

INTRODUCTION

This Explanatory Guide accompanies the Access Undertaking submitted by Queensland Rail ('QR') in accordance with the *Queensland Competition Authority Act 1997* (the 'Act'). The Undertaking sets out the processes to be followed and the basic terms and conditions under which Access to QR's Rail Infrastructure will be negotiated between QR and Third Party Operators. Once accepted by the QCA the Undertaking places binding, court enforceable obligations on QR. This Explanatory Guide provides an explanation of key elements of the Undertaking. It is not designed to address all elements of the Undertaking, but rather to focus on those areas where it is considered that further discussion will assist in the interpretation of the Undertaking. The meanings given to defined terms in the Undertaking will also have application in this Explanatory Guide. Where, in this Explanatory Guide, references are made to parts, clauses, subclauses, paragraphs, subparagraphs and schedules, the references refer to the relevant sections of the Undertaking.

Whilst this Explanatory Guide is an aide to interpreting the contents of the Undertaking and is intended to be relied upon for that purpose, QR's obligations will be based on the requirements of its approved Undertaking. To the extent that there is any inconsistency between the Undertaking and this Explanatory Guide, the provisions of the Undertaking will prevail.

Bearing in mind the purpose for which the Explanatory Guide is provided, QR recognises that, from time to time, amendments to the Explanatory Guide may be desirable to further assist in clarifying the provisions of the Undertaking. Prior to making any such amendments QR will consult with the QCA to ensure that the Explanatory Guide continues to provide an accurate explanation of relevant provisions of the Undertaking.

PART 2. SCOPE AND ADMINISTRATION OF UNDERTAKING

2.1 SCOPE

There may be occasions where a Third Party Operator seeks Access to certain Rail Infrastructure that, although owned by QR, is situated on land to which QR is not legally entitled to authorise access by third parties. For example, some of QR's Rail Infrastructure may run over land subject to crown mining leases, or land owned by a port authority. Whilst QR may be licensed (or otherwise permitted) to operate on Rail Infrastructure situated on such land, it may not be entitled to allow Third Party Operators to enter the land (as would occur if they operated on the Rail Infrastructure) under the terms of the relevant licence or agreement. In such cases, paragraph 2.1(d) places the obligation for obtaining any necessary approvals from the land owner on the Third Party Operator. It should also be noted that where QR is authorised to allow Third Party Operators to enter land that is not owned or subleased (from Queensland Transport) by QR, any agreement for Access by

Third Party Operators will be subject to the inclusion of conditions that mirror the conditions under which QR is permitted to allow Third Party Operators to enter the land.

2.3 REVIEW OF UNDERTAKING

Clause 2.3 provides for a review of the Undertaking to occur approximately twelve months after the Commencing Date. This does not preclude QR from submitting a Draft Amending Undertaking (as provided in the QCA Act) within the twelve month period from the Commencing Date, nor at any other time within the life of the Undertaking if QR considers that it is necessary to address provisions of the Undertaking that are not operating satisfactorily. Similarly, this does not preclude the QCA from requiring QR to lodge a Draft Amending Undertaking in the circumstances provided in the QCA Act.

PART 3. RINGFENCING ARRANGEMENTS

3.2 ORGANISATIONAL STRUCTURE

Network Access is responsible for managing the provision of QR's Below Rail Services, with the exception of those services associated with platforms, stations and selected marshalling yards. The term marshalling yard (which is used in legislation such as the *Transport Infrastructure Act 1994*) has tended to have a broad application in its interpretation and has been applied to areas of Track used for queuing, shunting, provisioning, marshalling and storage. Network Access will be responsible for managing those areas of Track within marshalling yards that are required for the through operation of Trains (including Track used for queuing for entry to ports). This extends to all Track on existing rail corridor land or new rail corridor land (as defined under the *Transport Infrastructure Act 1994*) with the exception of any of those Track that is not necessary for through traffic and that is specifically nominated by QR as "operator specific rail infrastructure". Operator specific rail infrastructure includes areas within marshalling yards, used for provisioning and storage, that is in operator specific use. Interested parties will be advised which infrastructure is defined as "operator specific rail infrastructure".

3.3 ACCOUNTING ARRANGEMENTS

The Undertaking provides that separate financial accounts (profit and loss statement and balance sheet) will be maintained for those Below Rail Services provided by Network Access. Given that Network Access does not provide services in relation to platforms, stations and certain marshalling yards (as identified above), the financial accounts kept in accordance with the Undertaking will not include financial details relating to these facilities.

The publication, in QR's annual report, of the profit and loss statement and balance sheet for Below Rail Services provided by Network Access will be the only cost information (in respect of Below Rail Services) that QR will publish.

3.4 INTERNAL ACCESS AGREEMENTS

3.4.1 Internal Access Agreements for Existing QR Train Services

For QR Train Services existing at the commencement of the Undertaking, Network Access will formalise the arrangements currently in place through internal Access Agreements. QR is not required to undertake all of the processes provided in the Undertaking in the development of the related internal Access Agreements. Many of the processes in the Undertaking do not have any meaningful application to Train Services that have been operating on the QR network for some time. For example, all existing QR Train Services are already covered by QR's Safety Management System and as a result, the Safety Risk Assessment provided in part 7 of the Undertaking will not need to be undertaken unless significant changes to the Train Services are proposed. Notwithstanding that the Undertaking does not require that internal Access Agreements for existing QR Train Services be consistent with the provisions of the Undertaking, the internal Access Agreements will be sufficiently consistent with the Undertaking to ensure that QR is not in breach of section 104 of the Act¹ in the event that a Third Party Operator seeks Access for the purpose of competing with a QR Railway Operator.

