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Chief Executive Officer  
Queensland Competition Authority  
GPO Box 2257  
BRISBANE QLD 4001

Dear John

**QR NETWORK'S RESPONSE TO THE QCA'S DRAFT DECISION ON THE 2009 ACCESS UNDERTAKING**

Please find enclosed QR Network's submission in response to the Queensland Competition Authority's (QCA's) draft decision issued on 18 December 2009 concerning QR Network's 2009 Draft Access Undertaking (2009DAU). The submission comprises two volumes and appendices. Volume 1 deals with non-price matters and Volume 2 deals with matters impacting the reference tariffs.

QR Network recognises QCA's difficult role in balancing the interests of all stakeholders in the consideration of a proposed Access Undertaking. QR Network is committed to achieving an outcome that promotes efficient and sustainable investment in rail infrastructure and a reliable and sustainable rail network to match the needs of the supply chain.

There are many aspects of the draft decision that QR Network accepts entirely, or accepts the principle with amended drafting. These have been identified within the submission.

QR Network is committed to finalising the 2009DAU process as early as possible. I acknowledge the significant effort and cooperation which will be required between all stakeholders in realising this objective. I ask for your support to resolve issues in a cooperative manner.

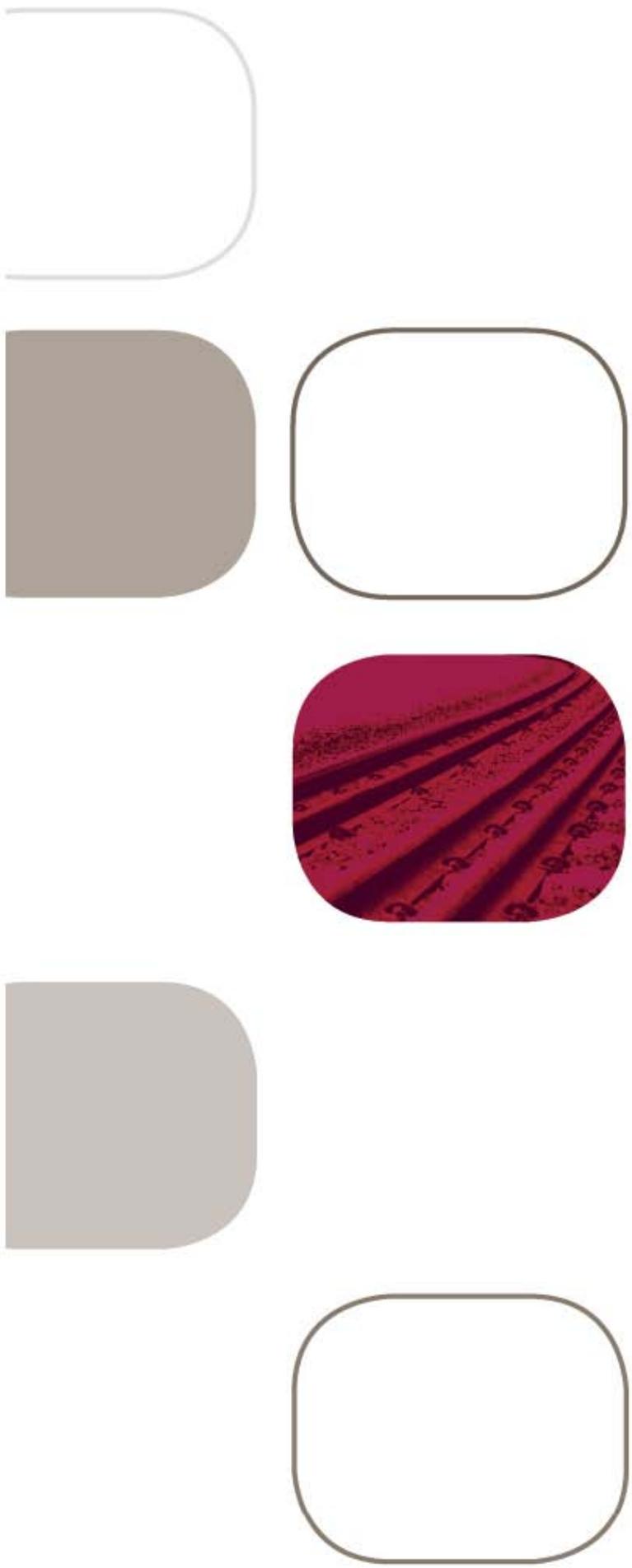
If you have any questions on this matter please feel free to contact me or alternately contact Harry Simson, General Manager Business Development on 07 3235 2336.

Yours sincerely



Michael Carter  
Executive General Manager  
QR Network Pty Ltd

15 February 2010



QR Network's  
Access  
Undertaking  
(2009)

*Response to QCA  
draft decision*

*Volume 1- Non- pricing  
matters*

*15 February 2010*

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## **EXECUTIVE SUMMARY**

This is Volume 1 of QR Network's response to the QCA's draft decision and addresses non-price related matters concerning the 2009 Undertaking.

QR Network accepts the great majority of the QCA's draft decision and will not oppose the application of these areas of agreement in its resubmission. In some cases we accept the principle of the QCA's decision and recommend drafting improvement. Certain decisions QR Network cannot accept because they impact its commercial objectives. Extensive reasoning is provided within this submission in response to these matters.

QR Network's positions on issues of major contention are summarised below.

### **1. Review of Rail Infrastructure**

QR Network cannot accept the QCA's decision to oblige QR Network to be responsible for the provision of access to assets owned by QR related parties. This is an obligation that QR Network would have trouble meeting and risks QR Network being held liable for the actions (or omissions) of other entities.

### **2. Disclosure of Debt/Equity Funding Arrangements**

The requirement to prepare audited general purpose financial statements is considered as excessive and the QCA has not provided acceptable reasoning to justify a move away from the 2008 Undertaking audit requirements. QR Network believes that there is no regulatory precedent to justify the imposition of such a highly detailed form of regulatory account reporting.

### **3. Major Projects**

QR Network does not agree with the highly prescriptive form of drafting proposed by the QCA on the major project provisions. It would like to see drafting that balances the need to provide customers with certainty and the flexibility required to the circumstances of particular projects. Alternate drafting has been proposed to address this balance.

### **4. Capital Expenditure**

QR Network proposes to continue to have the ability to claim early works and pre-feasibility costs through the capital expenditure approval process. The QCA's decision to formally limit the ability to claim these costs prior to the commissioning or discontinuation of a project does not take account of the current process which has

been successfully utilised in the consideration of early works for the Goonyella to Abbot Point project. Further, QR Network points to the accepted practice of allowing costs to be claimed as they are incurred, as they are by ARTC.

#### 5. System Rules

QR Network opposes a formal process for the creation of System Rules on the basis that it reduces the flexibility that QR Network and industry have sought. The process was included by QR Network as an informal, flexible and voluntary mechanism to be developed between QR Network and operators/affected parties. QR Network proposes amendments to this drafting within the QCA's draft decision.

#### 6. Decision Making Principles - Audit

The QCA has stated that it would like the 2008 AU auditing provisions to be retained in their entirety. QR Network has accepted retaining the decision making principles but proposes to only conduct an audit upon receipt of a complaint, rather than having to conduct a regular annual audit. QR Network has sought to reach a compromise solution on this matter and considers its proposal provides sufficient protection to its customers while reducing its regulatory burden.

#### 7. Supply Chain

Part 11 of the resubmitted draft 2009 Undertaking will introduce new drafting relating to system supply chain planning and coordination. This is designed to ensure that QR Network participates in the supply chain so that each system operates to its maximum efficiency. The impetus for this drafting has come from discussions with industry, in particular as a result of outcomes from the long term solution within the Dalrymple Bay Coal Chain (DBCC). The principles included in Part 11 are provided at an aggregated level which could be applied to all coal chains and not only the DBCC.

#### 8. Incentive Mechanism

QR Network does not accept the QCA's proposal on a new incentive mechanism. It believes that the proposal is asymmetric and provides no practical ability for QR Network to be able to achieve the proposed upside benefits. QR Network maintains that it is sufficiently incentivised to maximise coal system throughput through other means. It also proposes that the breach or negligence test as part of the revenue cap should be assessed at a system level, rather than an origin to destination level.

However, in response to the QCA's concerns, QR Network has proposed a revised threshold for this test.

## **INTRODUCTION TO QR NETWORK'S SUBMISSION**

### **1. Form of Response**

This submission has been prepared to respond to the Queensland Competition Authority's (QCA's) draft decision on QR Network's draft 2009 Undertaking. The response is comprised of two volumes with relevant attachments:

- Volume 1. Non-Price Matters Concerning the Access Undertaking
- Volume 2. Reference Tariffs for Coal Carrying Train Services

The submission responds to the decisions in the draft decision. Where amended drafting is suggested QR Network, redrafting will be included in the resubmitted draft 2009 Undertaking to be submitted by QR Network in March 2010.

Additional material to that provided in the draft 2009 Undertaking has been included in this document such as proposals for mechanisms relating to supply chain planning and coordination. This was the subject of a public exposure draft released in January 2010.

### **2. Layout of the Submission**

The chapters and headings in this submission correspond to the arrangement of the QCA's draft decision. Similarly the decision numbering also corresponds to the draft decision.

### **3. References**

In this submission:

- References to QR Network are in the context of QR Network's activities which are proposed to be regulated by the 2009 Undertaking.
- References to UT1 are to the period covered by the 2001 Undertaking, effective 1 July 2001.
- References to UT2 are to the period covered by the 2005 Undertaking, effective 1 July 2005, and the 2008 Undertaking effective 1 September 2008.

- References to UT3 are to the period covered by the 2009 Undertaking which is expected to become effective retrospectively from 1 July 2009.
- References to the draft 2009 Undertaking refers to the submission made by QR Network to the QCA on 9 September 2008.
- References to the resubmitted draft 2009 Undertaking refers to the submission which QR Network will provide to the QCA in March 2010.
- References to “mines” are to coal mine owners as end customers pursuant to a haulage agreement with an Access Holder.
- Other than for Internal Access Agreements and Rail Transport Infrastructure which are referenced in the 2008 Undertaking, defined terms in the submission have the meaning given in the resubmitted draft 2009 Undertaking.

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## **PART 2 SCOPE AND INTENT OF UNDERTAKING**

### ***Introduction***

The specific provisions of Part 2 relate to:

- The scope of the 2009 Undertaking;
- The intent of the 2009 Undertaking; and
- Early termination triggers and the duration of the Undertaking

### ***Response to draft decisions***

The following table provides a reference to the decisions reached in the draft decision and QR Network's proposed responses to those decisions:

<b>Draft decision reference and issue</b>	<b>QR Network position</b>
2.1 – Inclusion of clause 2.2 (f) – (i) in the 2009 DAU	Accept with amendment
2.2 – Procurement of Undertaking from QR Ltd	Accept with amendment
2.3 – Extension of application to QR Network related parties	Accept with amendment
2.4 – Intent of Undertaking	Reject
2.5 – Early Termination Triggers and Duration of Undertaking	Accept

Amendments to Part 2 have been made in response to the QCA's draft decision. Where the QCA has not sought to amend QR Network's draft 2009 Undertaking an explanation of QR Network's position is provided instead. These are as follows.

## **2.2 Scope of undertaking and transfer of assets (review of rail infrastructure)**

QR Network rejects the obligations that the QCA is seeking to impose in decision 2.1 and dot point two of decision 2.2 which are related to the transfer of rail infrastructure from a QR related entity to QR Network. QR Network is however prepared to accept the last three dot points of decision 2.2 and decision 2.3.

QR Network and the QR CEO are strongly supportive of ensuring open access within the Queensland rail network. They believe that providing an Undertaking from the QR Ltd Board on the access to land, electricity supply and the compliance with ring-fencing requirements is an essential component to facilitate competition in the above rail market.

QR Network however rejects decision 2.1 and dot point two of decision 2.2. These decisions require QR Network to procure an undertaking from the Board of QR Ltd which obliges:

- QR Ltd or other QR Parties to take steps required to allow QR Network to obtain ownership or rail transport infrastructure required by an Access Seeker to obtain Access to the declared service (in accordance with the provisions of clause 2.2 of the 2008 undertaking which this decision is requiring be included in the resubmitted draft 2009 Undertaking)

Notwithstanding the belief that QR Network is the railway manager of all assets required to provide the declared service, we believe that the negotiate/arbitrate model and framework within the QCA Act provides sufficient protection for third party access seekers requiring access to facilities not owned or operated by QR Network.

The Queensland state government made a decision on the assets that it believed should be attributed to QR Network when this was made a subsidiary company of QR Ltd in 2008. Since this separation there has not been a cause for the transfer of assets to QR Network for the purpose of providing access to rail infrastructure. This was most evident in the negotiation of Asciano's access rights for the CQCR. QR Network, therefore questions the QCA's comment that "There remains, some uncertainty whether all declared infrastructure has been transferred to QR Network"

(pg97) and would certainly suggest the QCA discuss with the government if they believe that the wrong asset attribution was made in 2008.

QR Network rejects the QCA's decisions as set out in decision 2.1 and the dot point of decision 2.2 as it does not believe it should be responsible for the obtaining the assets of a separate organisation. Retaining the provisions from the 2008 Undertaking would have this effect as QR Network would be required to ensure that QR Ltd provides the transfer of assets required by access holders.

An obligation on QR Network to obtain the ownership of assets from a third party (albeit a related party) goes beyond the terms on which it provides access to the service and is not information about the provision of access to the service. On the contrary, the provisions arguably have the effect of obliging QR Network to extend by acquisition the service that is the subject of the 2009 Undertaking. In this sense, the provisions referred to by the QCA are not about access to the service, rather they are aimed at changing the nature of the service that is the subject of the 2009 Undertaking.

If QR Network accepts an obligation to procure from the QR Ltd board an undertaking on the matters set out in the draft decision, QR Network is exposed to a substantial risk that the QR Ltd board may not in fact give that undertaking. If so, QR Network will have failed to comply with its obligations in the access undertaking and would be in breach of the *Queensland Competition Authority Act 1997* (QCA Act).

The QCA Act specifically outlines that the QCA must take into consideration the interests of an access provider when making a decision on access undertakings (section 109). The imposition of an obligation on QR Network by the QCA where it knows that this is not be able to complied with is not taking the interests of a service provider into account and therefore contravenes this provision.

The QCA's decisions 2.1 and 2.2 excluded commentary on the terms and conditions of any transfer of ownership (including the price payable) should this occur, or about giving regulatory certainty to QR Network including, for instance, that the cost of obtaining the ownership of the relevant assets will be included in the regulatory asset base. Should the QCA seek to impose this decision on QR Network, it should outline the treatment of the acquisition costs of these assets.

QR Network's amendments to its resubmitted draft 2009 Undertaking will reflect the matters raised above.

### **2.3 Intent of undertaking**

QR Network's proposes to accept the QCA's proposed drafting relating to QR Network's recognition that it is part of a wider supply chain.

