



**Submission to the
Queensland Competition Authority**

**QR Network 2009 Draft Access
Undertaking**

Response to the Draft Decision

February 2010

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1 EXECUTIVE SUMMARY

Asciano welcomes the opportunity to comment on the Queensland Competition Authority's ("QCA") Draft Decision on QR Network's Draft 2009 Access Undertaking (UT3).

Asciano has on record a number of concerns particularly around the controls, or lack of them, on ring fencing and effective non discrimination between above rail operators.¹ The privatisation of a vertically integrated QR will sharpen QR's commercial incentives to discriminate against above rail competitors. A privatised QR would have a fiduciary duty to maximise its value for shareholders by, amongst other things, minimising above rail competition provided it remained within the law.

Thus the QCA must test whether the current Undertaking will be robust enough to deal with a privately owned vertically integrated QR, particularly as Asciano understands that the Queensland Government's view is that UT3 will form the Undertaking for the new IPO entity with very little change.

There are a number of ways in which the vertically integrated monopoly track provider could discriminate against above rail competitors including: margin squeeze; targeting network investment; discriminatory train control decisions; restricting access to associated facilities; varying network rules; and delay and inflexibility in dealing with access applications.

An effective regime should prevent this discriminatory behaviour. The current undertaking does deal, at least partially, with a number of these behaviours but improvement is required in four broad areas.

Effective Separation

The Undertaking should be amended to require that:

- the majority of directors and chair of QR Network are independent (i.e. not on the board of QR Ltd or any related body corporate;²
- the Constitution of QR is changed such that QR Network provides that its directors will only act in the best interests of QR Network.

¹ See for example <http://www.qca.org.au/files/R-2009DAU-Asciano-SubQR09DAU-1108.PDF>

² Under a privatised, QR independence would extend to exclude ownership of shares in the parent company.

Prohibition on Preferential Treatment

The Undertaking must include:

- an effective general prohibition on discrimination between above rail operators;
- prohibition on anti-competitive cost shifting, anti-competitive cross-subsidies and margin squeezing;
- A requirement that QR Network provides access to all projected cost information in the same way as currently reported by ARTC;
- An improved obligation to invest clause; and
- provide penalties for under performance in key network performance KPIs.

Enforcement

To create the appropriate incentives the regulated entity must know that any breaches will be detected and that they will carry a suitable financial penalty. The regulatory framework must include:

- geographic and above rail operator disaggregated KPIs;
- broad independent audit of compliance; and
- stronger penalties for breach including penalties not related to compensation

Infrastructure

UT3 needs to ensure that all track and facilities required for above rail operators can compete with QRNational above rail sit within QR Network.

2 DECISION CONTEXT

Since Asciano's last submission³ on the QR Network 2009 Draft Access Undertaking ("UT3") the market context has shifted significantly with the announcement by the Queensland Government that it will sell a vertically integrated Queensland Rail (QR) via an IPO whilst retaining the passenger and loss making network in public hands.

The Queensland's Government sale timeframe is tight. Queensland Treasury has stated to Asciano that they expect that UT3, as approved by the QCA, will with very limited changes, form the undertaking for the new QR IPO entity. The current proposed undertaking may be inappropriate under certain corporate structures⁴ and we strongly urge the QCA to fully review this undertaking provided by a privatised, vertically integrated QR. Such a review should allow sufficient time for meaningful stakeholder comment.

Asciano has on record a number of concerns particularly around the controls, or lack of them, on ring fencing and effective non discrimination between above rail operators.⁵ These concerns were raised when QR was Government owned. The privatisation of a vertically integrated QR will sharpen QR's commercial incentives to discriminate against above rail competitors. To date QR Network has not had purely commercial motives but has acted partly as an instrument of government policy. A privatised QR would have a fiduciary duty to maximise its value for shareholders by, amongst other things, minimising above rail competition provided it remained within the law.

Thus the QCA must test whether the current Undertaking will be robust enough to deal with a privately owned vertically integrated QR.

³ See for example <http://www.qca.org.au/files/R-2009DAU-Asciano-SubQR09DAU-1108.PDF>

⁴ For example if QRNetwork's successor was in effect a shell company with track maintenance and investment carried out by a unregulated services division, then the current undertaking would be ineffective as the maintenance and investment decisions were likely be driven by the unregulated business.

⁵ See for example <http://www.qca.org.au/files/R-2009DAU-Asciano-SubQR09DAU-1108.PDF>

It should be remembered that Asciano's recent entry into the Queensland above rail coal market was achieved after a number of failed attempts over a 10 year period and entry was only secured with customer partnerships, in effect customer sponsored entry. Asciano's only other entry into the Queensland above rail market (the north coast container traffic) was also achieved through a long term take or pay agreement with a key customer, in effect customer sponsored entry.

Asciano's current contracts have a performance clause within them. If a newly privatised QR was successful in some of the discriminatory behaviour identified below then not only would Asciano or other above rail competitors be prevented from competing for increased tonnages, Asciano's currently contracted tonnages could be at risk.