3.4.2 Internal Access Agreements for New or Renewed QR Train Services

Internal Access Agreements for Train Services relating to new or renewed QR rail haulage arrangements will need to be consistent with the provisions of the Undertaking as QR Railway Operators will potentially be competing with Third Party Operators at the time of negotiating such agreements. This requirement does not preclude QR taking advantage of any synergies that arise due to QR's integrated status, provided this does not lead to a breach of section 104 of the Act. Further, in respect of renewed rail haulage arrangements, QR recognises that a number of the interface issues outlined in part 7 of the Undertaking will have already been addressed prior to the commencement of the original Access Agreement, and accordingly, may not need to be addressed again unless significant changes to the Train Services are proposed. Importantly, the internal Access Agreements negotiated in accordance with this subclause must reflect an outcome consistent with that which would be reached through an application of the Undertaking in a negotiation with a Third Party Operator.

PART 4. NEGOTIATION FRAMEWORK

4.1 FRAMEWORK

A flowchart illustrating the negotiation process is provided at Attachment A.

¹ section 104 of the Act prohibits an access provider, such as QR, from engaging in conduct for the purpose of preventing or hindering a user's access under an access agreement.

4.1.1 Parties to Negotiation

Paragraphs 4.1.1(a) and 4.1.1(b) specify when Network Access will negotiate Access to Below Rail Services (including stations, platforms and marshalling yards). Network Access will undertake negotiations for Access to Below Rail Services except in the circumstances set out in paragraph 4.1.1(b). With regard to such circumstances, it is unlikely that a Third Party Operator will seek Access to a station or platform managed by a QR business group other than Network Access for the sole purpose of also gaining access to an above rail facility (such as a workshop or terminal) managed by the same QR business group. It is more likely a Third Party Operator will seek Access to a marshalling yard² in these circumstances and where this does occur, the Undertaking provides that negotiations for Access will be conducted between the Third Party Operator and the relevant QR business group that manages the above rail facility.

The following examples illustrate some of the circumstances in which Network Access will negotiate with Third Party Operators seeking Access to marshalling yards:

- a Third Party Operator seeks Access to a marshalling yard area used for queuing Trains for unloading at a port. The marshalling yard area is essential for the through running of Trains on the QR Rail Infrastructure and, consistent with the discussion on organisational structure, Network Access manages this area of the marshalling yard. Therefore, Network Access will negotiate with the Third Party Operator seeking Access to this marshalling yard area; and
- a Third Party Operator seeks Access to a marshalling yard area used for shunting and marshalling of Trains in order to gain access to a private siding attached to that marshalling yard. This area of the marshalling yard is not necessary for the through operation of trains and, therefore, may be managed by a QR business group other than Network Access. As the purpose of gaining Access to the marshalling yard is to gain access to a facility owned by a party other than QR, Network Access will negotiate with the Third Party Operator for such Access.

The following example illustrates an instance where Third Party Operators will negotiate Access to marshalling yards with QR business groups other than Network Access:

- a Third Party Operator seeks Access to a marshalling yard for the purpose of unloading and storing freight in an adjoining terminal that is operated by the QR above rail business group that also manages the marshalling yard (or relevant section thereof). Because the Third Party Operator only wants Access for the purpose of unloading and storing freight in the above rail facility (the terminal) and will therefore be negotiating for access to that facility with the relevant QR above rail business group, the Railway Operator will also negotiate Access to the marshalling yard directly with the relevant QR above rail business group.

² Refer to the comments above under the heading, **3.2 Organisation Structure**, that explain which marshalling yards Network Access is responsible for managing.

In paragraph 4.1.1(c), the Undertaking envisages an end user, for example a coal mine, participating in the negotiation for Access Rights. The following scenario provides an example of how such a negotiation for Access to QR's infrastructure might proceed:

- representatives from a coal mine lodge an Access Application with QR. QR provides an Indicative Access Proposal to the coal mine and the coal mine then calls for tenders for the operation of the relevant Train Services, consistent with the Train Service information in their Access Application. Competing Railway Operators submit tenders to the coal mine based on the Indicative Access Proposal. The coal mine then selects its preferred operator and nominates that party to finalise an Access Agreement with QR. The coal mine can continue to be involved in negotiations with QR, however, the Access Agreement will be signed by QR and the Railway Operator.

4.1.2 Conditions to Negotiation

The Undertaking has been developed by QR to provide certainty, for both Third Party Operators and QR, regarding the processes that will govern the negotiation of Access to QR's Rail Infrastructure. Accordingly, paragraph 4.1.2(a) provides that if a Third Party Operator fails to comply with the relevant obligations and processes set out in the Undertaking, and that failure is assessed by QR to be material, QR will advise the Third Party Operator of its assessment (and the reasons behind that assessment) in ceasing negotiations. Paragraph 4.1.2(f) of the Undertaking provides the Third Party Operator with the right to refer the matter to the QCA if it disagrees with QR's assessment of the situation. Without being exhaustive, the examples listed below illustrate some instances of non-compliance that QR is likely to consider 'material' in terms of this subclause:

- any breach of the provisions of clause 4.2 of the Undertaking relating to confidentiality of information exchanged during Access negotiations;
- a refusal to provide funding for detailed scoping of infrastructure enhancements prior to the execution of an Access Agreement as provided in paragraph 4.7.2(e) of the Undertaking;
- failure to address all the issues in subclause 4.7.2 during negotiation; and
- a failure to provide additional information or clarification of the information provided in an Access Application, as provided in paragraph 4.4(b), within what would be considered a reasonable time bearing in mind the complexity of the task.

In paragraphs 4.1.2(b) and (c), QR reserves the right not to negotiate with Third Party Operators that fail to meet QR's prudential requirements. A Third Party Operator must be able to satisfy QR that it is Solvent and that it is not currently, nor in the previous two years has been, in Material Default of an agreement with QR or an access agreement with another railway manager. Accordingly, if a Railway Operator has materially defaulted on an access agreement with a railway manager in another state (for example, Rail Access Corporation in New South Wales) within the past two years, QR may decline to negotiate Access with them.