However, QR Network does not accept decision 2.4. The QCA's proposed additional drafting of clause 2.2(vi)(A)(1)-(4) contained in Appendix 2 constrains QR Network's commercial interests as this obliges QR Network to balance the pricing principles against its legitimate business interests in all matters.

QR Network believes that this was not the intent of the QCA's proposed drafting. As such, QR Network will submit its own drafting including changes to better align the intent provisions with the QCA Act, specifically the pricing principles as set out in section 168A of the Act.

### **2.4 Duration of undertaking and early termination triggers**

QR Network accepts the QCA's decision 2.5 and will amend the definition of terminating date. Upon consultation with industry and the QCA, there was opposition to QR Network's early termination triggers in its draft 2009 Undertaking. This opposition was justified on the basis that regulatory certainty would be diminished for stakeholders if the proposed provisions were approved. QR Network has agreed to remove the early termination triggers in the resubmitted draft 2009 Undertaking.

QR Network accepts the QCA's decision to change the terminating date definition so that the terminating date is 30 June 2013. This date is consistent with QR Network's original proposal to have the Undertaking last four years and balances providing certainty to access holders with the need to maintain relevance of the undertaking.

## **PART 3 RING-FENCING ARRANGEMENTS**

### ***Introduction***

Part 3 of the resubmitted draft 2009 Undertaking will set out QR Network's obligations with respect to ring-fencing such as:

- The separation of Rail Infrastructure from the operations of Train Services;
- The arrangements to be followed in respect of changes to QR's organisational structure;
- The preparation and audit of 'ring-fenced' financial accounts associated with QR Network's Below Rail activities;
- The management of confidential information provided to QR Network by Third Parties;
- Obligations regarding the movement of QR Network employees between QR Network and other QR business groups; and
- The decision making and complaints handling framework which, at a minimum, must be followed, including the requirements for QR Network's compliance with these frameworks to be audited.

In addition, the ring-fencing arrangements refer to a Confidentiality Deed between QR Network and an Access Seeker, which has now been attached at Schedule B.

### ***Response to draft decisions***

The following table provides a reference to the decisions reached in the draft decision and QR Network's proposed responses to those decisions:

<b>Draft decision reference and issue</b>	<b>QR Network position</b>
3.1 – Decision Making Audit	Reject
3.2 – Reinstatement of Confidentiality Deed	Accept
3.3 – Provision of deed/undertaking by QR parties	Accept

3.4 – Complaints handling on breach	Accept
3.5 – Major Yards Definition	Accept
3.6 – Joint review of yard control services	Accept
3.7 – Audited Financial Statements	Reject
3.8 – Reference Amendment	Accept
3.9- Costing Manual	Accept

Amendments to Part 3 have been made in response to the QCA’s draft decision. Where the QCA has not sought to amend QR Network’s draft 2009 Undertaking an explanation of QR Network’s position is provided instead. These are as follows.

### **3.2 Decision making audit**

QR Network rejects the QCA’s decision 3.1 to reinstate the decision making audits under clause 3.5 of the draft 2009 Undertaking, except under circumstances where a complaint is received by an access seeker/holder. However, we propose to accept the reinstatement of the decision making principles from clause 3.4 of the 2008 Undertaking.

The 2008 Undertaking required that QR Network comply with certain principles when making decisions which materially affect an Access Seeker’s or Access Holder’s rights. QR Network removed these principles from the draft 2009 Undertaking because QR Network had become an independent entity through the establishment of QR Network as a separate subsidiary within the QR portfolio.

Whilst QR Network accepts these general principles about how it manages the provision of Access, it considers that the inclusion of these obligations in the 2009 Undertaking is unnecessary.

Since the commencement of the 2005 Undertaking, no issues have been raised by any Access Seeker, nor any issues identified during an audit process, regarding QR Network’s compliance with these decision making principles. QR Network believes

that substantial protections already exist for the rights of Access Seekers and Access Holders in the way that QR Network manages Access. In particular:

- The rights of Access Holders are protected via their Access Agreement with QR Network, which takes precedence over any of the confidentiality provisions in the 2001, 2005 and 2008 Undertakings; and
- The rights of Access Seekers are protected via the dispute resolution procedures in Part 10 of the 2009 Undertaking (previously Clause 4.7 of the 2008 Undertaking).

In response to the QCA's draft decision and some industry concern about the Decision Making process, QR Network will reinstate Clause 3.4 of the 2008 Undertaking into the resubmitted draft 2009 Undertaking. QR Network has not reinstated obligations to undertake an annual decision making audit.

QR believes that the given its performance over the UT2 period that an annual audit process is not required. Further, the imposition of the annual audit process adds significant regulatory burden and expense. For example, the current cost of the audits for these requirements is in excess of \$100,000 per annum.

While QR Network does not propose to reinstate the decision making audit provisions in their entirety, QR Network will accept an audit process that is based on the substantiation of a customer complaint on its decision making process to the QCA. QR Network believes that this mechanism, if implemented, will enable authentic customer complaints to be investigated in the way intended by the QCA when it developed and imposed these requirements on QR Network. The drafting will be modified to reflect this position.

### **3.3 *Ring-fencing arrangements and management of confidential information***

QR Network accepts the QCA's decisions 3.2 to 3.4 which require:

- the reinstatement of a Confidentiality Deed in Schedule B;
- QR Ltd and other QR Businesses to provide a deed or undertaking agreeing to be bound by the terms of the confidentiality agreement and Undertaking; and

- provisions that allow a third party to lodge a complaint in the event of a breach by QR Network or QR related entities.

QR Network proposed the removal of the Confidentiality Deed from the Undertaking. QR Network will reinstate this at Schedule B in the resubmitted draft 2009 Undertaking. The Confidentiality Deed will take the same form as that in the 2008 Undertaking and is referenced at clause 3.3 (c), which is the clause reinstated from the 2008 Undertaking.

The requirement for QR Ltd and other QR Businesses to provide a deed or undertaking agreeing to be bound by the terms of the confidentiality agreement and Undertaking is already in place. QR Network will reinstate a mechanism included in the 2008 Undertaking to give effect to decision 3.4 in the draft decision.

### **3.4 Provision of yard control services**

QR Network accepts the QCA draft decision 3.5 to amend the definition of Major Yards to include Pring as a major yard. Further, QR Network accepts decision 3.6 to reinstate the review of major yard facilities.

### **3.5 Costing manual**

QR Network accepts the QCA's decision 3.9 to defer the review of the costing manual until after the QCA's assessment of the draft 2009 Undertaking. QR Network however would like to see the approval process for the costing manual by the QCA occur in a timely manner.

The QCA's decision 3.7 (and 3.8) is rejected by QR Network. To date financial reports have been prepared for the below rail Central Queensland Coal Region (CQCR) network under the 2005 Undertaking period and QR Network does not oppose the continuation of these reports.

The current reports produced in accordance with the costing manual provide information on the below rail regulatory expenditure and income for the CQCR, thus fulfilling the requirements of the Undertaking. QR Network does not believe that the requirement of decision 3.7 and 3.8 will necessarily provide regulatory information to the QCA.

Further, the requirement to prepare audited general purpose financial statements would result in a significantly increased burden for QR Network. The current provisions under the 2008 Undertaking only obligate QR Network to prepare supplementary financial statements that identify the CQCR and are in accordance with the costing manual. These statements are in addition to the consolidated financial statements prepared by QR Ltd.

The preparation of general purpose financial statements would have the effect of increasing the content of the statements (which may not yield relevant information for the regulator) from the current 10 pages to 40-50 pages. It would also increase operating costs by \$0.5 million per annum.

The QCA draft decision notes that:

‘This was viewed as reasonable because QR Network was part of a larger entity and the funding arrangements were established for the entirety of QR Ltd. However, this no longer applies as QR Network is now a separate subsidiary’<sup>1</sup>

The QCA’s observation that QR Network is a separate legal subsidiary is correct. However, it was also a separate legal subsidiary when it considered and approved the 2008 Undertaking. QR Network had advised the QCA in its consideration of the 2008 Undertaking, and the QCA had accepted, that QR Network was not required to prepare audited general purpose financial statements while it maintained a deed of cross guarantee and therefore satisfies the relevant financial reporting exemption requirements under chapter 2M of the *Corporations Act*.

QR Network has not given the QCA any information which would suggest these circumstances have changed. It is therefore not clear why arrangements which were considered reasonable and appropriate for the approval of the 2008 Undertaking require a change from that established regulatory precedent. QR Network remains part of a larger organisation with Treasury functions still undertaken at a corporate level.

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<sup>1</sup> Queensland Competition Authority (2009), pg 110.

QR Network does not accept the basis for the QCA's decision to obligate QR Network to prepare audited general purpose financial statements. The Authority's analysis on this topic is minimal and no detailed reasoning is provided as to why QR Network should now have this obligation imposed on it. In fact, the QCA in its analysis makes reference only to the inclusion of QR Network's debt and equity funding arrangements in the financial statements. No mention is made of preparing general audited financial statements in the body of the document or comprehensive reasoning given.

It is not considered sufficient for the QCA to base its decision on the basis of "reasonableness" as this is not part of criteria by which the QCA is to make a decision. The *QCA Act* stipulates the factors that the QCA is to take into account when making a decision to approve or not approve a draft access undertaking. Section 138 (2)(b) states that the QCA is to have regard to the legitimate business interests of the owner or operator of the service in the approval of an access undertaking. Section 136(5)(a) states that the QCA must provide reasons for refusal if it refuses to approve a draft access undertaking. If the QCA is to adhere to these provisions, QR Network believes there should be a clear rationale as to why the preparation of audited financial statements is now required, particularly taking into account the impact of this decision on QR Network's business interests. This determination should also demonstrate the relevant objective and how that objective is not being satisfied by the provisions included in the draft 2009 Undertaking.

In addition, QR Network does not believe that the QCA's decision is justified based on the lack of similar requirements in other rail regimes in Australia. QR Network is not aware of any examples, either presently or in the past, where an economic regulator in Australia has enforced the preparation of general audited financial statements on a regulated business, where that entity was a subsidiary of a larger organisation.

Westnet Rail, while it was a vertically integrated entity between 2000 and 2006, is one example where the requirements on financial account reporting were much broader in nature. The regulator at that time determined that Westnet was subject to a general requirement to maintain separate accounts and financial records for its access related functions, as outlined under section 34 of the *Western Australian Railways (Access) Act 1998*. These were to be presented to the regulator in a manner approved by the regulator.

Another example relates to regulatory account reporting requirements applicable to the Dalrymple Bay Coal Terminal (DBCT). Clause 10.1 of the DBCT 2006 Access Undertaking obligates DBCT to only report on a predefined set of items, which is significantly less than that required under audited general purpose financial statements.

QR Network considers that the costing manual needs to be consistent with any final decision on financial accounts reporting; and that it appropriately reflects QR Network's new corporate structure. A revised costing manual to reflect changes in the 2008 Undertaking has been with the QCA awaiting approval. QR Network is concerned that future iterations of the costing manual, particularly based on likely changes from the sale of QR's coal business, will jeopardise QR Network's ability to comply with financial account reporting requirements. QR Network thus considers that the approval of any current and future versions of the costing manual is of paramount importance and occurs in a timely manner.

### ***Further amendments not related to the draft decision***

Other amendments will be introduced to the resubmitted draft 2009 Undertaking following further discussion with industry and the QCA, which are not necessarily relevant to issues raised in the draft decision. These are provided in the following section.

### ***Disclosure to aid contractual alignment***

QR Network will include a new clause 3.3(L) as a result of consultation with Industry about the alignment of rail Access Rights with Infrastructure provider's contracts (that is, Port contracts). In order to achieve this alignment the disclosure of certain rail customers contract information to Infrastructure providers will be required. This exclusion has been included to capture this situation, subject to this information being released by a customer and the third parties (such as Ports) only using this information for the purpose for which it was provided.

## **PART 4 NEGOTIATION FRAMEWORK**

### ***Introduction***

Part 4 of a resubmitted draft 2009 Undertaking will set out the framework by which Access Seekers can request Access from QR Network, to have that request for Access confirmed in terms of whether that request can be met, then negotiate an Access Agreement.

Part 4 also links to the following schedules:

- Schedule C, which sets out the information to be included in an Access Application; and
- Schedule D, which sets out the nature of information to be made available to Access Seekers.

The negotiation framework includes:

- The process (including timeframes) for submitting an Access Application, including the information to be provided, and the acknowledgement of the Access Application by QR Network;
- The issuing of an Indicative Access Proposal (IAP) by QR Network following consideration of the Access Application, including the information to be provided;
- The process for accepting an IAP and the negotiation of an Access Agreement;
- The process to be followed by QR Network where two or more Access Seekers are seeking access to the same Capacity; and
- The guidelines under which the negotiation of an Access Agreement can be terminated.

## ***Response to draft decisions***

The following table provides a reference to the decisions reached in the draft decision and QR Network’s proposed responses to those decisions:

<b>Draft decision reference and issue</b>	<b>QR Network position</b>
4.1 – Major Projects Allocation Process	Reject
4.2 – Major Projects Definition	Accept with amendment
4.3 – Major Projects Dispute Resolution Process	Reject
4.4 – QR Network’s failure to comply with the queuing mechanism	Reject
4.5 – Rejection of Access Application	Accept
4.6 – Indicative access proposal and time frames	Accept
4.7 – Allocation of capacity rights at IAP stage	Accept
4.8 – Negotiation ceasing on reduction of available capacity	Accept
4.9 – Negotiation ceasing on reduction of available capacity: CNR	Accept
4.10 – Capacity Notification Register definition	Accept with amendment
4.11 – Notification on expression of interest for a major project	Accept

Amendments to Part 4 have been made in response to the QCA’s draft decision. Where the QCA has not sought to amend QR Network’s draft 2009 Undertaking an explanation of QR Network’s position is provided instead. These are as follows.

## **4.2 Framework for major projects**

QR Network accepts and welcomes the spirit of QCA's decisions (4.1, 4.2 and 4.3) to allow the establishment and use of major project provisions for the allocation of capacity for major capacity expansion projects. However, QR Network rejects the framework that the QCA has included within the draft decision and proposes to include amended drafting within its resubmitted draft 2009 Undertaking.

The main basis for the rejection of the QCA's decision 4.1 is that it does not provide the required flexibility for QR Network to undertake its assessment of Major Projects and also dictates a framework for each new major project process to follow even though QR Network has identified that no two processes are likely to be the same. Such flexibility is required to ensure that QR Network can engage in the most optimal assessment process given the circumstances of the particular project (for example, depending on its size, location, dependence on other projects, perceived risk and potential user base).

The QCA's revised drafting under decision 4.1 does not appear to appreciate the project evaluation criteria and process that QR Network utilises to determine the commerciality and development of project stages for approval. As such, there are aspects of the drafting that would impose conditions on QR Network that it would not be able to meet. For example, at the time of an 'expression of interest' (as proposed by the QCA) it is unlikely the QR Network would state a capacity allocation methodology. Further, QR Network does not agree that it should have to provide an assessment of factors such as above rail considerations to customers as part of the information for a project.