If the above rail competitive process is undermined then the problems already experienced by producers prior to Asciano's entry, namely poor above and below rail service and unnecessarily high prices, will likely continue and potentially increase.

3 PRACTICAL METHODS OF DISCRIMINATION

To assess the effectiveness of the access regime, it is useful first to identify areas of potential anti-competitive behaviour by the monopolist. Appropriate regulatory responses to these problems are set out in the next section. The effectiveness of Asciano's above rail services is reliant on the efficient provision of QR's below rail services. As a result, in addition to a traditional margin squeeze via pricing above economic cost, there are a number of opportunities for operational discrimination.

3.1 Margin Squeeze

A standard ploy by a vertically integrated upstream monopolist would be to margin squeeze its retail competitors. That is, QR would inflate its below rail charges above cost and then set its above rail prices (inclusive of below rail charges) below the level at which an efficient above rail competitor could compete.

As a simple example⁶ say the above rail efficient cost of providing a train service is \$3000 and the below rail efficient cost is \$1000, but the QR below rail charge is \$4000. If QR sets a retail price of \$6000 it will make a margin of \$2000 ($\$6000 - \$3000 - \1000). The downstream competitor's costs will be \$7000 but they will not be able to charge more than \$6000 and if the competitor remains in the market they will make a loss of \$1000 ($\$6000 - \$4000 - \3000).

A vertically integrated QR has strong incentives to behave in a manner which is both economically inefficient, as the prices charged for below rail and above rail are not genuinely cost reflective, and in a manner which discourages competition. Asciano believes that these incentives run directly counter to the object of Part 5 of the QCA Act, which requires the promotion by the Authority of the economical use of infrastructure and the promotion of competition. Consequently Asciano believes the Authority should focus increased attention on issues related to cost transparency and ring fencing to ensure prices are cost reflective and that there is no subsidy between different QR functions.

3.2 Targeting Network Investment

A privatised QR with a regulated rate of return is likely to constrain capital expenditure on network renewal and capacity improvements. QR and Asciano's customers are geographically differentiated, ie they operate from distinct mine sites. As a result it would be possible for QR to target its limited network investment at areas which would benefit its own above rail customers in terms of both capacity and quality.

Indeed, below rail investment or even pricing could be made conditional on agreeing an above rail contract with QR. Asciano is aware of a recent instance when QR Network announced it was reducing an already regulatory approved below rail tariff relevant only to a single coal producer on the same day it became public that the same coal producer had signed an above rail contract with QR.

⁶ In this example the cost figures and proportions and relativities between these figures are purely for illustrative purposes.

3.3 Access to Associated Facilities

The extent and definition of the regulated network is key to effective above rail competition. Currently what Asciano considers to be a number of key below rail facilities are part of QR above rail and as such Asciano does not get regulated access. These facilities including provisioning centres, maintenance facilities and storage are vital to providing an efficient above rail service. However, now and presumably in future, QR is able to dictate terms and condition of access, giving it an ability to favour its own above rail operations.

3.4 Variation of the Network rules

The below rail operator sets detailed rules for above rail operators who access their network. These include the allowable weights and speeds of rolling stock and at the extreme whether a particular type of rolling stock is deemed safe to travel on the network. QR engineers play a key role in the rolling stock approval process. It is possible for a below rail operator to change its network rules to advantage one above rail customer over another. For example, the approval of particular rolling stock only relevant to one operator could be refused or at least delayed. In addition, speed and weight restriction could be placed on particular parts of the network over which one above rail operators' customers are concentrated.

3.5 Access Applications

The access application process could be unreasonably delayed or the flexibility of QR's approach limited for certain above rail operators. Thus producers would know that if they went with a non QR above rail operator they would receive unfavourable treatment.

3.6 Train Control

QR Network could operate train control, the live decisions made on the day of operation, in a way which favours one above rail operator over another. Rail networks never run according to timetable, and as such each day there will be operational decisions to be made such as which train to hold, which train to advance. In the

aggregate these decision could ultimately affect the performance of an operator negatively by reducing quality and increasing costs (increased driver and fuel costs and reduced asset cycle time).

4 IMPROVEMENTS REQUIRED TO THE CURRENT UNDERTAKING

An effective regime should prevent the discriminatory behaviour described in the previous section. The current undertaking does deal, at least partially, with a number of these behaviours. However, there are four broad areas which Asciano believes need to be improved in the current undertaking before it could be said to be effective, especially with a private vertically integrated QR. The improvements required, in separation, prohibition of preferential treatment, enforcement and Infrastructure, are detailed below.

4.1 Effective Separation

QR has heralded the setting up of QR Network as a separate company as a step forward in its separation and independence. However, the underlying board structure and QR constitution undermines the effectiveness of this separation.

The members of the Board of each QR subsidiary comprise QR's CEO, CFO and the relevant Executive General Manager.⁷ This means that the CEO and CFO will be common directors between QR Network and QR operational business groups. They will share information at the Board level and they will also have access to confidential information about above rail competitors. This puts the CEO and CFO in a potential position of conflict.

