft Undertaking.

5.2.2 Price Limits for Individual Train Services

- (a) Price limits will apply in respect to Access Charges to be established for each individual Train Service (referred to as "Individual Train Service") such that, over the Evaluation Period, the relevant Access Charge for the Individual Train Service:
 - (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for the Individual Train Service; and
 - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for the Individual Train Service.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph (a)(ii) of this Subclause, a Revenue Limit will be established for the Individual Train Service. The Revenue Limit for an Individual Train Service will reflect the Stand Alone Cost of providing Access for the Individual Train Service over the Evaluation Period. The Revenue Limit will be determined in accordance with Subclause 5.2.4.

QCA's Position**FD, 139; DD, 211-6**

The QCA will accept sub-clause 5.2.2 of the Draft Undertaking as it is currently drafted provided sub-paragraph 5.2.2 (a)(i) is amended such that QR observes the limits on price differentiation irrespective of whether the resulting access charges cover the incremental cost of the individual train service.

5.2.3 Price Limits on Train Service Combinations

- (a) In addition to Subclause 5.2.2, price limits will apply in respect of Access Charges to be established for Individual Train Services such that, over the Evaluation Period, the expected Access revenue (determined in accordance with Paragraph (c) of this Subclause) for any combination of Train Services incorporating the Individual Train Service:
 - (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that combination of Train Services after giving consideration to the level of contribution provided by Infrastructure Payments towards the relevant Rail Infrastructure; and
 - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that combination of Train Services.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph (a)(ii) of this Subclause, a Revenue Limit will be established for identified Train Service Groups. The Revenue Limit for a Train Service Group will reflect the Stand Alone Cost of providing Access for the Train Service Group over the Evaluation Period. The Revenue Limit for the Train Service Group will be determined in accordance with Subclause 5.2.4.
- (c) Expected Access revenue for a combination of Train Services will be determined as the aggregate of revenue reasonably expected from the application of Access Charges for all the Train Services comprising the combination of Train Services, where the Access Charges for different Train Service types will be identified as follows:
 - (i) where a Reference Tariff is to be developed for certain Train Service types, expected Access Charges will be developed for Train Services falling within those Train Service types on a consistent basis to the Reference Tariff proposed; and
 - (ii) where a Reference Tariff is not intended to be developed for certain Train Service types, expected Access Charges will be developed for Train Services falling within those Train Service types on a consistent basis to current applicable Access Charges.

QCA's Position

FD, 139; DD, 211-6

The QCA accepts sub-clause 5.2.3 of the Draft Undertaking.

5.2.4 Definition of Revenue Limit

- (a) The Revenue Limit will be determined as the maximum amount of expected Access revenue (determined consistent with Paragraph 5.2.3(c)) that may be earned from Access Charges over the Evaluation Period measured such that the net present value of the cashflows associated with providing Access for the Individual Train Service or the Train Service Group (as appropriate) over the Evaluation Period is zero. This measurement can be expressed as:

$$0 = -AV_o + \sum_{t=1}^n \frac{(RL_t - C_t - M_t)}{(1 + ROA)^t} + \frac{AV_n}{(1 + ROA)^n}$$

where:

AV_0 is the depreciated replacement value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service or Train Service Group (as appropriate) at the commencement of the Evaluation Period;

QCA's Position

FD, 366-77; DD (vol. 3), 137-87

In assessing QR's reference tariffs, the QCA has:

- 1. valued all assets in the coal network, including land, on a DORC basis in nominal post-tax terms (this will necessitate a revision of the formula to incorporate cashflows associated with taxes and franking credits);**
- 2. calculated the current replacement cost of the network by:**
 - allowing for costs associated with financing construction; and**
 - recognising costs of altering infrastructure from the original track construction;**
- 3. recognised asset consumption through depreciation charges and adopted a straight-line pattern of depreciation. In those instances where an asset's condition is inconsistent with its age, the asset valuation was adjusted accordingly;**
- 4. undertaken a limited brownfields optimisation which resulted in \$33.6 million of track, comprising approximately 50 kilometres between Rocklands and Callemondah, being excised from QR's asset valuation; and**
- 5. taken the following position on contributed assets:**
 - elements of past capital contributions will not influence the process that establishes reference tariffs;**
 - QR may have contractual obligations to honour past user-funded capital contributions, and these will be dealt with through the respective rail haulage agreements; and**
 - past contributions should only be recognised where a claimant can demonstrate that recognition beyond the existing haulage contract is justified by way of documentary evidence presented, in which case specific adjustments would be made to access charges.**

n is the number of years in the Evaluation Period;

t is each year within the Evaluation Period from 1 to n ;

RL_t is the Revenue Limit for the Train Service or Train Service Group (as appropriate) expressed as revenue that may be earned in each year of the Evaluation Period;

C_t is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service or Train Service Group (as appropriate) in each year of the Evaluation Period;

M_t is the operating, maintenance and any other costs, including business and corporate overhead costs, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Service or Train Service Group (as appropriate) in each year of the Evaluation Period;

QCA's Position

FD, 354-62; DD (vol. 3), 111-32

In assessing QR's reference tariffs, the QCA has:

1. assigned to non-coal traffics the incremental capacity costs associated with the paths those trains consume;
2. assessed stand-alone maintenance costs on the basis of the costs that would be incurred by the railway assuming it only carried coal traffic;
3. assessed the current level of inefficiency in the maintenance of QR's coal corridors at approximately 15%; and
4. estimated the system-wide and regional cost components of stand-alone cost on the basis of an allocation of QR's costs as set out in Table 12.5 of the Draft Decision.

ROA is the maximum allowable rate of return expressed in nominal pre tax terms, as agreed by QR and the QCA or, failing such agreement, as determined by the QCA; and

QCA's Position

FD, 392-7; DD (vol. 3), 201-30

In assessing QR's reference tariffs, the QCA has used the following parameter values:

1. nominal risk-free rate – 5.97%;
2. market risk premium – 6.00%;
3. equity beta – 0.76;
4. asset beta – 0.45;
5. debt beta – 0.2;
6. debt/value – 55%;
7. franking credit (gamma) – 50%;
8. debt margin – 1.2%;
9. cost of debt – 7.17%;

10. **tax rate – 30%;**
11. **nominal post-tax cost of equity – 10.53%;**
12. **nominal post-tax WACC – 8.68%; and**
13. **nominal pre-tax WACC – 9.52%.**

AV_n is the depreciated replacement value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service or Train Service Group (as appropriate) at the end of the Evaluation Period.

QCA's Position**FD, 366-77; DD (vol. 3), 137-87**

Refer to the QCA's position on asset valuation above.

- (b) The values identified for the variables set out in Paragraph (a) of this Subclause should reflect improvements in efficiency (in terms of both operating costs and asset utilisation) that QR should reasonably be able to achieve in each year of the Evaluation Period.

QCA's Position**No discussion**

Refer to the QCA's position on operating and maintenance costs above.

- (c) In order to determine the amount of each of the variables set out in Paragraph (a) of this Subclause, it will be necessary to identify the expected traffic task resulting from the Train Service or Train Service Group (as applicable) over the Evaluation Period. The expected traffic task shall be determined as a forecast of the traffic task resulting from the Train Service or Train Service Group (as applicable) which can be reasonably expected over the Evaluation Period, except where changes in traffic task are the result of the commencement or discontinuation of major projects which individually impact significantly on the traffic task. In such circumstances, increases in traffic task shall be built into the forecast at the time of service commitment and decreases in traffic task shall be excluded from the forecast at the time of expected service termination.

QCA's Position**FD, 344-7; DD (vol. 3), 100-5**

The QCA accepts this paragraph of the Draft Undertaking.

In assessing QR's reference tariffs, the QCA has adopted Asia Pacific Coal Services' conservative traffic task forecasts for the purposes of assessing forecast costs and unit rates of reference tariffs. The remaining parameters have been calculated by using individual mine-by-mine trip lengths and assuming the operation of the reference train service.

5.3 Reference tariffs

5.3.1 Establishment of Reference Tariffs

- (a) It is recognised that, for individual Train Services, there may be a large range between the price limits established in Clause 5.2 within which Access Charges may be determined.

Therefore, to assist in the facilitation of an efficient Access negotiation process, QR may develop Reference Tariffs for certain types of Train Services.

- (b) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service. The Access Charge for a specific Train Service which is the subject of an Access Application may, depending upon the specific issues associated with the provision of Access for that Train Service, be higher or lower than the Reference Tariff applicable for that type of Train Service.
- (c) Reference Tariffs will be established in a manner consistent with the pricing principles set out in this Undertaking, including the price limits identified in Clause 5.2.
- (d) Reference Tariffs will not be required to be consistent with the actual Access Charges for the relevant type of Train Services applicable under existing Access Agreements. However, QR will give Railway Operators the opportunity to incorporate rate review provisions in Access Agreements to reflect, for example, changes in Reference Tariffs.

QCA's Position

No discussion

The QCA accepts paras 5.3.1(a) - (d) of the Draft Undertaking.

- (e) Reference Tariffs will be developed for those types of Train Services identified in Schedule G. Reference Tariffs for those types of Train Services will be applied in the manner set out in Schedule G.

QCA's Position

FD, 329-31; DD (vol. 3), 71-87

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that references to Schedule G are replaced by the Reference Tariff Schedules (refer to Volume 5 of the Draft Decision at www.qca.org.au). The QCA accepts QR's proposed arrangements in the Reference Tariff Schedules, subject to:

- 1. the reference train not specifying gross tonnages;**
- 2. capacity consumption being determined by reference to the standard train path for the corridor rather than the dominant train; and**
- 3. allowance being made for acceptable variations as itemised in the QCA's consideration in Chapter 10 of the Draft Decision.**

- (f) Reference Tariffs for other types of Train Services will be developed as and when QR and the QCA agree necessary, taking into account the level of demand for Access for that type of Train Service by Third Party Operators. QR will submit a Draft Amending Undertaking varying Schedule G to identify the manner in which Reference Tariffs will apply to these Train Services within one (1) month of agreeing to develop the additional Reference Tariffs.

QCA's Position

FD, 141-2; DD, 217-8

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

1. **QR will submit reference tariffs for other services within three months of being required to do so by the QCA;**
2. **QR will comply on a timely basis with any request from the QCA for information to enable the QCA to assess those reference tariffs;**
3. **before the QCA requested QR to submit further reference tariffs, it will need to:**
 - **be satisfied that the benefit to the competitiveness of the above-rail market from increased pricing transparency for a relatively homogenous set of train services justifies the intrusion into QR's operational autonomy; and**
 - **consult with QR;**
4. **when reviewing reference tariffs submitted by QR, the QCA must have regard to:**
 - **whether the reference tariffs are likely to distort competition in an above-rail and/or end-user market; and**
 - **whether the reference tariffs are likely to hinder access within a market.**

- (g) The Reference Tariffs for those types of Train Services identified in Schedule G at the Commencing Date will be submitted to the QCA for endorsement within three (3) months of the Commencing Date. Where Schedule G is varied in accordance with Paragraph (f), QR will submit to the QCA Reference Tariffs for the types of Train Services added to Schedule G within three (3) months of the QCA accepting the relevant Draft Amending Undertaking. In considering whether to endorse a Reference Tariff the QCA must be satisfied that the Reference Tariff is consistent with the pricing principles established in this Part of the Undertaking.

QCA's Position

FD, 307-14; DD (vol. 3), 29-37

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that the following QCA-approved reference tariffs are incorporated as a schedule:

Loading Point	Unloading point	Route Kms	Rail Access \$/NT	Rail access \$/'000GTK
Goonyella South Cluster				
Peak Downs	Hay Point	190.6	1.29	4.17
Saraji	Hay Point	211.7	1.36	3.95
Norwich Park	Hay Point	255.2	1.50	3.62
German Creek	Dalrymple Bay	276.9	1.57	3.49
Oaky Creek	Hay Point	294.9	1.63	3.40

Foxleigh	Dalrymple Bay	276.1	1.57	3.50
Goonyella North Cluster				
South Walker Creek	Hay Point	145.1	1.14	4.81
Macarthur/Coppabella	Dalrymple Bay	142.0	1.13	4.88
Burton	Dalrymple Bay	169.3	1.21	4.41
Monanbah North	Dalrymple Bay	194.6	1.30	4.10
Goonyella	Hay Point	197.4	1.31	4.07
Riverside	Dalrymple Bay	203.9	1.33	4.00
Riverside	Hay Point	205.3	1.33	3.99
Goonyella West Cluster				
Blair Athol	Dalrymple Bay	279.6	1.57	3.46
Gregory via Goonyella Cluster				
Ensham	Dalrymple Bay	353.0	1.82	3.17
Yongala	Dalrymple Bay	350.0	1.81	3.18
Kestral	Dalrymple Bay	327.6	1.74	3.26
Gregory	Hay Point	312.4	1.69	3.32
Central Blackwater Cluster				
Boonal	Gladstone	284.0	2.61	5.60
Koorilgah	Gladstone	308.7	2.72	5.38
Curragh	Gladstone	306.5	2.71	5.39
Boorgoon	Gladstone	309.1	2.72	5.37
Kinrola	Gladstone	316.6	2.75	5.31
Laleham	Gladstone	314.7	2.74	5.33
Gregory via Blackwater Cluster				
Ensham	Gladstone	341.0	2.72	4.87
Yongala	Gladstone	367.8	2.74	4.55
Kestral	Gladstone	367.8	2.74	4.55
Gregory	Gladstone	366.4	2.74	4.57
Oaky Creek	Gladstone	385.8	2.76	4.37
Stanwell Cluster				
Koorilgah	Stanwell P/house	183.5	1.61	5.36
Curragh	Stanwell P/house	181.2	1.60	5.40
Boorgoon	Stanwell P/house	184.9	1.62	5.34
Kinrola	Stanwell P/house	192.0	1.65	5.25
Moura Cluster				
Boundary Hill	Gladstone P/house	115.9	2.49	13.12
Boundary Hill	QAL	124.0	2.57	12.66
Dunn Creek	Gladstone P/house	150.0	2.83	11.53
Moura	Gladstone	178.5	3.12	10.67
Newlands Cluster				
McNaughton	Abbot Point	108.3	1.89	10.57
Newlands	Abbot Point	176.0	2.45	8.43

5.3.2 Review of Reference Tariffs

- (a) A Reference Tariff will be effective for a maximum period of three (3) years from the date upon which the QCA endorses the Reference Tariff. Three (3) months prior to the expiry of a Reference Tariff, QR will submit to the QCA a revised Reference Tariff. In considering whether to endorse a Reference Tariff the QCA must be satisfied that the Reference Tariff is consistent with the pricing principles established in this Part of the Undertaking.

QCA's Position**FD, 52; DD, 63**

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that the maximum period of the reference tariffs reflects the time from the date of the QCA's approval of the Undertaking to its expiry on 30 June 2005.

- (b) Within its effective life of three (3) years, a Reference Tariff may be reviewed upon the occurrence of a Material Change Event. Upon the occurrence of a Material Change Event that could reasonably be expected to result in QR materially exceeding its Revenue Limit, QR will notify the QCA of the occurrence of a Material Change Event. QR may notify the QCA of the occurrence of any other Material Change Event. QR's notification of a Material Change Event will include details of the Material Change Event and the required revisions to the existing Reference Tariff to reflect the impact of the Material Change Event. Such revisions will not reflect a full review of the Reference Tariff, but rather will be limited to revising the Reference Tariff to reflect the impact of the specific Material Change Event. The QCA shall consider the appropriateness of the changes to a Reference Tariff through assessing whether the changes adequately preserve the financial position of QR compared to the position QR would be in if the Material Change Event did not occur. If assessed as appropriate by the QCA, the revised terms of the Reference Tariff will apply for the remaining effective life of that Reference Tariff.

QCA's Position**FD, 410-1; DD (vol. 3), 262-4**

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it is amended such that:

- 1. the definition of material change events is limited to a change in taxes or laws or a departure in actual traffic volumes greater than 10% from the forecasts adopted in the QCA's analysis of QR's reference tariffs; and**
- 2. any review of reference tariffs will take account of the totality of departures from forecasts that underpinned the QCA's original assessment of reference tariffs.**

5.4 Structure of access prices

- (a) The structure of Access Charges will be negotiated with individual Third Party Operators depending on their particular requirements and may include:
- (i) an initial up-front component as a pre condition to being granted Access Rights;
 - (ii) an ongoing periodic fixed component independent of the level of usage of the Rail Infrastructure;
 - (iii) an ongoing variable component based on usage of the Rail Infrastructure; or
 - (iv) any other structure or combination as agreed by QR and the Third Party Operator.

QCA's Position**No discussion**

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided it applies to non-reference tariff traffics only.

Proposed new provision

The QCA considers that the Draft Undertaking should establish the specification and structure of reference tariffs.