QR Network believes that its current drafting within the draft 2009 Undertaking could be refined to ensure that the following principles are included, which it believes would satisfy the QCA's requirements (as articulated in the draft decision):

- Notification of Major Projects to an interested party;
- Notification of terms for feasibility development;
- Transparent notification of a process for the allocation of capacity, including terms of a capacity allocation process; and
- Dispute resolution.

QR Network may accept the QCA's definition of "interested party" in decision 4.3 and notes that this is not significantly different to that proposed in the draft 2009 Undertaking.

QR Network proposes that it will provide an interested party with information about the development of a major project and the terms of any financial contribution (if any) required to further assess a major project's feasibility (and whether this contribution would be considered as a requirement to be able to gain capacity within a capacity allocation process). This stage may not occur where QR Network undertakes a feasibility assessment which requires no contribution.

QR Network after determining whether a project is commercially feasible will issue to an interested party a capacity allocation methodology which it believes sufficiently reflect the terms for the project to be completed. The terms of this methodology will be subject to a dispute resolution mechanism.

QR Network is not opposed to ensuring that the dispute resolution mechanism allows single customers to raise a dispute about the capacity allocation process but will be guided by the views of stakeholders on this matter.

QR Network provided a dispute mechanism process within its major projects clause in the draft 2009 Undertaking. In addition to addressing the issues identified above, QR Network believed it would mitigate the risks that customers<sup>2</sup>—within the capacity allocation process could encounter from vexatious claims from other customers seeking to gain a competitive advantage by delaying the major project.

QR Network believes that it can work with the Authority to clarify and address concerns that the QCA have on this matter and establish a process that provides clarity for QR Network and its customers.

The QCA and Industry raised concern with the proposed definition of Major Project as it believed that QR Network could bundle a suite of smaller projects to trigger the Major Projects provisions. The QCA in its draft decision sought to tighten the definition of Major Project so that smaller projects cannot be aggregated to meet the major project threshold.

QR Network agrees with the QCA's amendment in principle but can foresee that a Major Project could include a suite of projects on an existing CQCR mainline. To this extent, QR Network's proposed definition will differ from that proposed by the QCA in decision 4.2.

#### **4.3 QR Network's failure to comply with the queuing mechanism**

QR Network rejects the QCA's decision 4.4. The provisions proposed by QR Network already exist within the 2008 Undertaking, albeit separated into two clauses, one of which is subject to the other. QR Network refers the QCA to clauses 4.3(a)(iv) and 7.4.1(b) of the 2008 Undertaking and suggests that there is no material difference in its proposal but merely puts these clauses in one place within the 2009 Undertaking.

#### **4.4 Transparency during negotiation**

QR Network accepts the QCA's decision that information exchange between an Access Seeker and its customer is best handled between those parties. QR Network will not seek to have information passed to an end customer from an access seeker's application and acknowledges that this is a commercial matter between the two parties.

#### **4.5 Rejection of Access Application**

QR Network accepts the QCA's decision 4.5 proposing modification of clause 4.2(c) to have regard to the anticipated nature, volume and duration of the proposed train service when deciding whether to accept or reject an access application. This is a minor adjustment and is consistent with QR Network's desire to not unreasonably reject an application based on insufficient information.

#### **4.6 Indicative access proposal and time frames**

QR Network accepts the QCA's decision 4.6 to allow QR Network to extend the timeframe for the issuing of an Indicative Access Proposal (IAP). The draft 2009 Undertaking contained a provision by which QR Network could extend the timeline for provision of an IAP within the first 30 days without approval from the Access Seeker. Upon consultation with stakeholders, QR Network has decided to modify this provision so that after day 20, QR Network must seek permission from the Access

Seeker if it wishes to extend the timeline. QR Network may still extend the timeline before day 20 without permission from the Access Seeker but only for a maximum of 30 days.

#### ***4.7 Allocation of capacity rights at IAP stage (capacity modelling assumptions)***

QR Network accepts the QCA's decision 4.7 requiring it to provide modelling assumptions to access seekers as part of the issuing of an IAP for coal carrying train services. This will provide greater transparency for access seekers and QR Network does not oppose this goal. QR Network within its current IAP provides modelling assumptions to access seekers. This is normally in the form of the assumptions provided to QR Network by operators about the proposed haul and rollingstock configurations. These are contained within a Conceptual Operating Plan. QR Network does acknowledge that the assumptions could change on issuance of an IAP and therefore agrees to provide the relevant assumptions where this occurs.

#### ***4.8 Negotiation ceasing on reduction of available capacity***

QR Network's draft 2009 Undertaking proposed to cease negotiations with an Access Seeker where there was a reduction in available capacity. The QCA's decision 4.8 rejected this trigger as there was concern that an Access Seeker would have to resubmit their access application and lose their place in the queue. QR Network agrees with the intent of the QCA's revised drafting which allows an access seeker to maintain their place in the queue if they wish to continue to seek access for any remaining capacity.

QR Network is concerned that the two week period for the provision of a revised IAP is too short and may not be achievable for all types of train service. QR Network proposes to increase this period to three weeks from the receipt of confirmation from customers seeking to gain access to the remaining capacity.

#### ***4.9 Capacity Notification Register (CNR)***

The QCA was supportive of QR Network's proposal in the draft 2009 Undertaking to replace the capacity resumption register with the Capacity Notification Register (CNR). However the QCA requested that the definition of the CNR be placed in the

definition section and that all access seekers on the CNR be sent an expression of interest for a major project. QR Network does not believe that all customers on the CNR necessarily should be notified of a major project but QR Network outlines a response to this matter with which it believes that the QCA will accept.

In its resubmission QR Network is proposing to amend the operation of the CNR and add a requirement that Access Seekers must provide written confirmation of complimentary port queuing arrangements for the same tonnage for which they are requesting rail access. Further, they will be required to provide this information to QR Network every six (6) months in order to remain on the CNR. This will ensure applications for access are not spurious and expedite the capacity allocation process when capacity becomes available.

It has become apparent to QR Network that the introduction of a Capacity Notification Register, if implemented in the way that was initially intended by QR Network when this was first mooted in September 2008, would promote gaming by coal customers. QR Network is certain that if its amendments are not accepted by the QCA that it will receive a large number of unsubstantiated capacity requests during the first month of the 2009 Undertaking period. QR Network firmly believes that this defeats the purpose of the CNR.

QR Network's amendments will ensure that the CNR only contains customers who have taken genuine steps to obtain capacity with a Port.

QR Network proposes to accept the QCA's decision 4.10 but accept decision 4.11 with amendment. It will notify customers on the Capacity Notification Register where they are within a coal system where a major project is foreshadowed. QR Network can not see the value in notifying customers with no desire to utilise new capacity (for example, a customer who desires capacity on the Moura line where new capacity or a major project is contemplated in the Newlands system).

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## **PART 5 ACCESS AGREEMENTS**

### ***Introduction***

Part 5 of the QR Network's resubmitted draft 2009 Undertaking will set out a framework for the development of Access Agreements between QR Network and an Access Seeker, including the establishment of a Standard Access Agreement.

Schedule E sets out the principles to be incorporated in an Access Agreement.

The key aspects of Part 5 and Schedule E are set out below.

- Access to Rail Infrastructure will be underpinned by an Access Agreement between QR Network and the Access Holder.
- The Access Holder must ensure that Train Services are run by an accredited Train operator.
- Subject to limited exclusions, QR Network is obliged to:
  - Allow the public disclosure of the Below Rail aspects of Access Agreements for all coal carrying Train Services; and
  - Allow disclosure to the QCA of the Below Rail aspects of all other Access Agreements.

### ***Response to draft decisions***

The following table provides a reference to the decisions reached in the draft decision and QR Network's proposed responses to those decisions:

<b>Draft decision reference and issue</b>	<b>QR Network position</b>
5.1 – Include Access Agreements in 2009 DAU	Accept
5.2 – Amend definition of Standard Access Agreement	Propose alternate drafting
5.3 – Introduction of new form of Standard Access Agreement	Accept with amendment

5.4 – Item 14 of Schedule E: Liability for carriage of dangerous goods	Accept
5.5 – Amendment of definition of consequential loss	Reject
5.6 – Compliance with s104 and s125 of QCA Act	Accept
5.7 – Withdrawal of Standard Access Agreement	Accept with amendment

## **5.2 Standard access agreements**

QR Network accepts decision 5.1 and in its resubmission will include in Volume 2 of the Access Undertaking the requested Standard Access (Operator) Agreement and the Standard Access (Customer) Agreement. QR Network confirms that to date the Operator Standard Access Agreement has formed the basis of all coal-carrying Train Services. To date the Standard Access (Customer) Agreement has not been used by Coal customers, nor is it likely to be used with the establishment of the alternate form of access agreement outlined below.

Regarding decision 5.2 QR Network believes that the definition of Standard Access Agreement does not significantly add to that definition already within the draft 2009 Undertaking. However, QR Network will provide alternate drafting within its resubmission which it believes will satisfy the intent of the QCA's decision.

## **5.3 Development of new or alternate form of access agreements**

Regarding decision 5.3 QR Network does not oppose the QCA including a timeline for the completion of the alternate form of agreement within its proposed clause 2.4. QR Network will however propose amendments to this clause which it believes enhances the consultation and approval process. It believes that the process currently within the undertaking can be used for the creation of a new standard access agreement and that there is no need to create a new process to do this as part of the 2009 Undertaking.

QR Network believes that the QCA's proposed drafting can be improved. For example, QR Network does not believe that members of the Coal System Master

Planning Forum are the correct group to consult on the development of a new Standard Access Agreement. Further, QR Network does not agree with the QCA's implication within clause 2.4(b)(i) and (ii) of its proposed drafting that a new Standard Access Agreement will not require the linkage of an Operator agreement and a Capacity holder agreement.

QR Network's amendments to this process in its resubmission will address these matters.

**5.4 *Indemnities and liabilities for carriage of dangerous goods (Schedule E, clause 14).***

QR Network accepts the QCA's decision 5.4 to disallow QR Network to limit its liability for the carriage of dangerous goods. It will amend its resubmitted draft 2009 Undertaking to reflect this change at Item 14 of Schedule E.

QR Network sought to reduce the liability associated with the carriage of dangerous goods on the rail network as it believed that the remedial action required from an incident involving dangerous goods would be in excess of those actions required for other incidents.

QR Network's inability to be able to reduce its liability will be reflected in the future pricing of access contracts for the carriage of dangerous goods on the network.

**5.5 *Definition of consequential loss and limitation on liability (Schedule E, clause 15)***

QR Network accepts the QCA's decision regarding the definition of consequential loss but will propose improved drafting so as to clarify whether a QR related party is a third party for the purpose of Schedule E.

**5.6 *Access agreements for new or renewed QR services***

QR Network accepts the QCA's decision 5.6.

### **5.7 *Withdrawal of standard access agreements***

QR Network finds the QCA's discussion and the related decision 5.7 confusing. The discussion (pg.141 of the draft decision) refers to the removal of an approved Standard Access Agreement, whilst the drafting within decision 5.7 relates to the removal of a Proposed Standard Access Agreement.

QR Network was not intending to be able to remove an approved Standard Access Agreement without the approval of the QCA, so agrees with its decision in principle but believes that the drafting proposed by QR Network is sufficient in all cases apart from the removal of a Proposed Standard Access Agreement.

We will discuss this matter with the QCA to clarify any misunderstanding.

## **PART 6 PRICING RELATED ISSUES**

### ***Introduction***

Part 6 of the resubmitted draft 2009 Undertaking will outline the key principles to be followed by QR Network in the negotiation of Access Charges with Access Seekers.

The principles relate to price differentiation, pricing limits, the utilisation of the Rail Infrastructure and revenue adequacy. The Reference Tariffs for coal carrying Train Services are set out in Schedule F and are developed consistent with these pricing principles.

QCA's decisions 6.1 to 6.7 are contained in this part (Part 6). Decisions 6.8 to 6.23 contained in part 6.6-6.18 of the draft decision relate to Schedule F.

The QCA has accepted a number of the proposals put forward by QR Network. The key areas of disagreement relate to the QCA's decision regarding further proposed amendments in relation to private infrastructure and the term of rebates.

### ***Response to draft decisions***

The following table provides a reference to the decisions reached in the draft decision and QR Network's proposed responses to those decisions:

<b>Draft decision Reference and Issue</b>	<b>QR Network position</b>
6.1 - Price Differentiation	Accept
6.2 - Private Infrastructure	Accept with amendment
6.3 - Access Conditions: Term of Rebate	Reject
6.4 - Access Conditions: Major Projects	Accept
6.5 - Access Conditions: Deeming	Accept but offer amended drafting

6.6 - Access Conditions: Sharing of Responsibility	Accept
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## **6.2 Price Differentiation**

QR Network had proposed the deletion of Clause 6.1.2 from the 2008 Undertaking, which constrains it from establishing access charges for the purpose of preventing or hindering access. QR Network proposed this as a consequence of the proposed deletion of Clause 5.3, given there will no longer be internal Access Agreements in place. QR Network also continues to be bound by its obligations under the QCA Act that limit preferential self-dealing.

In its decision 6.1 the QCA rejected this proposal as it considers that Clause 6.1.2 is necessary to avoid any ambiguity regarding QR's ability to exploit its market power. QR Network accepts this decision and will therefore reinstate Clause 6.1.2, and related Clauses 11.2(r), 11.2(s) and 11.2(t), in its resubmitted draft 2009 Undertaking.

## **6.3 Private Infrastructure**

Clause 6.4.2 of the 2008 Undertaking requires QR Network to include all services that will travel between a new mine (which uses QR Network's rail infrastructure) and its most common destination in a new or existing reference train service. QR Network proposed to remove the qualification that services for mines located on private infrastructure will be defined from the point where the private infrastructure connects to QR Network's rail infrastructure. The basis for this is the consideration of private infrastructure in development is specifically detailed in Schedule F and therefore its inclusion in Part 6 was both unnecessary and potentially conflicting.

The QCA has stated that while this amendment does not necessarily alter the intent of the draft 2009 Undertaking, it may result in some ambiguity, particularly in relation to the Western System. However, the QCA in decision 6.2 it has also indicated that modification to the deleted wording will be needed to ensure this clause is compatible with Clause 4.1.3 of Schedule F, Part B of the resubmitted draft 2009 Undertaking, which clarifies the treatment of private infrastructure for the purpose of establishing a Reference Tariff for a new Train Service.

QR Network believe that the objectives of the both the QCA and QR Network can be met through the inclusion of a ‘for avoidance of doubt’ clause at the end of the provision.

## **6.5 Access Conditions**

### ***Decision 6.3 - term of rebate***

QR Network understands that a key concern is associated with the Western System Access Facilitation Deeds (AFDs) and the concern that a rebate term misaligns with the asset lives assumed in the reference tariff.