Typically directors of companies are required by the Corporations Act to act in good faith in the best interests of that company.⁸ However, as the QR subsidiaries are wholly owned subsidiaries of QR, the directors of the subsidiaries are allowed to make decisions which are in the interests of the holding company, i.e. QR, if the Constitution

⁷ QR's Preliminary Submission to the QCA on the 2008 Access Undertaking, May 2008 (paragraph 2.3).

⁸ section 181 of the Corporations Act 2001 (Cth).

expressly allows.⁹ The Constitutions of all QR subsidiaries allow the directors of those subsidiaries to act in the best interests of QR.¹⁰ This means that the directors of QR Network can act in the best interests of QR which would necessarily take into account the interests of the other QR operational business groups including its above rail operator.

The current terms of the UT3 dealing with separation are ineffective. Clause 3.1 of UT3 requires separate entities with separate boards. However, as noted above QR Network is allowed to make decisions in the interests of QR Ltd and its related bodies corporate and QR Ltd and QR Network have some common directors. This fundamentally undermines any benefit provided from having separate Boards as the Undertaking permits QR Network to make decisions that are in the interests of QR Ltd or its related bodies corporate, including its above rail businesses.

It is vital for competition that there is effective separation of above and below rail businesses with:

- separate entities operating each business with truly independent Boards;
- a requirement that decisions are made in the interests of QR Network only; and
- separate people, premises and IT systems with security systems controlling access between the different businesses; and
- requirements regarding the use of common consultants and the transfer of personnel between the different businesses.

Thus the undertaking should be amended to require that:

- the majority of directors of the QR Network board be independent (i.e. not on the board of QR Ltd or any related body corporate);¹¹
- the chairperson of QR Network be independent; and
- the Constitution of QR is changed such that QR Network provides, notwithstanding s187 of the Corporations Act 2001 (Cth), that directors of the QRNetwork will only act in the best interests of QR Network and not in the interests of any of its related bodies corporate.

⁹ section 187 of the Corporations Act 2001 (Cth).

¹⁰ QR, Board Directive: Corporate Governance – QR Subsidiaries, paragraph 4 (www.qr.com.au).

¹¹ Under a privatised QR independence would extend to exclude ownership of shares in the parent company.

4.2 Prohibition on Preferential Treatment

Asciano's key concern is that with the exception of pricing there is no positive obligation on QR Network not to discriminate between above rail operators. Asciano believes that there should be positive obligations on QR Network not to discriminate between above rail operators with respect to investment, access to associated facilities, amendment of network rules, access application processes and train control procedures and practices.

4.2.1 Discrimination Requirement

UT3 provides that the intent of the Undertaking is that it be applied in a consistent and non-discriminatory way (cl2.2). However, this is only intent and there are no clauses which give meaningful effect to this intent. In UT2008 the only effective clause was 3.4 which required QR Network to follow certain decision making procedures when making a decision. We welcome the QCA's decision to reinstate this along with the requirement to have compliance with the decision making criteria auditable. In its "Statement of Regulatory Intent"¹² QR accepts the reinsertion of the decision making criteria but are "rejecting" the auditing criteria. QR's position in rejecting any monitoring and accountability with regard to the decision making criteria effectively makes the decision making criteria worthless.

Even if QR accepted the audit criteria these provisions fall far short of an effective non-discrimination regime. The decision making criteria only apply to decisions under the Undertaking – it is unclear to Asciano whether for example a discriminatory train control decision would be made under the Undertaking or not. In addition, the requirement states only that "the decision is made in a manner that is consistent between Access Seekers and/or Access Holders in the same circumstances"¹³. It is unclear to Asciano how the "same circumstances" would be applied. For example, If a QR and PN train were running different consists and PN was unfairly treated in a train control direction would that constitute the "same circumstance"?

¹² QR Network Access Undertaking (2009) Statement of Regulatory Intent – Position in response to the QCA draft Decision February 2010.

¹³ UT2008 Clause 3.4.

The QCA's proposal leaves open the opportunity for QR Ltd to discriminate in any number of ways by making decisions outside of the Undertaking (e.g. by the above rail business or by QR Ltd with respect to cross-subsidies) which have the effect of putting that business in a better position than its competitors.

To be effective there must be a requirement that QR Network does not discriminate in any way between above rail operators including an obligation to provide:

- equivalent services (including setting network rules and train control operation);
- equivalent quality of service;
- equivalent prices;
- equivalent access to capacity;
- train control ensuring an equitable distribution of the impact of live run variations from the train plan; and
- equivalent information and processing of access applications.