Paragraph 4.1.2(d) is intended to ensure that QR does not:

- (i) commit the same Capacity Entitlement to more than one Railway Operator/s; or
- (ii) have Access Agreements with more than one Railway Operator where it is feasible for only one of those Railway Operators to run the relevant Train Services.

For example, one Railway Operator has a contract with a mine for the transport of five million tonnes of coal per annum and QR has an Access Agreement with that Railway Operator to provide sufficient Access Rights to enable the Railway Operator to carry the contracted quantity of coal. If another Railway Operator seeks Access from QR for the carriage of five million tonnes of coal from the same mine to the same destination and the second Railway Operator's request for Access relates to the same five million tonnes of coal currently transported by the first Railway Operator then it will not be feasible for both Railway Operators to transport this coal. In this instance, QR would only negotiate with the second Railway Operator in the manner specified in paragraph 4.1.2(d).

This paragraph is not intended to allow QR to make an assessment of whether or not there is sufficient market demand, for example in the long distance passenger Market, to justify the entrance of an additional competitor. In such a situation, provided sufficient Capacity exists, both Railway Operators could feasibly operate their Train Services.

The Undertaking provides that, where QR receives an Access Application to which paragraph 4.1.2(d) relates, it will not be obliged to enter into negotiations with the Railway Operator unless and until the Railway Operator demonstrates that Committed Capacity can be made available or that QR will not be contracted more than once for Access for Train Services carrying the relevant bulk consignments. Paragraph 6.4(d) provides one avenue through which a Railway Operator may meet this requirement, however, it is not the only avenue. For example, an end customer, such as a mining company, may directly negotiate with its existing Railway Operator for the Access Rights to be surrendered to QR.

In the event that QR receives an Access Application to which paragraph 4.1.2(d) relates, and another Access Application in respect of Available Capacity, and QR is unable to prepare an Indicative Access Proposal for both within the time limits specified in clauses 4.4 and 4.5, priority will be given to the preparation of the Indicative Access Proposal for the Access Application relating to Available Capacity.

4.4 ACKNOWLEDGEMENT

For the purposes of paragraph 4.4(b), QR is likely to seek additional information from a Third Party Operator where the Access Application is incomplete or the information provided begs another question that has not been answered by the Third Party Operator. For example, QR may require additional information where the Third Party Operator has not nominated the start date for its proposed operation, or if it does not require Access to QR stations but equally does not advise that it will require a connection to private infrastructure. For the purpose of paragraph 4.4(b), QR is likely to seek clarification where, for example, there appear to be errors in the data and/or calculations included in an Access

Application, or a Third Party Operator requests something that varies greatly from existing standards (for no apparent reason) and will result in a disproportionately high indicative Access Charge.

The Undertaking provides, in paragraph 4.4(c), that in extenuating circumstances, QR may not be able to provide an Indicative Access Proposal within 30 days of acknowledging an Access Application. Such extenuating circumstances may include:

- major impediments to the provision of sufficient Capacity to meet the requirements of a Third Party Operator;
- fundamental change in the technical or operating parameters for a corridor such as an increase in axle load or Train length, which requires a detailed investigation before any meaningful Access Charge can be calculated; and
- abnormal work commitments within Network Access.

4.7 NEGOTIATION PROCESS

4.7.1 Negotiation Period

Subparagraph 4.7.1(c)(iii) reflects the operation of paragraph 6.3.2(b) of the Undertaking: if two or more Railway Operators seek Access to mutually exclusive Access Rights, QR may finalise an Access Agreement with the Railway Operator willing to agree to terms and conditions of Access that are considered by QR to be most favourable to the commercial performance of Below Rail Services. Mutually exclusive Access Rights are Access Rights that overlap such that only one Railway Operator is capable of operating their proposed Train Services in the absence of Capacity expansion, the cost of which cannot be commercially achieved. For example, if there is Capacity for one Train per day available, and expanding Capacity would require the replacement of a major bridge, then if two Railway Operators sought Access for the operation of one Train per day and it was not commercially viable to replace the bridge so that both Railway Operators can operate, mutually exclusive Access Rights would exist. Once QR has signed an Access Agreement with one Railway Operator, it is no longer in a position to negotiate with the other Railway Operator in respect of the Access it has sought and accordingly, Access negotiations with that party in respect of that Access will cease.

4.7.2 Issues to be addressed during Negotiation

Paragraph (d) of this subclause allows QR and a Third Party Operator to agree to finalise certain aspects of the identified negotiation requirements after execution of the Access Agreement. For example, commitment to an Access Agreement may be required before it is possible to finalise all details, in order to secure financial backing for a project. Where the parties have agreed to finalise details following execution of the Access Agreement, the satisfactory finalisation of outstanding matters will be a condition precedent to the Third Party Operator commencing operations upon the Rail Infrastructure. Finalisation of outstanding issues after execution of an Access Agreement may result in consequential amendments to other terms and conditions of the Access Agreement (including Access

Charge). For instance, it is possible that a Third Party Operator will not have possession of its Rollingstock at the time of negotiating and signing an Access Agreement. Although, it will contract on the understanding it has in relation to the specifications of its Rollingstock, amendment to Rollingstock design during construction may have the result that, once delivered, the Rollingstock differs to an extent that requires the terms of the Access Agreement to be altered. In this instance, the detail of the Rollingstock Interface Standards may only be able to be finalised following construction of the Rollingstock. Any variation to the Rollingstock Interface Standards may have cost implications to QR and would therefore require a change in the Access Charge. The Rollingstock will have to be authorised after execution of the Access Agreement but before operation of the Train Services.