QCA's Position**FD, 334-5; DD (vol. 3), 52-62**

The QCA considers it appropriate that the Draft Undertaking be amended such that the reference tariffs are structured as follows:

- 1. a usage-based charge which reflects the incremental operating and maintenance costs expressed on a per gross tonne kilometre basis;**
- 2. a capacity charge that covers the incremental cost to the network owner of the provision of capacity expressed per train path;**
- 3. a charge for the use of the electrical overhead network only if an above rail operator uses it;**
- 4. an allocative charge for the remainder of QR's revenue which is based, for each cluster, on equal amounts being collected on:**
 - a per tonne basis; and**
 - a per net tonne kilometre basis;**
- 5. take-or-pay arrangements for even railings which are only triggered for a mine where:**
 - the cluster in which the mine belongs fails to rail 90% of the monthly average requirement for that cluster (adjusted for the number of days in the month);**
 - the mine fails to rail 90% of its monthly average requirement (adjusted for the number of days in the month); and**
 - over the preceding 3 months the operator and the mine fail to rail 90% of their average requirement over that period, with the charge being calculated on the basis of 20% of the difference between the actual access charges paid and the access charges that would have been paid if 90% of the commitment had been hauled;**
- 6. take-or-pay arrangements for mines failing to rail committed tonnages only where:**
 - the corridor in which the mine belongs fails to rail 100% of the**

total annual commitment for that corridor; and

- **the mine fails to rail 100% of its annual commitment, with the charge being calculated on the basis of 20% of the difference between the actual access charges paid by the mine over the course of the year and the access charges that would have been paid if 100% of that mines commitment had been hauled; and**

- 7. where a mine is abandoned, maximum liability of the mine be limited to a 2-year take-or-pay requirement based on 20% of annual commitment as contained in the contract.**

- (b) Notwithstanding Paragraph (a) of this Clause, QR shall not require an Access Charge structure from a Third Party Operator that is significantly different from the Access Charge structures for existing Railway Operators providing Train Services for the same commodity type within the same Geographic System unless the different Access Charge structure is reasonable taking account of the costs and risks to QR of providing Access to that Third Party Operator compared to the costs and risks of providing Access to existing Railway Operators providing Train Services for the same commodity type within the same Geographic System.

QCA's Position

No discussion

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended to reflect the QCA's proposed amendments in relation to sub-paragraphs 5.1.2(a) and (b).

5.5 Cost allocation

- (a) QR shall within the first three (3) months following the Commencing Date prepare and submit to the QCA for its approval a Cost Allocation Manual, which will set out:
 - (i) the process for identifying the cost base for Below Rail Services, separate from other services provided by QR;
 - (ii) within the cost base for Below Rail Services, the process for identifying costs attributable to specified line sections (line section costs), costs not attributable to specified line sections but attributable to specified geographic regions (regional costs), and costs not attributable to specified line sections or any specified geographic region (network costs); and
 - (iii) the process for identifying pricing limits identified in Clause 5.2.

QCA's Position

DD, 219-21

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that the Costing Manual will be finalised as soon as possible following the release of the QCA's Final Decision on the Draft Undertaking. The Costing Manual will form part of the approved Undertaking.

<u>Costing Manual</u>	FD, 144; DD, 224-31
The Costing Manual will provide for:	
1. default allocators for corporate overheads;	
2. the creation of additional account codes to more accurately reflect the split of costs and assets relating to declared and undeclared services;	
3. telecommunications costs to be divided equally between above and below rail for coal;	
4. QR's four Central Queensland coal systems to be treated as geographic regions in their own right;	
5. the more structured use of work orders;	
6. the netting off of 'like for like' cost recovery type revenue items against the relevant cost items; and	
7. the assignment of corporate service costs to levels appropriate to where the costs are incurred rather than the Group General Manager level.	
	DD, 233-4
8. it will be based on QR's existing general ledger approach	
	DD, 234-5
9. the base data for allocations under the Costing Manual will be historic cost.	

- (b) If the QCA approves the Cost Allocation Manual prepared by QR in accordance with Paragraph (a) of this Clause it will not be necessary for the QCA to prepare and distribute a Cost Allocation Manual in accordance with Division 9 of Part 5 of the Act.
- (c) QR shall comply with the procedures and protocols of the Cost Allocation Manual in determining the Revenue Limits for particular Train Services or Train Service Groups.

<i>QCA's Position</i>	No discussion
The QCA will accept paras 5.5 (b) and (c) of the Draft Undertaking as they are currently drafted provided paragraph 5.5(a) is amended as indicated above. This follows as a consequence of the content of paras 5.5(b) and (c).	

Proposed new provision

The QCA proposes that the Undertaking addresses the accountability of the Costing Manual through the establishment of an audit framework.

QCA's Position

FD, 149-50; DD, 241-5

The QCA considers it appropriate that the Draft Undertaking be amended such that the Draft Undertaking:

- 1. defines the scope of the audit, such that the auditor examines whether:**
 - the processes contained in the Manual have been followed; and**
 - the financial statements represent a reasonable allocation of costs and are consistent with the Manual;**
- 2. QR is obliged to present financial statements prepared in accordance with the Manual within 6 months of the end of the financial year;**
- 3. provides that these accounts would be certified by the Chair and the Chief Executive or the Chair and a Director;**
- 4. provides for the following process to select the auditor to audit QR's compliance with its Manual;**
 - QR and QCA agree a list of three auditors. Failing agreement, QCA will nominate a number sufficient to constitute a panel of three;**
 - each auditor selected to the panel must – acknowledge that if appointed they are to act for the QCA; that they owe their duties to the QCA under the terms of the Undertaking; and that they will accept instructions on the subject matter of the audit from the QCA;**
 - QR then chooses the auditor to undertake the audit from the list. That auditor will undertake the audit and may be directed by the QCA as to matters that are to be looked at and reported on;**
 - the report of the auditor is to be given to the QCA with a copy to QR; and**
 - QR commits to pay for the audit;**
- 5. confirms the auditor would be provided full access to QR's information systems, with the degree of access forming part of the auditor's report to the QCA;**
- 6. obliges QR to provide any information the auditor requires within any reasonable timeframe nominated by the auditor;**
- 7. acknowledges that QR must comply with the Authority's requirements in response to a qualified audit report in accordance with the Authority's time frames; and**

- | |
|--|
| 8. acknowledges that an audit may be conducted at any time. |
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Proposed new provision

The QCA proposes that the Undertaking establishes a performance monitoring regime.

QCA's Position

FD, 156-61; DD, 248-50

The QCA considers it appropriate that the Draft Undertaking be amended such that it provides for the following key performance indicators to be disclosed publicly on a quarterly basis:

- 1. the number and percentage of healthy services that exit on-time, within agreed tolerances;**
- 2. the number and percentage of unhealthy services that do not deteriorate further, within agreed tolerances;**
- 3. the number and percentage of unhealthy services that exit on-time, within agreed tolerances;**
- 4. the number and percentage of total services which are operated in a healthy manner;**
- 5. the average number of kilometres under temporary speed restrictions that prevail during the reporting period;**
- 6. the number and percentage of trains that experience an above-rail delay on the network that is in excess of 15 minutes;**
- 7. the number and percentage of trains that experience a below-rail delay on the network that is in excess of 15 minutes;**
- 8. the number and percentage of trains that experience an unallocated delay on the network that is in excess of 15 minutes;**
- 9. the average time, in minutes, of below-rail delays;**
- 10. the average time, in minutes, of above-rail delays;**
- 11. the number and percentage of services cancelled due to below-rail factors;**
- 12. the number and percentage of services cancelled due to above-rail factors;**
- 13. the number and percentage of services cancelled due to unallocated factors;**
- 14. track quality measured by an index with component measures such as rail surface level, alignment, twist/cross level and gauge variation;**
- 15. the number of reportable safety incidents (AS 4292); and**

16. **the number of complaints regarding billing accuracy.**

The timing of the publication shall be on or by a date to be agreed with the QCA.

6. CAPACITY MANAGEMENT

6.1 Service specification and train scheduling

- (a) The Capacity Entitlement of a Third Party Operator will be defined in terms of a number of Train Services that can be operated in a given time period subject to constraints agreed with the Third Party Operator. The application of constraints is likely to vary significantly between different types of Train Services and may include, but will not necessarily be limited to, the following:
- (i) a specified origin and/or destination time and where appropriate, specified arrival/departure times at intermediate locations, with an allowable variation around these specified time(s);
 - (ii) maximum time period between Train Services;
 - (iii) minimum time period between Train Services;
 - (iv) average travel time and acceptable variations to travel time;
 - (v) regularity of timetable reviews and the applicable review process; and
 - (vi) allowable modifications of timetable, e.g. cancellation or deferral of services.

QCA's Position

No discussion

The QCA accepts this paragraph of the Draft Undertaking.

- (b) As outlined in Clause 4.7, as part of the negotiation process, QR will develop an initial specification of the Third Party Operator's Capacity Entitlement. This specification of Capacity Entitlement will be further refined by QR and the Third Party Operator during the negotiation process. The Capacity Entitlement will be incorporated into the Access Agreement.

QCA's Position

No discussion

The QCA accepts this paragraph of the Draft Undertaking.

- (c) The Capacity Entitlement will be used to develop an initial timetable, which QR and the Third Party Operator will then be required to adhere to unless and/or until such time as the timetable is varied in accordance with the Third Party Operator's specified Capacity Entitlement and QR's Scheduling and Train Control Protocols.

QCA's Position

FD, 165; DD, 255-6

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided references to the Scheduling and Train Control Protocols are removed and replaced by the Scheduling and Train Control Principles (see below).

- (d) QR will, subject to the Third Party Operator's Capacity Entitlement and the Scheduling and Train Control Protocols, be able to manage the development of timetables to optimise the use of the Rail Infrastructure as circumstances change from time to time. The dispute

resolution provisions in the Third Party Operator's Access Agreement will provide an avenue for a Third Party Operator to challenge a decision by QR to make Train scheduling changes that result in an alteration to that Third Party Operator's timetable, if it believes QR's decision was inconsistent with the terms of its Capacity Entitlement and/or the Scheduling and Train Control Protocols.

QCA's Position

FD, 170-4; DD, 260-3

The QCA refuses to accept this paragraph of the Draft Undertaking and considers that the Draft Undertaking should be amended such that:

- 1. QR commits to perform the scheduling and train control functions in accordance with the Scheduling and Train Control Principles; and**
- 2. the following Scheduling Principles are incorporated as a schedule to the Undertaking:**

Capacity Entitlement Principles

- 1. All railway operators' capacity entitlements will use consistent terminology, recognising that different traffic types may require different terminology, incorporated in a single glossary.**
- 2. Capacity entitlements will be expressed in terms that can be interpreted for the development of a master train plan and a daily train plan. An electronic medium should be used for the conveying of this information.**
- 3. Where objectives of either party cannot be met, the parties could, in accepting the capacity entitlement, document on the Register of Interested Parties the areas where the objectives are not being met with a view to modifying the capacity entitlement at another opportunity.**

Master Train Plan Principles

- 1. The master train plan will need to define all of the railway operators' capacity entitlements and Network Access' requirements in a form that indicates the time/distance/location relationship of the train services.**
- 2. The master train plan will consist of a graphical representation as well as any explanatory notes to indicate any relevant conditions of service (eg. explanations of underlying capacity entitlements).**
- 3. The master train plan may, subject to the terms of relevant access agreements, be modified:**
 - where QR and an operator agree to a change to the operator's train services in accordance with their capacity entitlement;**
 - where new capacity entitlements or maintenance possessions are created; and**
 - where actual train running indicates that greater than 10% of**

- train services on a particular system are consistently (over a 3 month period) varying from their scheduled paths; or
- following a review of the master train plan undertaken every 3 months, by Network Access, operators, and infrastructure service providers. Any one of these parties may seek a review before the three-month period expires.
4. Network Access will invite all railway operators and, where appropriate, other relevant parties, to contribute to the modification of the master train plan. Each party will be provided with a copy of any proposed changes 7 days prior to a meeting between all parties. An operator will have the power of veto over changes to the master train plan if its capacity entitlement can no longer be satisfied.
5. The master train plan will be in a form that is readily convertible to a daily train plan, which is the principal reference document to be used by the train controllers in carrying out their duties.

Daily Train Plan Principles

1. The daily train plan will express the relevant railway operator's capacity entitlement and Network Access' requirements in a form that indicates the time/distance (location) relationship of the train services. It will reflect the information contained in the master train plan.
2. The daily train plan will consist of a graphical representation as well as any explanatory notes to indicate any relevant conditions of service.
3. Network Access will invite all railway operators and, where appropriate, other relevant parties, to contribute to the formulation of the daily train plan. This will normally occur each week, for the coming week or fortnight. Alternative arrangements may be necessary for timetabled traffics. Unless otherwise agreed by all parties, Network Access will make available a draft of its understanding of operators' requirements 24 hours before a weekly meeting of all parties to finalise the plan.
4. The daily train plan may be modified:
 - Periodically during the course of its currency, in accordance with the railway operators' capacity entitlements or Network Access' needs or the needs of other infrastructure providers.
 - At any time following a request by a railway operator to make such a change on terms established by its capacity entitlement.
 - Where actual train running indicates a consistent variation to that established in the access agreement and formulated in the daily train plan.
5. Network Access will invite all railway operators and, where appropriate, other relevant parties, to contribute to the modification

of the daily train plan. Each party will be provided with a copy of any proposed changes.

6. The daily train plan will be the principal reference document from which train controllers will carry out their normal duties of train routing and dispatch, as well as incident management where trains run differently from their expected paths.
7. The daily train plan will express the expected train operation performance target over its period and will be used as the base information for the performance monitoring in reference to the underlying capacity entitlement.
8. Modifications to the daily train plan may occur during the course of its duration in the event of out-of-course running. Those modifications will occur according to the train control principles.

Train Control Principles

FD, 179-80; DD, 271-3

1. The following Train Control Principles are incorporated as a schedule to the Undertaking:

The fundamental objective of train control will be to facilitate the running of train services and the commencement and closures of track possessions as scheduled in the daily train plan.

1. The following general principles apply to train operations and train control:
 - all parties will ensure that operational safety is maintained through compliance with safeworking rules, safety management systems, applicable safety risk management and rollingstock interface requirements and environmental management systems;
 - railway operators will ensure operating integrity, including train crewing, locomotives, wagons and loading so that the daily train plan can be met;
 - QR will manage the network on behalf of railway operators based on agreed entry/exit times as specified in the daily train plan with the objectives of managing trains according to their schedule for on time exit, not contributing to late running and, if a train is running late, making up time and holding the gain where reasonably possible; and
 - the primary objective is to ensure a train that enters the network within the agreed threshold exits the network within the agreed threshold, except to the extent that the above-rail operator causes delays.
2. Out-of-course running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. In the event of out-of-course running:

- except as provided in a railway operator’s access agreement, QR Train Control will adhere to the contracted capacity entitlement of each railway operator, expressed in terms of the daily train plan. The capacity entitlement will reflect a level of priority on the network;
 - where QR Train Control fails to adhere to a railway operator’s contracted capacity entitlement, the terms of that operator’s access agreement will govern the consequences;
 - the identity of a railway operator will, of itself, play no part in a decision by train control to alter that operator’s scheduled train service; and
 - train control will resolve conflicts in accordance with the primary goal of ensuring a train that enters the network within the agreed threshold exits the network within the agreed threshold, except to the extent that the above-rail operator causes delays.
3. The Matrix, approved by the QCA, will be provided to assist train controllers in the resolution of disputes in accordance with the above principles.
 4. For the purposes of the Matrix, a ‘healthy’ train is defined as one that has experienced no deviation - in excess of an agreed tolerance – from the path in the daily train plan that is attributable to QR as the rail manager. Out-of-course running refers to the circumstances in which the actual running of a train service differs, by more than an agreed tolerance, from the path provided in the daily train plan.
 5. QR will provide railway operators with the current version of the Matrix, real time train control information and copies of train control diagrams to assist operators understand how train control decisions are made.

Proposed new provision

The QCA proposes that the Undertaking should commit QR to provide third-party operators with a copy of its Access Co-ordination Plan and any related train control documentation.

QCA’s Position

FD, 165; DD, 255-6

The QCA considers it appropriate that the Draft Undertaking be amended such that QR provides a third-party operator with a copy of its Access Co-ordination Plan and any related relevant documentation that train controllers are supplied with to assist in the performance of their duties.

6.2 Capacity analysis

- (a) An Initial Capacity Assessment will be undertaken by QR as part of the preparation of an Indicative Access Proposal. The Initial Capacity Assessment will identify the amount of Capacity that is not required to preserve existing Capacity Entitlements. The Initial

Capacity Assessment is designed to determine if there is sufficient Available Capacity to meet the Third Party Operator's requirements and, if not, the extent to which additional Capacity is required.

- (b) Where it is believed that there are major impediments to the provision of sufficient Capacity to meet the requirements of the Third Party Operator, and that the Capacity enhancements that might be necessary would have a significant bearing on the economics of the proposed operation, then the Initial Capacity Assessment will be conducted in more detail. This may add some time to the preparation of the Indicative Access Proposal and may be a reason for QR advising, in accordance with Paragraph 4.4(c), that an Indicative Access Proposal will not be available within thirty (30) days of QR's acknowledgment of the Access Application.
- (c) The results of the Initial Capacity Assessment will be indicative only and will be subject to confirmation by a Capacity Analysis undertaken as part of the negotiation process. As outlined in Clause 4.7, as part of the negotiation process QR will undertake a Capacity Analysis, including an investigation of operational impacts for the proposed Access. The Capacity Analysis will be conducted in a more comprehensive manner than the Initial Capacity Assessment and will be based on the further detail provided by the Third Party Operator in its Operating Plan. The Capacity Analysis will confirm whether there is sufficient Available Capacity to meet the Third Party Operator's requirements and, if not, detail the requirements for Capacity enhancements. The Capacity Analysis will enable the finalisation of the resultant Capacity Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process).

