

11 March 2019

Mr. Charles Millstead  
Chief Executive Officer  
Queensland Competition Authority  
GPO Box 2257  
Brisbane QLD 4001

*Submitted via QCA online portal*

Dear Mr. Millstead

## **Declarations review: Aurizon Network, Queensland Rail and DBCT**

### **Introduction**

Pacific National welcomes the opportunity to provide a submission on the QCA's declarations review draft decision (draft decision).

Pacific National's 30 May 2018 submission in response to the staff issues paper on the QCA's declarations review broadly supported the QCA approach to the access criteria and considered each of the declaration criteria for the Aurizon Network (the Central Queensland Coal Network (CQCN)), Queensland Rail Network (QRN) and Dalrymple Bay Coal Terminal (DBCT) met.

### **Declaration remains critical**

Declaration of the CQCN, QRN and DBCT over the last two decades has proven critical to promoting effective competition and efficient investment across key transport supply chains in Queensland.

CQCN, QRN and DBCT are categorised by COAG's Transport Infrastructure Council's (TIC) as part of the National Key Freight Routes<sup>1</sup>. To be categorised in this way, TIC considered the significance of the connection between nationally significant places for freight and the types of commodities, as well as the value and volumes of those commodities the route carries.

Accordingly, Pacific National agrees with the draft decision that all criteria are met and recommends declaration of the CQCN and the QRN (North Coast, Mt Isa, West Moreton and Metro services) for a declaration period of 15 years.

---

<sup>1</sup> Transport Infrastructure Council website, National Key Freight Routes.

However, unlike the QCA, Pacific National asserts the other QRN system services (South Western, Western, Central Western and Tableland systems) – ‘the other systems’ should remain declared (for 15 years).

While Pacific National agrees with the draft decision that all criteria are met for the DBCT, we assert there are strong arguments for it to remain declared for 15 years, rather than the ten years recommended in the draft decision. The reasons for our position on the other systems and DBCT are detailed below.

### **The other systems should remain declared**

The QCA appears to have adopted the position of Queensland Rail (QR) that the other systems should not be declared because of the low volume of freight hauled, higher under-utilisation rates (due to modal competition from road) and a high degree of dependence on Transport Services Contract (TSC) revenue (subsidies) for commercial viability. In addition, it stated it is not evident access (because of declaration) would promote a material increase in competition in a dependent market such as the above-rail haulage market, or any other dependent market, on any of these other systems.

We note QR has not provided information to the QCA to enable it to undertake a rigorous assessment to support the above assertions. Nevertheless, statements made by QR about the absence of a need for declaration give significant rise for concern. For example, the QCA did not agree with QR that its proposed *draft* access framework or deed poll would provide the certainty needed for access seekers as an alternative to declaration. Further, government policies routinely change, the argument about TSC as basis for no declaration is tenuous given it could be removed at any time.

The QCA confirms these other systems are state significant infrastructure, particularly as all the systems are interconnected. This is further supported by being identified as national key freight routes<sup>2</sup>. The QCA has already established declaration on the North Coast, Mt Isa, West Moreton and Metro services improves competition in many areas of economic activity (such as coal, rail haulage, agriculture and commuter passenger transport), which contribute substantially to the Queensland economy both in terms of direct revenue, as well as employment and regional development. The mere fact the other systems are interconnected within the QRN creates a strong inference that the benefits flowing from the North Coast, Mt Isa, West Moreton and Metro services apply to the other systems services.

The QCA notes the lack of stakeholder submissions addressing public interest factors in relation to the other systems services however this is not a reason to dismiss it as being not satisfied. Further, the fact TSC payments are subsidies provided for public policy reasons to 'support regional economic development and trade' and to 'assist in managing livestock transport demands on the road network' is consistent with the public interest<sup>3</sup>.

---

<sup>2</sup> Transport Infrastructure Council website, National Key Freight Routes.

<sup>3</sup> QCA Draft recommendation Part B: Queensland Rail declaration review, December 2018, p,70.

The QCA in weighing up the public interest test, stated the North Coast line 'would have a net beneficial effect on environmental and safety issues' a conclusion that could be drawn for all system services on the QRN.