Paragraph (e) of this subclause allows QR to require a Third Party Operator to provide the funding for a detailed investigation and the design of infrastructure enhancements necessary for the Access Rights sought by the Third Party Operator, if the Third Party Operator requires such investigation and design to occur prior to finalisation of the Access Agreement. If the Third Party Operator is happy to leave this work until after the Access Agreement has been signed (as would normally be the case), the cost of such work will be met by the Third Party Operator in the manner provided for in the Access Agreement. This paragraph provides QR with the security of being able to recover the cost of such project specific work notwithstanding the Third Party Operator in question subsequently declines to proceed with its Access Application.

Paragraph 4.7.2(f) provides that if, after providing an Indicative Access Proposal but prior to executing an Access Agreement with one Railway Operator, a second Railway Operator submits an Access Application in respect of Access that would adversely affect QR's ability to provide Access in accordance with the Indicative Access Proposal provided to the first Railway Operator, QR will notify the first Railway Operator of the existence of the second Railway Operator's Access Application prior to providing an Indicative Access Proposal to the second Railway Operator.

4.8 ACCESS AGREEMENT

The summary of the Access Agreement in schedule E does not provide a detailed summary of all issues addressed in an Access Agreement, although it is intended to outline all major issues likely to be dealt with in an Access Agreement. The different circumstances in which Railway Operators are likely to operate mean that there will be an indeterminate range of possible variations in approach to the relevant issues. The summary cannot and does not spell out all of these possible variations.

PART 5. PRICING PRINCIPLES

5.1 PRICING OBJECTIVES

5.1.2 Limits on Price Differentiation

Paragraph 5.1.2(a) requires, subject to paragraph 5.1.2(c), that where different Railway Operators are competing to provide the same specified transport service they will be offered consistent Access Charges.

A 'specified transport service' is one which carries a specified commodity between a specified origin and specified destination. For example:

- the haulage of grain from grain terminal X to port Y;
- the carriage of commuter passengers from A to B in the peak period; or
- the haulage of coal from coal mine D to port E.

A 'consistent Access Charge', for the purposes of this subclause, is an Access Charge which differs (from the Access Charge it is being compared to) only to the extent that it reflects differences in the costs (including risks) to QR in providing Access. For example where two Railway Operators are competing to provide a specified transport service:

- if one Railway Operator proposes to use a different Train consist, which (for example) results in more Capacity being used to transport the same quantity of the commodity, QR will reflect the value of the additional Capacity required for that operation in the Access Charge it offers to that Railway Operator;
- if one Railway Operator wishes to use Rollingstock that will give rise to greater wear and tear on the Track (eg different wheel profile or hardness), QR will reflect the additional cost impact of that Rollingstock in the Access Charge it offers to that Railway Operator; or
- if one Railway Operator proposes a different operation that does not result in any appreciable change in costs to QR, for example, where there is little demand for the Available Capacity, proposing to use a longer Train (ie less numbers of trains) or using Rollingstock that is more efficient in terms of gross to net weight (ie less gross tonnes), QR will keep the amount of the Access Charge constant between the two Railway Operators. This may, however, result in a change to the unit rate of Access Charge applied for the Railway Operator proposing the different operation.

It is relevant to note that the cost (including risk) impact/s of certain Railway Operator requirements (such as the use of certain Rollingstock and Train consists as illustrated above) will not always be discernible with great certainty or precision, nor capable of formulated calculation. QR will reflect its assessment of the cost (including risk) impact/s of different operations in the Access Charge offered, based on its commercial judgement.

Paragraph 5.1.2(b) provides that where Railway Operators are providing Train Services in relation to the same commodity type and within the same Geographic System, when these Railway Operators negotiate for access, QR will take a consistent approach to the determination of Access Charges, taking into account the characteristics of the Rail Infrastructure and the Train Services operating on that Rail Infrastructure.

For the purposes of the Undertaking, a ‘commodity type’ will be identified by a particular product, and where such a product has different discernible characteristics at particular stages of production, by the particular stage of its production. Examples of commodity types are provided below:

- sugar cane;
- sugar syrup;
- processed sugar;
- copper concentrate;
- copper metal;
- ilmenite;
- magnesite; and
- coal.

The term ‘commodity type’ will also be applicable to passenger traffics and in this regard a distinction can be made between the types of passenger services available. For example:

- long distance passengers; and
- commuter passengers.

A ‘Geographic System’ is a part of the network that can be logically distinguished on the basis of location, dominant traffic type and/or dominant traffic operations (in terms of origin/destination, for example). The following are examples of Geographic Systems:

- the Goonyella system;
- the Brisbane metropolitan system;
- the Mount Isa system;
- the Moura system; and
- the Blackwater system.

The precise boundaries of these Geographic Systems (and other applicable Geographic Systems) will be identified in the Cost Allocation Manual.

The reference to a ‘consistent approach’ in paragraph 5.1.2(b) does not require that Access Charges calculated by QR be identical, but rather that QR calculate those charges in a consistent manner, taking into account the characteristics of the Rail Infrastructure and the Train Services operating on that Rail Infrastructure.

The requirement to develop Access Charges using a consistent approach does not imply that Access Charges will be mechanistically derived based on a pre-determined set of formulas and parameters. There are many factors which influence rail costs and QR's commercial risk, and cost and service inter-relationships are complex and not able to be defined with precision. In recognition of these factors, QR has retained a degree of flexibility in the way it develops Access Charges, however its obligation to adopt a consistent approach disciplines the application of its pricing flexibility.