QCA's Position

FD, 183-5; DD, 278-9

The QCA accepts clause 6.2 of the Draft Undertaking.

Proposed new provision

The QCA proposes that the Undertaking should require QR to provide an access seeker with various information to assist them in conducting their own capacity analysis.

QCA's Position

FD, 183-5; DD, 278-9

The QCA considers it appropriate that the Draft Undertaking be amended such that QR commits:

1. **to make sufficient information available to access seekers for them to conduct their own capacity analysis;**
2. **to include the following capacity information in the Information Packs:**
 - **a master train plan;**
 - **details of committed capacity upgrades;**
 - **a general description of known capacity constraints; and**
 - **historical delay and system disruption data;**

3. to provide an access seeker who has made an access application with the relevant current daily train plan(s);
4. to provide an access seeker who has made an access application with the relevant train control diagrams. QR should be able to recover the reasonable costs associated with the provision of these diagrams; and
5. to provide below-rail transit times as part of the additional information (sub-para 4.7.2(a)(i) of the Draft Undertaking), once the formal negotiation period commences (sub-cl 4.7.1 of the Draft Undertaking).

6.3 Capacity allocation

6.3.1 Register of Interested Parties

- (a) No Railway Operator is to assume that it has Access Rights beyond the term of its Access Agreement. However, where a Railway Operator requests Access which will utilise Capacity that will only become available following the expiration of an existing Access Agreement, QR will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the register established in accordance with Paragraph (b) of this Subclause as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement which may have been entered into by QR provided that such failure was not wilful and QR has acted in good faith.
- (b) QR will maintain a register of parties who have an interest in existing Access Rights. The register will identify:
 - (i) the party who has an interest in the Access Rights;
 - (ii) the Access Rights in which they have an interest; and
 - (iii) the nature of that interest.

A Railway Operator with Access Rights under an Access Agreement will be automatically placed on the register. If any other party considers that it has an interest in existing Access Rights and wishes to be included in the register it must notify QR in writing.

QCA's Position

No discussion

The QCA accepts sub-clause 6.3.1 of the Draft Undertaking.

6.3.2 Allocation of Capacity

- (a) Subject to Paragraph (b), Access Rights will be allocated to the first Railway Operator with whom QR can negotiate and execute an acceptable Access Agreement.
- (b) If, at any time, two or more Railway Operators are seeking access with respect to mutually exclusive Access Rights, each of the Railway Operators who has received an

Indicative Access Proposal with respect to those mutually exclusive Access Rights will be advised, either in accordance with Subparagraph 4.5(a)(iv) or Paragraph 4.7.2(f), that there is one or more other Railway Operators seeking to negotiate for mutually exclusive Access Rights. In such circumstances, QR is entitled to seek to finalise an Access Agreement in respect of those Access Rights with the Railway Operator with whom QR can agree to terms and conditions, including an Access Charge, which are considered by QR to be the most favourable in terms of the commercial performance of Below Rail Services. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement which may have been entered into by QR provided that such failure was not wilful and QR has acted in good faith.

QCA's Position

FD, 188; DD, 282-5

The QCA refuses to accept sub-clause 6.3.2 of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

- 1. where two or more railway operators are seeking access with respect to mutually exclusive access rights, prior to the development of a QCA-approved standard access agreement, QR provides for access rights to be contingent on the winning of a contract with an end-user by a specified date. In this instance, reference to 'the most favourable commercial outcome for the below-rail service provider' should be deleted;**
- 2. where two or more railway operators are seeking access with respect to mutually exclusive paths, if available capacity is reduced because one operator concludes an access agreement with QR, negotiations will continue with the other operator(s) on the basis of a revised access proposal taking into account the reduction in available capacity; and**
- 3. a right is reserved for the QCA to approve the rules of a capacity auction prior to it being held.**

6.4 Capacity transfer

(a) Where a Railway Operator:

- (i) has consistently underutilised the Access Rights allocated to it under an Access Agreement for a period of six (6) months; and
- (ii) cannot reasonably demonstrate to QR a future requirement for those Access Rights;

the terms of the Access Agreement will provide that QR may reduce the Railway Operator's Access Rights, provided that the adjusted Access Rights are sufficient to meet the Railway Operator's maximum monthly usage over that six (6) month period. In such event, the Access Charge payable by the Railway Operator will be varied in accordance with the terms of the Access Agreement.

QCA's Position

FD, 196-200; DD, 288-92

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking should be amended such that:

1. a threshold trigger for resumption of access rights is established where a railway operator, for any reason other than the occurrence of a force majeure event or the failure of QR to make the railway operator's access rights available, does not operate:
 - a train service on a scheduled train path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular scheduled train path exists; or
 - all of its nominated weekly train services for seven (7) or more (not necessarily consecutive) weeks out of any twelve (12) consecutive weeks;
2. QR can issue a notice in writing which reduces the railway operator's access rights, either by:
 - deleting the relevant scheduled train path from the railway operator's access agreement; or
 - reducing the railway operator's relevant nominated weekly train services, provided that the number of remaining nominated weekly train services is no less than the railway operator's average weekly usage during the relevant twelve (12) week period,

once the threshold trigger has been satisfied and provided:

 - the railway operator is not able to demonstrate, to QR's reasonable satisfaction, a sustained requirement for the access rights; and
 - QR is satisfied that it can demonstrate that it has a reasonable expectation of alternative demand to justify a resumption of capacity;
3. Network Access must notify all relevant parties on the Register of Interested Parties when a resumption test is triggered;
4. the life of a particular transgression of the capacity resumption trigger is one month;
5. where QR reduces a railway operator's access rights, the access charge payable by the railway operator will be varied in accordance with the terms of its access agreement;

- (b) Where QR makes a decision to reduce a Third Party Operator's Access Rights in accordance with Paragraph (a) of this Clause, and the Third Party Operator believes that QR's decision is not justified in the circumstances after having regard to the factors specified in Paragraph (a) of this Clause, the Third Party Operator may challenge the decision through the dispute resolution procedure provided in its Access Agreement. QR will not implement the reduction unless and until the dispute resolution procedure has been exhausted in favour of its decision, provided it is not otherwise required to do so by law.

QCA's Position

FD, 196-200; DD, 288-92

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

Resumption disputes

1. where QR makes a decision to reduce a railway operator's access rights in accordance with the stated procedure, and the railway operator believes that QR's decision is not justified in the circumstances, the railway operator may challenge the decision through the dispute resolution procedure for capacity resumption disputes;
2. QR will not implement the reduction, unless and until the dispute resolution procedure has been exhausted in favour of its decision, provided it is not otherwise required to do so by law;
3. the following procedure applies with respect to capacity resumption disputes. A party (either QR, a railway operator or an access seeker) instigates the process by giving notice to the QCA and the other relevant parties indicating the capacity sought and detailing the circumstances which have led to the satisfaction of the trigger. The QCA would then substantiate the information and appoint an expert to hear the matter:
 - the expert must decide which party is more likely to utilise the capacity subject to resumption. Once an expert has been appointed, parties would be allowed 10 business days to make submissions. Sensitive commercial information could be provided to the expert in-confidence;
 - the expert could award costs if any party to a resumption dispute is found to have acted unreasonably.

The expert would be allowed 10 business days in which to deliver a decision, which would become effective at the expert's discretion.

4. An end-user can change its rail operator by serving notice on Network Access where a rail operator can demonstrate that it has an unconditional contractual entitlement with an end-user for capacity entitlements in preference to an incumbent rail operator. The contractual commitment would be unconditional other than as to resumption of any incumbent's capacity entitlements (if any) necessary to allow the operator to operate train services under its

contract with the end-user on notice from the end-user to QR;

- **this right would be subject to the satisfaction of capacity transfer conditions;**

5. **the threshold triggers, resumption dispute process and an end-user's right to change its rail operator, as outlined above, are also included in access agreements;**

Instigation of resumption

6. **a right for Network Access to resume capacity is established; and**
7. **a right for access seekers to apply for a resumption of an incumbent's capacity is established, subject to providing Network Access with a commitment to use the capacity subject to resumption. Any failure to do so would be relevant in the context of the expert's assessment of QR's cost of resuming capacity.**

- (c) Where a Railway Operator wishes that its Access Rights be reduced, it may seek to surrender the unwanted Access Rights to QR. QR will use reasonable endeavours to reassign the unwanted Access Rights to another Railway Operator. Such unwanted Access Rights allocated to the Railway Operator under its Access Agreement will be reduced if and to the extent that QR allocates those Access Rights to another Railway Operator or as otherwise agreed between QR and the Railway Operator.

QCA's Position

FD, 207-10; DD, 296-9

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

1. **a rail operator has a right to relinquish its capacity entitlement if it cannot effect a 'trade' in accordance with the secondary trading arrangements, subject to a relinquishment fee;**
 - **for coal traffics, the fee for relinquishment will be equivalent to two years payment of the take-or-pay component of the operator's access charge; and**
 - **for non-coal traffics, the relinquishment fee would be the amount that would be achieved over two years from the contribution the traffic makes to the fixed costs of operating the rail infrastructure;**
2. **the capacity entitlement be reassigned at the same time that it is relinquished in order for the incumbent party's relinquishment fee to be mitigated;**
3. **QR has to assign surrendered access rights to the next access seeker that seeks rights consistent with those that have been surrendered;**
4. **if QR could not have supplied a train path to the next access seeker without using some part of the surrendered capacity, then the access**

rights will be considered consistent and the surrendered party's obligation to QR would then be terminated.

- (d) Where a Railway Operator seeks Access Rights that are already utilised by another Railway Operator, but in the reasonable opinion of either the first Railway Operator or QR, such Access Rights will not be required by the other Railway Operator after the time from which Access is being sought by the first Railway Operator, QR will approach the other Railway Operator to seek to negotiate an amendment to its Access Agreement so as to facilitate Access for the Train Services of the Railway Operator seeking Access.

QCA's Position

FD, 207-10; DD, 296-9

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided paragraph 6.4(b) is amended as indicated above.

- (e) Where a Railway Operator's Access Rights are reduced in accordance with Paragraphs (c) or (d) of this Clause, and where QR is able to reassign those Access Rights, the Railway Operator's Access Charge will be adjusted as agreed between the parties.

QCA's Position

FD, 207-10; DD, 296-9

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that the relinquishment procedures proposed by the QCA in relation to paragraph 6.4(c) should apply.

- (f) Access Rights may only be transferred by a Railway Operator assigning the whole of its respective rights and obligations under an Access Agreement in accordance with the assignment provisions of that Access Agreement.

QCA's Position

FD, 207-10; DD, 296-9

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

- 1. the transfer of unwanted capacity rights between participants, including partial transfer, by bilateral negotiation, is allowed subject to the establishment of adequate notification procedures between QR and capacity holders;**
 - secondary trading could occur within each system on the Central Queensland coal network and between mines in the Stanwell cluster;**
 - secondary trading could occur across different non-coal traffics;**
 - the over-riding requirement of any secondary trade should be that QR is made no worse off financially;**

2. **the following factors are adequately recognised in secondary trades:**
 - **products carried and the nature of other arrangements;**
 - **rollingstock used; and**
 - **safety and environmental controls adopted;**
3. **access agreements allow appropriate adjustments to be made to access rights so that transferability can be accommodated; and**
4. **subject to a commerciality test, QR cannot unreasonably withhold consent for the transfer of capacity.**

7. INTERFACE CONSIDERATIONS

7.1 Rollingstock interface standards

7.1.1 Development of Rollingstock Interface Standards

- (a) To ensure the integrity of the Rail Infrastructure, it is essential that all Rollingstock and Rollingstock Configurations operated on the Rail Infrastructure are compatible with the Rail Infrastructure and that they are operated in a manner consistent with the applicable Safeworking Procedures and Safety Standards. Accordingly, only Rollingstock and Rollingstock Configurations complying with the Rollingstock Interface Standards may operate on the Rail Infrastructure.
- (b) The Rollingstock Interface Standards incorporate:
 - (i) Rollingstock Standards, addressing:
 - safety constraints including all aspects of the Rail Infrastructure, Safeworking Procedures and other applicable Safety Standards that constrain Rollingstock design and performance; and
 - commercial constraints including other aspects of Rollingstock design and performance that impact on the cost or risk to QR of providing Access; and
 - (ii) Train Standards, addressing:
 - safety constraints including all aspects of the Rail Infrastructure, Safeworking Procedures and other applicable Safety Standards that constrain the configuration of Rollingstock to form a Train; and
 - commercial constraints including other aspects of the configuration of Rollingstock to form a Train that impact on the cost or risk to QR of providing Access.
- (c) QR will adopt a consistent approach in the application of the Rollingstock Interface Standards to all Railway Operators, having regard to Paragraphs (e) and (h) of this Subclause.
- (d) As provided in Clause 4.3, the Preliminary Information that may be provided by QR to Third Party Operators will include preliminary information on applicable Rollingstock Interface Standards for the purpose of assisting a Third Party Operator to make an initial assessment of its Rollingstock requirements. As provided for in Subclause 4.7.2, detailed Rollingstock Interface Standards will be advised by QR to the Third Party Operator as part of the provision of Additional Information to enable the Third Party Operator to finalise its Rollingstock requirements and Operating Plan.
- (e) QR acknowledges that variations to the Rollingstock Interface Standards may be made without sacrificing system safety, although they may have commercial consequences for QR. During the negotiation process QR may consider variations to the Rollingstock Interface Standards and/or the development of additional Rollingstock Interface Standards in response to particular requirements of the Third Party Operator with respect to either its proposed Rollingstock requirements or Operating Plan.
- (f) Proposed variations to the initially advised Rollingstock Interface Standards will be assessed by QR in terms of their likely impact on:

- (i) the risks likely to arise at the interface between the Third Party Operator's operations and the Rail Infrastructure;
 - (ii) the financial implications for QR in regard to the management and maintenance of the Rail Infrastructure; and
 - (iii) the financial implications for other Railway Operators in regard to the operation of their Train Services.
- (g) QR's acceptance of variations to the initially advised Rollingstock Interface Standards will be dependent upon:
- (i) the development by the Third Party Operator, in collaboration with QR, of an appropriate Safety Risk Management Plan in accordance with Clause 7.3;
 - (ii) QR's ability to commercially negotiate variations to its Access Agreements with other Railway Operators adversely impacted upon by the proposed variation to the Rollingstock Interface Standards; and
 - (iii) agreement on an Access Charge or other payments from the Third Party Operator to compensate QR for any financial implications associated with the proposed variation.
- (h) Where a Railway Operator (or group of Railway Operators) and QR agree to vary Rollingstock Interface Standards in accordance with this Clause and such variation(s) involve an additional cost funded exclusively by that Railway Operator (or group of Railway Operators), QR will be entitled to restrict other Railway Operators from benefiting from the variation in the Rollingstock Interface Standards unless and until they make an appropriate contribution to the costs thereof.

QCA's Position**FD, 223-6; DD, 307-9**

The QCA refuses to accept clause 7.1.1 of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

- 1. the reference to the development of QR's rollingstock interface standards for the rail infrastructure and the requirement that only rollingstock and rollingstock configurations complying with QR's rollingstock interface standards may operate on that infrastructure is removed;**
- 2. QR and the third party operator will agree upon the rollingstock interface standards as part of the interface risk management process; and**
- 3. a schedule to the Undertaking will provide the following non-exhaustive list of minimum interface requirements to guide negotiations regarding minimum rollingstock interface standards during the safety risk assessment so that any vehicle a third-party operator proposes to run on QR's network should be able to:**
 - remain on the track up to the permissible speed limit;**
 - negotiate the varied track elements and configuration without**

interference or fouling;

- **clear track-side structures and infrastructure;**
- **activate the signalling system;**
- **stop from track speed within the required distances;**
- **retain its loading; and**
- **comply with environmental requirements.**

7.1.2 Compliance with Rollingstock Interface Standards

- (a) In order to ensure that only Rollingstock and Rollingstock Configurations complying with the Rollingstock Interface Standards operate on the Rail Infrastructure:
- (i) all Rollingstock must be authorised by QR; and
 - (ii) all Rollingstock Configurations must be authorised by QR:
- prior to operation on the Rail Infrastructure.
- (b) To obtain authorisation of Rollingstock, a Railway Operator must satisfy QR that Rollingstock has been constructed or modified to comply with the Rollingstock Standards. In order to demonstrate such compliance, a certificate of compliance must be prepared by a party who QR accepts as being competent to give the certification. The certificate of compliance may, on the request of QR, be required to be supported by reports on trials or commissioning tests.
- (c) To obtain authorisation of Rollingstock Configurations, a Railway Operator must satisfy QR that authorised Rollingstock has been configured in a manner which complies with the Train Standards. In order to demonstrate such compliance, a certificate of compliance must be prepared by a party who QR accepts as being competent to give the certification. The certificate of compliance may, on the request of QR, be required to be supported by reports on trials or commissioning tests.
- (d) Authorisation of Rollingstock and Rollingstock Configurations may be sought concurrently.
- (e) The Access Agreement will incorporate provisions to ensure the ongoing compliance of Rollingstock and Rollingstock Configurations with the Rollingstock Interface Standards, including the requirement for audit, as set out in Clause 7.5.