Pacific National asserts the South Western, Western, Central Western and Tableland systems should remain declared.

### **DBCT needs to be declared for 15 years**

Despite satisfying all the criteria for declaration, the QCA adopted a ten-year declaration period for the DBCT compared to 15 years for CQCN and QRN. The reason for the shorter declaration period appears to be based on an assertion that assets at the commencement period would be partially life expired and 'to the extent that new DBCT users contract at DBCT for new access during the declaration period, the QCA presumes that they will have the benefit of the evergreen renewal right to the extent that their mine life exceeds 10 years, and therefore beyond the declaration period'<sup>4</sup>.

Pacific National strongly disagrees with this assertion. Most of the rollingstock on the CQCN is 'young' by industry standards with new locomotives and wagons deployed as recently as 2014. It is simply not accurate to assert rollingstock assets are mid-life expired. Moreover, given ongoing demand for coal, associated spot tonne prices, and potential mine developments in central Queensland, the need for additional rollingstock to service the DBCT beyond 9 September 2020 (the date of the re-declaration commencement) is almost certain.

Regarding the assertion about evergreen rights, the QCA identifies concerns with DBCT's discretion to provide access capacity based on willingness to pay as it 'would create a material asymmetry between existing users and potential DBCT users in a future without declaration over access'<sup>5</sup>. Pacific National agrees, it is also unclear how evergreen contracts provide existing users sufficient rights (and access to arbitration) in the event of a dispute without declaration.

The late submission provided by DBCT asserts DBCT is fully contracted. In assessing whether DBCT could meet the total foreseeable demand in the market at the least cost compared to any two or more facilities (criterion (b)), the QCA states it is relevant to consider the expansion costs at DBCT and in the Goonyella system<sup>6</sup>. This fully contracted position only cements the need for access rights to any expanded capacity to serve long-life rollingstock and mine lives.

Given the interconnectedness of the various systems, state significance and being an identified part of a key freight route (as demonstrated above) it is inconsistent with the application of the access criteria to declare it less than the other systems.

---

<sup>4</sup> QCA Draft recommendation Part B: Queensland Rail declaration review, December 2018, p 37.

<sup>5</sup> Ibid, p 93.

<sup>6</sup> This is reflected in section 76(3) of the QCA Act, which states that: '... if the facility for the service is currently at capacity, and it is reasonably possible to expand that capacity, the authority and the Minister may have regard to the facility as if it had that expanded capacity.'

Moreover, the QCA states the relevant 'market' for criterion (b) is the market for DBCT's coal handling services in the Goonyella system. The Goonyella system is part of the market identified by the QCA for the purposes of satisfying criterion (b) for the CQCN being the market for access to rail infrastructure in the coal basins served by CQCN. For the all reasons noted, DBCT needs to be re-declared for 15 years.

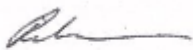
## **Conclusion**

Pacific National notes in reaching its final decision, the QCA must decide whether to recommend the (re)declaration of services, which are already declared (and have been for some time). According to the QCA, this means the existing competitive conditions in a dependent market do not necessarily represent the 'future without' declaration; they in fact may reflect the 'future with'. Pacific National agrees this is the correct interpretation of the application of the access criteria.

As noted above, declaration has been critical to promoting effective competition and supporting efficient investment across key freight transport supply chains over the past twenty years. The experience of Pacific National in Queensland demonstrates how regulated access to rail track has been effective in creating an environment in which rail freight competition can develop and grow. Pacific National's ability to grow its business in Queensland has been critically dependent on the certainty in relation to the terms of access to key rail infrastructure.

The draft decision largely confirms how the new access criteria (per the amendments to both section 76 the *Queensland Competition Act* (QCA Act) and Part IIIA of the Competition and Consumer Act 2010 (Cth) (CCA) following the Harper Review) should be applied. The final decision needs to declare the other systems and adopt a 15-year declaration period for DBCT to fully confirm the correct interpretation of the new access criteria.

Yours sincerely



Robert Millar  
Regulation and Policy Manager