The negotiated term of the rebates in these agreements reflects the fact that at the time of their negotiation there did not, and still does not, exist an approved reference tariff which is based on a robust and valid stand-alone cost building block model. Given the quantum of the approved reference tariffs in UT2, it is reasonable for QR Network to commercially negotiate the rebate schedule over a longer term.

The purpose and application of rebates is discussed in greater detail in Volume 2 on the Western System Reference Tariff. The rebate as clearly indicated in the drafting of 6.5.2(d)(i) is the return of depreciation and the non-diversifiable component of the return on the relevant Infrastructure Enhancements included in the Access Charge. It is not a rebate of the value of the contributed asset. This would be contrary to QR Network’s objective of mitigating the financial risk associated with the future utilisation or demand for train services using those infrastructure enhancements.

Notwithstanding that where a rebate term is established which exceeds the assumed lives by the QCA in the reference tariff, provided the terms of the agreement provide for the rebate of the relevant asset charges included in the Access Charge, then the intent of the 6.5.2(d)(i) has been met.

Accordingly, QR Network does not consider the QCA’s proposed amendments to 6.5.2(d)(i) contained in decision 6.3 are necessary to ensure the rebate arrangements satisfy the requirement that QR Network does not earn additional revenue through the inclusion of the relevant infrastructure enhancements in the relevant Regulatory Asset Base and therefore the relevant Reference Tariff. This objective is embodied and achieved by QR Network’s draft 2009 Undertaking.

### ***Decision 6.4 – Major Projects***

As outlined previously, QR Network has proposed to further develop its framework for investment in major projects, including the ability to seek to impose access conditions for new infrastructure associated with these projects. While the QCA considers that it is appropriate for QR Network to be able to impose access conditions in relation to major projects, it has indicated that:

- QR Network had not proposed any prescribed process for imposing access conditions for major projects. This process should be linked to the capacity allocation projects for major projects.
- QR Network’s proposed definition of a ‘major project’ is too broad.

As set out in section 5.2.1, QR Network has proposed amendments to Clause 4.8 that clarify the principles that it may seek to apply when allocating capacity for a major project and has also proposed a revised definition of major projects.

### ***Decision 6.5 - Deeming***

QR Network had proposed that the wording of Clause 6.5.2(c) regarding the restrictions on access conditions for mainline sections of track be changed from “deemed to be unreasonable” to “presumed not to be reasonably required”. The QCA has rejected QR Network’s proposed wording as it considers that it materially alters QR Network’s rights. It therefore requires the word “presumed” to be replaced with “deemed”.

QR Network considers there may be circumstances arise where the level of asymmetric risk associated with shared infrastructure enhancements would require QR Network to seek an Access Condition to mitigate that financial risk. It is also noted that an Access Seeker is able to dispute whether the access condition being sought is reasonable to mitigate the financial risk.

QR Network does not agree that its proposal materially alters QR Network’s rights. However, in the event that QR Network required an Access Condition it also unlikely that the relevant infrastructure enhancements would not meet the requirements under section 7.3.3. Therefore QR Network is prepared to substitute the term ‘presumed’ with ‘deemed’ in 6.5.2(c).

***Decision 6.6 - sharing of responsibility***

QR Network proposed an amendment whereby it could amend access conditions imposed on the first user of a spur line when another subsequent user starts using some or all of that line. The QCA has rejected QR Network's proposed wording because it is concerned that it will effectively deem that the access conditions imposed on the subsequent user are reasonable. The QCA has therefore proposed that QR Network modifies this clause by including the words "provided that the division of responsibility for the Access Conditions between the First Party and Subsequent Party is equitable."

QR Network is prepared to accept the QCA's proposed amendment, although notes that it does raise additional questions regarding what matters could and should be considered when assessing what is equitable.

***Decision 6.7 – extension of capacity rights to Western System Access Holders***

This is addressed in Volume 2.

## SCHEDULE F: REFERENCE TARIFF SCHEDULES

### *Introduction*

Schedule F has been developed in accordance with the principles contained in Part 6 and comprises three parts:

- A. Provisions generically applying to all coal carrying Train Services;
- B. The requirements specific to each nominated Reference Train Service on the CQCR; and
- C. The requirements specific to each nominated Reference Train Service on the Western System.

Part 6 Pricing Related Issues within this submission provided detail on decisions 6.1 through to 6.8 contained in part 6.1-6.5 of the draft decision.

### *Response to draft decisions*

The following table provides a reference to decisions 6.8 – 6.23 contained in parts 6.6 -6.18 in the draft decision and QR Network’s proposed responses:

<b>Draft Decision Reference and Issue</b>	<b>QR Network position</b>
6.8 - Treatment of cross system traffics	Accept but offer amended drafting
6.9 – Single AT5	Accept
6.10 – Revenue cap	Accept
6.11 – Revenue cap: Disincentives for breach and negligence	Reject
6.12 – Revenue cap: draft incentive mechanism	Reject
6.13 – Take or pay: reallocation within portfolio	Reject
6.14 – Take or pay: Total Actual Revenue	Accept

6.15 – Annual review process: timing	Accept
6.16 – Annual review process: annual Reference Tariffs	Accept
6.17 – Non-reference tariffs	Accept
6.18 – MCI: composition	Accept but offer amended drafting
6.19 – MCI: interim review	Accept
6.20 – MCI: application	Accept but offer amended drafting
6.21 – New spurs, electrical feeder stations and electricity charges	Reject
6.22 – Review event for maintenance scope change	Accept
6.23 – Variations to Reference Train Service	Accept

### **6.9 Treatment of Cross-system Traffics**

With the increasing growth in cross-system traffics, QR Network proposed a set of more specific guidelines about how to price these traffics. These guidelines were set out in the draft 2009 Undertaking and a subsequent paper lodged with the QCA in April 2009.

The QCA has proposed in decision 6.8 to accept QR Network’s proposed pricing arrangements for cross-system traffics. However, it has indicated that additional amendments to the draft 2009 Undertaking are required to clarify how:

- tariffs (including system premiums where applicable) will be determined;
- rail spur capital costs will be allocated to a system’s asset base; and
- revenue will be allocated between the origin and destination systems.

While these matters were addressed in QR Network’s April 2009 paper when these matters were considered in the context of the Vermont Reference Tariff a number of deficiencies were identified where the cross-system service also requires significant infrastructure investment in the origin system. To address this issue QR Network

provided a summary paper of proposed principles as to how a reference tariff would be determined and how the subsequent cross-system revenues should be attributed between the origin and destination systems.

The QCA has proposed amendments to Clause 4.2 of Schedule F, Part B, which were set out in Appendix 6 of the draft decision. QR Network proposes some amendments to this drafting that clarify how a cross-system service will meet its minimum contribution to common costs and how revenue will be allocated between the relevant systems.

QR Network is proposing to assess this as follows:

- origin system:  $AT_2$  if operating in a constrained corridor plus 50% of  $AT_3$ ; and
- destination system:  $AT_2$  plus 50% of  $AT_3$ .

This basic rule works well for established systems. However, QR Network notes that this minimum contribution to common costs may not be sufficient in other situations, such as where a service is triggering a costly expansion in the destination system. An example of this is GAPE, where services originating in the Goonyella system are likely to be required to make more than their minimum contribution to common costs in the Newlands system.

QR Network therefore requires the ability to retain sufficient flexibility to adapt this rule for such situations (such as major interconnections), noting that all cross-system tariffs will eventually need to be approved by the QCA.

In regard to revenue attribution, QR Network supports the QCA approach to attributing the minimum contribution to common costs to the destination system on the basis that the impact on users in the destination system is equivalent to the development of a new mine and associated rail infrastructure wholly within that system. However, QR Network considers that 'prescribing' this arrangement in the access undertaking may be overly restrictive and not allow for a review of appropriateness of the circumstances having regard to the volume of the cross-system traffic and the mainline enhancement costs in the destination system. Accordingly, QR Network proposes to address the revenue attribution between systems by including a requirement that the Total Actual Revenue for an Individual Coal System is to be determined on the same basis as that which was used to

determine the System Allowable Revenue. The attribution rule would then be fixed for the term of the Undertaking or until such time as new reference tariff was submitted which required reconsideration of the attribution rule.

For the purpose of UT3, the volume forecasts include cross-system traffics from Vermont to RG Tanna and Gregory to DBCT. QR Network considers that attributing only the minimum contribution to common costs to the relevant destination systems represents a reasonable balance of interest between users of the relevant systems.

QR Network also notes that the inherent uncertainty associated with future changes to those rules does hinder competition or limit the proponent of a new mine's ability to determine what the likely reference tariff is going to be. This will be determined in accordance with the above minimum contribution to common cost requirements and the cross-system pricing principles. The revenue attribution occurs primarily at a macro system level and consequential changes in System Prices will not affect the predictability of the tariff.

#### **6.10 Pricing for Electric Trains**

QR Network had proposed to amalgamate the AT<sub>5</sub> Reference Tariff for the Blackwater and Goonyella systems. QR Network submitted a number of documents in support of its proposal (which were contained in the Attachments to Volume 1 of its submission), which included:

- a Principles Paper prepared by QR Network detailing the rationale for its proposal;
- a report by Synergies Economic Consulting (Synergies), which considers the economic rationale for a network pricing solution; and
- an analysis by Connell Hatch of the benefits of electric traction.

The main rationale for QR Network's proposal is that it considers that a combined AT<sub>5</sub> tariff would ensure the following:

1. It will promote efficient investment in supply chain infrastructure. In particular, it is recognised that an above-rail operator will take a whole-of-CQCR view when planning its rollingstock investment strategy. A single AT<sub>5</sub> will reduce the risk of a bias away from investment in electric fleet due to concerns about

the extent to which that fleet can be economically employed across the CQCR. This is also considered to be in the best interests of effective above-rail competition.

2. It will ensure that the prices in each system will encourage use of the technology that is most cost efficient and effective for that system, which in turn will maximise efficient utilisation of the network infrastructure.
3. It will better achieve equity between users of electric infrastructure in the Blackwater and Goonyella systems, noting that the existing differential between the two is currently significant. This could ultimately impact users in both systems to the extent that it distorts above-rail investment choice.

Despite the volume of material submitted by QR Network, the QCA's analysis in the draft decision is very limited. While it is not specific in its reasoning, it states that it does not accept that "combining the tariffs is necessary for it to invest in the electric infrastructure in the Blackwater system."<sup>2</sup> The rationale for combining the AT<sub>5</sub> tariff across the two systems is not solely based on the risk of the stranding of the below-rail network assets. The primary rationale is to promote efficient utilisation and investment across the supply chain, which is one of the overarching objectives of QR Network's regulatory regime based on clause 69E of the QCA Act.

As outlined above, the promotion of efficient investment and asset utilisation is not just a below-rail issue. As noted in the Synergies paper, having the option to deploy electric rollingstock in more than one system will be very important to an above-rail operator, particularly a new entrant:

...if above rail operators do not have confidence that they will be able to deploy their rollingstock across more than one system, or that the future investment in any system is jeopardised, they will have little option but to invest in diesel locomotives notwithstanding the inherent advantages offered by electric – not just for cost efficiency but also for the benefit of the network as a whole.<sup>3</sup>

Investment in overhead traction is typically not scalable. Therefore, the next tranche of overhead traction capacity is considerably lumpy and subject to large economies

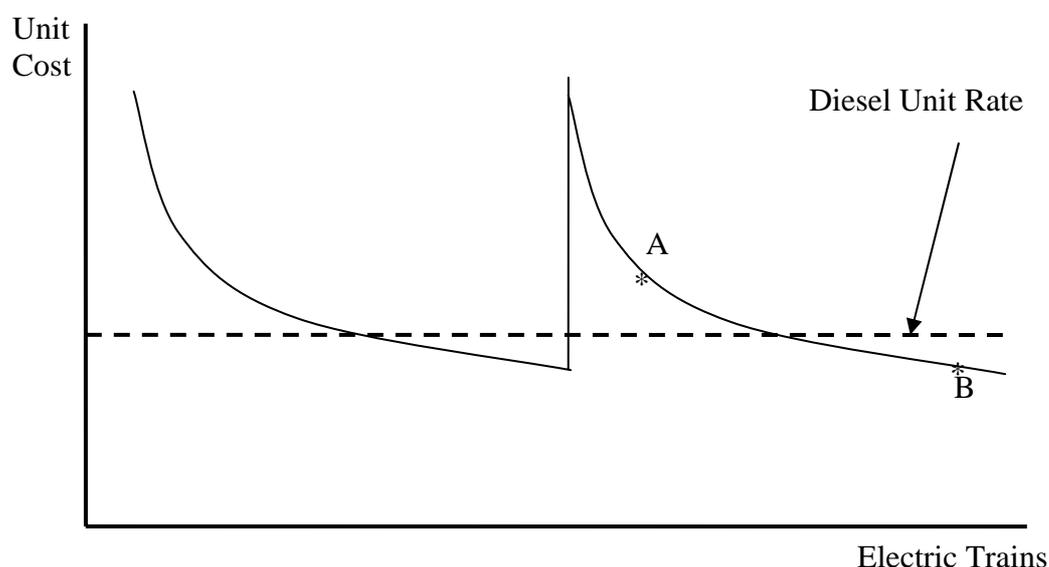
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<sup>2</sup> Queensland Competition Authority (2009), p.170.

<sup>3</sup> Synergies Economic Consulting (2009), Review of AT<sub>5</sub> – The Case for Network Wide Pricing, April, p.5.

of scale. In the absence of supporting price structures there is an inherent risk that the short term rationale interests of end-users might result in different operator investment decisions in rollingstock. This issue is illustrated in Figure 13.1 below which demonstrates that at low volumes (point A) the unit cost per electric train may not be lower than unit cost for the diesel alternate. This creates a disconnect between the short term commercial interests of the end-user and the long term economic interests of the supply chain in delivering long-term efficient outcomes (point B). There is a strong incentive for the individual user to seek to negotiate for a diesel only service.

**Figure 6.1: Electric Traction Average Cost Curves**



The QCA noted that most stakeholders supported QR Network's proposal 'in principle'. Both QR National and Asciano were supportive of the proposal, although Asciano stated:

Asciano accepts the merit of QR Network's argument for a single AT<sub>5</sub> tariff to apply to the two systems...To this extent, Asciano supports the proposal for a uniform AT<sub>5</sub> tariff in UT3. However, such support is conditional on being able to use electric locomotives interchangeably between the systems. As the current timing to achieve this is towards the end of UT3, it is appropriate to consider whether the unification of AT<sub>5</sub> would be better dealt with under UT4.

QR Network does not have access to the necessary information to assess the impacts of its proposal on the stranding risk faced by the above-rail operators. While

QR Network is prepared to accept the QCA's decision 6.7 on this issue, it will be strongly guided by stakeholder views. For example, based on the views expressed by Asciano, this may suggest that this issue should be revisited in UT4.