QCA's Position**FD, 229-30; DD, 311-3**

The QCA refuses to accept sub-clause 7.1.2 of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

- 1. QR and a third-party operator will agree upon a party competent to provide certification for the operator's rollingstock;**
- 2. QR has a right to view a certificate(s) of compliance and associated**

test results from a third-party operator in order to confirm that the rollingstock/rollingstock configurations for its proposed train services are as agreed by the two parties in the interface risk management plan;

- 3. QR has a right to provide input to the Rail Safety Accreditation Unit (RSAU) regarding the authorisation of the third-party operator's rollingstock;**
- 4. any concerns QR may have about a third-party operator's rollingstock certification tests will be brought to RSAU's attention within 10 business days of it being provided with the relevant certification documentation.**

7.2 Operating plan

- (a) In order to analyse the impacts and requirements of the operations proposed by a Third Party Operator on the Rail Infrastructure, an Operating Plan must be submitted to QR by the Third Party Operator during the negotiation process. The Operating Plan is an enhancement of the initial information provided in the Access Application. During the negotiating process, the Operating Plan must be developed to the reasonable satisfaction of QR.
- (b) Details of the contents typically required in an Operating Plan for new or varied Train Services are set out in Schedule H.
- (c) The Operating Plan will be utilised by QR to refine and finalise the Capacity Entitlement, Interface Coordination Plan, Access Charge and other terms and conditions of the Access Agreement. It will also form the basis for the Third Party Operator's Safety Risk Assessment and Environmental Investigation and for QR's Capacity Analysis.
- (d) The Access Agreement will incorporate provisions ensuring the Third Party Operator's ongoing compliance with the Operating Plan.

QCA's Position

No discussion

The QCA accepts clause 7.2 of the Draft Undertaking.

7.3 Safety management

7.3.1 Safety Risk Assessment

- (a) As outlined in Clause 4.7, as part of the negotiation process the Third Party Operator shall, jointly with QR, conduct a Safety Risk Assessment of its operations insofar as they interface with the Rail Infrastructure.
- (b) The parties may agree that a preliminary assessment need only be conducted prior to execution of the Access Agreement but a final Safety Risk Assessment must be completed, and a Safety Risk Management Plan agreed and implemented, prior to the operation of Train Services on the Rail Infrastructure.

- (c) The Safety Risk Assessment must be conducted by a suitably qualified person(s), reasonably acceptable to both parties.
- (d) The Safety Risk Assessment should identify all reasonably foreseeable hazards relating to the interface between the Third Party Operator, QR and other Railway Operators arising out of the proposed operation of Train Services, the risks of such hazards occurring and the implications of such hazards occurring.

QCA's Position**FD, 237-8; DD, 318-25**

The QCA will accept sub-clause 7.3.1 of the Draft Undertaking as it is currently drafted provided it is amended such that:

- 1. QR's role in the conduct of a third-party operator's safety risk assessment will not extend beyond the joint safety risk assessment;**
- 2. the following dispute resolution process for safety-related interface matters is incorporated:**
 - following receipt of written notice from either party notifying the other party of a safety-related interface matter, the Chief Executive Officers (CEOs) of the two organisations would meet to try and resolve the matter;**
 - if the CEOs could not reach a resolution after 14 days of receipt of the written notice, the matter would be referred to the RSAU to provide non-binding advice to the two parties;**
 - if the RSAU's advice did not facilitate resolution of the dispute, the matter would be referred to the QCA for arbitration under the QCA Act; and**
- 3. RSAU can recover the costs associated with its role in the dispute resolution process;**
- 4. QR and a third-party operator will agree any training requirements for the third-party operator's staff during the safety risk assessment process. The training requirements will be restricted to those that are the responsibility of QR, as track manager, to provide under Australia's co-regulatory approach to rail safety;**
- 5. QR will provide a 'reasonable endeavours' commitment to assist a third-party operator meet any training requirements for its staff identified during the interface risk management process, where the operator cannot otherwise reasonably attain that training.**

7.3.2 Safety Risk Management Plan

- (a) To address the results of the Safety Risk Assessment, a Safety Risk Management Plan is to be developed and agreed between the Third Party Operator and QR. QR must be reasonably satisfied that the Safety Risk Management Plan is appropriate and compatible with the existing management systems for the Rail Infrastructure.
- (b) Prior to the operation of the Third Party Operator's Train Service on the Rail Infrastructure, the Third Party Operator shall incorporate in its Safety Management System:
 - (i) the elements agreed in the Safety Risk Management Plan, for which the Third Party Operator is responsible for implementing; and
 - (ii) necessary processes for ensuring that the Third Party Operator, its Rollingstock and Train Services, at all times comply with the safety requirements of the Access Agreement, including the Safeworking Procedures and other applicable Safety Standards.
- (c) Similarly, prior to the operation of the Third Party Operator's Train Service on the Rail Infrastructure, QR shall ensure that its Safety Management System incorporates the elements agreed with the Third Party Operator in the Safety Risk Management Plan, for which QR is responsible for implementing.
- (d) The implementation of the Safety Risk Management Plan may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the Rollingstock Interface Standards.
- (e) Clause 7.5 provides for audit of the Third Party Operator's ongoing compliance with the Safety Risk Management Plan.

QCA's Position

FD, 223-6, 237-8; DD, 307-9, 318-25

The QCA will accept sub-clause 7.3.2 of the Draft Undertaking as it is currently drafted provided it is amended such that it reflects the QCA's proposed amendments in relation to sub-clauses 7.1.1 and 7.3.1 above.

7.4 Environmental management plan

7.4.1 Environmental Investigation

- (a) As outlined in Clause 4.7, as part of the negotiation process the Third Party Operator shall, in collaboration with QR, conduct an appropriate Environmental Investigation of its operations insofar as they interface with the Rail Infrastructure. QR may, in recognition of its legal obligations in relation to the environment (in particular those obligations arising from the *State Development and Public Works Organisation Act 1971*, and the *Environmental Protection Act 1994*) require that the Environmental Investigation take the form of an Impact Assessment Study in circumstances where the operation proposed is substantially different to existing operations or if it will result in significant increases in traffic levels.
- (b) The parties may agree that a preliminary investigation need only be conducted prior to execution of the Access Agreement but a final Environmental Investigation based on the

findings of the preliminary investigation must be completed, and appropriate controls agreed and implemented, prior to the operation of Train Services on the Rail Infrastructure.

- (c) The Environmental Investigation must be conducted by a suitably qualified party who is reasonably acceptable to both parties.
- (d) The Environmental Investigation must assess the environmental impact of Access by the Third Party Operator relating to the interface between the Third Party Operator, QR and other Railway Operators including risks related to those issues identified in Schedule I. The Environmental Investigation should use recognised techniques and procedures in assessing such environmental impacts including the assessment of the associated environmental risks and shall comply with all legislative requirements.

QCA's Position

FD, 254-62; DD, 337-49

The QCA refuses to accept sub-clause 7.4.1 of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

- 1. an environmental investigation and risk management report will be prepared for the third-party operator by a suitably qualified person reasonably acceptable to both parties;**
- 2. QR will provide in writing to the third-party operator its reasons if it has a problem with the adequacy of the EIRMR within 30 days of its receipt, or within a period otherwise agreed between the parties;**
- 3. the third party operator has a written right of reply to QR's concerns;**
- 4. if the parties can not agree on the adequacy of the EIRMR, either party will have recourse to dispute resolution under the relevant provisions of the Undertaking (including recourse to an expert or the QCA);**
- 5. the third-party operator will be given a reasonable period within which to amend its EIRMR as required by the expert. If the third-party operator fails in this regard, QR will be able to cease negotiations or terminate the access agreement (if signed);**
- 6. once finalised, the EIRMR will be incorporated as a schedule to the third-party operator's access agreement;**
- 7. QR has a right to seek confirmation from a third-party operator regarding the adequacy of the EIRMR and/or its compliance with the EIRMR. If QR becomes aware of any circumstances associated with the activities of the operator that cause or threaten serious or material environmental harm, then it can require the operator to undertake a review of the adequacy of the EIRMR and/or the operator's compliance with it.**

7.4.2 Environmental Management System

- (a) In response to the findings of the Environmental Investigation, an Environmental Risk Management Plan is to be developed and agreed by the Third Party Operator and QR. QR will need to be reasonably satisfied that the Environmental Risk Management Plan is appropriate and compatible with the existing management systems for the Rail Infrastructure.

QCA's position

FD, 254-62; DD, 337-49

The QCA refuses to accept this paragraph of the Draft Undertaking because it is inconsistent with the QCA's position in relation to sub-clause 7.4.1 above

- (b) Prior to the operation of the Third Party Operator's Train Services on the Rail Infrastructure, the Third Party Operator shall have developed an Environmental Management System which is accredited in accordance with the relevant ISO 14000 standards for environmental management systems and shall incorporate in this Environmental Management System:

QCA's Position

FD, 256-7; DD, 340-1

The QCA refuses to accept sub-paragraph 7.4.2(b) of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that a third-party operator's environmental management system need not be accredited under, or be consistent with, the ISO 14,000 environmental standard or any other domestic or international standard.

- (i) all legislative requirements including any requirements in respect of Environmental Authorities held by QR from time to time as appropriate;

QCA's Position

FD, 257; DD, 341

The QCA refuses to accept sub-paragraph 7.4.2(b)(i) and considers it appropriate that the Draft Undertaking be amended such that requirements in respect of QR's environmental authorities/licences are imposed on third-party operators to the extent that they are relevant to the third-party operator's train services.

- (ii) the elements agreed with QR in the Environmental Risk Management Plan, for which the Third Party Operator is responsible for implementing; and

QCA's Position

No discussion

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided reference to the environmental risk management plan is replaced by the EIRMR.

- (iii) necessary processes for ensuring that the Third Party Operator, its Rollingstock and Train Services, at all times comply with the environmental requirements of the Access Agreement.

QCA's Position**No discussion**

The QCA accepts this sub-paragraph of the Draft Undertaking.

- (c) Similarly, prior to the operation of the Third Party Operator's Train Services on the Rail Infrastructure QR shall ensure that the elements agreed in the Environmental Risk Management Plan, for which QR is responsible for implementing, are incorporated in its environmental management system.

QCA's Position**No discussion**

The QCA will accept this paragraph of the Draft Undertaking as it is currently drafted provided reference to the environmental risk management plan is replaced by the EIRMR.

- (d) The implementation of the Environmental Risk Management Plan may necessitate changes to the terms and conditions of the Access Agreement, including variations to the Access Charge and the Rollingstock Interface Standards.

QCA's position**FD, 223-6, 254-62; DD 307-9, 337-49**

The QCA refuses to accept this paragraph of the Draft Undertaking because it is inconsistent with the QCA's position in relation to sub-clauses 7.1.1 and 7.4.1 above.

- (e) Clause 7.5 provides an audit procedure for the Third Party Operator's ongoing compliance with the Environmental Risk Management Plan and its Environmental Management System.

QCA's Position**FD, 258-9; DD, 343-4**

Refer to the QCA's position in relation to clause 7.5 below.

7.5 AUDITS

- (a) The Third Party Operator must be able to establish to QR's reasonable satisfaction that it is complying with the Rollingstock Interface Standards, the items identified in Paragraph 7.3.2(b), and the items identified in Paragraph 7.4.2(b), in its operations on the Rail Infrastructure. Therefore, the Third Party Operator will be required to have its operations on the Rail Infrastructure, including relevant systems, audited on an annual basis for compliance with these items.

- (b) In addition, QR may, at any time, require the Third Party Operator to have specific elements of its operations audited for compliance, where QR has reasonable grounds for believing that the Rollingstock Interface Standards, the items identified in Paragraph 7.3.2(b), and/or the items identified in Paragraph 7.4.2(b), have not been complied with and the Third Party Operator has not taken appropriate measures to rectify such non compliance.
- (c) Audits undertaken in accordance with Paragraphs (a) and (b) of this Clause, insofar as they relate to the Rollingstock Interface Standards and the items identified in Paragraph 7.3.2(b), may at the option of the Third Party Operator and subject to QR's reasonable satisfaction, be undertaken in conjunction with an audit required by the Safety Regulator. In any event, all audits must be conducted by a suitably qualified and competent person, who is independent of the Third Party Operator and reasonably acceptable to both parties.
- (d) The audit report(s) must advise whether the Third Party Operator is complying with the Rollingstock Interface Standards, the items identified in Paragraph 7.3.2(b), and the items identified in Paragraph 7.4.2(b), and provide details of any non-compliance. A copy of the audit report(s) must be provided to QR.

QCA's Position

The QCA refuses to accept clause 7.5 of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that:

Interface risk management plan

FD, 244-5; DD, 326-8

1. **QR's right to require an annual or 'spot' audit of a third-party operator's interface risk management plan is removed;**
2. **QR and a third-party operator will commit to inform each other of non-compliance with the interface risk management plan, including the nature of the breach and how the breach will be rectified;**
3. **the Rail Safety Accreditation Unit of QT is recognised as the body responsible for safety compliance audits under Queensland's rail safety regulatory framework;**

Rollingstock interface standards

FD, 244-5; DD, 326-8

4. **QR's right to an open-ended audit power concerning a third-party operator's compliance with the agreed rollingstock standards is replaced with an entitlement to audit within the following framework:**
 - **QR is obliged to provide all relevant information on above-rail rollingstock incidents - eg. incidences of dragging equipment and 'hot box' detection, over-loading and inaccurate train manifests - to a third-party operator concerning its train services;**
 - **it should be specified in the access agreement with a third-party operator what aspects of that operator's compliance with the agreed rollingstock standards QR can audit;**
 - **QR must provide reasonable grounds, as established in the**

access agreement, for the need for an audit prior to exercising its audit right; and

- **a third-party operator must pay for audits of its rollingstock required by QR if the reasonable grounds for audit established in the access agreement are satisfied;**

Commercial matters

FD, 244-5; DD, 326-8

5. **for commercial matters identified and agreed during the interface risk management process, where QR wants to audit a third-party operator's compliance with its contractual obligations it must provide reasonable grounds, as established in the access agreement, for the need for an audit prior to exercising its audit right. A third-party operator is entitled to a reciprocal audit right along the same lines.**

Environmental report

FD, 258-9; DD, 343-4

6. **linked QR's auditing requirement to the risks posed by a third-party operator's train services and what is established in the operator's environmental management system. Auditing requirements will be specifically addressed in the environmental investigation and risk management report (EIRMR). Each party will be required to provide the other with copies of the relevant parts of its internal audit reports;**

7.6 Interface coordination plan

- (a) Prior to the commencement of Train Services by the Third Party Operator, QR will develop, in consultation with the Third Party Operator, an Interface Coordination Plan. Both parties shall comply with the Interface Coordination Plan in exercising the rights and obligations of the Access Agreement. However to the extent any inconsistency arises between the Interface Coordination Plan and the Access Agreement the requirements of the Access Agreement shall prevail.
- (b) The Interface Coordination Plan will supplement the provisions of the Access Agreement and be consistent with such plans in existence for other Railway Operators and may include:
 - (i) operational procedures;
 - (ii) emergency procedures and incident management;
 - (iii) track possession procedures;
 - (iv) train control contacts;
 - (v) train schedule variation procedures;
 - (vi) service recovery procedures; and
 - (vii) any other issues considered necessary in respect of the procedures to be followed in administering the Access Agreement.

QCA's Position**No discussion****The QCA accepts clause 7.6 of the Draft Undertaking.****7.7 Adjoining infrastructure**

- (a) Unless otherwise agreed, where a Third Party Operator proposes to construct infrastructure which connects to the Rail Infrastructure but for which QR will not be Railway Manager, QR shall either design, or approve the design of, and supervise the construction of the connection and those elements of adjoining infrastructure essential to the operation of safeworking systems on the Rail Infrastructure including the connection itself.

QCA's Position**FD, 268; DD, 353-5**

The QCA will accept this sub-paragraph as it is currently drafted provided it is amended such that QR's interest in the development of any adjoining infrastructure is limited to the connecting infrastructure, which is defined as follows:

- 1. the connection point or turn-out;**
- 2. the safeworking system, including signalling; and**
- 3. the electrical overhead system, where relevant.**

- (b) The Third Party Operator shall reimburse QR's reasonable costs for such design and supervision work and, unless otherwise agreed, shall be responsible for funding all costs associated with the construction of the adjoining infrastructure and the connection.

