

**AUSTRALIAN RAIL TRACK CORPORATION LTD****- 5 JUN 2008**

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Queensland Competition Authority  
GPO Box 2257  
Brisbane QLD 4001

**QR NETWORK'S 2008 DRAFT ACCESS UNDERTAKING****ARTC COMMENTS ON THE QCA POSITION PAPER**

ARTC notes the proposed restructure of QR Ltd. into five separate Corporations Law subsidiaries wholly owned by QR Ltd., and the change of name to the network subsidiary from QR Network Access to QR Network Pty. Ltd. It is intended that QR Network would hold all assets that it manages and that all internal access agreements with QR National will be formalised as legally enforceable contracts. Ownership of below rail assets is to be transferred from QR Ltd. to QR Network from 1 July 2008.

QR Ltd. is now seeking to withdraw the current undertaking with QR Network submitting a replacement undertaking reflecting the change in ownership. ARTC has no issue with the proposed approach.

ARTC owns or manages through lease a substantial part of the interstate rail network between the Queensland border, through to Perth. ARTC understands that the existing undertaking and proposed replacement undertaking do not apply to the 100km standard gauge section connecting the interstate network at the Queensland border to Acacia Ridge intermodal terminal and to Fisherman Islands.

ARTC currently has an access undertaking before the ACCC covering those parts of the mainline interstate network that it currently manages, and expects that undertaking to come into operation within the next several months.

It has been ARTC's position in the past that the intensity of access regulation should have regard to the specific characteristics and structure of the industry and market involved. In particular, where the owner of infrastructure has substantial market power (as occurs on most commodity based networks) the focus of economic regulation should be on access pricing. Where the owner of infrastructure is vertically integrated or related to a participant in the upstream or downstream market, then the focus of economic regulation should be on of third party dealing. Where neither of these characteristics exists, economic regulation should be

relatively light handed.

The rail access undertaking in Queensland is heavily focussed toward the Central Queensland Coal Network. In this market, the infrastructure owner has substantial market power and is vertically integrated. As such, the intensity of economic regulation afforded by the rail undertaking has justifiably tended towards being heavy handed in the areas of access pricing and third party dealing.

Whilst the proposed restructure will create separate independent subsidiaries of QR Ltd. with their own customers, legally binding commercial contracts and staff, ARTC understands that these subsidiaries are still related through QR Ltd.'s ownership and guarantee. To this extent, it would still seem plausible for decision making of QR Network to be influenced by the parent, with the potential for anti-competitive outcomes. Regardless, it would be unlikely that the confidence of third parties to seek to access to the network to compete with QR Ltd's above rail subsidiaries would be substantially enhanced as a result of the restructure.

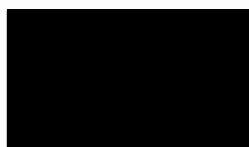
As such, ARTC considers that the QCA's objective to ensure that the regulatory principles as they currently apply to QR should be preserved in the proposed undertaking is appropriate.

ARTC has been unable to undertake a detailed assessment of each of the amendments to the existing undertaking proposed by QR Ltd. Nevertheless, the position taken by the QCA in its Position Paper in relation to each of the amendments, on the surface appears reasonable and consistent with the above objective. ARTC agrees that the QCA will need to satisfy itself that the proposed access agreements to be developed by QR Network comply with the provisions of the proposed undertaking.

ARTC looks forward to continued participation in this process with the aim to give rise to an optimal level of consistency between rail jurisdictions, having regard to the particular characteristics of the markets and structure within each jurisdiction.

These comments contain no information considered 'commercial-in-confidence'. A copy of the submission has also been forwarded to your office via email.

For further information regarding the preparation of these comments, could you please contact Mr. Glenn Edwards, (08)82174292 (Ph), (08)82174578 (Fax), [gedwards@artc.com.au](mailto:gedwards@artc.com.au) (Email).



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