### **6.11 Revenue Cap Incentives and Penalties**

The QCA's decision 6.10 accepts QR Network's proposal to continue to apply a revenue cap form of regulation in the draft 2009 Undertaking.

#### ***Decision 6.11 - Disincentives for Breach and Negligence***

QR Network had proposed to change the scope of the breach and negligence threshold from 10% of train services in a month under an Access Agreement, to 10% of train services in a year in an individual system. While the majority of services remain subject to a single access agreement (noting that this will change in the future), QR Network's proposal was intended to address concerns that the existing breach or negligence threshold is too high.

The QCA did not specifically respond to QR Network's proposal to apply the threshold at a system level. Instead, the QCA has proposed to set the threshold based on 10% of each origin-destination pair. Apart from the fact that this represents a material reduction in the threshold that was previously applied (and the threshold proposed by QR Network), QR Network has significant concerns with applying the threshold at this level.

QR Network has previously expressed concerns regarding the interplay between the QCA arbitrating claims for breach or negligence and the treatment of breach or negligence under the Access Agreement (which is a legal mechanism). The potential costs of responding to and defending claims could be significant for both parties. The application of such a test on an origin-destination level has the potential to supplant the contractual mechanism, which should remain the primary mechanism for dealing with breach or negligence claims. This will therefore also allow parties to transfer the costs of pursuing breach or negligence to the QCA. This not only passes these costs onto the regulator but also provides parties with an incentive to pursue unsubstantiated claims. QR Network would have implemented different contractual provisions if it was intended to assess claims at this level.

As QR Network has previously highlighted, the revenue cap is a regulatory mechanism, not a contractual one. Applying the breach or negligence test at a system level is consistent with the development and assessment of QR Network's revenue at a system level. QR Network therefore maintains that the test needs to be applied at a system level. However, it is prepared to reduce the proposed threshold from 10% of train services a year in an individual system to 4%. The level of train services under this threshold is lower than that attributable to 10% of the aggregate train services under the largest agreement (UT1) in any given system. Accordingly, the threshold is lower than applied in UT2. It is also at a reasonably sufficient level that would allow stakeholders to readily identify contributing factors which could warrant a reduction in the system allowable revenues.

As indicated in various submissions by QR Network, the 2% increment has significant transaction costs in demonstrating that supply chain performance is directly attributable to actions within the supply chain and involves a very material burden of proof on QR Network. However, QR Network does not consider the QCA's position which reinstates the downside and not reinstate any upside is a reasonable balance of the interests of the Access Holders and the Access Provider.

Therefore, QR Network proposes to balance the downside system performance threshold by reinstating the 2% upside increment provisions from the 2008 Undertaking.

***Decision 6.12: Draft Incentive Mechanism***

*QR Network's draft 2009 Undertaking proposal*

Concerns have previously been expressed by QR Network and other stakeholders regarding the perceived effectiveness of the 2% volume 'incentive'. One of QR Network's main concerns is the difficulties in demonstrating the basis for such a claim, given the interdependencies between the various interfaces within the supply chain and the contribution of all parties to supply chain performance. In view of these complexities the costs of pursuing a claim through the QCA are likely to be high. QR Network had therefore proposed to place the onus of proof on a non-QR Network party to show that QR Network had not contributed to an increase in volumes. This proposal has been rejected by the QCA.

The difficulties in designing an effective mechanism have previously been highlighted. As outlined above, these difficulties arise given the inherent complexity in delineating the specific contribution that each party makes to performance (particularly if this needs to be quantified). Nonetheless, the QCA is proposing that QR Network develops a revised mechanism within six months of the commencement of the 2009 Undertaking.

QR Network is concerned that the debate regarding an appropriate incentive mechanism has now evolved to the point where the fundamental purpose of such a mechanism has been lost, particularly given the nature of QR Network's business and its regulatory framework. Further, as acknowledged by the QCA, initiatives to improve performance are being considered as part of the development of the Long-Term Solution in the Dalrymple Bay supply chain. Given this is an industry-led solution, and the QCA requires QR Network to consult with industry, this is considered a much more appropriate forum to consider what is a whole-of-supply-chain issue.

#### *Incentive regimes in theory and practice*

QR Network engaged Synergies to review the application of an incentive mechanism to QR Network and their report is contained in Appendix 1. This report considered the rationale underpinning the application of such regime and the key design principles. It showed that they are most commonly applied in industries where there are significant gaps in information and negotiating power between the network owner and users, such as in electricity (which has a large retail customer base) and passenger rail. In other words, it may be necessary to impose a service quality regime where users are not in a position to assess and/or negotiate service standards on their own behalf. While the QCA has communicated that it was not its understanding that the breach or negligence provisions operated at an aggregate level with an agreement it is not the regulator's responsibility to supplant itself in the position of an informed and well resourced Customer and to effectively seek an ex-post change in the negotiated terms and condition of access.

A successful regime also needs to have realistic and meaningful measures (that reflect the desired incentives) that are within the control of the business. As outlined above, given the complex interfaces within a coal supply chain it can be reasonably difficult to attribute specific responsibility for performance improvements or failures on

an ex post basis. For example, delay attribution has proven one of the more difficult areas under Network's Rail's performance regime, with the Office of Rail Regulation noting that between 300 and 500 staff are involved in this activity across the relevant businesses (noting that this regime governs both above- and below-rail).<sup>4</sup> There is therefore a risk that the costs of administering and managing such a scheme could outweigh the benefits to the supply chain.

In applying these regimes in electricity, both the ACCC and the AER have considered other obligations and incentives existing under the regulatory regime (for example, this is an explicit requirement to consider this under the National Electricity Rules). In QR Network's case, consideration therefore needs to be given as to how it can influence supply chain performance, and what obligations and incentives it already has in these areas.

The key areas in which QR Network can influence performance are as follows:

- undertaking sufficient and timely investment in network capacity;
- undertaking adequate maintenance to maximise network availability (while recognising the impact that maintenance possessions have on availability);  
and
- maximising efficient utilisation of network capacity.

QR Network already has a number of obligations in these areas. Its investment and maintenance programs are also scrutinised each regulatory period by the QCA as part of the approval of its revenue requirement. QR Network also has obligations to publicly report on a range of indicators on a regular basis. No other heavy haul access provider in Australia is subject to this level of scrutiny.

As highlighted by Synergies, QR Network also has a strong incentive to optimise throughput given its vertical integration. If QR Network does not do what it can to optimise increased throughput, including undertaking necessary investment (provided it is justified on economic and commercial grounds), it will restrict the growth opportunities of its above-rail affiliate and reduce the value of the group as a whole. Vertical separation was cited as one of the key reasons for the introduction of a service quality regime for Network Rail in the UK (then Railtrack) in the mid 1990s.

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<sup>4</sup> Office of Rail Regulation (2008), GB Performance Regime.

### *Implications for QR Network*

QR Network's customer base comprises a reasonably small number of sophisticated commercial organisations with individual and collective negotiating power. QR Network has already sought input from its users in relation to the specification of service standards for the network, as well as the scope of its maintenance program, as part of the development of its maintenance cost allowance for UT3.<sup>5</sup> Unfortunately, it did receive limited feedback. It is expected that users will want to become more involved in the specification of service standards in the future, particularly as users take more direct control over their access to supply chain capacity. It is therefore considered that the most appropriate way of dealing with service quality is via contracts.

In the meantime, QR Network is subject to a range of obligations under its undertaking governing the key ways in which it can influence supply chain performance. QR Network is also an active participant in a number of supply chain forums, including: the Dalrymple Bay Coal Chain, the Capricornia Coal Chain forum In Dalrymple Bay for example, apart from the development of the Long Term Solution (LTS) which is aimed at improving coordination (and hence performance) across the supply chain, the Central Coordinator is already involved in collecting data on performance, including monitoring and analysing performance failures.

The QCA notes that QR Network is currently involved in initiatives such as the LTS and that it is looking at initiatives to improve supply chain performance. A forum such as this is considered a more effective vehicle for examining this issue because it involves all supply chain participants and also considers the role that each participant plays in influencing supply chain performance. QR Network has also been working with supply chain participants in other systems to improve performance.

In the Capricornia Region, QR Network has been proactively working towards improvements in supply chain performance. In 2006, the Capricornia Coal Chain was established, comprising of working groups from QR Network, QRNational Coal, Gladstone Port Corporation, and various Mine and Domestic User Representatives. The steering group was established to bring cohesion to the supply chain operations

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<sup>5</sup> Refer: QR Network (2008), Volume 2, Attachment G: QR Network's Access Undertaking (2009): Maintenance Costs, August.

through the streamlining of maintenance and construction activities across the network. Significant improvements have been made in collaborative forecasting, planning and scheduling of train services, which has resulted in increased tonnage throughput, and increase asset efficiencies. In 2009, Pacific National were welcomed to the Capricornia Coal Chain, presenting new challenges and opportunities for supply chain operations. QR Network will continue to lead the Capricornia Coal Chain in its process of continues improvement.

QR Network has also been involved in other supply chain wide improvement projects, including the Capricornia Coal Chain Rail Maximisation Project. This project was initiated to determine the optimal throughput for the supply chain as a whole. It included modelling the links between rail, yards and port movements, which inefficiencies being identified. Port/Rail protocols have been developed and implemented, and currently the RG Tanna Coal Terminal and Barney Point Coal Terminal are testing a set port unloading slot regime, introducing a higher level of discipline, and reduced variability in the system.

The QCA notes that because it “has not yet had the benefit of understanding the outcomes of these processes”<sup>6</sup>, QR Network will be required to develop a revised incentive regime with industry within a six month timeframe. QR Network cannot see the benefit of establishing a separate process to examine an issue that is already being considered in these forums. This could also be seen to undermine what these other forums are seeking to achieve. QR Network therefore considers that it is more appropriate to see what outcomes evolve from these processes.

QR Network notes that some of the comments that have been made in relation to the development of an incentive regime relate to concerns that under a revenue cap, it does not have an incentive to invest. QR Network does have concerns regarding investment incentives, as set out in its submission accompanying its draft 2009 Undertaking, however a service quality incentive regime will not address this. QR Network’s main concern in relation to new investment is that it is commercial, in other words, it can earn an appropriate rate of return for the risk involved, and can also effectively mitigate asset stranding risk (if considered necessary).

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<sup>6</sup> Queensland Competition Authority (2009), p.174.

QR Network remains fundamentally concerned with the application of a service quality incentive regime that could fail to provide any real incentive to improve supply chain performance. For the reasons set out above, the design of such a regime is inherently difficult and needs to be considered within the context of the whole supply chain, and each participant's contribution to performance. A poorly designed regime will not only fail to incentivise improvement, and potentially create adverse consequences, it will impose additional costs on the business. It is imperative that the benefits of any such regime outweigh the costs.

QR Network remains committed to continue to work with industry to improve performance across all of the coal supply chains. However, it does not agree with the establishment of a separate 'incentive' regime as part of its regulatory framework.

QR Network has strong commercial incentives to develop a framework with the Industry in which it can seek to improve its commercial performance. In the event that QR Network and Industry are able to develop mechanisms which provide the appropriate balance between risk and reward then QR Network may voluntarily seek to have those mechanisms embodied in the Access Undertaking framework if it and stakeholders believe it appropriate to do so. In this context, it is not necessary to either prescribe a negotiation process with Industry where the service provider already has a reasonably strong incentive to do so.

## **6.12 Take or pay**

### ***Decision 6.13 - Reallocation within portfolio***

In its submission in response to QR Networks' draft 2009 Undertaking, QR National Coal requested that the QCA give consideration to changing the take-or-pay methodology to allow producers with multiple mines to be able to transfer their commitments within that portfolio for the purpose of assessing their take-or-pay exposure. This would mean that each producer's take-or-pay exposure would be assessed across its entire contractual commitment, rather than on a mine by mine basis.

The QCA requires that QR Network will incorporate provisions in its resubmitted draft 2009 Undertaking to allow for the transfer of take-or-pay obligations by producers

within their own portfolio of mines, “while protecting the interests of QR Network and other stakeholders.”<sup>7</sup>

QR Network considers this proposal to be difficult to administer as mine ownership is not a straightforward proposition. Many mines have joint venture partners of varying degrees of ownership. Therefore, application of the proposal would require additional drafting to be able to objectively pool mines into the portfolio and gives rise to issues of gaming and potential for dispute.

While QR Network supports the principle of netting total service levels for a single origin to destination, its primary concern with QR National Coal’s proposal is that it would be inequitable for smaller mines as they would not have the same ability to transfer commitments between mines.

Consideration also needs to be given to the original intention of take-or-pay. Its key purpose was to service infrastructure enhancements for a particular origin to destination path. It was also intended to provide producers with an incentive to avoid over-contracting, or at least be accountable for that decision if they choose to do so. Allowing for the transfer of commitments between different origin to destination paths is seen as contrary to the intention of take-or-pay.

The ability to effectively net off take-or-pay commitments against other origin to destination paths may be seen to largely obviate the need to enter into physical transfers of capacity. Given the port currently contracts based on origin, this could result in capacity mismatches and impact on future scheduling decisions.

QR Network is of the view that capacity transfers should be the key mechanism used by large producers to transfer capacity commitments between different mines within their portfolio. This also ensures that all mines are on the same footing in relation to the assessment of take-or-pay obligations. Large producers are not prevented from exploiting any competitive advantage that they may have in relation to the flexibility to allocate supply chain capacity between mines. However, this flexibility is best exercised via capacity transfers.

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<sup>7</sup> Queensland Competition Authority (2009), p.176.

For the reasons cited above QR Network does not believe the QCA's decision 6.13 would promote competition in the upstream market of coal extraction and processing.

QR Network is prepared to look further into the capping of take-or-pay obligations by mine. It has commenced discussing with industry on the ability to assess take-or-pay on an origin to destination basis where that origin to destination pair is serviced by multiple access agreements. This is likely to promote competition in the market for above rail services by providing individual mines with the benefits of operator diversification rather than 'lock-in' with single operator to avoid take-or-pay exposure while still raiiling the aggregate level of train services from that origin. QR Network considers that this approach can be addressed through the definition of Total Actual Revenue which would not penalise QR Network for not recovering revenue it was entitled to earn. QR Network proposes to include relevant drafting in its resubmitted draft 2009 Undertaking.

#### ***Decision 6.14 - Total Actual Revenue***

Under decision 6.14 the QCA requires QR Network to amend clauses 3.2.3 and 3.2.5 of Part B, Schedule F, to clarify that Total Actual Revenue will be based on the amount that QR Network "was entitled" to collect. QR Network accepts the required amendment.

#### ***6.13 Review of Reference Tariffs***

##### ***Decision 6.15 - Timing***

One of the key changes put forward by QR Network was a proposal to reforecast volumes and certain costs at the beginning of each year and reflect these updated forecasts in the revised Reference Tariffs for the following financial year. The primary purpose of this proposal was to reduce the magnitude of the year-on-year adjustments required under the revenue cap and hence the volatility of access charges during the course of the regulatory period. It has no impact on QR Network's exposure to short-term volume risk within the term of the regulatory period (noting that it still bears that risk beyond the horizon of the regulatory period) given short-term volume risk is now borne by industry under the revenue cap.