QCA's Position**FD, 268; DD, 353-5**

The QCA refuses to accept this paragraph of the Draft Undertaking and considers it appropriate that the Draft Undertaking be amended such that if QR exercises its right to design and construct the connecting infrastructure, it should be within the following framework:

- 1. the third-party operator must be given a reasonable period within which to provide comments to QR on any design or construction matters.**
- 2. QR is required to demonstrate the reasonableness of the costs associated with it performing those design and construction (and any associated) tasks;**
- 3. QR is required to pay the reasonable costs incurred by third parties as a result of unreasonable delays in any phase in the development of the connecting infrastructure; and**
- 4. design standards associated with the connection point and electrical**

power system and the risk-based nature of safeworking standards described in the QCA’s Draft Decision should apply. In addition, QR could be required to demonstrate that the design and construction of the connecting infrastructure is not in excess of that required to retain the functionality of QR’s existing infrastructure.

8. DEFINITIONS & INTERPRETATIONS

8.1 DEFINITIONS

In this Undertaking, unless inconsistent with the context, the following words and expressions shall have the respective meanings:

“Above Rail Services” means those activities, other than Below Rail Services, required to provide and operate Train Services including Rollingstock provision, Rollingstock maintenance, non train control related communications, train crewing, terminal provision and services, freight handling and marketing and administration of those services;

“Access” means the non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services;

“Access Agreement” means an agreement between QR and a Railway Operator for the provision of Access and will include arrangements between Network Access and other QR business groups for the provision of Access for the purpose of QR operated Train Services;

“Access Application” means a request for Access by a Third Party Operator which has been prepared in writing and which complies with the information requirements of Paragraph 4.3(b);

“Access Charge” means the price paid by a Railway Operator for Access under an Access Agreement;

“Access Rights” means the entitlement of a Railway Operator to Access in accordance with a specified Capacity Entitlement;

“Accreditation” means accreditation in accordance with Part 4, Chapter 6 of the *Transport Infrastructure Act 1994 (Qld)* and **“Accredited”** has a similar meaning;

“Act” means the *Queensland Competition Authority Act 1997 (Qld)*;

“Additional Information” means that information that is to be provided by QR to a Third Party Operator during the Negotiation Period as set out in Schedule D, excluding any information that is provided as part of the Preliminary Information, but only to the extent required either by the Third Party Operator or as part of the Access Agreement;

“Authority” means the Crown, a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such that lawfully exercise jurisdiction over QR;

“Available Capacity” means Capacity that is not Committed Capacity and includes Capacity which will cease being Committed Capacity prior to the time in respect of which Capacity is being assessed;

“Below Rail Services” means the activities associated with the provision and management of Rail Infrastructure, including the construction, maintenance and renewal of Rail Infrastructure assets, and the network management services required for the safe operation of Train Services on the Rail Infrastructure, including train control and the implementation of Safeworking Procedures;

“Capacity” means the capability of a specified section of Rail Infrastructure to accommodate Train Services within a specified time period after providing for QR’s reasonable requirements

for the exclusive utilisation of that specified section of Rail Infrastructure for the purposes of performing activities associated with the repair or enhancement of the Rail Infrastructure, including the operation of work trains;

“Capacity Analysis” means an assessment of the extent a specified section of Rail Infrastructure has Available Capacity and whether that Available Capacity is sufficient for the proposed Access requirements and, if the Available Capacity is not sufficient for the proposed Access requirements, an assessment of Rail Infrastructure expansion or other Capacity enhancement required to meet those proposed Access requirements;

“Capacity Entitlement” means a Railway Operator’s entitlement under an Access Agreement to operate a specified number and type of Train Services over the Rail Infrastructure within a specified time period and in accordance with specified scheduling constraints for the purpose of either carrying a specified commodity or providing a specified transport service, and, until such time that Access Agreements have been developed for all existing QR operated Train Services, includes the Capacity that is demonstrably required for the purpose of QR operated Train Services and in respect of which Access Charges are applicable;

“Committed Capacity” means that portion of the Capacity that is required to meet the Capacity Entitlements of Railway Operators;

“Common Costs” means those costs associated with provision of Rail Infrastructure that are not Incremental Costs for any particular Train Service using that Rail Infrastructure;

“Confidential Information” means any information, data or other matter marked confidential by a party when disclosed to the other party or disclosed to the other party with an express requirement in writing that the information, data or other matter be treated as confidential, where such information, data or other matter:

- (i) is not already in the public domain;
- (ii) does not become available to the public through means other than a breach of confidentiality;
- (iii) was not in the other party’s possession prior to such disclosure; and
- (iv) is not received by the other party independently from a third party free to disclose such information, data or other matter;

QCA’s Position

FD, 74-6; DD, 102-9

The QCA refuses to accept this definition and considers it appropriate that the Draft Undertaking be amended such that “Confidential information means any information, data or other matter in any form whatsoever which:

- 1. is not already in the public domain;**
- 2. does not become available to the public through means other than a breach of confidentiality;**
- 3. was not in the other party’s lawful possession prior to such disclosure;**
- 4. is not received by the other party independently from a third party**

which is free to disclose such information, data or other matter; and

5. **the disclosure of which might reasonably be expected to affect the commercial affairs of a person or is marked confidential by a party when disclosed to the other party.**

Such information, data, or other matter must be treated as confidential by the party receiving it”.

“Corporations Law” has the meaning given to that term in the *Corporations (Queensland) Act 1990*;

“Cost Allocation Manual” means a manual prepared by QR which identifies the matters outlined in Paragraph 5.5(a);

“Cross Subsidy” means where one Train Service or combination of Train Services pays Access Charges which are insufficient to meet:

- (a) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and
- (b) in respect of a group of Train Services, the Common Costs related specifically to sections of Rail Infrastructure that are used solely for the purpose of Train Services within that combination of Train Services;

and the shortfall is contributed to by another Train Service or combination of Train Services;

“Draft Amending Undertaking” means a document specifying amendments to the relevant provisions of this Undertaking, which is submitted to the QCA in the circumstances envisaged in Part 5 of the Act;

“Environmental Authorities” has the meaning given to that term in the *Environmental Protection Act 1994 (Qld)*;

“Environmental Investigation” means a study of the likely short term and long term beneficial and detrimental effects on the environment of the Third Party Operator’s operations insofar as they interact with the Rail Infrastructure and other Train Services;

“Environmental Management System” means the Third Party Operator’s plan of management to address all environmental risks and to ensure compliance with all environmental laws and licenses;

“Environmental Risk Management Plan” means a plan identifying the set of controls and measures agreed between QR and the Third Party Operator to address risks identified through the Environmental Investigation, and identifying the party responsible for implementation of those controls and measures;

“Evaluation Period” means, when in reference to an Individual Train Service, the period which is equal to the length of the expected duration of the existing or proposed Access Agreement in respect of the relevant Train Service or, when in reference to a group of Train Services, the period which is equal to the length of the expected duration of the longest existing or proposed Access Agreement in respect of any of the Train Services comprising the combination of Train Services, provided that such period does not exceed ten (10) years;

“Explanatory Guide” means the document developed for the purpose set out in Paragraph 1(d) of this Undertaking;

“Geographic System” means sections of the Rail Infrastructure identified as such in the Cost Allocation Manual;

“Impact Assessment Study” means a detailed study of the short and long term beneficial and detrimental effects on the environment of the Third Party Operator’s operations insofar as they interact with the Rail Infrastructure and which includes an assessment of all relevant environmental factors, including social, economic and biophysical factors related to such operations;

“Incremental Costs” means those costs of providing Access, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or group of Train Services (as appropriate) did not operate;

QCA’s Position

FD, 139; DD, 211-6

The QCA refuses to accept this definition and considers it appropriate that the Draft Undertaking be amended such that “Incremental costs means those costs of providing access, including capital (renewal and expansion) costs, that would not be incurred if the particular train service or group of train services (as appropriate) did not operate. Incremental costs are considered in the context of efficient operations and an efficient level of assets actually required by QR, as network manager, to provide the service(s).”

“Indicative Access Proposal” means a non-binding response from QR to an Access Application of a Third Party Operator, prepared in writing and including the information set out in Clause 4.5;

“Infrastructure Payments” means payments to QR from the Queensland Government to enable QR to provide specified sections of Rail Infrastructure;

“Initial Capacity Assessment” means a preliminary Capacity Analysis undertaken in a manner to give an indicative assessment only and which will require further analysis as part of the final Capacity Analysis;

“Interface Coordination Plan” means a plan which identifies the procedures to be followed and the responsible officers from both QR and the Third Party Operator, in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under the Access Agreement;

“Market” has the meaning given to that term in section 71 of the Act;

“Material Change Event” means the occurrence of any of the following events on or after the date upon which the QCA approved the relevant Reference Tariff/s:

- (a) any amendment, repeal, modification or enactment of any acts, ordinances, regulations, by-laws, proclamations and subordinate legislation made under, by or pursuant to any Commonwealth or State statute or any relevant Authority (“Legislation”);

- (b) any binding change in the interpretation or application of any Legislation resulting from a decision of a court or tribunal;
- (c) the making of any new policy, instruction, direction or order (“Directive”) of an Authority (including without limitation QR’s shareholding ministers) which impacts on QR, or the modification, extension or replacement of any existing Directive;
- (d) the imposition of a requirement for any license, permit, approval, consent or other authority (“Authorisation”) not required as at the date upon which the QCA approved the relevant Reference Tariff;
- (e) after the date of grant of any Authorisation, a change in the terms and conditions attaching to that Authorisation or the attachment of any new terms or conditions;
- (f) the imposition or abolition of, increase or reduction in the rate of, or change in the basis of calculating, any Commonwealth, State or Local Government imposed tax, charge, levy, duty, impost, rate, royalty or imposition (“Tax”) imposed on, or payable by, QR including, without limitation, any Tax relating to the protection of the environment imposed on users of electricity or imposing a form of consumption, value added or sales tax, but excluding any income tax; or
- (g) a change in the Commonwealth Government ten (10) year bond rate of more than one hundred (100) basis points from the time that the Reference Tariff:
 - (i) was endorsed by the QCA; or
 - (ii) was varied in accordance with Paragraph 5.3.2(b) to reflect a change in the Commonwealth Government ten (10) year bond rate;whichever is the later;

“Material Default” means:

- (a) repeated failure to comply with the terms and/or conditions of any of the agreements specified in Paragraph 4.1.2(c); or
- (b) any breach of a fundamental term and/or condition of any of the agreements specified in Paragraph 4.1.2(c);

“Negotiation Period” means the period during which the terms and conditions of an Access Agreement will be negotiated and which commences upon the Third Party Operator providing QR with a notification of intent to proceed with negotiations pursuant to Clause 4.6 and concludes upon any of the events set out in Paragraph 4.7.1(c);

“Network Access” means the business group established within QR to manage the provision of Below Rail Services with the exception of stations, platforms and selected marshalling yards;

“Operating Plan” is a description of how the proposed Train Services are to be operated, including the matters identified in Schedule H;

“Preliminary Information” means that information that, prior to the submission of an Access Application, QR will be required to provide to a Third Party Operator, if and to the extent requested by the Third Party Operator, where the scope of such information is as set out in Part 1 of Schedule D;

“QCA” means the Queensland Competition Authority as established by the Act;

“Queensland Transport” means the Department of Transport for the State of Queensland;

“Rail Infrastructure” means Rail Transport Infrastructure as defined in the *Transport Infrastructure Act 1994 (Qld)* for which QR is the Railway Manager;

“Railway Manager” has the meaning given to that term in the *Transport Infrastructure Act 1994 (Qld)*;

“Railway Operator” means a person who has, or is seeking, Access from QR to operate Train Services on the Rail Infrastructure and who is, or who will become, Accredited in respect of those Train Services;

“Reference Tariff” is an Access Charge applicable for a specified Reference Train Service, established in accordance with Clause 5.3, the purpose of which is to provide information to Third Party Operators as to the likely level of Access Charge for Train Services of a similar type as the specified Reference Train Service;

“Reference Train Service” means a notional Train Service conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions;

“Related Party” has the meaning given to Related Body Corporate in the Corporations Law;

“Revenue Limit” is the maximum revenue which QR should be entitled to earn from the provision of Access to the Train Service or Train Service Group (as appropriate) over the Evaluation Period;

“Ringfencing Guidelines” means guidelines prepared by QR in accordance with Clause 3.5;

“Rollingstock” means locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle which operates on or uses the Track;

“Rollingstock Configuration” means the description of the combination of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

“Rollingstock Interface Standards” are the minimum standards relating to the interface between Rollingstock and the Rail Infrastructure with which the Rollingstock and Rollingstock Configurations must comply in order for them to be able to be operated on the relevant parts of the Rail Infrastructure and which include standards relating to the criteria identified in Part 2 of Schedule D;

“Rollingstock Standards” are those Rollingstock Interface Standards that relate to the design and performance of Rollingstock;

“Safety Management System” means:

- (a) in respect of a Railway Operator, a system developed by the Railway Operator to manage all risks associated with the operation of Train Services including specifically those risks identified in the Safety Risk Assessment; and

- (b) in respect of a Railway Manager, a system developed by the Railway Manager to manage all risks associated with the provision of Rail Infrastructure and safe management of Train operations on the Rail Infrastructure, including specifically those risks identified in the Safety Risk Assessment;

and which forms the basis upon which the Railway Operator or Railway Manager becomes Accredited;

“Safety Regulator” means the Chief Executive of Queensland Transport (or his delegate) operating in accordance with Part 4 of the *Transport Infrastructure Act 1994*;

“Safety Risk Assessment” means an assessment of the operational and safety risks associated with the Third Party Operator’s operations insofar as they interface with the Rail Infrastructure and other Train Services;

“Safety Risk Management Plan” means a plan identifying the set of controls and measures agreed between QR and the Third Party Operator to address risks identified through the Safety Risk Assessment, and the party responsible for the implementation of those controls and measures;

“Safety Standards” means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or QR policies and all standards relating to safety, including occupational health and safety, prescribed by any laws;

“Safeworking Procedures” means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of work sites on the Rail Infrastructure;

“Scheduling and Train Control Protocols” means protocols prepared by QR outlining the approach QR will adopt with respect to the matters outlined in Paragraph 3.2(e);

“Solvent” means none of the following events have happened in relation to the Third Party Operator:

- (a) the Third Party Operator is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in Section 459F(1) of the Corporations Law;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one month;
- (d) the appointment of a controller (as defined in the Corporations Law) of any of its assets; or
- (e) the Third Party Operator proposes to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

QCA’s Position

DD, 164-71

The QCA refuses to accept this definition and considers it appropriate that the Draft Undertaking be amended such that “Solvent means none of the

following events have happened in relation to the third party operator:

1. the access seeker operator is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in Section 459F(1) of the Corporations Law;
2. a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator, unless the resolution is withdrawn within 14 days or the resolution fails to pass;
3. an application is made to a court for it to be wound up and the application is not dismissed within one month;
4. the appointment of a controller (as defined in the Corporations Law) of any of its assets, if that appointment is not revoked within 14 days after it is made; or
5. the access seeker resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement.”

“Stand Alone Costs” means those costs that QR would incur if the relevant Train Service or combination of Train Services (as appropriate) was the only Train Service or group of Train Services provided Access by QR and **“Stand Alone”** has a similar meaning;

QCA’s Position

FD, 139; DD, 211-6

The QCA refuses to accept this definition and considers it appropriate that the Draft Undertaking be amended such that “stand alone costs means those costs that would be incurred if the relevant train service or combination of train services (as appropriate) was the only train service or group of train services provided access by QR. Stand alone costs are considered in the context of efficient operations and an efficient level of assets actually required by QR, as network manager, to provide the service(s).” “Stand alone” has a similar meaning.

“Standard Gauge” means a nominal gauge between rails of 1435 mm;

“Third Party Operator” means a Railway Operator other than QR;

“Track” means that part of the Rail Infrastructure comprising the rail, ballast, sleepers and associated fittings upon which Trains operate;

“Train” means any configuration of Rollingstock operating as a unit on the Track;

“Train Service” means the operation of a Train between specified origins and destinations on the Rail Infrastructure;

“Train Service Group” means a specified combination of Train Services that operate over discrete parts of the Rail Infrastructure and which is nominated as such in Schedule F;

“Train Standards” are those Rollingstock Interface Standards that relate to Rollingstock Configurations; and

“Undertaking” has the meaning given to that term in the Act.

8.2 Interpretation

In this Undertaking unless the context otherwise requires:

- (a) reference to a person includes any other entity recognised by law and vice versa;
- (b) reference to “dollars” or “\$” means a reference to Australian dollars;
- (c) words importing the singular number includes the plural number and vice versa;
- (d) words importing any gender include the other gender;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) any reference to any parties by their defined terms includes that party’s executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation of any party extends to those persons;
- (g) a reference to conduct includes a benefit, remedy, discretion, authority or power;
- (h) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (i) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or ensures for the benefit of those persons jointly and each of them severally;
- (j) clause headings are for reference purpose only;
- (k) any reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (l) any reference to the words “include” or “including” must be read as if they are followed by the words “without limitation”;
- (m) any reference to time is to local time in Queensland;
- (n) reference to a Clause, Subclause, Paragraph or Schedule is a reference to the corresponding Clause, Subclause, Paragraph or Schedule to this Undertaking as amended or replaced from time to time;
- (o) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time and notwithstanding any changes in the identity of the parties;
- (p) reference to any legislation includes all legislation under and amendments to that legislation and any legislation passed in substitution for that legislation or incorporating any of its provisions to the extent that they are incorporated;

- (q) if there is any inconsistency between matters contained in a Schedule and the body of this Undertaking, the provisions of the Undertaking prevail.