Thus the Undertaking must include:

- an effective prohibition on discrimination between users of the service. The obligation should be a general obligation not one confined to those decisions which are made in accordance with a specified procedure; and
- require that agreement between the access provider and any related body corporate in respect of the services covered by the Undertaking be approved in advance by the board of QR Network and only approved if the board is satisfied, in good faith, that the agreement is considered arm's length and bona fide to be in the best interests of QR Network
- A complaints process whereby
 - parties can make any complaints regarding discrimination which is investigated by an independent body, presumably the QCA
 - onus of proof of non-discrimination is on QR

4.2.2 Prohibition on cross-subsidies and margin squeezing

Although the accounting reporting requirements in UT3 may detect a cross-subsidy, there is no provision to prevent it or make it a breach of the undertaking. A cross subsidy from below rail to above rail would allow it to unfairly compete in above rail markets.

There also needs to be an explicit prohibition on anti-competitive cost shifting, ie effecting a margin squeeze through loading costs into the below rail business.

Thus the Undertaking should contain express provisions preventing:

- anti-competitive cost shifting;
- anti-competitive cross-subsidies; and
- and margin squeezing.

Although we recognise the thorough job the QCA is undertaking in reviewing QR's costs, the lack of transparency on these costs makes the process less robust than it needs to be. QR keeps a significant amount of cost data commercial in confidence. Industry participants have useful experience and data to bring to bear on the efficacy or otherwise of QR's costs. It is unclear to Asciano why QR is so reluctant to produce cost information. Usually there are legitimate competitive concerns, but QR Network is a monopolist with no competitors. Asciano notes that in other regulatory processes which set access prices for monopoly infrastructure the cost data underpinning these prices is generally made public.

Thus Asciano believes that all cost information should be provided to access seekers so they can assist in detecting whether QR Network is complying with the regime. For example ARTC provides details of its DORC valuation and other information which QR Network maintains as confidential.

The undertaking should be amended such that QR Network provides access to all projected cost information in the same way as currently reported by ARTC.

4.2.3 Maintenance and investment obligations

It is vital, in order to facilitate efficient investment, that access seekers have certainty around the investment obligations of the track provider. This is especially true where the track provider is privatised and will have competing capital options, some of which will not be constrained to receiving the regulated return.

UT3 requires QR Network to expand the capacity to create available capacity for access demanded where QR Network reasonably considers net additional revenue (less costs) is sufficient to justify the expenditure (UT2008cl7.4.1(n)/UT3cl7.3.3).

Investment decisions are left entirely with QR Network without scrutiny as to whether QR Network has acting reasonably.

Whilst the intent of the clause is appropriate, Asciano does not believe it to be effective or efficient. We recommend the adoption of an ARTC style clause with improvement. Namely the Undertaking should include a provision consistent with the provision in clause 6 of the ARTC Hunter Valley Access Undertaking¹⁴ with the amendments required to make these provisions effective. Specifically:

- giving an individual access seeker the right to require QR Network to invest if that person fully funds the investment and it is otherwise feasible and safe;
- appropriate industry consultation provisions;
- obliging QR Network to provide relevant reports and information; and
- and ensuring that where a project is to be fully funded by one or more access seekers, the project cannot be undermined by other industry participants.

The other key plank in ensuring appropriate investment and maintenance would be to provide penalties for under performance in key KPIs covering network performance. KPIs are discussed in more detail below.

We understand that the Queensland Government is considering outsourcing QR Network's maintenance obligations to a service company which would be an associated entity and would carry out both above and below rail maintenance and investment activities. If this is the case appropriate arrangements would have to be put in place to ensure this outsourcing did not undermine the Undertaking by ensuring that the company making decisions about maintenance and investment is bound by the Undertaking and that sufficient "look-through" provisions apply to allow regulatory scrutiny of this service company's costs and internal charges. In particular the ability of this service company to act as a vehicle for transferring subsidies would have to be monitored and prevented.

The regime would have to require that QR Network's successor must be the decision-maker with respect to maintenance and investment and must be of sufficient substance

¹⁴ <http://www.accc.gov.au/content/index.phtml/itemId/870155>

with sufficient people to make these decisions and not outsource the decision-making to QR Service Co.

4.3 Enforcement

The key to an effective regulatory regime is enforcement. To provide the appropriate incentives the regulated entity must know that any breaches will be detected and that they will carry a suitable financial penalty. Whilst recognising that some of the solution set out below would be best placed outside the undertaking, for example amendments to the QCA Act, we have provided them so the QCA understands what Asciano believes would constitute an effective regulatory regime.

4.3.1 Detection

QR Network currently:

- provides quarterly performance reports;
- provides annual financial and performance reports (cl9); and
- reports breaches to the QCA (UT3 cl 9.4).

QR Network must publicly release the reports except the breach reports (cl 9.1 & 9.2). However, the reports are in aggregate and so relative operator performance or geographic network performance cannot be determined. Thus discrimination against an above rail competitor, for example through poor train control decision or network under investment or under maintenance, cannot be detected. Thus the non-discrimination regime cannot be enforced. The KPIs must be appropriately disaggregated to detect under performance for specific above rail operators and in specific track sections.