The relevant cost elements that were to be revised included:

- adjusting for any difference between actual and forecast MCI and CPI (which is discussed further in section 13.2.12 below);
- any increase in maintenance costs following the commissioning of a new branch line;
- upon finalisation of a new connection agreement, any difference between the forecast and agreed connection cost; and
- an update of the forecast costs of electric traction.

The main changes that would result from the proposal put forward by QR Network were:

- an Annual Review process will be conducted covering an annual variation to Reference Tariffs (by way of an Adjustment to System Allowable Revenue), sought by QR Network by 28 February prior to the commencement of the relevant year; and
- the revenue cap process will be modified to only involve QCA endorsement of the Revenue Adjustment Amount, rather than the variation of Reference Tariffs arising from the Revenue Adjustment Amount (with the variation to be addressed via the Annual Review process).

The QCA was broadly supportive of QR Network's proposal to reduce the volatility of access charges, as well as the proposed adjustments to the MCI and CPI and other cost allowances. However, it rejected QR Network's annual review process. It considers that the annual review process occurring in February should be limited to the updating of tariffs for the revised volume forecasts. Adjustments for new spur maintenance costs, electric energy costs and electrical feeder station costs will be adjusted as part of the review process at the end of each year.

This will therefore mean that these adjustments will flow through to QR Network's revenue with a lag. However, it accepts that it will be NPV neutral over the term of the regulatory period. QR Network is therefore prepared to accept the QCA's proposed amendments.

### ***Decision 6.16 - Annual Reference Tariffs***

The proposal for annual Reference Tariffs replaces the quarterly escalation of Reference Tariffs by CPI. The QCA has accepted this proposal.

### ***Decision 6.17 - Non-reference tariffs***

QR Network has proposed to remove the existing provisions in relation to the calculation of access charges for non-reference services from clause 3.5.1 of Part A, Schedule F to a new clause 4.3 in Part B, Schedule F. QR Network had proposed that this provision would not apply to cross-system services, because the pricing of these services is dealt with in the new clause 4.2 in Part B, Schedule F.

Decision 6.17 is compatible with the provisions in clause 4.2.

## ***6.15 Maintenance Cost Index***

### ***Decision 6.18 - Composition***

A key change to Schedule F proposed by QR Network in the draft 2009 Undertaking was the indexation of maintenance costs by a specifically constructed index that is more reflective of the actual drivers of QR Network's maintenance costs. QR Network set out the basis for the determination and application of a Maintenance Cost Index (MCI) as part of its regulatory proposal.

The QCA has accepted QR Network's proposal to index its maintenance costs based on the MCI. It also considers that the proposed construction is reasonable to the extent that it is based on third party indices that are not subject to manipulation by QR Network. However, the QCA has expressed concerns with the composition of the index. In particular, it requires the application of a 15.9% weighting for asset charges, which are to remain constant for the term of the regulatory period.

QR Network agrees that asset charges should remain constant during the regulatory period, consistent with their application to a real asset base. However, the QCA assumptions do not take account of the application of these charges to new maintenance assets that are acquired during the regulatory period. The QCA's treatment will effectively assume that all assets acquired during the term of the regulatory period are priced in 2007-08 dollars, which will result in QR Network's maintenance cost allowance being understated.

QR Network does not believe it is appropriate to apply the assumed index value of 100 to the charges that will apply to new assets acquired during the term of the regulatory period. The asset charges for new maintenance assets need to be based on the value of those assets in the 'dollars of the day' at the time those assets are acquired. This will ensure that consistency is maintained with QR Network's baseline maintenance costs. Once acquired, the asset charges relating to those assets will then be held constant for the duration of the regulatory period.

In order for the proposed MCI to be compatible with the proposed maintenance costs, the base level maintenance costs to which the MCI is to be applied must include asset charges at their nominal value. Therefore QR Network can only accept the QCA's draft decision on the composition of the MCI where it is applied to the appropriate base level maintenance cost.

The other change proposed by the QCA under this particular decision was that to the extent that an index that is being relied upon to calculate the MCI ceases to be published, the proportion of the MCI relating to that index will revert to the CPI. QR Network is prepared to accept this amendment, but proposes that this only occur if an appropriate substitute cannot be found, being an alternative third party index that is acceptable to the QCA.

In order to improve the robustness of the forecast for the MCI, QR Network engaged Bis Shrapnel to provide a forecast of the relevant components which comprise the Maintenance Cost Index, with the exception of the consumer price index and the accommodation. Accommodation has retained the escalation assumed in the original maintenance cost submission and consumer price index reflects the mid-point of the RBA targeted band of 2% to 3%. The report from Bis Shrapnel is included at Appendix 2. An updated forecast of the index is detailed in Table 6.1. A comparison of the original MCI and the updated MCI is shown in Figure 6.2.

**Table 6.1: Revised Maintenance Cost Index**

		fuel	accom	consumables	labour	Asset	Weighted Index
<b>Actuals</b>	<b>Jul-06</b>	140.8	115.0	121.6	113.1	100.0	115
	<b>Jul-07</b>	140.4	126.9	127.3	118.9	100.0	120
	<b>Jul-08</b>	156.3	144.0	128.9	124.7	100.0	124
	<b>Jul-09</b>	146.1	149.7	127.6	130.6	100.0	125.46
<b>BIS Shrapnel Forecast</b>	<b>Jul-10</b>	146.2	159.3	127.7	144.3	101.0	131.92
	<b>Jul-11</b>	150.2	169.5	128.7	150.7	102.0	135.55
	<b>Jul-12</b>	156.7	179.8	132.4	157.7	103.0	140.48
	<b>Jul-13</b>	168.1	191.4	141.5	166.6	104.0	148.34

**Figure 6.2: Comparison of the Submitted and Revised MCI**



***Decision 6.19 - Interim Review***

In accepting QR Network's proposal in relation to the MCI, the QCA is proposing to review the effect of the weightings of the components, and the application of the MCI, after the 2011-12 financial year. This process is likely to be subject to public consultation. QR Network will also be required to include details of the MCI in its public maintenance cost report, as part of proposed amendments to clause 9.2.3(b).

QR Network notes that it will already be reporting the difference between the actual and forecast MCI on an annual basis as part of the annual review of Reference Tariffs.

As the QR Network is subject to an ex-ante incentive based regime QR Network would be concerned if the QCA sought to amend the weightings of the index in the middle of the regulatory term if the difference was attributable to efficiency gains by QR Network or its maintenance provider. QR Network accepts the QCA's requirement to review the composition and application of the MCI after 2011-12 but proposes that the relevant weightings can only be varied where there is a material difference between the proposed and actual weightings.

***Decision 6.20 - Application***

As outlined above, as part of the annual review process QR Network is proposing to revise its forecast of the MCI each year for the purpose setting its revised Reference Tariffs. Further, differences between the actual and forecast MCI will be assessed on an annual basis as part of assessing whether there has been any under- or over-recovery of revenue.

The QCA considers that this process is administratively complex and hence has indicated that it cannot accept it in its current form. It is therefore proposing to set QR Network's tariffs and revenues, including maintenance costs, on the basis of forecast CPI, because it considers that this is more readily available than the MCI. Regulated tariffs and revenues will then be adjusted for the difference between the forecast CPI and actual MCI as part of the revenue cap review which occurs following the end of each financial year.

As discussed above, QR Network agrees with a single annual review process. However, it has two concerns with the QCA's proposal. The first is setting the initial

maintenance cost allowance based on CPI rather than MCI. QR Network considers that there is no reason why a forecast of the MCI could not be made.

The second is that QR Network's original proposal did not contemplate application of the X factor, which the QCA proposes to apply to both the CPI and MCI (QR Network's response to the proposed quantum of the X factor is addressed in Volume 2). QR Network considers the cost forecasts that are used to set QR Network's revenue and tariffs should be based on the best estimate available. This includes factoring the impact of the X factor into the cost forecasts that are used to set QR Network's revenue and tariffs at the start of the regulatory period. The annual review process – and hence any consequent revenue and tariff adjustment – should then be limited to the difference between the forecast and actual CPI minus X, and forecast and actual MCI minus X.

#### **6.16 *New Spurs, Electrical Feeder Stations and Electricity Charges***

QR Network proposes to review the forecasts for the following as part of the annual review mechanism:

- the cost of maintaining new spurs;
- connection fees to electrical feeder stations; and
- the costs of electric traction.

As the current undertaking did not include any allowance for the costs of maintaining new branch lines or spurs commissioned during the regulatory period, QR Network proposed a 'benchmark' cost of \$25,000 per track kilometre per annum, which was based on the actual costs of maintaining the Lake Vermont spur line.

The QCA's consultant, GHD, indicated that the annual cost of maintaining new spurs was more in the order of \$15,000 per track kilometre per annum. The QCA considers that there is some uncertainty surrounding these costs. Rather than propose a set allowance, it has rejected the amounts proposed by QR Network and GHD and requires that the actual efficient costs of maintaining new spurs is included in the calculation of the Revenue Adjustment Amount once commissioned.

In rejecting decision 6.21 QR Network's main concern with the QCA's required amendment is that the inclusion of a process that reviews the actual maintenance

cost of each new spur line will only extend (and further complicate) the annual revenue cap approval. This also creates further uncertainty for QR Network.

QR Network notes the concerns that the QCA expressed about an annual review process increasing complexity. Having to seek approval for the maintenance costs of each new spur will do this. To avoid this complexity (and provide QR Network with a reasonable degree of certainty), QR Network is prepared to accept GHD's proposed allowance of \$15,000 per track kilometre per annum but proposes a further amendment to also include the ability to seek to increase this allowance if the actual costs prove materially higher than this amount. Approval for these additional costs would then be sought via the annual review cap review.

### **6.17 Review Event for Maintenance Scope Change**

QR Network proposed an ability to review System Allowable Revenue where it needed to change its maintenance practices in order to maintain or improve supply chain efficiency (for example, to facilitate efficient expansion). This is subject to a materiality threshold of 2.5% of AT<sub>3</sub>, AT<sub>4</sub> and/or AT<sub>5</sub>. QR Network had proposed that such a change would be implemented as an endorsed variation event.

The QRC had expressed concerns with QR Network's proposal, mainly in terms of its implementation via an endorsed variation event. It proposed that QR Network should seek such a change by way of a Draft Amending Undertaking. QR Network has subsequently indicated that it is willing to implement this change via a Review Event, which would require that this mechanism is reinstated in Schedule F. This has been accepted by the QCA.

QR Network accepts the QCA's decision 6.22 to support the reinstatement of the Review Event provisions and the inclusion within the Review Event definition changes in maintenance practices requested by an Access Holder or Customers. This will allow QR Network and Customers the option of renegotiating the maintenance requirements to achieve specific objectives where market demand conditions or network availability changes.

### **6.18 Variations to Reference Train Service**

The existing capacity multiplier results in a surcharge being levied on train services that are slower than the Reference Train service. It is proposed to make this symmetrical, so that the surcharge applies to services that are faster or slower than the Reference Train service, but only where the service is scheduled to operate faster. QR Network accepts the QCA's amendments to clause 3.2 of Part A, Schedule F contained in decision 6.23.

## **PART 7 CAPACITY MANAGEMENT**

### ***Introduction***

Part 7 and Schedule G of the resubmitted draft 2009 Undertaking will set out the framework for QR Network’s management of Capacity on the Rail Infrastructure.

The key principles associated with the framework are set out below.

- QR Network will perform scheduling, train control and associated services as well as provide Capacity related information in accordance with Network Management Principles (Schedule G).
- QR Network may resume Capacity from an Access Holder in specific circumstances.
- An Access Holder may relinquish Access Rights upon the payment of a Relinquishment Fee, which may be reduced if QR Network enters into an Access Agreement with another Access Holder.
- An Access Holder may transfer all or part of its Access Rights to an Access Seeker on payment of a transfer fee.

### ***Response to draft decisions***

The following table provides a reference to the decisions reached in the draft decision and QR Network’s proposed responses to those decisions:

<b>Draft decision Reference and Issue</b>	<b>QR Network Position</b>
7.1 – Initial System Rules	Accept but propose amendment
7.2 – System Rules Amendment	Reject
7.3 – System Path definition	Accept with amendment
7.4 – Definition of Intermediate Train Plan	Accept
7.5 – Capacity resumption	Accept

7.6 – Competing Applications	Accept
7.7 – Competing Application consequential amendment	Accept with amendment
7.8 – End User can be an Access Seeker (Multiple amendments)	Accept
7.9 – Transfer Fee less than 2 years & impact of System rules	Accept but clarify
7.10 – First right of refusal on renewal	Accept
7.11 – Remove clause 7.4(d)(ii)	Accept
7.12 – Definition of Renewal Application	Accept with amendment
7.13 – Amend definition of Relinquishment Fee	Accept
7.14 – Differentiate between transfer and relinquishment	Reject
7.15 – Move definitions into Part 7 from Part 11	Accept
7.16 – Cancellation of Infrastructure Enhancement	Accept with minor amendment
7.17 – removal of 7.3.5(d)(iii)	Accept
7.18 – Definition of Available Capacity	Accept with amendment

### **7.3 System Rules**

#### ***Decision 7.1 – Initial System Rules***

QR Network proposed the creation of System Rules in its draft 2009 Undertaking and outlined explicitly that these rules would be created voluntarily with a process for their acceptance included in Appendix 1 of Schedule G. System Rules were created as a primary response to coal system integration issues on the Goonyella system but were viewed as a useful mechanism if required in all systems. As such QR Network rejects the QCA's decision that QR Network develop System Rules for all systems,

this would formalise a process that was meant to retain some flexibility and be agreed with affected parties within a coal chain.

QR Network agrees with the QCA that where it believes System Rules would be useful it will undertake a process of consultation with affected parties to endeavour to ensure the best outcome for a coal system. QR Network is prepared to provide a draft copy of these rules to operators and the QCA during their negotiation in line with the QCA's proposed timeframe of nine months should these rules be developed.

QR Network believes that sufficient dispute resolution exists for customers/operators under clause 10.1 of the draft 2009 Undertaking. This is referenced within Schedule G, Appendix 1, clause (g) of the draft 2009 Undertaking.

QR Network is prepared to amend the draft 2009 Undertaking to include references to Access Seekers should they become Access Holders.

For the avoidance of doubt QR Network confirms that it will not be able to use the System Rules as a mechanism to alter a customer's Train Service Entitlement as the System Rules fall within the Network Management Principles that form part of the System-wide Requirements within the customer's Access Agreement. QR Network will not be able to alter these System-wide Requirements without consulting affected parties.

QR Network also clarifies that the use of the System Rules within the day of operation environment to alter the Daily Train Plan does not constitute a transfer of a Train Service Entitlement. Specific transfer arrangements exist for the ongoing contractual movement of tonnes from one customer to another. Further discussion on this matter is contained in section 8.2.8.