***SCHEDULE A**

***Timetable for Internal Access Agreements**

Date for Completion	Products
4 months after the Commencing Date	<ul style="list-style-type: none"> unit trains of coal and major industrial products (e.g. minerals, bulk fertilizer, bulk acid)
6 months after the Commencing Date	<ul style="list-style-type: none"> unit trains of containers unit trains of primary industry products (e.g. grain, sugar) Brisbane urban and interurban passenger long distance and country passenger

QCA's position

FD, 98-9; DD, 125-8

The QCA refuses to accept Schedule A of the Draft Undertaking because it is inconsistent with the QCA's position in relation to sub-paragraph 3.4.1(b).

***SCHEDULE B**

***Ringfencing Guidelines**

A. Ringfencing Principles

- assist in meeting QR's obligations under section 104 of the Act, namely that having regard to the relevant criteria Access is not provided to QR business groups operating Train Services on more favourable terms than the terms on which QR intends to provide Access to Third Party Operators;
- ensuring that QR business groups operating Train Services are not placed at a competitive disadvantage in relation to the negotiation and provision of Access, by virtue of QR's status as a vertically integrated railway; and
- ensuring that, as far as possible taking into account QR's obligations under the Undertaking and under the QCA Act, QR retains the economic and other benefits which come from being a vertically integrated railway.

B. Ringfencing Issues

- the provision of a framework for the movement of information within QR to ensure that the confidentiality of information provided by Railway Operators, including both Third Party Operators and QR Railway Operators, is maintained consistent with Clause 4.2 of this Undertaking. This framework will ensure that Confidential Information provided to QR by Third Party Operators will not be made available to those areas of QR responsible for the commercial arrangements associated with QR operated Train Services;
- the protection of QR's intellectual property and the intellectual property rights of Third Party Operators;
- requiring all Network Access employees, contractors and other relevant QR employees (including staff employed by QR business groups operating Train Services) dealing with Access to undergo training in relation to QR's Ringfencing Guidelines in order to ensure they are aware of QR's obligations with respect to Confidential Information and the importance of complying with QR's Ringfencing Guidelines;
- establishing procedures for staff transfer and secondment to assist in meeting QR's obligations in relation to the Confidential Information belonging to Third Party Operators whilst not unreasonably limiting the potential career paths of QR employees;
- establishing a register to identify ringfencing issues and the actions taken to resolve them. Specifically, the register will deal with questions of interpretation raised in relation to compliance with QR's Ringfencing Guidelines, suggestions for improvement to the Ringfencing Guidelines, changes to procedures or controls that may be implemented over time, action taken in response to audits of QR's compliance with the Ringfencing Guidelines, and notification of breaches, potential breaches and complaints (internal or external) received;
- establishing procedures to conduct investigations into any complaints received from third parties that QR had breached its Ringfencing Guidelines and to report the outcome of the investigation to the complainant. A system of investigating possible breaches of the Ringfencing Guidelines reported by QR employees will also be established; and

- providing for audits of QR's compliance with the Ringfencing Guidelines.

QCA's position**FD, 74-83; DD, 102-9**

The QCA refuses to accept Schedule B of the Draft Undertaking because it is inconsistent with the QCA's position in relation to clause 4.2 and its associated new provisions as detailed earlier.

***SCHEDULE C**

***Summary of Information Requirements as part of Access Application**

A. Third party operator's name and contact details

(if the Third Party Operator is an unincorporated joint venture, all parties should be identified)

B. Train service description for freight services

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Method of transporting freight (e.g. containers, louvered wagons, bulk wagons)
- Description of freight
- Net tonnes per annum for years 1 to 4 and onwards from year 4. Seasonal peak tonnages should be noted.
- Access to station yards required, including load/unload and storage time
- Storage/servicing locations, repositioning requirements
- Required frequency of train services, including specific daily requirements, weekly requirements, seasonality variations and any trends over the agreement term
- General train details:
 - Proposed number of locomotives per train
 - Proposed number of wagons per train
 - Type and class of locomotive
 - Mass of each locomotive (includes full sand and fuel load)
 - Type and class of wagons
 - Nominal gross mass of wagon
 - Tare mass of each wagon
 - Tare mass per container
 - Average number of containers per wagon

- Average proposed load (of product) per wagon
 - Maximum proposed gross tonnes per wagon
 - Axle load/spacing
 - Wheel size
 - Gross tonnes per train service, forward and return
- Maximum operation speed of loaded and empty train

C. Train service description for passenger services

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Type of passenger traffic (e.g. long distance, commuter, tourist)
- Embarking and disembarking stations enroute, facilities required at stations and estimated dwell time
- Stabling/servicing locations, empty returning/repositioning requirements
- Required frequency of train services, including specific daily requirements, weekly requirements, seasonality variations and any trends over the agreement term
- General train details:
 - Total number of locomotives per train
 - Total number of carriages per train
 - Total number of passenger multiple units (PMU) per train
 - Type and class of locomotive
 - Mass of each locomotive (including full sand and fuel load)
 - Type and class of carriage
 - Nominal gross mass of each carriage
 - Tare mass per carriage
 - Type and class of PMU
 - Nominal gross mass of PMU
 - Tare mass per PMU
 - Axle load/spacing

- Wheel size
- Gross tonnes per train service, forward and return
- Maximum operation speed of loaded and empty train

QCA's position

FD, 119; DD, 174-5

The QCA accepts Schedule C of the Draft Undertaking.

***SCHEDULE D**

***Preliminary and Additional Information**

***Part One: Preliminary Information**

1.1 Introduction

This section defines the extent of the Rail Infrastructure to which this information is applicable ('Nominated Network') and details the criteria for use of the data and purpose of the document.

1.2 Technical Information

- (r) Civil Infrastructure
 - description of track
 - operational constraints (e.g. ruling grades)
- (s) Signals and Operational Systems
 - description of safeworking systems
- (t) Telecommunications
 - description of communications system used
- (u) Electric Traction
 - general system description
- (v) Rollingstock Interface Requirements
 - track gauge
 - axle load/s
 - train speed/s
 - minimum structure gauge
 - noise limits
- (w) Locality information
 - terrain information
 - environmental conditions, including temperature ranges, rainfall, exposure to floods, cyclones etc.
- (x) Committed and/or potential corridor upgrades
- (y) Relevant maps and drawings

- corridor maps
- working plan and section drawings
- (z) Level crossings
- number of level crossings
- type of protection used

1.3 Operational Information

- (a) Capacity
 - indication of Capacity utilisation for the Nominated Network
 - general description of known Capacity constraints
 - committed Capacity upgrades
- (b) Train operation
 - sectional running times
 - maximum train length
- (c) Description of systems
 - operational
 - safeworking

1.4 Commercial Information

- (d) Reference Tariffs (if applicable Reference Tariffs have been approved by the QCA)
- (e) Cost Allocation Manual

1.5 Policies

- (f) Undertaking
- (g) Ringfencing Guidelines
- (h) Process for authorisation of Rollingstock
- (i) Process for authorisation of Rollingstock Configurations
- (j) Scheduling and Train Control Protocols

***Part Two: Additional Information**

2.1 Rollingstock Standards

This section will identify the Rollingstock Standards currently applicable for the Nominated Network. The Rollingstock Standards shall be based on:

- parameters necessary to manage risks of incidents involving the Rail Infrastructure/Rollingstock interface;
- parameters necessary to manage risks of incidents with adverse consequences for the infrastructure integrity related to Rollingstock integrity; and
- Rollingstock characteristics used in formulating Access Charges.

2.2 Train Standards

This section will provide information on the Train Standards applicable to the Nominated Network. The Train Standards shall be based on parameters necessary to reasonably manage risks of incidents involving the Rail Infrastructure/Rollingstock Configuration interface.

QCA's position

FD, 120; DD, 181-4

The QCA will accept Schedule D of the Draft Undertaking as it is currently drafted provided it is amended such that:

- 1. for rail corridors where no reference tariffs apply, price and costing information consistent with ss 102(2) and ss 101(3) of the QCA Act is included; and**
- 2. the preliminary information includes an outline of any unusual signalling features on a particular system.**

***SCHEDULE E**

***Summary of Standard Access Agreement**

****Operative Provisions - Access Rights***

- Access Rights granted are for non-exclusive rights for the operation of Train Services in terms of agreed service levels over the nominated network and are for Access only to those parts of the infrastructure specifically included in the nominated network.
- Access Rights do not include Above Rail Services such as carrying out any provisioning, inspection, testing, maintenance of rollingstock, marshalling, shunting or other relocation or storage of rollingstock.
- The Agreement is to be for the specified term.

QCA's Position

FD, 275; DD, 371-2

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Access Rights

1. **The agreement will provide for non-exclusive train service entitlements for the operation of train services in terms of agreed service levels over the nominated network. Long-term train service entitlements can be varied only in accordance with agreed scheduling procedures specified in the agreement or as otherwise agreed between the parties. The Scheduling Principles should guide the performance of the scheduling function by QR.**
2. **It is the responsibility of the third-party entering into an access agreement with QR to ensure that the operator of train services utilising the access rights is accredited.**
3. **Access agreements will be for a specified term and include a good faith negotiation process for renewal.**

****General Conditions of Contract***

1. Definitions and Interpretation

2. Access Charges

- The Third Party Operator is to pay Access Charges (together with costs for any ancillary services) in accordance with the Agreement. Periodic review of Access Charges may be agreed in the case of longer term agreements.
- QR renders accounts on a monthly billing basis with payment required 5 business days from receipt of invoice.

- Late payments will bear interest at the default rate (Commonwealth Bank Reference Rate for overdrafts of \$100,000.00 or more, plus 2%).
- In the case of a dispute over any amount payable the Third Party Operator is to pay the non-disputed amount together with 50% of the disputed amount pending resolution of the dispute by expert determination.
- Any reimbursement required from QR to the Third Party Operator will be made by way of deduction from subsequent accounts for Access Charges.
- The Third Party Operator is required to lodge a security deposit in the form of an irrevocable bank guarantee for an amount specified in the Agreement to secure performance by the Third Party Operator of its obligations under the Agreement.

QCA's Position

FD, 277; DD, 372-4

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Access Charges

1. **Access charges are to be agreed between the parties and payable in accordance with reasonable payment terms set out in the agreement. Late payments or credits by either party will bear interest at an agreed default rate.**
2. **The agreement will provide for a fair and reasonable mechanism for dealing with bona fide disputed invoices.**
3. **The agreement may provide for periodic review of access charges.**
4. **Unless otherwise stated, all amounts payable under the agreement are exclusive of GST.**
5. **In appropriate cases, QR may require lodgement of a security to secure performance by the third-party of its obligations under the agreement having regard to QR's reasonable assessment of the creditworthiness of the third-party. An established rail entity's ability to demonstrate a track record of timely payment of similar obligations in other rail jurisdictions should be a relevant factor in assessing creditworthiness. Any required security should reflect the revenue risk that QR has taken on.**
6. **Where there are no security arrangements in place and a user defaults on its payments, QR is entitled to require some form of security equivalent to its financial exposure, where the default was not attributable to a legitimate dispute.**
7. **A third-party paying a security deposit should be credited with interest on the security at a market-based rate for as long as it is held by QR.**

3. Train Service Entitlements

- The Third Party Operator must operate Trains of the nominated specification for the transport of the nominated product over the nominated network.
- The operation of Train Services must be in accordance with agreed scheduling procedures subject to the constraints specified in the Agreement;
- Where the Third Party Operator fails during any 6 consecutive months (other than for reasons of Force Majeure or default by QR) to operate the Train Services which it is entitled to operate under the Agreement, QR may seek a reduction in the Third Party Operator's entitlements to a level commensurate with demonstrable requirements.

QCA's Position

FD, 278; DD, 374

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Train Service Entitlements

1. **The third-party shall not be entitled to commence train services unless and until all provisions of the agreement required to be completed or complied with prior to the commencement of train services have been completed or complied with by the due date specified in the agreement. QR will use all reasonable endeavours to cooperate with the third-party to facilitate the third-party's completion or compliance with such requirements.**
2. **The third-party must only operate trains of the nominated specification for the transport of the nominated product type over the nominated network.**
3. **The agreement will contain provisions regarding the resumption of capacity by QR. Unless otherwise agreed by the parties, the provisions will include objective criteria to assess consistently under-utilised capacity, a test for alternative demand and a tailored dispute resolution process conducted by an independent expert. Appropriate adjustments will be made to the access charges payable following a reduction in train service entitlements.**

4. Day to Day Train Movements

- QR is to have exclusive responsibility for train control and will use reasonable efforts to ensure efficient utilisation of the nominated network having regard to the entitlements of all users and safety and maintenance requirements.
- The Third Party Operator is required to comply with all QR train control directions.

QCA's Position**FD, 280-1; DD, 374-5**

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Day-to-Day Train Movements

- 1. QR is to have responsibility for train control and shall exercise train control having regard to the safe conduct of rail operations on the nominated network.**
- 2. QR and third parties shall ensure that the operation of train services is in accordance with entry and exit times on the relevant daily train plan, which may be varied in the circumstances specified in the agreement (which normally include safety considerations, force majeure, incidents or emergencies, track possessions in accordance with the agreement or as otherwise agreed between the parties, such agreement not to be unreasonably withheld).**
- 3. The Network Management Principles establish the procedures QR must follow in varying the daily train plan.**
- 4. The third-party is required to comply with all QR train control directions and ensure all trains and rollingstock are equipped with appropriate communication systems to comply with the agreed rollingstock interface standards.**

5. Train Operations

- All Train Services are to comply with all laws, Safety Standards, Safeworking Procedures, the Interface Coordination Plan and other requirements of the Agreement. QR may vary the Safeworking Procedures at any time following consultation with, and the giving of reasonable notice to, the Third Party Operator.
- The Third Party Operator is to use reasonable endeavours to ensure that its Train Services conform to the train schedule and must notify QR of any circumstances which may affect compliance with the train schedule. QR will use reasonable endeavours to provide an alternative time for any Train Service unable to operate in accordance with the train schedule however if it is unable to do so then the Train Service may be cancelled by either party.
- Except as otherwise prescribed in the Agreement neither party has any liability for delays to train movements unless arising from the willful default of either party.
- The Third Party Operator must provide the necessary communication links with QR's information systems and provide the specified details of Train Services prior to operation.
- The Third Party Operator must provide an Operating Plan detailing all procedural aspects relevant to its Train Services and must comply with that plan at all times. No alteration to the Operating Plan will be permitted without the prior approval of QR.

- The parties are required to meet specified performance levels and liquidated damages may be applied where these performance levels are not met. Performance levels may be reviewed periodically and QR may adjust the Third Party Operator's performance levels, the Access Charges and/or the service levels where the Third Party Operator consistently fails to meet its performance levels.
- The Third Party Operator is responsible for the safe operation of its Rollingstock on the nominated network and must ensure that at all times its Rollingstock and Rollingstock Configurations comply with all laws, the Rollingstock specification and Rollingstock Interface Standards specified in the Agreement.
- Only Rollingstock and Rollingstock Configurations authorised by QR may operate on the nominated network. For Rollingstock and Rollingstock Configurations to be authorised by QR the Third Party Operator must demonstrate to QR's reasonable satisfaction that Rollingstock and Rollingstock Configuration complies with the Rollingstock Interface Standards. Such authority to operate may be withdrawn if at any time Rollingstock or Rollingstock Configurations fail to comply with the Rollingstock Interface Standards.
- The Third Party Operator must ensure all loadings of Rollingstock are secure and comply with the requirements of the Rollingstock specification in the Agreement. QR may require discontinuance of any service and appropriate remedial action where it has a reasonable belief that Rollingstock is not properly loaded.
- QR may vary the Rollingstock Interface Standards at any time and where this necessitates modification of the Third Party Operator's Rollingstock, the cost of such modifications are to be borne in the manner agreed by the parties or, failing agreement, as determined by an expert.
- All Rollingstock must be equipped with the equipment necessary for compliance with the Safeworking Procedures and the Third Party Operator is responsible for providing any additional equipment required due to changes in the Safeworking Procedures required by QR from time to time.
- QR and the Third Party Operator must comply with the Interface Co-ordination Plan.

QCA's Position**FD, 282-3; DD, 375-6**

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Train Operations

- 1. The agreement will specify all reasonable operational, communication and procedural requirements for train services.**
- 2. The third-party is to comply with all laws, safeworking procedures and safety standards and all other train operations requirements in the agreement. QR will comply with its safeworking procedures and safety standards and may, acting reasonably, vary the safeworking procedures and safety standards at any time following consultation with, and reasonable notice to, the third-party. Subject to such variations being on safety grounds, each party is responsible for its costs - including the costs of additional or modified equipment - in complying with the safeworking procedures and safety standards. Safeworking procedures and safety standards will as far as**

practicable be consistent for all railway operators on the nominated network.