The requirement that Access Charges be developed on a consistent basis for Train Services carrying the same commodity type within the same Geographic System means that QR will not differentiate between such Train Services on grounds such as the perceived capacity on the part of one end user to pay more than another end user for reasons such as market incumbency, financial liquidity or product quality characteristics. Rather, Access Charge determination will take into account factors impacting on the Incremental Costs attributable to the specific Train Service as well as factors impacting on the Common Costs which that Train Service will contribute towards. Variations in the relevant factors applicable to different Train Services (for the same Geographic System and commodity type) will lead to variations in the applicable Access Charge, even though the approach used for determination is consistent.

For example, two of the factors that will be considered in determining an Access Charge include the characteristics of the Rail Infrastructure utilised by the Train Services and the inter-relationships between Train Services operating in the relevant Geographic System. This will include appraisal of the potential for variations in each of these Train Services' contribution to Common Costs having regard to the location of origins and destinations, the layout of the various corridors within the Geographic System, and the different traffic densities on each corridor.

Such considerations could potentially lead to the application of a distance taper in the Access Charge for Train Services travelling over a longer distance or utilising lower density branch lines. In effect, Train Services benefiting from a distance taper may make lesser contribution to Common Costs for those sections of the Rail Infrastructure which are traversed by a number of Railway Operators (referred to as "the common corridor") than Train Services which make greater use of the common corridor as a proportion of distance travelled. Such tapers are implicit in the determination of Reference Tariffs for the Reference Train Services identified in schedule G of the Undertaking. Taking into account the characteristics of the relevant Rail Infrastructure and the Train Services operating on that Rail Infrastructure, the extent to which a distance taper is applied in determining an Access Charge may vary from case to case.

Another factor that will impact on the determined Access Charge is the characteristics of the relevant Train Service. Typical Train Service characteristics that may impact on the Access Charge determined for a Train Service include those matters outlined in clause 1.3 of schedule G.

Paragraph 5.1.2(c) provides that the requirement to develop Access Charges consistently (as set out in paragraphs 5.1.2(a) and (b)) does not require QR to develop Access Charges

in a current negotiation with regard to Access Charges incorporated in existing Access Agreements. The operation of this paragraph is illustrated by the following example:

- In August 1999, one Railway Operator signs an Access Agreement with QR in respect of Train Services operating in a particular Geographic System for the purpose of hauling a particular commodity. In June 2000, another Railway Operator lodges an Access Application with QR in respect of Train Services operating in the same Geographic System and for the purpose of hauling the same commodity as the first Railway Operator. In determining the appropriate Access Charge for the second Railway Operator, QR does not look back to the Access Charge paid by the first Railway Operator under its Access Agreement, but instead looks forward and considers the contribution the Railway Operator should make to the cost of providing the relevant Rail Infrastructure, bearing in mind the pricing principles in part 5 of the Undertaking. If applicable, the rate review provisions, in the existing Railway Operator's Access Agreement, will address any need for an adjustment in the Access Charge payable by that Railway Operator as a result of, for example, a change in the anticipated cost of infrastructure provision due to an increase or decrease in the volume of traffic on the line.

5.1.3 Rail Infrastructure Utilisation

Whilst price differentiation between Railway Operators competing in the provision of Train Services in respect of the same commodity type in the same Geographic System is subject to the limitations outlined above, QR may price differentiate between Railway Operators serving different Markets, subject only to the pricing limits imposed by clause 5.2.

The following example illustrates the operation of paragraph 5.1.3(a):

- a number of Railway Operators seek Access to the same section of Rail Infrastructure. One of the Railway Operators wants to transport grain, another Railway Operator wants to transport coal, and a third Railway Operator wants to transport passengers. In determining Access Charges for the three Railway Operators, QR may take into account the characteristics of the Markets that the respective Railway Operators serve. These characteristics might include a strong customer demand base and a comparatively high end price for the service or the commodity for which the service is being provided, or strong competition for the business of end users from providers of alternative transport services. These factors will reflect the Railway Operators' ability to pay Access Charges and, based on the different ability of the Railway Operators to pay Access Charges, QR may provide Access Charges to each of the Railway Operators which provide different levels of contribution to Common Costs.

The price limits and cost allocation rules will ensure that, while different traffics may make different contributions to Common Costs, no Cross Subsidy will exist.

The principle in paragraph 5.1.3(a) assumes that there is adequate Capacity for all Railway Operators seeking to use the relevant Rail Infrastructure, or that increased Capacity can be funded by all Railway Operators.

Paragraph 5.1.3(c) deals with the situation where there is inadequate Capacity and insufficient commercial justification to expand Capacity to meet all demands. Paragraph 5.1.3(c) envisages scenarios such as the following:

- the same three Railway Operators described above seek Access to Rail Infrastructure where there is limited Available Capacity. There is only enough Capacity to enable one of the three Railway Operators to operate their Train Service and it is not commercially justifiable to increase the Available Capacity. QR may assess the Access Charge that would be payable by each Railway Operator as if there was sufficient Capacity to provide Access to all three Railway Operators, and then identify which of those Access Charges would provide QR with the highest contribution to Common Costs. QR may then quote all of the Railway Operators an Access Charge which is consistent with the Access Charge which provides the highest contribution to the Common Costs of providing the Rail Infrastructure (notwithstanding they are serving different Markets). In essence, this ensures that the highest value user, or the user willing to make the greatest contribution to the cost of providing the necessary Rail Infrastructure, obtains the limited Available Capacity.

Paragraph 5.1.3(d) acknowledges that in certain circumstances, Queensland Transport may provide Infrastructure Payments for the specific purpose of assisting a specified type of traffic. In the Brisbane metropolitan region, for example, Queensland Transport may nominate in its agreement with QR that its primary purpose in providing Infrastructure Payments is to enable an effective commuter rail transport system to operate in the Brisbane area. In this example, in determining the Access Charge to be paid by a Railway Operator providing a commuter rail transport service, QR will include the proportion of the Infrastructure Payment related to that service. This 'notional' Access Charge (taking into account the relevant proportion of the Infrastructure Payment) will be utilised for the purpose of making comparisons of the Access Charges payable by the Railway Operator of the commuter rail transport service compared with alternative Railway Operators.

