



Our Ref: Paul Bilyk  
Direct Line: 3222 0506  
File Ref: 312347

30 June 2010

Mr Michael Carter  
Executive General Manager  
QR Network  
GPO Box 1429  
Brisbane Qld 4001

Dear Mr Carter

**Final Approval**  
**QR Network's 2008 Extension DAAU (Pricing)**

The Authority has approved QR Network's proposal to amend its 2008 approved access undertaking. The amendments (the June 2010 extension DAAU) provide for:

- (a) the 2008 undertaking to apply until 30 June 2011 (or, in respect of the central Queensland coal network, until the Authority approves a subsequent access undertaking);
- (b) arrangements over the extended term of the 2008 undertaking relating to the proposed division of ownership and responsibility of the network between QR Network Pty Ltd and Queensland Rail Ltd (formerly known as QR Passenger Pty Ltd); and
- (c) new reference tariffs for coal-carrying train services in the central Queensland coal region and the Western system, to apply from 1 July 2009.

*Background*

QR Network's current undertaking (the 2008 undertaking) is due to expire on 30 June 2010.

In April 2010, QR Network submitted to the Authority a draft access undertaking (the April 2010 DAAU) to replace the 2008 undertaking, but the Authority has not yet approved that DAAU.

On 2 June 2010, the Authority released a draft decision on the pricing aspects of QR Network's April 2010 DAAU. In particular, the Authority rejected QR Network's proposed reference tariffs and price-setting rules and identified ways in which they should be amended to resolve the issues identified by stakeholders and the Authority.

In response, on 11 June 2010, QR Network submitted the June 2010 extension DAAU to extend the current 2008 undertaking and to incorporate the Authority's proposed amendments from its June 2010 draft decision on reference tariffs and price setting rules. QR Network also included transitional arrangements in relation to the proposed restructure of ownership and responsibility for the network due to occur in the near future and minor amendments to give effect to the new tariffs and price-setting arrangements. For a fuller explanation of these non-pricing matters, see the 'Summary

of the DAAU Amendments' which the Authority published on 11 June 2010 when it commenced its investigation on this matter.

The Authority published QR Network's June 2010 extension DAAU on its website and sought comments from stakeholders on it.

The Authority received comments from Asciano and the Queensland Resources Council (QRC) by the due date of 21 June 2010. The Authority's consideration of matters raised by stakeholders is set out in Attachment 1 of this decision.

### *Final Approval*

In making its decision to approve QR Network's June 2010 extension DAAU, the Authority, as required by the provisions of the *Queensland Competition Authority Act 1997* (the QCA Act), considered QR Network's proposal and supporting information and submissions from stakeholders.

In considering QR Network's proposed reference tariffs and price-setting rules, the Authority also had regard to the matters it considered in making its June 2010 draft decision on the pricing aspects of QR Network's April 2010 DAU.

On the basis of its assessment, the Authority:

- (a) is satisfied that the QR Network's June 2010 extension DAAU is consistent with the Authority's June 2010 draft decision, including the reference tariffs and system allowable revenues; and
- (b) considers that no further issues have been raised which have convinced the Authority to move from that position.

With regard to the non-pricing related matters in the June 2010 extension DAAU, the Authority accepts that the amendments proposed by QR Network are necessary and required.

Accordingly, the Authority's reasons for approving the June 2010 extension DAAU are that the pricing changes are consistent with what the Authority regarded as appropriate in its June 2010 draft decision and the non-pricing changes are necessary to give effect to the new termination date, the new reference tariffs and to the proposed restructuring of the network's ownership.

The Authority notes that the QRC has again raised concerns regarding investment incentives and an obligation to maintain the network. The Authority has not sought to address these matters in this decision – and instead considers that these are better resolved in the replacement undertaking to apply to the central Queensland coal network, as contemplated by the June 2010 extension DAAU. The Authority reserves the right to require in its decision on those non-pricing aspects that QR Network make consequential amendments to the schedule F clauses the Authority has approved in this decision on QR Network's June 2010 extension DAAU.

Yours sincerely



EJ Hall  
Chief Executive

## ATTACHMENT 1: RESPONSE TO STAKEHOLDERS' SUBMISSIONS

Both stakeholders raised matters they had already covered in previous submissions, including requests to:

- (a) implement a more robust framework to ensure the network is maintained;
- (b) not implement new western system tariffs at this time; and
- (c) not back-date tariffs to 1 July 2009.

As the Authority indicated in its June 2010 draft decision, it will be seeking to address stakeholders' concerns on obligations to maintain the network as part of its decision on the April 2010 DAU. Also, the comments relating to a delay in implementing the western system tariffs and to not back-dating the coal tariffs were substantially the same as those considered as part of the Authority's June 2010 draft decision on pricing matters. The Authority, therefore, does not propose to address these matters further in this decision.

