

File Ref: 826556

4 June 2015

Ms Helen Gluer
Chief Executive Officer
Queensland Rail Ltd
GPO Box 1429
Brisbane QLD 4001

Dear Ms Gluer

Draft decision: Queensland Rail's draft amending access undertaking – extension of termination date

On 4 June 2015, the Queensland Competition Authority (QCA) made a draft decision to refuse to approve Queensland Rail's draft amending access undertaking to extend the term of the 2008 access undertaking (the April 2015 Extension DAAU).

Context

Queensland Rail's 2008 access undertaking is due to expire on 30 June 2015.

On 9 April 2015, the QCA received from Queensland Rail, under section 142 of the *Queensland Competition Authority Act 1997* (QCA Act), a DAAU to extend its 2008 undertaking's termination date to the earlier of (i) 30 June 2016 and (ii) the date on which we approve a replacement access undertaking.

Stakeholder consultation

On 10 April 2015, we published the April 2015 extension DAAU on our website and invited stakeholders to comment.

The two stakeholders that commented on the DAAU had diverging views:

- Asciano supported the extension to maintain ongoing regulatory coverage of Queensland Rail's network and provide regulatory certainty for rail freight tasks which utilised that network.
- However, New Hope said that its preference was that the extension DAAU be approved if doing so did not prejudice the position of any party on the issue of applying some form of true-up in regard to tariffs paid from 1 July 2013 onwards; otherwise, the QCA should prepare a discussion paper and seek further submissions. New Hope considered that some form of true-up should apply, either in the form of an adjustment charge as originally indicated by Queensland Rail or by "having regard to" over-recovery of revenue in the current period when setting future reference tariffs. New Hope stated that it supported previous extensions on the basis that Queensland Rail's covering letters to previous extensions explained that the tariffs which would be applied for the extension period were 'transitional' and that 'adjustment charge provisions in AU1

[replacement undertaking] will allow the reference tariff to be backdated to 1 July 2013 upon the approval of AU1'.

The QCA's approach

In considering the April 2015 extension DAAU, we had regard to the basis on which we approved previous extensions of Queensland Rail's 2008 undertaking.

Queensland Rail previously sought seven extensions of its 2008 access undertaking. Between 30 March 2012 and 12 December 2014, stakeholders and the QCA were able to rely on a proposal by Queensland Rail in its voluntary draft access undertakings (DAUs) to give effect to new reference tariffs from 1 July 2013 by applying adjustment charge provisions to recoup or refund any variations between transitional and new tariffs. The six extension requests from June 2012 to November 2014 were submitted and approved while this adjustment proposal was in place. Queensland Rail's letters accompanying its extension DAAUs of May 2013, November 2013 and May 2014 also stated its intention to give effect to the new tariff from 1 July 2013 through adjustment charge provisions in its replacement DAU (**Attachment 1**).

Stakeholders did not object to the previous extension requests.

The QCA considered Queensland Rail's previous extension requests and stakeholder submissions in this context and approved the previous extensions.

Unlike previous extensions, the April 2015 extension DAAU is not accompanied by a commitment from Queensland Rail to give effect to the new reference tariff from 1 July 2013 as:

- Queensland Rail in December 2014 withdrew its June 2013 voluntary DAU that contained provisions to give effect to new tariff from 1 July 2013.
- Queensland Rail's cover letter accompanying the April 2015 extension DAAU did not state its intention to apply tariff from 1 July 2013.
- The DAU Queensland Rail submitted on 5 May 2015 in response to the section 133 initial undertaking notice we issued, proposes to give effect to new reference tariff from the date we approve that DAU.

The QCA has reviewed stakeholder submissions in light of the above matters.

The QCA had regard to Asciano's concerns about regulatory coverage, but notes that in the absence of an approved undertaking, stakeholders will continue to have the protections of the QCA Act, including the provisions in Division 4 that facilitate commercial negotiations and the provisions in Division 5 that provide for arbitration by the QCA if parties fail to reach an agreement. The QCA also had regard to New Hope's concerns and the submissions made in respect of the inclusion of an adjustment charge. Given timing considerations, the QCA has not released a discussion paper on the lack of an adjustment charge mechanism in the extension DAAU. However, the QCA notes that its staff have released a related issues paper as part of the QCA seeking submissions on the 2015 DAU.

Our draft decision

The QCA has considered Queensland Rail's extension DAAU and stakeholder comments as part of considering its obligations under the s. 138(2) of QCA Act to approve or refuse to approve the April 2015 extension DAAU.

The QCA's draft position is to refuse to approve the DAAU. This is because Queensland Rail's April 2015 extension DAAU is not accompanied by a commitment from Queensland Rail to give effect to the new reference

tariff from 1 July 2013. This change in Queensland Rail's position creates uncertainty about the application of an adjustment charge to give effect to tariffs from 1 July 2013. The DAAU also creates uncertainty whether the tariff for the proposed extension period is consistent with the requirements of section 138(2).

The QCA's draft position is that these uncertainties—and the negative effect such uncertainties have on the public interest and the promotion of the economically efficient operation of, use of and investment in, significant infrastructure—outweigh any regulatory certainty that may otherwise arise from approving the April 2015 extension DAAU and providing for an approved undertaking to continue beyond 30 June 2015.

The QCA's draft position is that it would be appropriate to amend the extension DAAU by including the same commitment as has previously been given by Queensland Rail, to give effect to new reference tariffs from 1 July 2013 by applying adjustment charge provisions to recoup or refund any variations between transitional and new tariffs.

Way forward

We have published this letter on our website (www.qca.org.au) and invite interested parties to make written submissions on this draft decision. Submissions must be received by no later than **12 June 2015**. We will consider all submissions received within this timeframe.