5.2 PRICING LIMITS

5.2.3 Price Limits on Train Service Combinations

Paragraph 5.2.3(a) provides that, in principle, the price limits for Train Service combinations relate to any combination of Train Services that operate on the Rail Infrastructure. A single Train Service may potentially be incorporated in a significant number of combinations of Train Services, for example it could be included in a combination of: two (2) Train Services operating over the same corridor; all Train Services operating over that corridor; and all Train Services operating in a specified region. This prevents monopoly rents being extracted by charging each individual user at or below the price ceiling but in total earning an excessive return (because of the sharing of costs between users).

(i) *Floor Test*

Queensland Transport may make Infrastructure Payments in relation to specified sections of Rail Infrastructure. The purpose of these Infrastructure Payments is, where Access Charges alone are not sufficient for QR to commercially justify continuing to provide a section of Rail Infrastructure, to ensure that the Rail Infrastructure continues to be provided for the benefit of all Railway Operators. In making these payments, Queensland Transport has recognised that, although the Access Charge for each Train Service will meet the test set out in Paragraph 5.2.2(a)(i), the Access Charges for a combination of Train Services travelling over certain parts of the network may not, on their own, meet the Incremental Cost of providing Access for that combination of Train Services. Therefore, in assessing whether QR has sufficient revenue to continue to provide the section of Rail Infrastructure which supports a particular combination of Train Services, any Infrastructure Payments for the relevant section of Rail Infrastructure will be added to the aggregate Access revenue for that combination of Train Services.

(ii) *Ceiling Test*

As for the price floor test, the ceiling test of Stand Alone Cost for Train Service combinations relates to any combination of Train Services that operate on the Rail Infrastructure.

Although the price ceiling test specified in Paragraph 5.2.3(a)(ii) allows for a Revenue Limit for all possible combinations of Train Services that operate over QR's Rail Infrastructure, provided that QR is complying with the principles set out in Subclause 5.1.2, there are only a limited number of combinations of Train Services which realistically may need to be reviewed to ensure that QR is complying with the price ceiling test. In paragraph 5.2.3(b), QR has nominated the specific combinations of Train Services identified as Train Service Groups as being those combinations of Train Services that may need to be assessed against the relevant Revenue Limit. Provided that QR is within the Revenue Limit for each of these Train Service Groups, QR will have complied with the price ceiling test set out in paragraph 5.2.3(a)(ii) of the Undertaking.

Paragraph 5.2.3(c) recognises that the purpose of the price limits, identified in paragraph 5.2.3(a), is to ensure that the Access Charges being negotiated at any one point in time are reasonable in the current circumstances. They are not intended to provide a limit on the actual revenue that QR may earn from Access.

QR enters into Access Agreements with Railway Operators based on each party assuming certain risks. If, for example, QR has previously made a poor business decision in entering into an Access Agreement with a particular Railway Operator, this will not enable QR to, in a current negotiation, charge another Railway Operator more than would otherwise be justified in the current circumstances. Similarly, if QR earns a greater return from one of those existing Access Agreements as a result of the manner in which risks are shared in that agreement, this will not result in a requirement that, in a current negotiation, QR provide Access to a Railway Operator at a lower price than would otherwise be justified in the current circumstances.

Therefore, in assessing aggregate Access revenue for the purpose of assessing the appropriateness of an Access Charge that QR is currently negotiating, the Access Charges currently payable with respect to all other Train Services will be ignored and it will be assumed that those other Train Services are paying Access Charges determined on a basis consistent with how they would currently be determined.

5.2.4 Definition of Revenue Limit

In order to assess what assets are reasonably expected to be required for the Stand Alone provision of Access in paragraph 5.2.4(a), the following types of assets will be considered:

- Rail Infrastructure assets: for example Track, signalling and Train control assets; and
- other assets owned by QR which are reasonably expected to be required for the provision of Access: for example computer systems and office equipment.

In assessing the operating, maintenance and other costs reasonably expected to be incurred in the provision of Access, other costs may include:

- business and corporate overheads;
- the implied cost of self insurance;
- recognition of previously incurred abnormal expenses (for example, expenses associated with moving electrical and telecommunication assets owned by other organisations where such movements are required to give effect to Rail Infrastructure enhancements.

Paragraph 5.2.4(c) provides that where changes in traffic task are the result of the commencement or discontinuation of a major project, increases in the traffic task shall be built into the forecast at the time of service commitment and decreases excluded from the forecast at the time of expected service termination. The intent of this can be illustrated by the following examples:

- where there is speculation that a new metal refinery will be built and metal concentrate will be transported to that refinery by rail, QR will not include the transport of that metal concentrate in its forecast traffic task. If a commitment is made to the construction of the metal refinery, QR will then include the transport of the metal concentrate in its forecast traffic task. The profile of the forecast traffic task will reflect the lead time prior to the commencement of any railings to the refinery;
- where it is known that a particular mine's reserves will be fully depleted at a certain time, the forecast traffic task will reflect the discontinuation of haulage from that mine from that time.

5.3 REFERENCE TARIFFS

5.3.2 Review of Reference Tariffs

QR will be expected to materially exceed its Revenue Limit, for the purposes of paragraph 5.3.2(b), when it expects to recover an amount that exceeds the Revenue Limit by a certain percentage of the Revenue Limit to be agreed between QR and the QCA.