3. The parties should agree specific performance levels and measurement criteria as a basis for creating effective performance management and incentives. This may involve financially-based incentives and sanctions. The performance levels may also be reviewed periodically.
4. The agreement will specify relevant rollingstock interface standards. QR and the third-party must agree on a party competent to provide certification for the third party's rollingstock and rollingstock configurations. QR has a right to view a certificate of compliance and associated test results from a third party in order to confirm that the rollingstock/rollingstock configurations are as agreed by the two parties in the interface risk management plan. QR has a right to provide input to the safety regulator regarding the authorisation of the third party's rollingstock. Rollingstock and rollingstock configurations that are certified will be included in the rollingstock specification as being authorised to operate on the nominated network subject to continuing compliance with the rollingstock interface standards and rollingstock specification.
5. The third-party is responsible for the safe operation of its rollingstock on the nominated network and must ensure that at all times its rollingstock and rollingstock configurations comply with all applicable laws, the rollingstock specification and the rollingstock interface standards specified in the agreement.
6. QR may suspend the operation of rollingstock and trains for demonstrated non-compliance that has safety implications until such non-compliance is rectified. If the source of non-compliance does not have safety implications, the third-party should be required to rectify the non-compliance within a reasonable period of time, but not be suspended. If the non-compliance is not rectified within a reasonable period, QR may suspend the operation of the affected rollingstock and trains.
7. The third-party must ensure all loadings of rollingstock are secure.
8. QR may, acting reasonably, vary the agreed rollingstock interface standards at any time on safety grounds, after consultation with the third-party. Otherwise, QR may, acting reasonably, negotiate any other changes with the third-party. Where any changes in the standards necessitate modification of the third-party's rollingstock, the costs of such modifications are to be borne in the manner agreed by the parties or, failing agreement, as determined by an expert.
9. QR will not exercise its suspension power in relation to a third-party's rollingstock and trains in such a manner as to hinder or restrict access to the declared service in any way contrary to s104 and s125 of the QCA Act.
10. A third-party operator could reserve the right that if its rollingstock is suspended without reasonable justification, then QR would be

liable for the loss thereby caused.

6. Infrastructure Management

- QR is responsible for the management and control of the nominated network and in developing and maintaining its Safety Management System shall have regard to the Rollingstock Interface Standards.
- QR will carry out maintenance work on the nominated network to the standard required to maintain its Accreditation as a Railway Manager and consistent with its Safety Management System.
- QR may impose operational constraints (such as speed or load restrictions) for the protection of persons or property or to facilitate maintenance work or enhancements and has reasonable entitlements to take possession of the track for the purpose of maintenance work, emergency repairs and enhancements. Except for emergency possessions QR will comply with the specified notification procedures and, subject to compliance with those procedures, QR has no liability for delays or cancellations of Train Services caused by the imposition of operational constraints.

QCA's Position

FD, 284; DD, 376-7

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Infrastructure Management

- 1. QR is responsible for the management and control of the nominated network.**
- 2. QR will carry out maintenance work on the nominated network such that, subject to any agreed criteria, the infrastructure is consistent with the agreed rollingstock interface standards and the third-party can operate train services in accordance with its train service entitlements.**
- 3. QR may impose operational constraints - such as speed or load restrictions - for the protection of persons or property or to facilitate maintenance work or enhancements and has reasonable entitlements to take possession of the track for the purpose of maintenance work, emergency repairs and enhancements. In carrying out such work, QR will use its reasonable endeavours to minimise disruption to train services so that the third-party can operate train services in accordance with its train service entitlements.**
- 4. The agreement will contain principles for consultation with the third-party regarding maintenance that will impact on the third-party's schedule.**
- 5. The agreement will contain provisions requiring the parties to provide advice to each other in relation to factors that could affect the third-party's operation of train services or the integrity of the**

nominated network.

6. **The third-party may inspect the nominated network for the purposes of assessing the operational, environmental and safety risks with respect to the infrastructure, as well as the standard of the infrastructure comprising the nominated network including, but not limited to, fencing and at-grade crossing protection. QR will not be liable for claims in relation to, or arising out of, the standard of the infrastructure except where QR fails to maintain the infrastructure such that, subject to any agreed criteria, it is consistent with the agreed rollingstock interface standards and the third-party can operate train services in accordance with its train service entitlements.**
7. **The agreement will specify the reasonable terms and conditions on which the third-party will have access to the nominated network for the purpose of inspecting the standard of the infrastructure comprising the nominated network.**
8. **Once developed, Network Maintenance Principles should be incorporated by reference in the agreement.**

7. Incident Management

- The Third Party Operator is required to develop and comply with an Emergency Response Plan containing procedures for dealing with incidents such as derailments, breakdowns and accidents. The Plan must be consistent with QR's emergency procedures.
- The Third Party Operator must not cause any obstruction on the nominated network and must notify QR of any obstruction or breach of Safeworking Procedures of which it becomes aware or anything which may cause or contribute to an incident or obstruction.
- QR is responsible for the overall co-ordination and management of incident responses and, except for action required to avoid imminent risk of injury or damage, the Third Party Operator is not to take any action without the prior approval of QR.
- In the event of an incident the Third Party Operator is required to arrange recovery of Rollingstock and to co-operate and assist with the restoration of train movements, comply with the directions of QR and alter or divert Train Services as directed by QR.
- The Third Party Operator is to provide reasonable assistance to QR (including the provision of Rollingstock or equipment) to deal with circumstances which could delay train movements subject to the Third Party Operator being reimbursed its reasonable costs.
- The parties must use all reasonable endeavours to minimise damage arising from restoration of services or recovery of Rollingstock however QR is entitled to take any action it considers necessary to recommence services as soon as possible.
- Investigations into incidents are to be carried out in accordance with the process specified in the Agreement with the parties to co-operate in any investigation and the implementation of any recommendations.

QCA's Position**FD, 287; DD, 377-8**

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Incident Management

- 1. Prior to the commencement of train services the third-party is required to develop an emergency response plan containing procedures for dealing with incidents which must be compatible with QR's emergency procedures.**
- 2. In the event of an incident, QR is responsible for the overall coordination and management of incident responses and may, subject to using reasonable efforts to consult with the third-party, take any action it considers reasonably necessary to recommence services as soon as possible. The third-party is to cooperate and assist with the restoration of train movements in accordance with directions from train controllers seeking to coordinate the clearance of network blockages. Any third-party so directed should be adequately compensated for doing so and is entitled to expect that all rail operators are subject to the same obligation. QR has the right to pass through the cost of clearing the blockage to the party that has broken down.**
- 3. Investigations into incidents are to be commenced as soon as practicable after an incident and carried out in accordance with the process specified in the agreement. The parties must cooperate in any investigation and consult in good faith in relation to the implementation of any recommendations.**

8. Environmental Protection and Other Issues

- Prior to the commencement of Train Services the Third Party Operator is required, in collaboration with QR, to procure an Environmental Investigation to be conducted by a suitably qualified person reasonably acceptable to both parties to identify all risks of environmental harm arising out of the use of the nominated network. The Third Party Operator and QR will then develop and agree specific controls and measures to address the risks identified in the environmental investigation and incorporate them into the Environmental Risk Management Plan.
- The Third Party Operator is required to incorporate the Environmental Risk Management Plan so developed into its Environmental Management System and at all times ensure compliance with the Environmental Risk Management Plan and all environmental laws.
- If the Environmental Investigation, the Environmental Risk Management Plan or any independent audit identifies environmental factors preventing the provision of access as envisaged or indicate to the reasonable satisfaction of QR that it will be placed at an unacceptable risk of liability from possible environmental harm or of breaching environmental laws, QR may terminate the Agreement. Before QR may terminate the Agreement it must first have the material or report on which it has based its assessment of risk subjected to an independent review by an expert.

- If Train Services are to carry dangerous goods, the Third Party Operator is to comply with the Dangerous Goods Code (including obtaining the necessary authorisations and providing details to QR prior to the commencement of each Train Service) and must include procedures for the handling of any incident in its Emergency Response Plan.
- The Third Party Operator must comply with the Noise Guidelines specified in the Agreement and any other documents prepared by QR in accordance with the relevant Environmental Protection Policy. Where the Train Services of the Third Party Operator exceed permitted noise levels the Third Party Operator, at its cost, may be required to participate in noise abatement measures and further monitoring of noise levels.
- The Third Party Operator is responsible for taking measures to prevent contamination and to deal with any spillage or leakage which could result in contamination.
- The Third Party Operator is required to have an independent environmental compliance audit conducted at least annually by a suitably qualified person reasonably acceptable to QR and provide a copy of the audit report to QR.

QCA's Position**FD, 289; DD, 378**

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Environmental Protection and other Issues

1. **All environmental laws, regulations and relevant guidelines must be complied with.**
2. **Environmental management must be approached on a risk identification and risk management basis with respect to operations on the nominated network. Auditing requirements should be linked to the environmental risks posed by a third party's operations and be established in that party's Environmental Investigation and Risk Management Report (EIRMR), which should be amended as necessary from time to time to address ongoing risk and compliance issues.**
3. **The third party is required to inform QR of non-compliance with its EIRMR and provide details of how it intends to address the non-compliance. The third party is required to rectify the non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of QR and any action required by the EPA.**
4. **A third-party operator should comply with its obligations under the EPA Act, including any notices or directions it received from the EPA. Failure to comply with such an obligation and for that failure to cause or threaten serious environmental harm establishes grounds for a material event of default.**
5. **QR reserves the right to temporarily suspend the right of a third-party operator to operate on the relevant network section in the event that, in QR's reasonable opinion, the operator's train services cause or threaten material or serious environmental harm. QR will not exercise this suspension power in such a manner as to hinder or**

restrict access to the declared service in any way contrary to s104 or s125 of the QCA Act.

6. **A third-party operator could reserve the right that if its train services are suspended on environmental grounds without reasonable justification, then QR would be liable for the loss thereby caused.**

9. Accreditation

- Both parties are required to warrant that prior to the commencement of Train Services they are accredited under the Transport Infrastructure Act 1994 to the extent required to perform their obligations and exercise their rights under this Agreement. The parties must also notify each other of any conditions, variations, amendment, investigation, suspension or cancellation affecting their Accreditation relevant to operating the Train Services on the nominated network.

QCA's Position

No discussion

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Accreditation

- QR must have and maintain accreditation as a railway manager under the Transport Infrastructure Act 1994 to the extent required to perform its obligations under the agreement.**
- An operator accredited as a railway operator under the Transport Infrastructure Act 1994 must operate train services and the operator must maintain such accreditation to the extent required to perform its obligations under the agreement.**

10. Third Party Operator's Staff

- The Third Party Operator is responsible for the health and safety of its staff and their property.
- The Third Party Operator is required to demonstrate the competence of all of its staff involved in safety related work and to ensure that they hold and keep current all necessary qualifications and accreditations.
- The Third Party Operator is to ensure that all staff comply with QR train control directions, Safeworking Procedures and Safety Standards and QR may temporarily suspend the right of staff to operate on the nominated network in the event of breach.

QCA's Position

FD, 237-8; DD, 379

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Third-Party's Staff and Associated Train Services

1. **The third-party is responsible for demonstrating to the Rail Safety Accreditation Unit through the interface risk management process, the competence of its staff performing safety-related work.**
2. **QR reserves the right to temporarily suspend the right of the third-party's train service to operate on the nominated network in the event of breach or likely breach of any laws relating to rail safety, QR train control directions, safeworking procedures or safety standards.**
3. **QR will not exercise its suspension power in relation to a third-party's train service in such a manner as to hinder or restrict access to the declared service in any way contrary to s104 and s125 of the QCA Act.**
4. **A third-party operator could reserve the right that if its train service is suspended without reasonable justification, then QR would be liable for the loss thereby caused.**

11. Risk Management

- Prior to the commencement of Train Services the Third Party Operator is required, jointly with QR, to procure a Safety Risk Assessment to be conducted by an appropriately competent person reasonably acceptable to both parties to address the risks (other than environmental risks) of operations over the nominated network. The Third Party Operator and QR will then develop and agree on a Safety Risk Management Plan to be included in the Third Party Operator's Safety Management System.
- The Third Party Operator is required to have an audit undertaken and produce a certificate of compliance with the Safety Risk Management Plan at least annually. All audits are to be undertaken by an independent appropriately qualified person reasonably acceptable to QR or may be undertaken as part of an audit required by the Safety Regulator.

QCA's Position**FD, 244-5; DD, 318-21**

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Safety Risk Management

Safety risk management must be addressed by risk identification through an interface risk management process and the formulation of an interface risk management plan. The parties will be required to comply with the interface risk management plan.

12. Reporting and Inspection Rights

- Upon reasonable notice QR is entitled to inspect and audit those aspects of the Third Party Operator's operation, procedures and documentation relevant to the Third Party Operator's compliance with this Agreement.
- QR is also entitled to inspect any trains or Rollingstock to review compliance with the Rollingstock specification and the Rollingstock Interface Standards and the Agreement without liability for delays to Train Services caused by such inspection provided that QR uses its reasonable efforts to minimise any disruptions.

QCA's Position

FD, 290; DD, 379-80

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Inspection and Audit Rights

- 1. Rights of inspection and audit in relation to the third-party's compliance with the agreement and inspection of trains and rollingstock shall be included in the agreement.**
- 2. The agreement will specify the terms and conditions on which QR can carry out such inspections and audits.**
- 3. QR will, in carrying out any inspection or audit, give the third-party reasonable notice and use reasonable endeavours to minimise disruption to the third-party's train services.**

13. Insurance by Third Party Operator

- Prior to the commencement of Train Services the Third Party Operator must effect the required insurance policies noting the interests of the Third Party Operator, any contractor and QR and provide evidence of such insurance to QR upon commencement and renewal. The terms and conditions of the policies must be approved by QR.

QCA's Position

No discussion

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Insurance

The agreement will provide for insurances to be effected by the parties to appropriately provide for the relevant insurance risks.

14. Indemnities and Liabilities

- The Third Party Operator is required to indemnify QR in respect of:

- claims arising from non-compliance with environmental obligations although indemnity reduced proportionately by extent of QR’s default or negligence (if any);
 - claims in respect of damage to property or injury to or death of any person to the extent that such claims arise from the deliberate or negligent act or omission of, or default by, the Third Party Operator; and
 - claims in respect of damage to property or injury to any person carried on Train Services.
- The Third Party Operator is to release QR from all claims for damage to property or injury to persons associated with the use of the nominated network except where they arise from the deliberate or negligent act or omission of, or default by QR.
 - Except as provided above QR is required to indemnify the Third Party Operator in respect of claims brought against the Third Party Operator in respect of any damage to property or personal injury or death to the extent that such claims arise from the deliberate or negligent act or omission of QR.
 - QR is to release the Third Party Operator from all claims for damage to property or injury to persons associated with the use of the nominated network except where they arise from the deliberate or negligent act or omission of, or default by the Third Party Operator.

QCA’s Position**FD, 291; DD, 380**

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Indemnities and liabilities

1. **Each party is liable for, and is required to release and indemnify each other for, all claims in respect of personal injury, death or property damage caused or contributed to - to the extent of the contribution - by the wilful default or negligent act or omission of that party or its staff.**
2. **The third-party is solely liable for, and is required to release and indemnify QR for, any damage to property or personal injury or death of any person being transported on train services, except to the extent that an act or omission by QR, its servants or agents, caused or contributed to the damage or harm.**

15. Limitation of Liability

- The liabilities of the parties for default are limited to the amount specified in the Agreement.
- Neither party has any liability for consequential loss or damage or loss of profits.
- Claims by either party must be lodged within six months of the occurrence of the event or circumstance giving rise to the claim.

QCA's Position

FD, 292-3; DD, 380

The QCA accepts this Schedule E principle as it is currently drafted provided the period for lodgement of claims is extended from six to twelve months.

16. Material Change

- QR will give the Third Party Operator notice of the occurrence of a material change which may give rise to an additional cost or variation to it of performing its obligations under the Agreement and the parties will enter into good faith negotiations to determine if any amendments to the Agreement are necessary as a consequence.
- Access charges are to be adjusted to reflect the impact of any material change which includes, but is not limited to, changes in taxes, laws and QR's Government Infrastructure Payments.

QCA's Position

FD, 293; DD, 380-81

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Material Change

1. **Access charges will be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost to QR of performing its obligations under the agreement.**
2. **A material change shall be limited to changes in taxes, laws or funding from QR's government infrastructure payments. The effect of material changes should be assessed on a case-by-case basis and in consultation with the third-party. There should be no assumption of automatic flow-on effects of material changes.**
3. **Any dispute regarding the impact on access charges as a result of a material change will be determined by an independent expert.**

17. Disputes

- Any dispute between the parties is to be firstly referred to the respective Chief Executives for resolution. If the dispute is not resolved then the parties may agree to refer the dispute for resolution by an expert or arbitration. If there is no agreement to resolve the dispute in this manner then the dispute is to be determined by a court.