Nevertheless, Asciano and the QRC did raise some new issues, which are discussed below.

Asciano said it was concerned that the June 2010 extension DAAU included a new clause specifying that the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 (Qld)* (the IIARD Act) will take precedence over the undertaking where there is a conflict (clause 2.1(i)).

The IIARD Act provides that a transfer notice issued under the IIARD Act would take effect despite any other law or instrument, which includes an access undertaking. As a result, clause 2.1(i) is simply a clarifying clause and its removal or amendment would have no effect as the IIARD Act would take precedence to the extent that there is any conflict between the two. Therefore QR Network's proposed clause 2.1(i) is reasonable.

Both Asciano and the QRC were concerned about a clause proposed by QR Network that allows confidential information to be disclosed between QR Passenger and QR Network, but only for the purpose of coordinating the negotiation or provision of access (clause 3.3(d)(ii)). The QRC said it wanted the clause to be amended to provide for a confidentiality deed that would govern the treatment of the shared information, and for the Authority to be informed what information had been shared.

The Authority considers that some confidential information will need to be exchanged between QR Network and QR Passenger, once they are separated, for them to go about their daily business of providing below-rail services. The Authority finds that the clause proposed by QR Network is reasonable, in that it restricts the exchange of information to the information necessary for that function.

However, it also accepts that this clause does not go far enough to limit what the receiving railway manager does with the information. To prevent the abuse of the confidential information, QR Network, Queensland Rail Ltd and the Authority have signed a confidentiality deed similar in form to Schedule B of the 2008 undertaking. The Authority believes that this satisfies the concerns raised by stakeholders.

The QRC was also concerned about a new clause that allows a mine with more than one operator to take into account the total number of train services run by all operators when assessing whether that mine has met its take-or-pay obligations, even if one or more operators has under-railed (clause 2.2.5 of schedule F, part B).

The QRC accepted that the intent of the clause was sensible, but said the clause was drafted in such a way that it would only apply to access agreements from the new undertaking period beginning 1 July 2010 (UT3). The QRC said the same rights to cap take-or-pay obligations from a single mine with multiple operators should also apply to access agreements signed during the term of the 2006 and 2008 undertakings.

QR Network has confirmed to the Authority that it interprets clause 2.2.5 of schedule F, Part B as applying to all generations of access agreement, and that it intends to apply the capping of take-or-pay for a single mine on that basis. QR Network said the clause provided that 'Train Services in excess of the Train Service Entitlement will be recognised as the performance of a Train Service Entitlement under *any other* individual Access Agreement for that same origin to destination'.

The Authority agrees with QR Network's interpretation of clause 2.2.5. The Authority therefore considers QR Network's proposal is reasonable, as it is consistent with the outcome requested by the QRC, and with the principle approved by the Authority in its June 2010 draft decision.

The QRC has again objected to the proposed treatment of the AT<sub>3</sub> and AT<sub>4</sub> allocative tariff components for cross-system tariffs.

In previous submissions to the Authority (in November 2008 and May 2010), the QRC argued against the proposal that access holders that operate train services across two systems should pay the higher of the AT<sub>3</sub> and AT<sub>4</sub> tariffs for the two systems. The QRC's preferred approach has been for the tariffs to be levied on the basis of the distance travelled in each of the systems.

The Authority formed a view in its December 2009 draft decision that the use of the higher tariffs was reasonable, as it provided appropriate pricing signals for the use of capacity constrained systems. The Authority did not alter this view in its June 2010 draft decision as no new arguments had been presented.

The QRC has now raised a concern that the treatment of AT<sub>3</sub> and AT<sub>4</sub> is inconsistent with QR Network's proposal that the access holder will pay each system's AT<sub>5</sub> electric infrastructure tariff for the distance its cross-system service travels through that system.

The Authority accepts that there is an inconsistency in the treatment of the AT<sub>3</sub> and AT<sub>4</sub> and the treatment of the AT<sub>5</sub> tariff. However, the Authority does not believe that this inconsistency is so material as to reject the June 2010 extension DAAU. The Authority will consider this matter again as part of its consideration of the April 2010 DAU.

The QRC also said the Authority should review whether its proposed specification of a 'single origin-destination pair' in its revenue cap adjustments was consistent with the access agreements. It said that, if the access agreement did not specify the number of paths that applied to that origin-destination pair, the proposed drafting may not achieve what the Authority intended in its June 2010 draft decision.

The Authority has reviewed the access agreements and notes that the current agreements are based on paths for each origin-destination pair. The Authority does not believe that the drafting of the revenue cap breach arrangements on the basis of origin-destination pairs is deficient.