#### ***Decision 7.2 - System Rules Amendment***

QR Network believes that the System Rules should be flexible enough to be able to be altered quickly with the approval of affected parties. Further, the process to amend these rules should allow parties to seek dispute resolution from a third party should they believe that the rules are not applied equitably.

Given these factors QR Network does not believe that the QCA's proposed changes in decision 7.2 add anything further than the conditions and process established in

Schedule G, Appendix 1. More specifically, the dispute resolution clauses within this Appendix would currently allow affected parties to seek resolution in accordance with clause 10.1 of the Undertaking.

QR Network therefore believes that while it agrees with the QCA in relations to the concept and operation of System Rules, it believes that the current drafting achieves these principles.

It should be noted that QR Network proposes to include amendments to Appendix 1 of Schedule G to ensure that if QR Network changes the System Rules (either through agreement of all parties or as a result of dispute resolution) and this has a net material financial impact on an Access Holder, the cost of compensating that Access Holder in accordance with the obligations of the Access Agreement will be included in the cost base for assessing reference tariffs. Further, QR Network will not be under any obligation whatsoever to change the System Rules where that results in a net material financial impact to an Access Holder, if QR Network is not reasonably satisfied that it will be compensated for this cost in the calculation of reference tariffs

#### ***Decision 7.3 - System Path Definition***

QR Network does not accept the QCA's definition of System Path within decision 7.3. QR Network notes that the provision of system paths is for planning purposes and does not form part of a Train Service Entitlement as stipulated by the QCA within its draft decision<sup>8</sup>. QR Network will provide a definition of System Path within its resubmitted draft 2009 Undertaking to ensure that there is a level of transparency for stakeholders.

#### ***Decision 7.4 - Intermediate Train Plan***

QR Network accepts the QCA's decision 7.4 to amend the definition of Intermediate Train Plan.

### ***7.7 Capacity Resumption***

QR Network accepts the QCA's decision 7.5 on this matter and will make the appropriate amendments.

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<sup>8</sup> Queensland Competition Authority (2009), pg 199.

## **7.8 Competing Applications**

QR Network accepts the QCA's decisions 7.6 and 7.7 but wishes to review the detailed drafting with the QCA.

QR Network accepts the QCA's amendments in decision 7.8 to allow end users to be able to be classified as an Access Seeker. This is consistent with the provision of a Standard Access (End User) Agreement and the introduction of a similar Access Agreement under the alternate form of agreement provisions in Part 5 of the 2009 Undertaking.

## **7.9 Capacity Transfer**

QR Network is unclear on the link in decision 7.9 between short term transfers and the System Rules for the purpose of managing entitlements within a portfolio. The proposed mechanism by QR Network for facilitating this is in the scheduling environment and the Contested Train Path Decision-making Process. Specifically, paragraph c(ii) allows for the nomination by an Access Holder to 'virtually' assign an underutilised path to an alternate origin to destination. However, this does not avoid the take-or-pay obligation for the original origin to destination. Should the Access Holder wish to avoid this obligation it must execute a formal transfer.

It is acknowledged that amendments are necessary to paragraph c(ii) of Appendix 2 to Schedule G which ensure that where the Access Holder has made an allocation under this provision that the nomination is also:

- recorded and documented; and
- the nomination is deemed to have been a utilisation of the original origin to destination for the purpose of future decisions made under the Contested Train Path Decision-making Process.

This framework is not dependent on the development of system rules and can operate independently. QR Network acknowledges that where System Rules are developed these may be utilised to formalise any administration arrangements associated with this process. System Rules may also include alternate short term capacity management arrangements which may apply emerge from negotiation of

the Dalrymple Bay Coal Terminal – Long Term Solution. However, the development of these processes is subject to commercial negotiation with the relevant stakeholders and the QCA should not pre-empt the outcomes from those negotiations or even whether those outcomes would be applicable more broadly across the CQCR. Accordingly, QR Network does not propose to specify how short term transfers will be managed under the System Rules.

QR Network also understands that stakeholders may express a preference for implementing the transfer arrangements for a transfer for periods less than 12 months in the Australian Rail Track Corporation Draft Hunter Valley Access Undertaking (HVAU). QR Network acknowledges the flexibility of this proposed approach but notes that some key differences between the HVAU and the QR Network Undertaking constrain the application those principles in the CQCR. These include:

- the material level of latent capacity provided by the 15% surge capacity which significantly mitigates ARTC potential to not meet its existing contractual obligations. QR Network notes that the users of the CQCR have not strongly advocated for a similar level of ‘surge capacity’ to increase flexibility in capacity management;
- the indemnity provisions which assign any liability for ARTC’s failure to not meet its existing contractual rights to the parties to the transfer. QR Network notes that as the intermediate scheduling arrangements are managed by an independent coordinator, of which all supply chain users and service providers are participants, provides for this indemnity as its transferring responsibility to another party. QR Network does not possess this benefit as it needs to ensure that it is able to meet its existing contractual obligations to a party who is not a participant to a supply chain coordinating body (i.e. the Goonyella System).

In the context of the proposal to recognise breach or negligence on the basis of origin to destination in consideration of penalties under the revenue cap, replicating the ARTC model in the QR Network Undertaking poses an unacceptably high risk and that those penalties may be triggered. It is therefore not in the legitimate business interests of QR Network, or in the interest of Access Holders not party to the transfer arrangement, to implement a short term transfer model. Accordingly, short term

transfers must be either managed in the scheduling environment as discussed above or facilitated by the capacity transfer arrangements in the Access Undertaking.

The draft decision also requires QR Network to address the issue of transfer fees for transfers between coal systems. In this regard, transfer fees should remain payable in all circumstances for transfers between coal systems. The predominant example of where this might occur is where two systems share common infrastructure such as Blackwater and Moura. In the event of an intersystem transfer between Moura and Blackwater the system from which the nomination access rights are being transferred should not be disadvantaged by the transfer. QR Network will ensure that the resubmitted draft 2009 Undertaking provides clarity in this drafting.

QR Network also proposes to retain the current Reduction Factor definition for inter-system transfers which provides for adjustments to reflect for the average contribution to common costs.

It has come to QR Network's attention that transfer fees calculated under the 2005 and 2008 Undertakings and UT2 agreements may give rise to a transfer fee which materially exceeds the net difference in the present value of the take-or-pay between the original and the new service. This outcome is a legacy from the price-cap and take-or-pay arrangements and was not addressed in the development of the revenue cap arrangements.

QR Network has previously communicated this issue to stakeholders and proposes to address the deficiency in the capacity management framework by modifying the reduction factor to reflect the ratio of the take-or-pay exposure between the original and new service. When included in the calculation of the relinquishment fee formula this formula algebraically collapses to the desired outcome. This is shown in the following equations.

$$\begin{aligned} \text{Transfer\_Fee} &= PV(\text{ToP})_A - (PV(\text{ToP})_A \times \text{Reduction\_Factor}) \\ &\text{where} \\ \text{Reduction\_Factor} &= PV(\text{ToP})_B / PV(\text{ToP})_A \\ &\text{therefore} \\ \text{Transfer\_Fee} &= PV(\text{ToP})_A - (PV(\text{ToP})_A \times [PV(\text{ToP})_B / PV(\text{ToP})_A]) \\ &= PV(\text{ToP})_A - PV(\text{ToP})_B \end{aligned} \tag{1}$$

QR Network will include detailed drafting in its resubmission to reflect this change. QR Network also notes the delivered outcomes from these amendments will replicate the transfer outcomes proposed in the ARTC Hunter Valley Access Undertaking.

### **7.10 Committed capacity or renew of access rights**

#### **Decision 7.10 – First right of refusal on renewal**

QR Network accepts the intent of the QCA's decision 7.10 but will need to review this drafting with the QCA to ensure that it achieves this intent. It should be noted that QR Network may not be able to provide rights of renewal to coal services on the Western System due to Passenger Priority legislation.

#### **Decision 7.11 - Remove clause 7.4(d)(ii)**

QR Network accepts the QCA's decision 7.11.

#### **Decision 7.12 - Definition of Renewal Application**

QR Network understands and accepts the majority of amendments that the QCA has outlined to the definition of "Renewal Application" in decision 7.12. It is however unsure why the QCA has excluded transfer tonnes. The primary reason for the exclusion of a holder of transferred capacity from being able to renew nominated access rights was to address the concern associated with rolling transfers to bypass and distort capacity allocation processes.

QR Network believes that the right of renewal for these tonnes should vest with the original owner of the tonnes not the transferee. By issuing a renewal application for transfer tonnes to the transferee this effectively creates a secondary market for the trade of tonnages and rolling transfer arrangements which would allow customers to circumvent the queuing process. Previously the QCA has been critical of proposals which would circumvent the queuing process. An example of a situation where this could occur could be where a mine which is nearing the end of its economic life could seek to on-sell the rights to another party for commercial gain.

QR Network specifically removed from the draft 2009 Undertaking its right to reallocate relinquished (transferring) rights to another party which may be able to better utilise those rights. QR Network identified this as a potential barrier to coordination and execution of transfers. We did not remove this provision to facilitate speculative activities associated with capacity allocation. For example, a mine may

over-contract for both port and rail for the purpose of on-selling. The ability of QR Network to rigorously validate production capacities is limited. However, QR Network may be required to seek additional information as part of an access application to constrain this type of behaviour.

QR Network maintains some reservations regarding the two year threshold for not recovering transfer fees. QR Network agreed to the inclusion of this condition as it was supported by the QRC on behalf of industry. However, this reflected an agreed outcome and the quarantining of transferred capacity from renewal rights formed part of the overall transfer management arrangements. In the event that the QCA maintains its position that holders of transferred tonnes are able to renew rights then the two year threshold for transfer fees is no longer reasonable.

#### **7.11 Capacity relinquishment and relinquishment fees**

QR Network accepts the intent of the QCA's decision 7.13 but will provide amended drafting so as to improve clarity. QR Network will work with the QCA to ensure drafting which adequately resolves this matter.

#### **Decision 7.14 - Differentiate between transfer and relinquishment**

QR Network does not accept the QCA's decision 7.14 which requires it to differentiate between transfer and relinquishment. QR Network believes that any transfer of rights is effectively a relinquishment of those rights (whether it be short or long term). As such, there is no difference between the two concepts under the relinquishment process. QR Network has clarified this by removing the definition of transfer fee from the Access Undertaking.

QR Network also considers it important that stakeholders understand that the proposed adjustments to transfer arrangements in the 2009 Undertaking apply only to Access Agreements negotiated under this undertaking. It is not appropriate to provide the Access Holder of an existing Access Agreement the benefit of these changes without being exposed to complimentary risks in the 2009 Undertaking. In particular this relates to the tighter resumption provisions than those prevailing in existing Access Agreements. Similarly it would be inappropriate to calculate a transfer fee under a UT1 Access Agreement using the proposed reduction factor in section 8.2.8, as in most if not all circumstances, a fee would not be payable due to the disparity in UT1 and UT2/3 take or pay arrangements.

***Decision 7.15 - Move definitions into Part 7 from Part 11***

QR Network accepts the QCA's decision 7.15.

***7.12 Capacity expansion***

QR Network rejects decision 7.16 because the proposed amendments are not in QR Network's legitimate business interests.

Clause 7.3.3 relates to QR Network's commitment to expand the network in order to meet the capacity requirements of the Access Seeker. Specifically, the clause states:

QR Network will undertake Infrastructure Enhancements to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker, if QR Network reasonably considers that its expected net additional revenue less any expected costs associated with the Infrastructure Enhancements, is sufficient to commercially justify QR Network undertaking the Infrastructure Enhancements (including QR Network's incurring of those costs and exposure to financial and other risks).

QR Network is particularly concerned with the interaction of the additional obligations and the existing provisions in the 7.3.3. Under section 118 of the QCA Act the QCA has deterministic powers to require the access provider to extend, or permit the extension of, the facility subject to an access determination. However, section 119 of the QCA Act also stipulates the constraints on the regulator powers in making that determination. More specifically, the access determination must not require the access provider to pay some or all of the costs of extending the facility.

As clause 7.3.3 includes a reasonableness test, the Undertaking as is currently drafted, potentially allows the QCA to arbitrate a dispute under a legally enforceable undertaking as to whether QR Network's assessment / consideration of expected net additional revenue less any expected costs is reasonable. The inclusion of this provision in a voluntary access undertaking effectively waives the protections the service provider possesses through section 118 and section 119 of the QCA Act.

The requirement to disclose the basis for that assessment potentially prejudices the service provider in an arbitration process and could require the owner of the facility to expand at its own cost. This removes the normal commercial discretion and rights of the service provider. Ultimately, whether the service provider decides to expand its facility at its own costs is a commercial matter to be determined through the normal practice of negotiation with the service provider about whether to proceed with that investment. This issue has been specifically addressed by the Australian Competition and Consumer Commission's consideration of the Hunter Valley Coal Network Access Undertaking<sup>9</sup>:

*The ACCC's preliminary view is that the HVAU should not set out strict rules which oblige ARTC to comply with the recommendations of an Applicant or the HVCCC regarding the creation of Additional Capacity, as the decision to consent to the provision of Additional Capacity is ultimately a decision for ARTC on commercial grounds.*

It is not clear to QR Network why its Undertaking needs to include obligations which are the normal course of negotiation. Therefore, QR Network does not support the amendments required by clause 7.16. In addition, QR Network proposes to amend 7.3.3 in the resubmitted draft 2009 Undertaking to ensure that QR Network's decision to not invest at its own costs remains at its own discretion.

### **7.13 Formation and reordering of the queue**

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<sup>9</sup> Australian Competition and Consumer Commission (2010) Hunter Valley Coal Access Undertaking - Position Paper on Matters Other than Price. p.285  
<http://www.accc.gov.au/content/item.phtml?itemId=913638&nodeId=33b65686a03b8060382ac5c4c2d8e55c&fn=Position%20Paper%20Feb%202010.pdf>

QR Network accepts the QCA's decision 7.17. QR Network will provide additional drafting to clarify that it has the ability to re-order the queue for capacity where two requests are for a term less than ten years. That is, it can give preference to an Access Seeker who is prepared to commit to a longer term but that term is less than ten years in duration.

#### **7.14 Definition of capacity analysis and available capacity**

QR Network accepts the QCA's decision 7.18 but will propose some amended drafting to ensure that this definition meets the requirements through the entire Undertaking.

#### **Amendments not related to the draft decision**

QR Network will pursue the following amendments not included in its draft 2009 Undertaking.

##### **1. Formation of a queue – clause 7.3.5(c)**

QR Network will amend this clause to reflect changes to queuing which may arise to align rail and port capacity where a supply chain co-ordinator exists. This amendment considers the situation where new infrastructure is completed but the outcome is that the defined capacity of the new infrastructure is below that originally forecast prior to its construction.