QCA's Position

FD, 123; DD, 370-1

The QCA accepts this Schedule E principle.

18. Events of Default

- Events of Default and Material Events of Default are as defined in the Agreement.
- An Event of Default or Material Event of Default must be remedied within the time specified in a Notice of Default otherwise access rights can be suspended and/or a court order sought however only a Material Event of Default can result in termination of the Agreement.

QCA's Position

FD, 233-4, 254-62; DD, 381

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Default, Suspension and Termination

The agreement will specify reasonable events of default and mutual rights of suspension and termination having regard to the commercial interests of both parties.

19. Suspension

- QR may immediately suspend Access Rights where the Third Party Operator fails to comply with its obligations under the Agreement and such failure is likely to cause disruption to Train movements or create risks to the safety of any person or property. QR may also suspend Access Rights for default in payment of money, maintenance of security or maintenance of insurance.
- QR may suspend the authorisation of any Rollingstock or Rollingstock Configurations where the Rollingstock or Rollingstock Configurations do not comply with the requirements of the Agreement until the non-compliance is rectified.
- Train Services will be suspended if the Third Party Operator's Accreditation is suspended or cancelled however QR may approve the operation of Train Services by another Accredited operator. The original Third Party Operator remains liable to pay the Access Charges during any period of suspension.
- If QR's Accreditation is suspended or cancelled payment of Access Charges is suspended during the period of suspension or cancellation provided such suspension or cancellation is not contributed to by the Third Party Operator.

QCA's Position**DD, 381**

Refer to QCA position regarding Default Suspension and Termination above.

20. Force Majeure

- The obligations of either party (other than an obligation to pay monies) will be suspended where by reason of Force Majeure that party is delayed in or prevented from carrying out its obligations under the Agreement.
- In the event that infrastructure on certain specified corridors of the nominated network is damaged or destroyed by an event of Force Majeure and in QR's reasonable opinion the cost of repairing the damage is not economic, QR may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.
- In the event of a Force Majeure which prevents performance for a period of six months the other non-affected party may terminate the Agreement.

QCA's Position**FD, 295**

The QCA accepts this Schedule E principle.

21. Termination

- The parties will have the right to terminate the Agreement for specified Material Events of Default.
- Upon termination of the Agreement for a Material Event of Default the parties are released from further obligations or liabilities under the Agreement except in respect of any antecedent breaches.

QCA's Position**DD, 381**

Refer to QCA position regarding Default Suspension and Termination above.

22. General

- The Agreement contains standard provisions in relation to jurisdiction, variation, waiver etc.
- The Third Party Operator may assign the whole of its respective rights and obligations under the Agreement to a related body corporate Accredited to operate Train Services and otherwise capable of performing its obligations under the Agreement or to a non-related body corporate with the prior written consent of QR (such consent not to be unreasonably withheld). A change in control of a Third Party Operator not a publicly listed corporation will be deemed to be an assignment of the Agreement.

- The respective Chief Executive Officers are to consult on all media releases and public statements on any issues which are in the parties' common interests provided that neither party is to disclose Confidential Information without the other party's approval.
- The parties are obliged to keep confidential the terms of the Agreement and any information disclosed to the other on a confidential basis except where disclosure is required by law. Confidential Information can only be used by the Third Party Operator for the purpose of operation of Train Services pursuant to the Agreement.
- All notices and communications must be in writing and effective on receipt.
- The Agreement relates only to the use of QR infrastructure and it is the responsibility of the Third Party Operator to obtain the necessary consent from the owners of any land which is not controlled by QR.
- The Third Party Operator is to ensure that QR is entitled to enter upon any of its land, premises or Rollingstock for the purpose of exercising any rights under the Agreement.

QCA's Position**FD, 296**

The QCA refuses to accept this Schedule E principle and considers it appropriate that the Draft Undertaking be amended such that:

Assignment

1. **The third-party may assign the whole of its rights and obligations under the Agreement to a related body corporate, provided that the assignor remains liable for the performance of obligations under the agreement or to a non-related body corporate, with the prior written consent of QR, such consent not to be unreasonably withheld.**
2. **A change in control of a third-party not a publicly listed corporation will be deemed to be an assignment of the agreement.**

QR's Undertaking**DD, 381**

1. **QR will comply with all applicable laws and the terms of QR's Access Undertaking in effect from time-to-time.**
2. **The agreement will contain provisions which require information provided to Network Access by third-party operators to only be used for the purposes of the agreement and to be kept confidential, in that it not be provided to any other person - including other employees or agents of QR - without the consent of the third-party operator.**
3. **The obligation to keep such information confidential will continue to bind the parties for a reasonable period of time following the expiry of the agreement.**

***SCHEDULE F**

***Train Service Groups**

1. The **Central Queensland Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising rail corridors:
 - from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine and Oaky Creek mine;
 - from the port of Gladstone to Oaky Creek mine;
 - from the port of Gladstone to Moura mine;
 - from the port of Abbot Point to Newlands mine; and
 - all branch lines directly connecting coal mine loading facilities to the abovementioned corridors.
2. The **Goonyella Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising rail corridors:
 - from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine and Oaky Creek mine; and
 - all branch lines directly connecting coal mine loading facilities to the abovementioned corridors with the exception of any branch lines south of Oaky Creek.
3. The **Moura Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising the rail corridor:
 - from the port of Gladstone to Moura mine; and
 - all branch lines directly connecting coal mine loading facilities to the abovementioned corridor.
4. The **Blackwater Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising the rail corridor:
 - from the port of Gladstone to Oaky Creek mine; and
 - all branch lines directly connecting coal mine loading facilities to the abovementioned corridor with the exception of any branch lines north of Oaky Creek.

5. The **Newlands Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising the rail corridor:
- from the port of Abbot Point to Newlands mine; and
 - all branch lines directly connecting coal mine loading facilities to the abovementioned corridor.
6. The **Mount Isa Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising the rail corridor:
- from Townsville to Mount Isa; and
 - all branch lines directly connecting mine loading/unloading facilities to the abovementioned corridor.

QCA's position

FD, 307-14, 329-31; DD (Vol. 3), 100-5, 111-32, 201-30

The QCA refuses to accept Schedule F of the Draft Undertaking because it is inconsistent with the QCA's position in relation to sub-paras 5.3.1(e) and(g).

***SCHEDULE G**

***Application of Reference Tariffs**

Part A - Coal Carrying Services

1. Reference Train Services

1.1 Commodity type

Reference Train Services identified in accordance with this Part A will be defined as Train Services operated for the purpose of transporting coal. Any reference to Train Services in the remainder of this Part A of this Schedule will, unless otherwise specified, be taken to be a reference to a Train Service operated for the purpose of transporting coal.

1.2 Geographical Scope

Each Reference Train Service will be defined with respect to operation between any loading point within the relevant geographical area nominated as origin and any unloading point in the relevant geographical area nominated as destination. Reference Train Services will be developed as follows:

(k) Newlands Reference Train Service:

- Origin: geographical area within 2 km of the Rail Infrastructure corridor that exists between the loading points at Newlands and McNaughton;
- Destination: geographical area within 2 km of Abbot Point Coal Terminal;

(l) Moura Reference Train Service:

- Origin: geographical area within 2 km of the Rail Infrastructure corridor that exists between the loading points at Boundary Hill, Dunn Creek and Moura Mine;
- Destination: geographical area within 2 km of the Rail Infrastructure corridor that exists between the unloading points at Queensland Alumina Limited, Clinton, Barney Point, Gladstone Power Station, and Queensland Cement Limited;

(m) West Moreton Reference Train Service:

- Origin: geographical area within 2 km of the Rail Infrastructure that exists between the loading points at Ebenezer and Box Flat;
- Destination: geographical area within 2 km of Fisherman Islands;

(n) Blackwater Reference Train Service:

- Origin: geographical area within 2 km of the Rail Infrastructure that exists between the loading points at Boonal, Koorilgah, Curragh, Boorgoon, Kinrola, Ensham, Gordonstone, and Gregory;
- Destination: geographical area within 2 km of the Rail Infrastructure corridor that exists between the unloading points at Queensland Alumina Limited, Clinton, Barney Point, the Gladstone Power Station, and Queensland Cement Limited;

(o) Goonyella South Reference Train Service:

- Origin: geographical area within 2 km of the Rail Infrastructure corridor that exists between the loading points at Coppabella, Peak Downs, Saraji, Norwich Park, German Creek, Oaky Creek, and Gregory;
- Destination: geographical area within 2 km of Dalrymple Bay coal terminal and Hay Point;

(p) Goonyella North Reference Train Service:

- Origin: geographical area within 2 km of the Rail Infrastructure corridor that exists between the loading points at Burton, Moranbah North, Goonyella, Riverside, and North Goonyella;
- Destination: geographical area within 2 km of Dalrymple Bay coal terminal and Hay Point; and

(q) Goonyella West Reference Train Service:

- Origin: geographical area within 2 km of Blair Athol;
- Destination: geographical area within 2 km of Dalrymple Bay coal terminal and Hay Point.

1.3 Train Service Characteristics

Each Reference Train Service nominated in Clause 1.2 will also be defined in accordance with other characteristics as follows:

(r) Train Technical Characteristics including:

- axle load/configuration;
- train length;
- gross tonnage (loaded and unloaded);
- traction type;
- terminal configuration; and

- compliance with other existing Rollingstock Interface Standards applicable for the relevant Rail Infrastructure.
- (s) Train Operational Characteristics including:
 - compliance with nominated sectional running times;
 - availability for operation (e.g. 24 hours/day, 7 days/week);
 - loading/unloading time on network;
 - capacity entitlement defined according to specified regularity on weekly basis, specified intervals between train cycles and specified transit times;
 - compliance with QR's coordinated corridor scheduling process; and
 - variability of operation.
- (t) Contract Terms and Conditions including:
 - consistency with the principles incorporated in the summary of the standard Access Agreement at Schedule E;
 - term; and
 - incorporation of an Access Charge review provision in the Access Agreement which relates movement in the Access Charge to movements in the Reference Tariff.

2. *Reference Tariff applicable to Reference Train Services*

Reference Tariffs will be defined for each Reference Train Service nominated in Clause 1.2 of:

- (u) amount of Reference Tariff identified as \$/,000 gtk;
- (v) proportion of Reference Tariff payable as a fixed charge; and
- (w) escalation of Reference Tariff.

3. *Other Conditions applicable to Reference Tariffs*

The validity of the Reference Tariff for each Reference Train Service nominated in Clause 1.2 will be conditional upon:

- (x) Traffic Volume Range

The Reference Tariff for each Reference Train Service nominated in Clause 1.2 will be valid within a nominated annual traffic volume range. Traffic volume will be measured as gross tonne kilometres resulting from Train Services operating on the Track between all loading points within the relevant loading geographical area and all unloading points within the nominated unloading geographical area (including from Train Services that are not subject to the relevant Reference Tariff).

4. Development of Access Charges for actual Train Services

4.1 Where there is an applicable Reference Tariff

The Access Charge for a Train Service that is consistent with the specified commodity type and geographic area nominated in a Reference Train Service will only differ from the relevant Reference Tariff where the Train Service characteristics differ from the Reference Train Service characteristics. In such circumstances, QR will determine the Access Charge by assessing variations to the Reference Tariff to ensure that the change in the revenue that would be received by QR reasonably reflects the change in costs (including the impact of changes in risks) to QR arising from the operation of the Train Service compared to the operation of it if it matched the Reference Train Service.

In doing so, QR will endeavour to ensure that variations in Access Charges from the Reference Tariff to reflect variations in Train Service characteristics from the Reference Train Service characteristics will be assessed consistently for all Train Services within the same specified commodity type and geographic area of the Reference Train Service.

4.2 Where there is no applicable Reference Tariff

(y) Development of Applicable Reference Tariff

Where a proposed Train Service is not consistent with the geographic scope of an existing Reference Train Service as identified in Clause 1.2, QR may, depending on the significance of the traffic flows arising from the proposed Train Service:

- develop an additional Reference Train Service to those identified in Clause 1.2 which identifies a geographic scope that incorporates the loading/unloading points for the proposed Train Service, and develop an associated Reference Tariff for this additional Reference Train Service;
- extend the geographic scope of an existing Reference Train Service identified in Clause 1.2 to incorporate the loading/unloading points for the proposed Train Service; or
- not develop a Reference Train Service incorporating the loading/unloading points for the proposed Train Service due to the relative insignificance of the resultant traffic flows.

QR will not extend the geographic scope of an existing Reference Train Service to incorporate an additional loading/unloading point, if the inclusion of this additional loading/unloading point would result in an increase in the applicable Reference Tariff.

Where it is proposed to extend the geographic scope of an existing Reference Train Service, or develop an additional Reference Train Service, QR will incorporate in its Indicative Access Proposal for the proposed Train Service its estimate of the expected Access Charge to apply. QR will also submit to the QCA for its approval the Reference Tariff to apply to the existing Reference Train Service (as geographically extended) or the additional Reference Tariff (as applicable). When the Reference Tariff for the Reference Train Service applicable to the proposed Train Service is approved by the QCA, the quoted Access Charge will be replaced by the Reference Tariff, adjusted as necessary for changes in the actual Train Service characteristics from the specified Reference Train Service characteristics in the manner outlined in Clause 4.1.

(z) Amendment of Schedule G

Where an applicable Reference Tariff is to be developed in accordance with Paragraph (a) of this Clause, QR will submit to the QCA a Draft Amending Undertaking amending this Schedule G to reflect the amendment to the existing Reference Train Service or the identification of a new Reference Train Service, whichever is applicable.

5. Review of Reference Tariffs

For the purpose of Reference Tariffs subject to this schedule, a Material Change Event will include:

- (aa) actual traffic volume falling outside the volume range nominated for the relevant Reference Train Service pursuant to Paragraph 3(a) of this Schedule.

QCA's position

FD, 329-31, DD (Vol. 3), 71-87

The QCA refuses to accept Schedule G of the Draft Undertaking because it is inconsistent with the QCA's position in relation to paragraph 5.3.1(e).

***SCHEDULE H**

***Operating Plan**

1. Area of Operation

- Origin
- Destination
- Route Description
- Entry and exit points onto Network

2. Business Plan

- Tonnage profile
- Passenger loading and unloading profile
- Anticipated project life
- Seasonality of haulage

3. Operation

- Type of service (passenger, freight)
- Commodity
- Train Consist Configuration
- Load and Length of train service
- Operational constraints
- Dangerous goods
- Overload management system
- Timing of scheduled servicing activities

4. Service Levels

- Frequency requirements, including specific daily and weekly requirements
- Maximum train services per year
- Dwell times at loading facility
- Dwell times at unloading facility

- Enroute operational requirements
- Rollingstock operational speed
- Indicative timetable requirements
- any connecting services
- any critical timings at specified locations

5. Train Service Planning/Ordering

- Train service ordering preference
- Train service canceling preference

6. Train Information

- Type
- Class and number of locomotives per train
- Gross tonnage of train
- Tare of train
- Method of operation
- Traction type
- Fuel range
- Safety systems
- Communication system
- Train length
- Achievable operating speeds

7. Crewing Plan

- Train service crew requirements
- Location of crew depots
- Crew change points
- Dwell times at change points

8. Recovery Methods

- Recovery of marked off rollingstock at loading/unloading locations/enroute
- Recovery of derailments
- Recovery of failed locomotives

QCA's position**No discussion****The QCA accepts Schedule H of the Draft Undertaking.**

***SCHEDULE I**

***Environmental Investigation**

This list is to be taken as the minimum requirements to be addressed and the Environmental Investigation and the Environmental Management System should not be restricted to the elements included in this list.

1. Water Quality Management

The Third Party Operator must consider the impact on storm water systems and natural waterways. In doing so, all relevant water quality standards and regulations must be met.

2. Air Pollution Management

The Third Party Operator must consider the impact on air quality. In doing so, all relevant air quality standards and regulations must be met.

3. Contaminated Land Management

The Third Party Operator must consider the impact of the operation on land contamination. In doing so, all practicable control measures to prevent the contamination of land must be undertaken.

4. Nature Conservation

The Third Party Operator must consider the impact of the operation on the flora and fauna.

5. Management of Hazardous Substances and Dangerous Goods

The Third Party Operator must consider the environmental impacts associated with the management of hazardous substances and dangerous goods by the Third Party Operator. In particular, the Third Party Operator must ensure that QR's requirements for the management of hazardous substances and dangerous goods are complied with.

6. Waste Management

The Third Party Operator must consider the impact of any waste produced by the operation. In doing so, all relevant government and local authority requirements must be met.

7. Environmental Noise Management

The Third Party Operator must consider the impact of any noise produced by the operation. In particular, the Third Party Operator must meet the requirements of the Rail Noise Plan referred to in the Environmental Protection Policy (Noise) and, where appropriate, must comply with QR's requirements for meeting the Rail Noise Plan referred to above.

8. Environmental Monitoring

The Third Party Operator must address the requirements of environmental monitoring to ensure that the environmental standards are met.

9. Education, Awareness and Training

The Third Party Operator must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Management System.

<i>QCA's position</i>	No discussion
The QCA accepts Schedule I of the Draft Undertaking.	