Thus the Undertaking should be amended such that QRNetwork reports to the regulator and individual operators on:

- the performance of QRNetwork in respect of that operator (train performance);
- the performance of QRNetwork in respect of each geographic area (track performance);
- performance in aggregate – for comparison purposes; and
- publicly reports any breaches of the Undertaking.

4.3.2 Audit

A vital part of any enforcement regime is audit. QR Network's current audit requirements are limited and ineffective. Currently QR Network in UT3 audits

- its performance (cl9.5), financial statements annually (cl3.2.2);
- compliance if required by the QCA (cl3.5.2); and
- annually compliance with its confidentiality obligations (cl3.5.3)¹⁵.

Financial audits are conducted by a 'qualified auditor'. The other audits only have to be conducted by an external auditor if required by the QCA. Audits are published if required by the QCA. Otherwise interested persons have no right to access them

The audit regime has neither the coverage nor independence to ensure compliance with the Undertaking.

To have an effective independent audit of compliance, it would need to cover:

- financial statements;
- cost-shifting/margin squeeze;
- network investment decisions;
- access to associated facilities;
- variations to network rules/train control;
- management of access applications;
- accuracy of KPIs
- relative price and access conditions;
- impact of live run variations from the train plan; and
- capacity allocation.

Thus the Undertaking should be amended to require QRNetwork:

- to have its compliance with the Undertaking annually audited, including those specific factors listed above;
- the audit be conducted by a suitably qualified external person;

¹⁵ As noted above, QR is "rejecting" the requirement to have compliance with the decision making requirements audited.

- the reports are published in an aggregated form and individual data made available to individual operators; and
- the QCA should approve the auditor and the auditor must be changed every three years.

The particular focus of each audit would be informed via discussion with the QCA and QR's above rail competitors. So for example if the QCA had a concern re train control decisions then in the that audit period more focus than usual would be placed on compliance with train control decisions. The focus should also be affected by the KPI results, which may indicate an area which warranted further investigation.

4.3.3 Information gathering powers

Although unable to be enacted through the current undertaking review process Asciano believes that it is important that in any effective regime the regulator has sufficient information gathering powers.

Currently there are limited provisions in the QCA Act (s150C & s185). The QCA has power to make ruling about access and conduct investigations and has limited information and document gathering powers for these purposes. Asciano believes that the QCA requires stronger document and information gathering powers to deter breaches of the undertaking. The QCA should be given information gathering powers consistent with the ACCC's powers in s155 of the Trade Practices Act (Cth).

4.3.4 Right to enforce the regime

Currently, the QCA or affected person can enforce the regime (s158A of the QCA Act).and seek remedies that order that the access provider comply, pay compensation and any other orders. In most situations compensation would be difficult to determine. For example the impact of a series of discriminatory train control decisions would likely lead to Asciano being unable to gain new customers. However, this would be difficult to prove and quantify.

To solve these issues Asciano recommends the following changes, not all of which would best sit in the current Undertaking review process.

- an undertaking must be obtained from the directors of QR Network to the effect that if they fail to materially comply with the Undertaking, they will resign immediately as a director of QR Network or any related body corporate and not stand again for appointment as a director of QR Network or any related body corporate;
- the QCA has power to seek pecuniary penalties against QR Network;
- the QCA has power to seek more stringent separation of the below rail business, including divestment, for repeated breaches.

4.4 Infrastructure

UT3 does not ensure that all track and facilities required to ensure that above rail operators can compete with QRNational above rail sit within QR Network.

The regulatory regime needs to ensure that:

- all assets of QR Network must be held within QR Network's successor and be covered by the Undertaking; and
- ensure approach to other infrastructure eg provisioning centres either through access to QRNational's provisioning centres or access to track to allow investment in provisioning centres by the access seeker (QRNational above rail provisioning centres are built over QR Network's track).

For example, at Jilalan QRNational's provisioning sheds are located on QR Network declared tracks. Besides provisioning, these tracks can be used as holding tracks for temporary storage off mainline, also as tracks to perform train examinations and potentially an alternative route down to the port should there be an incident preventing use of the standard route. However, Asciano is unlikely to get access to these tracks post 31 March 2010 as they will be scheduled for use by QRNational trains to allow for their provisioning requirements.

This situation is unsatisfactory. Either QR Network should own the provisioning facility and provide open access to it or QRNational should acquire the tracks into their asset

base and alternative QR National tracks be released from within Jilalan to QR Network ownership for use by all operators. The first option is the most pro competitive especially if further entry of above rail operators is desired. If the later is the case then all above rail competitors should be provided the opportunity to enter into reasonable commercial arrangements with QR Network to acquire suitable QR Network land and tracks to build a provisioning centre.

5 TABLE OF ADDITIONAL ISSUES

The table below seeks to address other issues which have been raised by Asciano, the QCA or QR Networks which are not otherwise addressed above, in particular the table identifies issues raised in either the Asciano submission of November 2008, the QCA Draft of December 2009 QCA or the QR Networks initial response to the QCA's Draft Decision of February 2010.