Where an Access Seeker(s) has Access Rights to the new infrastructure, but all of these rights have not been met as a consequence of an assessment that reduces the defined capacity of the project, this/these Access Holder(s) will be given preference (collectively) within a queue for new Access rights to further infrastructure development.

##### **2 Position of Renewal and Conditional Access applications in a queue – clause 7.3.5(g)**

QR Network confirms that renewal applications will be afforded preference in a queue for capacity. These will be placed at the front of the queue. This will be amended accordingly.

Further, where Access seekers capacity rights are reduced in accordance with clause 11.3(b)(ii) of an approved 2009 Undertaking then these applications will collectively be placed in the next position in the queue behind renewal applications.

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## **PART 8 INTERFACE CONSIDERATIONS**

### ***Introduction***

As Railway Manager, QR Network is responsible for ensuring that the Interface Risks associated with the operation of Train Services on the Rail Infrastructure are appropriately managed. The key aspects are:

- The Interface Risk Management Process commences with an integrated risk assessment and culminates in an Interface Risk Management Plan (IRMP) which specifies:
  - Which Safeworking Procedures and Safety Standards are applicable;
  - Any additional controls agreed;
  - The audit, inspection and review regime agreed; and
  - The particular party responsible for ensuring the various elements of the IRMP are implemented.
- The Access Holder's Safety Management System must reflect the IRMP.
- All Rollingstock and all Rollingstock Configurations must be authorised by QR Network. Access Holders must produce certificates of compliance prepared by an agreed party.
- The Access Holder must have in place processes to ensure IRMP compliance at all times in its operations. QR Network and the Access Holder must inform each other of any failure to comply with the IRMP.
- The Access Holder must prepare an Environmental Investigation and Risk Management Report (EIRMR) which identifies possible risks of environmental harm arising from the proposed use of the Rail Infrastructure and the proposed environmental risk mitigation strategies, including audit requirements. The Access Holder's Environmental Management System must address the risk management proposals in the EIRMR and all relevant legislative requirements.
- If an Access Holder proposes to construct infrastructure which connects to QR Network's Rail Infrastructure, QR Network reserves the right to design, project manage, construct, commission, maintain and upgrade the connecting infrastructure. The Access Holder will fund these works.

## ***Response to draft decisions***

The following table provides a reference to the decisions reached in the draft decision and QR Network's proposed responses to those decisions:

<b>Draft decision Reference and Issue</b>	<b>QR Network Position</b>
8.1 – Consequential amendments	Reject
8.2 – Removal of Schedule HA	Accept
8.3 – Alignment of references	Accept

### ***8.1 Interface Risk Management***

Currently there is no agreed form for the alternate form of agreement and amending the Undertaking may have the effect of pre-empting the use of a particular model for the form of agreement. More specifically, the comments of the QCA in the draft decision may lead customers to believe that QR Network agrees with a particular alternate access model, where there is no linkage between an operator and capacity holder agreement.

QR Network rejects the QCA's decision 8.1 but commits to including the required changes to Part 8 as part of the Draft Amending Undertaking process when the alternate form of agreement is approved by the QCA.

### ***8.2 Part 8 Schedules***

#### ***Decision 8.2 - Removal of Schedule HA***

QR Network accepts the QCA's decision 8.2.

#### ***Decision 8.3 - Alignment of references***

QR Network will include amendments to align with the QCA's decision 8.3.

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## **PART 9 REPORTING, INFORMATION PROVISIONS AND COMPLIANCE**

### ***Introduction***

Part 9 of the resubmitted draft 2009 Undertaking will establish QR Network's obligations regarding compliance and the preparation of various reports.

QR Network is obliged to have appointed a Compliance Officer responsible for monitoring QR Network's compliance with its regulatory obligations and reporting breaches of those obligations internally and to the QCA.

In addition, QR Network is obliged to prepare a number of reports, some of which are published and others provided on a commercial-in-confidence basis to the QCA. These reports include:

- Monthly and 'as required' reports of breaches of the 2009 Undertaking;
- Audited quarterly network performance reports;
- Annual reports on QR Network's maintenance costs and its roll forward of the RAB; and
- Special purpose detailed reports associated with QR Network's key operating parameters and maintenance costs.

### ***Stakeholder Issues***

In its response to QR Network's draft 2009 Undertaking, the QCA and other stakeholders expressed their desire to gain more transparency about the reporting of maintenance costs. Previously, maintenance costs had been reported publicly and a more detailed report provided by QR Network to the QCA. Given QR Network's emphasis on the scope of maintenance activities, stakeholders have asked for a report that includes the scope of activities completed against the forecast.

## ***Response to draft decisions***

The following table provides a reference to the decisions reached in the draft decision and QR Network's proposed responses to those decisions:

<b>Draft decision Reference and Issue</b>	<b>QR Network Position</b>
9.1 – Quarterly reporting indicators	Accept
9.2 – MCI reporting	Accept with amendment
9.3 – Provision of official statement by EGM QR Network	Accept

### ***9.1 Public Reporting***

#### ***Decision 9.1 - Quarterly reporting indicators***

QR Network accepts the QCA's decision 9.1 to make the quarterly report indicators more reflective of its current business and provide greater transparency for industry.

In discussion with the QCA and industry since the submission of its draft 2009 Undertaking, QR Network has agreed that it would provide a public maintenance report that provided the scope and cost (at an aggregate level) of maintenance activities established as part of the UT3 maintenance cost build-up.

Whilst the methodology for the calculation of Below Rail Transit Time is included in Part 12 of the Access Undertaking QR Network is happy to reiterate this methodology within its quarterly reports per the QCA's decision.

#### ***Decision 9.2 - MCI reporting***

QR Network believes that it is able to meet the majority of the requirements set out in the QCA's decision 9.2.

However, it believes that that the reporting should be limited to the major weighting categories of the MCI only. As the MCI represents a bundle of indices that are proxies for the type of commodities/services that QR Services provides to QR Network it will not precisely reflect the individual cost changes for thousands of

transactions. The MCI is intended to be a more reliable and robust predictor of changes in underlying cost drivers of maintenance activities. However, its development and composition was informed via the bottom-up approach to estimating the maintenance cost allowance. It is also consistent with the principle of incentive based regulation where the price outcomes are intended to reflect reasonable and appropriate benchmarks.

In order to comply with the QCA draft decision QR Network would effectively need to replicate the level of effort undertaken for development of the UT3 maintenance cost forecasts on an annual basis. This would likely require significant and material changes in the accounting and costing practices of QR Services.

Therefore, full compliance with the proposed MCI reporting requirements represents an arduous and overly burdensome process. It is also extremely difficult to compel a third party (QR Services) to alter the existing commercial arrangements to give effect to the requirements of the draft decision.

QR Network proposes to constrain reporting on the MCI to changes in the major weighting categories. QR Network also notes that this position is consistent with the conclusion in the GHD report on its assessment of the proposed index provided to the QCA in December 2009. We also note that the consultant, who QR Network presumes would have a detailed understanding of railway maintenance, did not raise any material concerns with the composition of the index.

QR Network also seeks to amend the QCA's proposed drafting to limit the reporting of derailments and the impact on planned maintenance works to the CQCR. The draft decision and drafting suggests this obligation could extend more broadly. QR Network also proposes to limit the reporting to incidents which involve a below rail damage cost above a material threshold. This is discussed in greater detail in the Volume 2.

## **9.2 Regulatory Reporting**

QR Network accepts the QCA's decision 9.3 on this matter. It had sought to remove the requirement to have a responsibility statement provided by the Executive General Manager QR Network to the QCA which would accompany the majority of reporting

matters. QR Network will amend its drafting of Part 9 to reinstate this requirement for reports that were previously included within Schedule MB of the 2008 Undertaking.

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## **PART 10 ASSET BASE AND MASTER PLANNING FOR CQCR**

### ***Introduction***

Within the draft 2009 Undertaking QR Network proposed clauses relating to master planning and maintenance of the Regulatory Asset Base within Schedule A. Since this time QR Network has been involved with supply chain co-ordination groups and has discussed expansion planning with key industry stakeholders. As such, the clauses contained in Schedule A will now be split between a new Part 11 – Co-ordination and Planning and Schedule A – Maintenance of the Regulatory Asset Base.

For simplicity all amendments required as a result of the draft decision which relate to either section will be referenced in this chapter.

In addition, new drafting will be added to Part 11 to represent supply chain participation. This information was circulated to stakeholders as an exposure draft by QR Network in late January 2010.

### ***Response to draft decisions***

The following table provides a reference to the decisions reached in the draft decision and QR Network's proposed responses to those decisions:

<b>Draft decision Reference and Issue</b>	<b>QR Network Position</b>
10.1 – Removal of definition of Carryover Discount rate	Accept
10.2 – Carryover Discount consequential amendment	Accept
10.3 – Inclusion of reference to Asset Management Plan	Accept with amendment
10.4 – Reinstatement of references to replacement	Accept

capital	
10.5 – Capital expenditure scope pre-approval	Reject
10.6 – Procurement strategy pre-approval	Accept with minor amendment
10.7 – Master Plan timing and consultation	Accept
10.8 – System Master Planning and coal system participation	Accept

## **10.2 Forecast Capital Expenditure**

### **Decision 10.1 - Removal of definition of Carryover Discount rate**

QR Network accepts the QCA's decision 10.1.

### **Decision 10.2 - Carryover Discount consequential amendment**

QR Network accepts the consequential amendment required by the QCA in decision 10.2 which flows from the removal of the definition of Carryover Discount Rate in decision 10.1.

## **10.3 Asset replacement expenditure and removal of the asset management plan**

### **Decision 10.3 - Inclusion of reference to Asset Management Plan**

QR Network accepts the QCA's decision 10.3 but notes that it sought to remove references to the Asset Management Plan because the QCA had not previously cited nor used this plan in its consideration of the scope of works claimed by QR Network.

QR Network seeks to amend the QCA's required drafting of clause 3.1.1(a)(i) such that the approval of asset replacement expenditure is not only based on the inclusion in the asset management plan. QR Network believes there are instances where asset replacement expenditure will be required due to unforeseen circumstances. The QCA's proposed drafting would exclude this expenditure from the Regulatory Asset Base as it was not contemplated within QR Network's asset management plan provided to the QCA. QR Network does not believe that this limitation added by the QCA's proposal was necessarily the intent of the QCA's drafting.

***Decision 10.4 - Reinstatement of references to replacement capital***

QR Network accepts decision 10.4 but notes that it believes that as an asset owner it is responsible for managing its assets to ensure safety, reliability and longevity. It believes that the QCA's proposed drafting (a return to 2008 provisions) intimates that the QCA is in a better position than QR Network to identify its ongoing asset replacement expenditure.

***10.4 Acceptance of capital expenditure into the regulatory asset base***

QR Network rejects decision 10.5 in its proposed form. However, QR Network will propose an amendment in its resubmission addressing the QCA's concerns.

QR Network believes the QCA's proposed drafting of clause 2.4 of Schedule A does not fully take into account the wishes of industry to be able to ensure timely development and investment in expansion infrastructure. For example, all participants in the Goonyella System co-signed a letter to the QCA in July 2007 which asked the QCA to ensure the fast approval of early works expenditure on the Goonyella to Abbot Point expansion project. QCA's proposed drafting would potentially compromise future requests of this nature made by industry for a fast response.

The Master Planning process has evolved over the past regulatory period and gained greater acceptance from industry (especially over the past 18 months to 2 years) as a consultation process that ensures industry stakeholders are presented with an analysis of future coal rail expansion projects.

Given the importance to industry of the timely construction of required expansion projects, QR Network proposes that the QCA consider for inclusion into the Regulatory Asset Base early works projects that have been endorsed by industry as part of the Master Planning customer voting process in addition to those that have been commissioned or formally discontinued.

This is similar to the process that ARTC uses to recognise expenditure on capital. This model allows the inclusion of expenditure into the asset base in line with stages of project approval.

QR Network believes that it has been able to negotiate a process for the acceptance of major early works expense claims through the 2008/09 capital expenditure process. It believes that this process, if replicated, would be effective in seeking approval.

Amended drafting will be included to reflect QR Network's proposal on this matter.

### **10.5 Procurement Strategy and Policy**

QR Network accepts the QCA's decision 10.6 and will amend most drafting in Schedule A to give this effect. QR Network believes that this process is not dissimilar to those currently utilised for major expansion projects.

QR Network does however propose to clarify drafting to ensure that any costs required to meet the requirements of this decision is included in QR Network's Regulatory Asset Base. The QCA's proposed drafting on this matter was silent, but QR Network believes that as a project cost (and one that it is unable to control if the QCA is employing consultants to review aspects of the procurement strategy) it should be able to be placed in the Regulatory Asset Base like all other costs.

QR Network's amended drafting will reflect this.

### **10.6 Master Plan and stakeholder consultation**

QR Network accepts QCA's decision 10.7 but will seek a clarifying drafting amendment to paragraph (d).

QR Network seeks to amend paragraph (d) so that the reference to a "minimum six months" clearly refers to information provided to customers for their consideration six months prior to the expansion project commencing. Amendments will be included within the resubmission to clarify this point.

### **10.7 Whole of coal chain initiatives**

QR Network accepts the intent of the QCA's decision 10.8 and will include drafting within the resubmitted draft 2009 Undertaking which it believes reflects this intent.

## ***Amendments not related to draft decision***

In the resubmission QR Network proposes to include amendments to the 2009 Undertaking which relate to how it interacts with the coal supply chain. A number of these changes have been driven by the principles agreed as part of the Dalrymple Bay Coal Chain Long Term Solution (LTS). QR Network will include amendments to reflect the principles agreed by customers at an aggregate level rather than tying each requirement to a specific coal system.

### ***1. Supply Chain Assumptions***

QR Network proposes to include drafting in clause 11.1.3 to outline how it will provide input into the creation of supply chain operating assumptions and its participation in the process for resolving conflicts about supply chain operating assumptions.

### ***2. Contracting for capacity in coal supply chains***

QR Network is proposing additional drafting to embody the alignment of port and rail contracts borne from the LTS discussions.

Drafting to be included at clause 11.3 will define the process that QR Network will take when the capacity of a proposed expansion project does not result in the expected increase in tonnage. This involves a process to evaluate and define the amount of capacity that has not been provided by the project and a mechanism to pro-rate the entitlements of Access Seekers that sought access to the new capacity. Where an Access Seeker has their access rights reduced in this manner they will be referred to as “Conditional Access Holders”

Consequential amendments have also been made to clause 7.3.5(g) to enable the queuing of these Conditional Access Holders at the top of the queue (below renewal applications) for new capacity on the part of the system where it was reduced as part of the post project evaluation of capacity.

Consequential amendments have been made to clause 3.3(d)(ii)(L) which would allow QR Network to provide supply chain infrastructure providers with third-party information which relates directly to the ability of the provider to establish supply chain operating assumptions on the proviso that this information is kept confidential.

This is subject to customer approval of the release of this information by QR Network.