5.4 STRUCTURE OF ACCESS PRICES

Once the level of required Access revenue has been determined for a Train Service in accordance with the principles set out in clause 5.2 of the Undertaking, the Access Charge may be structured to individually suit the requirements of QR and the Third Party Operator. The Access Charge may be structured to include:

- a) an initial up front component. This may represent some or all of the incremental investment that QR is required to undertake in order to ensure that there is sufficient Capacity for the Access Rights required by the Third Party Operator. Such incremental investment would typically be required to be funded upfront if it is specific to that Third Party Operator's operation and would have limited alternative use for QR. Alternatively, there may be other specific circumstances which the Third Party Operator and QR agree are best addressed through the payment of an up front component;
- b) an ongoing periodic fixed component. This would not necessarily reflect the fixed costs to QR of providing Access to the Third Party Operator, but rather may be established at a level which provides appropriate price signals with respect to the Third Party Operator's ongoing usage of the Rail Infrastructure. In determining the appropriate price signals, QR will consider issues such as the fixed cost of providing the Rail Infrastructure, incremental investment which is not recovered through an upfront charge, and alternative demand for the Capacity;
- c) an ongoing variable component based on usage of the Rail Infrastructure which may also be established at a level which provides appropriate price signals regarding ongoing usage of the Capacity; and
- d) any combination of the above elements, or any other structure as agreed by QR and the Third Party Operator.

The operation of paragraph 5.4(a) is illustrated by the example below:

- Two (2) Railway Operators want Access Rights for Train Services in respect of the same commodity type and within the same Geographic System. Both require some project specific Rail Infrastructure enhancements to be carried out to allow for the operation of their respective Train Services. The first Railway Operator requires a long spur line to be built. The second Railway Operator requires Track strengthening work to be undertaken in order to enable it to use Rollingstock with a higher axle load. The first Railway Operator is likely to pay a high upfront component to recover the significant project specific capital investment (which has no alternative use to QR) required for its operation. The second Railway Operator may also pay a high upfront component. Alternatively, its Access Charge may be structured to include a high fixed component if QR is satisfied that it may have an alternative use for the investment in the absence of that Railway Operator, or that

there are a number of Railway Operators prepared to contribute to the costs of the Rail Infrastructure enhancement.

Paragraph 5.4(b) provides that QR will not impose upon a Third Party Operator an Access Charge structured significantly differently from that provided to other Railway Operators providing Train Services for the same commodity type within the same Geographic System. (Refer to the discussion above on subclause 5.1.2 in relation to the meaning of the terms 'commodity type' and 'Geographic System'). 'Significantly different' means different in a real and substantial sense. QR reserves the right to structure an Access Charge differently if such an approach is reasonable in light of the different costs (including risks) to QR of providing Access to the respective Railway Operators. The example above, insofar as it relates to the Railway Operator requiring a long spur line to be built for its operations, illustrates an instance where a different Access Charge structure may be reasonable, if existing Railway Operators in the same Geographic System did not themselves require similar project specific capital investment.

PART 6. CAPACITY MANAGEMENT

6.1 SERVICE SPECIFICATION AND TRAIN SCHEDULING

The Capacity requirements of Railway Operators will vary for any number of reasons. QR's approach to defining Capacity is sufficiently flexible to meet the different requirements of various Railway Operators. To a large extent, the priorities of end customers will dictate the key priorities of a Railway Operator. For example, the key objective of a Railway Operator carrying coal is likely to be the maximum utilisation of its Rollingstock and the haulage of a certain tonnage over a given time period. Such a Railway Operator is likely to be less concerned with meeting a pre-agreed timetable than with meeting objectives such as turnaround time and maximum or minimum time between Train Services.

However, for a Railway Operator of passenger services, which are more sensitive to timetable reliability, the agreed constraints for timetabling are more likely to reflect issues such as ensuring departure and arrival times are appropriate for that Railway Operator's passengers and ensuring that timetable reviews occur at reasonable intervals (in terms of frequency and regularity). It is also likely that a Railway Operator of passenger services will require substantial prior notice for a timetable change to allow for the implementation of marketing and other associated strategies.

The Capacity Entitlements of individual Railway Operators may be tailored according to some or all of the items identified in paragraph 6.1(a) of the Undertaking, and any other constraints which a Railway Operator identifies as critical to its operation. An initial timetable will then be developed consistent with this Capacity Entitlement. Train Services will be operated in accordance with this timetable unless and until the timetable is varied. Any variations from the initial timetable must be made in a manner consistent with the Capacity Entitlement.

6.3 CAPACITY ALLOCATION

6.3.1 Register of Interested Parties

For the purposes of this subclause, an interest in Access Rights will include, but not be limited to:

- an interest held by the producer of a commodity that is transported or hauled by a Railway Operator using those Access Rights under an existing Access Agreement;
- an interest held by a Railway Operator looking to acquire those Access Rights (which are currently the subject of another Railway Operator's Access Agreement); and
- the interest held by the current Railway Operator in respect of those Access Rights under an existing Access Agreement. Note, the current Railway Operator will automatically be placed on the register of interested parties.

6.3.2 Allocation of Capacity

Paragraph 6.3.2(b) notes that where two (2) or more Railway Operators seek Access to mutually exclusive Access Rights, each Railway Operator will be advised that there is one or more other Railway Operator/s wishing to negotiate in respect of Access Rights that are mutually exclusive. (Refer to the discussion on 4.7.1 with respect to the meaning of mutually exclusive Access Rights.) Where this is the case, each of the Railway Operators will be advised of the existence of the Access Applications for mutually exclusive Access Rights and of QR's intent to finalise an Access Agreement with the Railway Operator willing to agree to terms and conditions of Access considered by QR to be 'most favourable' to the commercial performance of QR's Below Rail Services. No further details of a Railway Operator's Access Application will be provided to another Railway Operator without the agreement of the Railway Operator who lodged the Access Application.