The table below contains Asciano's current position with regard to each issue.

Issue	QCA Draft Decision	QR Response dated February 2010	Asciano Current position
Scope of UT3	The QCA (pp97-98) seeks to address this issue by seeking amendments to the undertaking and further undertakings from the QR Board.	QR Network (p5) does not accept these changes where they require QR Network to be responsible for the obligations of a separate organisation. If the QCA DD is amended to allow a reasonable endeavours clause to procure an undertaking from QR Ltd they will be accepted.	Asciano has concerns regarding the scope of the infrastructure included in UT3, particularly with regard to the ownership and control of this infrastructure going forward. Asciano generally supports the current QCA position, although Asciano seeks that the QCA reconsider its position (p98) with regard to issues related to crew-change over facilities.
Early Termination Termination prior to intended termination date.	The QCA (p102) does not accept the QR Network position. The	QR Network (p5) accepts the QCA position.	Asciano supports the current QCA position.

Issue	QCA Draft Decision	QR Response dated February 2010	Asciano Current position
	<p>termination date is a fixed date (June 2013).</p>		
<p>Time Limits for the Processing of Applications The extension of access application time limits.</p>	<p>QCA (p124) approves extensions of time frames in some circumstances. The extension is 30 days. Beyond this approval is needed from the access seeker.</p>	<p>QR Network (p9) accepts the QCA position.</p>	<p>Asciano maintains its position that it opposes the extension of access application time limits for the reasons previously outlined in its Submission of November (pp16-17).</p>
<p>Management of Major Projects</p>	<p>QCA (pp117-118) seeks to substantially redraft the section relating to major projects including a change in the definition of major projects which narrows the definition of a major project and the inclusion of a dispute resolution procedure.</p>	<p>QR Network (p9) rejects the QCA approach as being too prescriptive, while agreeing with the general principles.</p> <p>QR Network (p9) rejects the dispute resolution procedure.</p>	<p>Asciano supports the QCA changes.</p>
<p>Adoption of a System Approach to Planning and Capacity Allocation A system wide approach is needed for rail infrastructure planning and the allocation of capacity.</p>	<p>QCA (pp247-249) indicate that a system wide approach is appropriate and requires that QR Network participate in any system wide planning and align with any system wide master plans.</p>	<p>QR Network (p21) accepts the QCA position.</p>	<p>Asciano believes that UT3 should adopt a system wide approach for rail infrastructure planning and the allocation of capacity. As such Asciano supports the QCA position.</p>
<p>Queue re-ordering</p>			

Issue	QCA Draft Decision	QR Response dated February 2010	Asciano Current position
	QCA (p 219) requires DAU section 7.3.5 d) iii) to be deleted.	QR Network (p15) accepts the QCA position.	Asciano supports the QCA position.
Committed capacity Extension of access to capacity for end customers.	QCA (pp212-213) have amended the QR Network position.	QR Network (p15) accepts the QCA position with an amendment to definition of renewal application, whereby the right for renewal vests with the original owner of the tonnes and not the transferee. This is to avoid a secondary market.	Asciano supports the QCA's position.
Capacity Transfer	QCA (p210) requires clarification on various points regarding capacity transfer.	QR Network (p14) accepts the QCA position.	Asciano supports the QCA position.
Network Management Principles	QCA (p195) approves the QR Network's Network management Principles.	None	As outlined in its November 2008 submission (p27) Asciano supports the network management principles proposed.
Capacity Management Previous drafting indicated a coal train capacity resumption trigger of 90% on a quarterly basis.	QCA (p206) have clarified this point to ensure it applies to four consecutive quarters (i.e. a rolling year).	QR Network (p14) accepts the QCA position.	Asciano supports a 90% trigger on a twelve month moving average basis. As such, Asciano supports the QCA position
Confidential Information	QCA (pp107-108) requires a	Accepted by QR Network (p7)	Asciano supports the QCA position,

Issue	QCA Draft Decision	QR Response dated February 2010	Asciano Current position
	<p>prescribed confidentiality deed and an improved complaints handling procedure. These also apply to other QR companies to the extent they own / operate declared services.</p> <p>In effect QCA is seeking to maintain the 2008 Undertaking approach.</p>		<p>and would support the further strengthening of confidential information provisions.</p> <p>In addition Asciano continues to support the confidentiality concerns previously raised in Asciano's November 2008 submission (pp 31-32)</p>
<p>Public Reporting Requirements</p>	<p>QCA (p226) noted Asciano's concerns regarding on-time tolerances but believes current on-time tolerances are appropriate. The QCA will revisit this if Asciano can supply more information.</p>	<p>None</p>	<p>Asciano continues to believe on-time tolerances are too broad, and are inconsistent with tolerances used on other networks [Note: need to provide this info].</p> <p>Furthermore Asciano has concerns about TSR measurements. TSR is measured as total kilometres of track under TSR restriction, however such a measure does not adequately reflect the issues created by</p> <ul style="list-style-type: none"> • the number of discrete segments of track under TSR – this requires trains to brake multiple times • the absolute level of the speed restriction <p>Asciano believes TSR</p>

