

Monday, 14 March 2016

John Hindmarsh
Chief Executive Officer
Queensland Competition Authority
Level 27, 145 Ann Street
Brisbane QLD 4000
(submitted online)

Dear Mr Hindmarsh

Thank you for the opportunity to provide a submission on the Queensland Competition Authority's (QCA's) Draft Decision of 8 October 2015, regarding Queensland Rail's (QR's) May 2015 draft access undertaking (DAU).

As you are aware, the QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The process of developing a new undertaking to apply to QR commenced four years ago, in March 2012, when QR submitted the 2012 DAU.

It would be an understatement to say that the QCA has conducted extensive consultation on this undertaking. Some of that consultation related to previous draft DAUs submitted by QR, but has been repeated due to the need for the QCA to consider the issues 'afresh' during the latest process. From the perspective of QRC and its members, little has changed. Most of the issues remain the same, although the passage of time has allowed QR to engineer a range of changes in position which seek to benefit from the delay, and which, if successful, would frustrate the outcomes which an appropriate decision based on the approval criteria under the QCA Act would provide. A reminder of the main steps undertaken to date is provided below:

Mar 2012	2012 DAU submitted by QR
Apr 2012	QCA releases issues paper
July 2012	Stakeholders provide submissions
Sept 2012	Stakeholders provide further submissions
February 2013	QR withdraws 2012 DAU

Feb 2013	2013 DAU Version 1 submitted by QR
Apr 2013	Stakeholders provide submissions
May 2013	Stakeholders provide further submissions
June 2013	QR withdraws 2013 DAU Version 1

June 2013	2013 DAU Version 2 submitted by QR
Oct 2013	Stakeholders provide submissions
Jun 2014	QCA provides consultation paper on Western System tariffs
Jul 2014	Stakeholder submissions on consultation paper
Oct 2014	QCA draft decision to not approve 2013 DAU
Dec 2014	QCA working drafts of DAU and SAA
Dec 2014	QR withdraws 2013 DAU Version 2

Feb 2015	QCA provides initial undertaking notice under s133 of the QCA Act
May 2015	2015 DAU submitted by QR
May 2015	QCA discussion paper regarding asset valuation
May 2015	QCA request for comments regarding adjustment charges
Jun 2015	Stakeholders provide submissions
Oct 2015	QCA draft decision to not approve 2015 DAU
Dec 2015	Stakeholders provide submissions
Jan 2016	QCA request for further comments
Current	Stakeholders provide submissions

This table is not a complete list of all steps and processes in which QRC's members have participated. For example, our members have been required to review and respond to a large number of proposals to extend the term of the existing access undertaking, which was ultimately allowed to expire in June 2015.

The costs of our members' participation in this process have been significant, and include the cost of external resources, the QCA's costs (which are passed on through the QCA levy), and the diversion of management resources to these issues. The impact of four years of uncertainty should also not be underestimated. While the cost in this process is regrettable, the willingness of our members to continue their close engagement with the process demonstrates the critical importance of the issue: particularly the importance of preventing QR from charging uncompetitive tariffs on the West Moreton network, or from retaining excess payments made during the period for which the previous undertaking was extended (or was expired).

QR continues to show no signs of willingness to accept the independent decisions of the QCA. The latest QR submission:

- Features further dramatic changes in position which contradict information provided in previous QR submissions.
- Is strongly focussed on arguing that the QCA lacks the power to make certain decisions (presumably based on recognition that the merits of QR's arguments will not win the day)

The arguments put forward regarding limitations of the QCA's powers are not new. Aurizon Network has advanced extremely similar arguments in its attempts to challenge the draft decisions (including the 2015 Consolidated Draft Decision) on Aurizon's 2014 DAU. We refer to the responses which we have provided to those claims in our recent submissions, and to the comprehensive analysis of those matters which was contained in the QCA's Consolidated Draft Decision. QRC is confident that the QCA has wide discretion under the Act and should not be prevented from making an appropriate decision.

QR's actions throughout this process, highlighted by QR reneging on its commitment to provide an adjustment amount for tariffs paid since 1 July 2013, have undermined investment confidence, and seriously impacted on the attractiveness of investment in this region.

Confidence can only be restored through a clear demonstration that the QCA is willing and able to prevent misuse of processes by regulated entities.

QRC will not comment on specific aspects of QR's submission as the arguments put forward are generally not new. The QCA's draft decision was comprehensive in displaying a rigorous analysis of the issues and an appropriate application of the approval criteria under the Act. We support the vast majority of the draft decision, and leave it to our members to provide comments regarding areas for further improvement.

We note that the final decision to reject the 2015 DAU is not the end of the process, nor do we expect that the submission of QR's 2016 DAU will bring a speedy resolution to this saga. Given the difficult path which is likely to lie ahead, we would simply encourage the QCA to:

- make a final decision within a reasonable period;
- ensure that the decision is largely consistent with the draft decision;
- clearly document the new information on which the QCA has based any departure from the draft decision;
- continue to reach robust decisions based on the approval criteria; and
- make full use of the powers vested in the QCA in order to reach a decision which ensures that QR's misuse of monopoly power, including the charging of tariffs at inappropriate levels, does not result in a further decline in the use of the West Moreton system by coal traffic.

Thank you for the opportunity to provide a submission on the Queensland Competition Authority's (QCA's) Draft Decision of 8 October 2015, regarding Queensland Rail's (QR's) May 2015 draft access undertaking (DAU). The QRC contact on this submission is Andrew Barger, who can be contacted on (07) 3316 2502 or alternatively via email at andrewb@qrc.org.au

Yours sincerely



Michael Roche
Chief Executive