The following factors indicate the types of considerations that QR would be likely to take into account in assessing the 'most favourable' terms and conditions for QR's Below Rail Services:

- the length of the Access Agreement (and depending on the circumstances, a longer or a shorter contract may be more favourable to QR in particular instances);
- the Access Charge and resultant contribution to Common Costs having regard to the Incremental Costs of the particular Train Service;
- terms and conditions relating to interface issues which result in minimum inconsistency (and therefore cost and/or risk to QR and other Railway Operators) with other Railway Operators on the Rail Infrastructure (unless such terms and conditions actually represent a more efficient and/or effective approach or process); and
- an approach to Capacity Entitlement definition that is conducive to the optimisation of the utilisation of the Rail Infrastructure.

Importantly, this provision does not permit QR to price Access inconsistently with the pricing principles in part 5 of the Undertaking.

6.4 CAPACITY TRANSFER

Where a Railway Operator has consistently under-utilised its Access Rights for six months, it may be able to demonstrate a future requirement for those Access Rights, in accordance with subparagraph 6.4(a)(ii), by, for example:

- providing evidence of a contract between the Railway Operator and another party, which will require the Railway Operator to utilise the relevant Access Rights; or
- providing evidence of short term extenuating circumstances affecting demand for its Train Services.

If a Railway Operator can demonstrate that its usage of its Access Rights will increase, but cannot demonstrate that it will fully utilise its existing Access Rights, QR may reduce the Railway Operator's Access Rights to a level that will allow it to meet its anticipated level of demand.

Paragraph 6.4(d) provides that, in certain circumstances, QR may approach a Railway Operator to seek to negotiate an amendment to its Access Agreement so as to facilitate Access by another Railway Operator. The following examples illustrate how paragraph 6.4(d) may operate:

- a Railway Operator wishes to negotiate Access in respect of Capacity that is currently contracted to another Railway Operator, but that second Railway Operator is not utilising the full amount of its contracted Capacity. The first Railway Operator may request QR seek to negotiate a reduction of the second Railway Operator's Capacity Entitlement so as to allow it to operate its Train Services. If the circumstances described in paragraph 6.4(a) exist, QR may reduce the second Railway Operator's Access Rights regardless of whether the second Railway Operator agrees to such a reduction. If the circumstances described in paragraph 6.4(a) do not exist, the second Railway Operator's Access Rights will only be reduced if the second Railway Operator agrees to such reduction; and
- if an end user wants to secure the services of a different Railway Operator, it may request QR seek to negotiate a reduction (possibly to occur in the future) in the Capacity Entitlement currently held by the existing Railway Operator to allow that Capacity to be contracted to the new Railway Operator. QR's ability to contract the requested Capacity to the new Railway Operator will be conditional upon the existing Railway Operator agreeing to the corresponding reduction in its Access Rights, unless, as noted above, the circumstances in paragraph 6.4(a) exist.

Paragraph 6.4(f) prevents a Railway Operator from buying Access Rights from QR and then on-selling them to other parties. Transfer of Access Rights may only occur in accordance with the assignment provisions of the Railway Operator's Access Agreement.

PART 7. INTERFACE CONSIDERATIONS

7.1 ROLLINGSTOCK INTERFACE STANDARDS

7.1.1 Development of Rollingstock Interface Standards

Clause 2.1 of schedule D of the Undertaking provides that Rollingstock Standards will 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 Rail Infrastructure integrity related to Rollingstock integrity; and
- Rollingstock characteristics used in formulating Access Charges.

The following are examples of what will be included in the Rollingstock Standards:

- wheel profile characteristics;
- Rollingstock kinematic outline;
- wheel flat limits;
- maximum axle load;
- impact loading on the Rail Infrastructure;
- wheel diameter;
- bogie and wheel spacing; and
- wheel to wheel electrical resistance.

Clause 2.2 of schedule D of the Undertaking provides that Train Standards will be based on parameters necessary to reasonably manage risks of incidents involving the Rail Infrastructure and Rollingstock Configuration interface.

The following are examples of what will be included in the Train Standards:

- Train-radio type;
- braking distance;
- braking deceleration rate;
- maximum Train length; and
- maximum Train speed.

The Rollingstock Interface Standards are not intended to specify detailed implementation methods or processes, unless such methods or processes are critical to the effective management of risks. Rather the Rollingstock Interface Standards are intended to specify the outcome that must be achieved to maintain compatibility with the Rail Infrastructure.

Paragraphs 7.1.1(e),(f) and (g) allow for variations to the Rollingstock Interface Standards to be negotiated. This flexibility allows for variation and/or addition to the initially advised Rollingstock Interface Standards to suit the particular requirements of Railway Operators. For example, a Railway Operator may wish for QR to upgrade the applicable axle load on a relevant piece of Rail Infrastructure from 20 tonne to 25 tonne. Subject to the factors in paragraphs 7.1.1(f) and (g), a variation to effect such a change may be made to the Rollingstock Interface Standards.

Paragraph 7.1.1(h) provides that where a Railway Operator exclusively funds the works necessary for the implementation of a variation to Rollingstock Interface Standards, QR will be entitled to restrict any other Railway Operator from taking advantage of the variation in question, until it has made an appropriate contribution towards the cost of implementing the variation. For example, a Railway Operator who wishes to utilise longer Trains on the Rail Infrastructure, may agree to pay for longer passing loops. QR may then restrict other Railway Operators from running longer Trains until they also contribute to the cost of lengthening the passing loops. Similarly, one Railway Operator may wish to run Trains with a heavier axle load than the Rail Infrastructure currently permits. If it agrees to pay for the necessary strengthening of the infrastructure, other Railway Operators may not be permitted to run heavier axle loads over the Track until they make a contribution to the cost of the strengthening work undertaken.