Issue	QCA Draft Decision	QR Response dated February 2010	Asciano Current position
			measurements should reflect these variables as well as the total kilometres under TSR.
Escalation of Maintenance Costs by MCI	<p>QCA (p 186) rejects QR Network MCI and seeks that QR Network recalculate the MCI.</p> <p>QCA (p61) requires MCI-X for maintenance costs and CPI-X for operating expenditure.</p>	QR Network (p23) accepts the QCA position but offers amended drafting with regard to MCI composition and application.	Asciano supports the QCA position, dependent on finalisation of the MCI composition and application.
Capital Expenditure	QCA (p233) accepts the capital indicator, although the QCA (p31) indicates that it will reduce the forecast capital expenditure from \$1.35bn to \$1.18bn.	None.	Asciano supports the QCA position, although Asciano believes capital expenditure should be monitored to ensure it is efficient.
Asset Lives QR is seeking to change asset life assumptions, including 20 year asset lives.	QCA (pp35-36) notes the 20 year asset life does not apply to current assets and applies only to new investment. The 20 year asset life will apply to new investment but will be a rolling 20 years- i.e. it may be re-assessed at a later date (QCA p36).	None	<p>Asciano does not support the changed asset life assumptions, although it welcomes the QCA statement that the asset lives may be re-assessed.</p> <p>As noted in the Asciano November 2008 submission (pp43-44) little explanation or justification is given for these changed asset lives.</p>

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<p>Asset Transfer The potential transfer of assets out of QR Network raises concerns that users will be disadvantaged by these transfers.</p>	<p>QCA (p7) believes it is reasonable for QR to remove system-wide assets if these assets are retained by QR Ltd.</p>	<p>None</p>	<p>Asciano continues to have concerns regarding the transfer of assets out of QR Network when these are required for the provision of declared services.</p> <p>Any fees or charges paid for usage of these assets will not be regulated raising cross subsidy concerns within QR Ltd. These concerns are exacerbated by the potential for changed corporate structures following the IPO.</p> <p>Prior to any asset transfers being approved AR Networks must provide both a strong justifications and put in place a monitoring system to ensure network users are not disadvantaged by the transfer.</p>
<p>Cost of Capital</p>	<p>QCA (p25) reduce WACC from 11.76% to 9.41%. In particular equity beta, which reflects risk, has been reduced.</p>	<p>None.</p>	<p>Asciano had previously argued that QR amendments, such as asset life truncation reduce risks and hence the QR WACC should be reduced to take account of this reduced risk. Asciano note that the beta, which</p>

Issue	QCA Draft Decision	QR Response dated February 2010	Asciano Current position
			effectively reflects QR specific risk considerations, has been reduced.
Operating Costs	QCA (p43) reduced operating costs and insurance costs by approx \$30m in total over the 4 years.	None.	<p>Asciano support the current QCA position, although there may be potential for further cost efficiencies to be made.</p> <p>Asciano's main concern is that the appropriateness, or otherwise, of the operating costs is difficult to assess due to the confidentiality applied to the analysis of these costs.</p> <p>This confidentiality should be removed to allow access seekers to assure themselves that any inefficient operating costs have been excluded.</p>
Maintenance Costs	QCA (p59) reduced maintenance costs by approx \$220m in total over the 4 years.	None.	<p>Asciano support the current QCA position, although there may be potential for further cost efficiencies to be made.</p> <p>Asciano's main concern is that the appropriateness, or otherwise, of the maintenance costs is difficult to assess due to the confidentiality</p>

Issue	QCA Draft Decision	QR Response dated February 2010	Asciano Current position
			<p>applied to the analysis of these costs.</p> <p>This confidentiality should be removed to allow access seekers to assure themselves that any inefficient operating costs have been excluded.</p>
Tariff Increases	<p>Generally, tariffs have been reduced from the QR network proposal.</p> <p>Specifically, one of Asciano's concerns was with the AT1 tariff, but there was limited information available. The QCA (p68) requires QR Network to continue using the current AT1 Rate rather than the proposed AT1 rate.</p>	None.	<p>Asciano supports the current QCA position, although there may be potential for further cost efficiencies to be made.</p> <p>Asciano is concerned that tariffs have increased based on confidential information and that these increases should be tested by making the cost information underpinning the tariffs public.</p>
<p>Access Conditions Allows pricing outside revenue limits if QCA approval exists.</p>	<p>QCA (p149) accepts the QR Network proposal given QCA approval will be required.</p> <p>QCA (p155) has imposed additional requirements in regards to access conditions, which may address some concerns about potential cost over-recovery.</p>	<p>None</p> <p>QR Network (p13) rejects the QCA position and believes the current drafting is appropriate.</p>	<p>Asciano supports the QCA position. Asciano supports pricing outside revenue limits if prior QCA approval exists, however QR Network should not use this pricing to over-recover its investment.</p>