Yours sincerely



Malcolm Roberts
Chairman

Attachment 1 Previous extensions of Queensland Rail's 2008 undertaking

<i>Extension DAAU</i>	<i>Queensland Rail's (QR) proposal</i>	<i>Stakeholder comments</i>	<i>QCA decision</i>
April 2011	Proposed extending the term to 30 June 2012. QR said the extension will maintain regulatory coverage of train services until the approval of a replacement DAU, which it was yet to submit then. ¹	No stakeholder objected to the extension but stakeholders raised concerns about QR taking too long to submit a replacement undertaking.	We considered it reasonable to approve the extension, given that QR was yet to submit an undertaking that better reflected its business activities, noting that the decision did not prejudice our ability to issue QR a section 133 initial undertaking notice. ²
June 2012	Proposed extending the term to 31 December 2012. QR said the extension will maintain regulatory coverage of train services until the approval of its March 2012 replacement draft access undertaking (DAU). The DAU included adjustment charge provisions to backdate reference tariff to 1 July 2013. ³	No stakeholder objected to the extension.	We approved the extension. ⁴
October 2012	Proposed extending the term to 30 June 2013. QR said the extension will allow sufficient time for consultation with stakeholders and approval of its March 2012 DAU. ⁵	No stakeholder objected to the extension although New Hope wanted new reference tariffs to be in place by 1 July 2013 on the expectation that the tariffs for the regulatory period beginning 1 July 2013 would be lower. ⁶	We approved the extension. ⁷
May 2013	Proposed extending the term to 31 December 2013. QR said the extension will allow time to finalise its February 2013 replacement DAU. ⁸ QR also proposed applying transitional reference tariffs from 1 July 2013 by rolling forward the existing tariff and said the adjustment charge provisions in its February 2013 DAU will allow the	No stakeholder objected to the extension. However, stakeholders were disappointed that QR was yet to submit its western system reference tariff proposal and were concerned about rolling forward the existing tariff, as they expected the tariff to decline from 1 July 2013. ¹⁰ New Hope said 'the interim tariff applicable to the extension be set such as to minimise the risk of overpyment'	We approved the extension on the basis that it would allow time to finalise the 2013 DAU assessment process and that Queensland Rail intended to apply an adjustment charge mechanism to recover (or return) the difference between the transitional tariffs and the tariffs that would be approved as part of the 2013 DAU assessment process. ¹¹

¹ Queensland Rail, April 2011.² QCA, May 2011.³ Queensland Rail, April 2012; March 2012: Clause 3.4.2 and Schedule A.⁴ QCA, June 2012.⁵ Queensland Rail, October 2012.⁶ New Hope, November 2012.⁷ QCA, November 2012.⁸ In February 2013, Queensland Rail withdrew its March 2012 DAU and submitted the February 2013 DAU, which retained provisions to apply reference tariffs from 1 July 2013 through an adjustment charge.

Extension DAAU	Queensland Rail's (QR) proposal	Stakeholder comments	QCA decision
	reference tariff to be backdated to 1 July 2013. QR noted that transitional tariffs were applied during the approval of QR Ltd's 2005 and Aurizon Network's 2010 access undertakings. ⁹	and suggested adjusting QR's proposed interim tariff to reflect a lower weighted average cost of capital due to lower government bond rates and debt margins.	
November 2013	Proposed extending the term to the earlier of 30 June 2014 and the date on which we approve a replacement undertaking. QR reiterated its proposal to apply transitional reference tariffs until the approval of a replacement undertaking and said the adjustment charge provisions in its June 2013 DAAU ¹² will allow the reference tariff to be backdated to 1 July 2013. ¹³	No stakeholder objected to the extension, although New Hope suggested we prioritise the determination of new reference tariffs as part of the 2013 DAAU assessment process. ¹⁴	We approved the extension DAAU. ¹⁵
May 2014	Proposed extending the term to the earlier of 31 December 2014 and the date on which we approve a replacement undertaking. QR reiterated its proposal to apply transitional reference tariffs until the approval of a replacement undertaking and said the adjustment charge provisions in its June 2013 DAAU will allow the reference tariff to be backdated to 1 July 2013. ¹⁶	We did not receive any submissions.	We approved the extension DAAU. ¹⁷
November 2014	Proposed extending the term to the earlier of 30 June 2015 and the date on which we approve a replacement undertaking. QR said the extension will allow sufficient time for the completion	We did not receive any submissions.	We approved the DAAU. ¹⁹ The letter accompanying the November 2014 extension DAAU did not withdraw Queensland Rail's earlier commitment to backdating tariffs and the relevant

¹⁰ Aurizon, May 2013; New Hope, May 2013.

¹¹ QCA, June 2013.

⁹ Queensland Rail, May 2013.

¹² In June 2013, Queensland Rail resubmitted its February 2013 DAAU and included, for the first time, its proposed reference tariffs for the western system. The June 2013 DAAU retained provisions to apply reference tariffs from 1 July 2013 through an adjustment charge.

¹³ Queensland Rail, November 2013.

¹⁴ New Hope, November 2013.

¹⁵ QCA, November 2013.

¹⁶ Queensland Rail, May 2014.

¹⁷ QCA, June 2014.

<i>Extension DAAU</i>	<i>Queensland Rail's (QR) proposal</i>	<i>Stakeholder comments</i>	<i>QCA decision</i>
	of the June 2013 DAU process. ¹⁸		clauses were still before the QCA in the June 2013 DAU submitted by Queensland Rail.

¹⁹ QCA, December 2014.

¹⁸ Queensland Rail, November 2014.