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Calculation of reference path Train Multiplier	QCA (p192) requires an amendment that the multiplier provides for a surcharge for trains which are faster or slower than the predominant train.	QR Network (p24) accepts the QCA position.	Asciano continues to support the current formula for determination of the multiplier.
Liability and Indemnity issues	<p>QCA (p140) amends the definition of consequential loss to address the possible confusion with regard to QR entities.</p> <p>QCA (pp138-139) remove dangerous goods wording.</p>	<p>QR Network (p11) rejects the QCA position, believing it exposes it to undue risk.</p> <p>QR Network (p11) accepts the QCA position.</p>	Asciano supports the QCA position. In particular Asciano supports the Decision on DGs.
Amendments to Accommodate Standard Access Agreements	QCA (p134-137) requires substantial new wording including a new form of standard access agreement. The agreements will then go through a QCA public approval process.	QR Network (p11) accepts the QCA position with amendment.	Asciano supports the QCA position.
Natural justice	QCA Draft Decision contained no explicit discussion of the natural justice issue as discussed in UT3 10.2.	None	Asciano believes it is inappropriate for QR to opt out of natural justice; therefore it is unnecessary to discuss this in UT3.
Joint Review of Yard Control			

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services	QCA (p109) seek a joint review of yard control services in yards where services are provided by QR related operators.	This has been rejected by QR Network (p7).	Asciano supports such a review, but believe that QCA should be able to initiate a review without the need for QR's agreement.
QR Network's Failure to Comply with Queuing Mechanism	QCA (p120) seek to restore the 2008 AU position which makes QR Network more accountable if they fail to comply with queuing procedures.	This has been rejected by QR Network (p9).	Asciano supports the QCA position.
Allocation of Capacity Rights at IAP Stage	QCA (p125) requires QR Network IAP to include QR network's assumptions with regard to rolling stock, run times, unloading times etc.	This has been accepted by QR Network (p9).	Asciano supports the QCA position.
Amend definition of Standard Access Agreement	QCA (p131) requires a definitional amendment to "Standard Access Agreement".	This has been accepted by QR Network (p11) with amendments	Asciano supports the QCA position without amendment.
Withdrawal of Standard Access Agreement	QCA (p142) requires that, once approved, the standard access	This has been accepted by QR Network (p11)	Asciano supports the QCA position.

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	agreement can only be withdrawn with QCA approval.		
Price Differentiation	QCA (p145) requires 2008 clauses regarding price discrimination to be restored.	This has been accepted by QR Network (p13)	Asciano strongly support the QCA position.
Initial System Rules	QCA (p 199) requires QR Network to consult with users and establish initial system rules.	This has been accepted by QR Network (p14) with amendments, as QR Network believes it should not be compelled to create system rules where these would not add value.	Asciano strongly supports the QCA position. without amendment
System rules amendment	QCA (p199) seek to establish a system for amending the system rules.	QR Network reject (p14) this as they argue the rules should be flexible and not have to go through a formal amendment process.	Asciano strongly supports the QCA position. Asciano believes a system for amending rules is necessary.
Differentiate between transfer and relinquishment	QCA (p216) seeks to distinguish between transfer and relinquishment of rights.	QR Network reject (pp14-15) this as it views any transfer of rights as a relinquishment of those rights.	Asciano supports the QCA position.
Consequential amendments	QCA (p222) require amendments to align the DAU with the new form of access agreements.	QR Network reject (p17) this at the current time but commits to including changes when an	Asciano supports the QCA position.

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		alternate form of the agreement is approved by QCA.	
Quarterly reporting indicators	QCA (p228) requires more detailed methodologies and descriptions of indicators.	This has been accepted by QR Network (p18)	Asciano supports the QCA position.
MCI reporting	QCA (p228) requires more detail on MCI reporting.	This has been accepted by QR Network (p18) with amendments as QR Network believes that the reporting should be limited to the weightings of the MCI only and the reporting of derailments and impact of planned maintenance works should be limited.	Asciano supports the QCA position without amendment.
Provision of official statement by EGM QR Network	QCA (p229) requires QR Network EGM to verify regulatory reports.	This has been accepted by QR Network (p18)	Asciano supports the QCA position.
Inclusion of Reference to Asset Management Plan	QCA (p232) require the reinstatement of asset management plans.	This has been accepted by QR Network (p20) with amendments as QR Network seeks that the approval of asset replacement expenditure is not only based on the inclusion in the asset management plan.	Asciano supports the QCA position without amendment.

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Capital expenditure scope pre-approval	QCA (p236) are seeking to implement a capital pre approval procedure.	QR Network rejects this (p20) but will propose an amendment in due course.	Asciano supports the QCA position until such a time as the QR Network proposed amendment is available
New spurs, electrical feeder stations and electricity charges	QCA (p188) rejects the inclusion of certain costs.	QR Network reject this (pp23-24)	Asciano supports the QCA position.