



**Third Party Access under an Integrated Structure:
lessons from QR's Access Undertaking**

ACCC Regulation, Industry Structure and Market Power Conference

1 August 2003

Sea World Nara Resort

Gold Coast

Mr Paul Bilyk

Director

1. INTRODUCTION

Following the theme of this session, I intend to discuss with you the Authority's experience during, and subsequent to, its assessment of Queensland Rail's (QR's) access undertaking.

QR is a vertically integrated rail business which provides both above and below rail services. That is, it operates train services as well as being an access provider for its own and third party operators. Competition in the above-rail market is governed by the access regime under the *Queensland Competition Authority Act 1997* (the QCA Act).

QR's obligation to provide access to access seekers commenced with the declaration of its network under the QCA Act. However, the details of the access regime were not bedded down until the Authority approved the access undertaking in December 2001.

This was approved after three years of review, consultation and discussion. Following this, further work on supplementary issues relating to the access undertaking has been undertaken. For example, finalising the development and approval of a standard access agreement and costing manual for coal-carrying services took about 18 months. Much of this time and work focussed on conduct rules to limit the scope for preferential self-dealing.

In this session, I'll talk about

- the reasons for retaining QR's vertically integrated structure;
- the implications of vertical integration for an access regime; and
- the experience to date.

2. QUEENSLAND RAIL'S STRUCTURE

QR is a wholly government owned integrated rail service provider. QR manages Australia's largest rail network, virtually all of Queensland's rail infrastructure and delivers nearly all passenger and freight services in Queensland.

QR was corporatised in 1995 and comprises six separate business groups reporting to a single chief executive officer and Board of Directors. QR's six business groups consist of:

- Network Access - manages QR's network, railway access, network capacity and traffic management;
- Coal & Freight Services – provides train services for coal, bulk and non-bulk freight (including industrial products, rail linehaul and container terminal services for the freight forwarding, shipping and sugar industries and agricultural products);
- Passenger Services – provides train services for metropolitan, long distance and tourist passengers;
- Infrastructure Services – provides services and resources to maintain, construct and manage QR's rail infrastructure;
- Workshops - undertakes maintenance, modifications, major overhaul, component exchange and manufacturing support for the rolling stock requirements of QR's business groups; and
- Technical Services – provides QR's external and internal customers with specialist engineering and project management services.

Why is QR vertically integrated?

In contrast to much of the experience elsewhere, the introduction of third party access into Queensland was not accompanied with a vertical separation of QR's above and below rail activities.

The decision to retain a vertically integrated railway has been a matter for the Queensland Government. In assessing QR's access undertaking, the Authority did not seek to re-open that decision, rather it sought to ensure that the framework for providing third party train operators with access to QR's network was both fair and efficient within the corporate structure determined by the Queensland government.

The decision to retain a vertically integrated QR was made in 1997, following a government review of the corporatisation of QR, which had occurred two years earlier. While the report of that review has not been published, the reasons behind that decision can be gleaned from a number of public documents.

In announcing its decision on this matter, the Queensland government stated that the review supported QR remaining a single, vertically integrated railway. This decision was justified on the basis that a state based third party access regime will be effective in achieving contestability within the rail industry in Queensland. The decision not to separate track from operations in Queensland was also influenced by the potential to increase costs and disrupt services.¹

¹ Queensland Government. Minister for Transport and Main Roads The Hon. Vaughan Johnson M.P., 'Queensland Rail Ready for Competition', *Ministerial media statement*, 17 December 1997.

In addition, the government also announced that to ensure that any new operators could access the Queensland network, QR would internally manage its track and access arrangements separately and will contract with internal QR operating units on the same basis as external railway operators.²

In its 2001 report on progress in National Competition Policy, the NCC commented that the Queensland Government's 1997 review of QR recommended retaining a vertically integrated QR on the basis that 'the benefits from separation were ambiguous but that the costs of establishing and operating separate legal entities were significant'.³ The NCC also noted that competition policy obligations, with respect to QR not obtaining regulatory advantage over competitors, were met as:

- QR has no regulatory responsibilities in relation to the rail industry; and
- Safety regulation and accreditation is the responsibility of the rail safety accreditation unit within Queensland Transport.

QR itself provided further detail on the rationale for remaining vertically integrated in its 1998 submission to the Productivity Commission's inquiry into the Australian Black Coal Industry. In that submission, QR set out a number of arguments in favour of retaining vertical integration, including:⁴

- Inter-modal competition – can often provide market based mechanisms for providing efficiency incentives whereas vertical separation does not always result in competition on the rails.
- Infrastructure and operations interdependencies – an integrated railway can most effectively make the infrastructure and operational trade-offs necessary to make optimal investment decisions and provide the best possible service. For example, investment and maintenance of infrastructure can be traded off against investment and maintenance of rolling-stock as well as operational decisions such as train configurations and operational limits (eg axle loads and speed).
- Administrative efficiencies – separation is likely to result in duplication of staff and complex and expensive contractual agreements. At the time, QR estimated the additional costs to be in the order of \$30 - \$50 million.
- Economies of scope and size – in the absence of multiple entry of new train operators, an integrated operation can continue to deliver the benefits of economies of scope and size without the likely higher costs of infrastructure separation.
- Safety – creating multiple suppliers with different cultures and procedures may adversely affect safety through increased risk of safety failures and increased costs due to the complexity required to conform to one standard.

In concluding, QR summarised its view as one, that, given the costs of separation are significant, the benefits of separation should be established as significant and unequivocal before a policy of mandated separation of ownership can be justified; in particular, given the uncertainties about whether vertical separation results in increased competition or efficiency

² *ibid.*

³ National Competition Council 2001, *2001 Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms*, June, p.10.6.

3. THE ACCESS REGIME

Following its decision in December 1997 to retain QR as a vertically integrated rail service provider, in March 1998 the Queensland government declared QR's intra-state rail infrastructure for third party access under Part 5 of the QCA Act. The obligations on QR to negotiate an access agreement with an access seeker have applied from the date of declaration.

3.1 Comparison of the Queensland and national access regimes

Part 5 of the QCA Act and Part IIIA of the *Trade Practices Act 1974* (the TPA Act) share a number of similar concepts and terms, but they do also differ in a number of significant ways.

Part 5 and Part IIIA are similar to the extent that third party access to the services of a facility is on the basis of a negotiate/arbitrate model. That is, the prime responsibility is on the access provider and access seeker to negotiate on price and non-price terms, with the regulator becoming involved only where provided for, for example, where agreement cannot be reached and either party has lodged a dispute notice with the regulator. Both Part 5 and Part IIIA also have similarly constructed prohibitions on an access provider from engaging in conduct for the purpose of preventing or hindering a user's access to a service.

In addition, Part 5 and Part IIIA also provide for the declaration of a service and for the approval of an access undertaking from the owner of the facility. However, the type of facility that can be covered by a declaration and the role of the access undertakings in Part 5 and Part IIIA differ.

Under Part IIIA of the TPA Act, declaration and an access undertaking are alternative mechanisms to provide users with access to the services of a facility. Under Part IIIA, a facility can be declared if, *inter alia*, it is uneconomic to duplicate and it is nationally significant. Upon declaration, the negotiate/arbitrate model comes into effect. Alternatively, a facility owner can prepare and submit a voluntary access undertaking to the ACCC for approval. Once the ACCC has approved an access undertaking, the terms and conditions of access are as set out in the undertaking and the facility cannot then be declared.

Under Part 5 of the QCA Act, declaration imposes an obligation on the facility owner to negotiate, in good faith, for the making of an access agreement. Failing the satisfactory completion of an access agreement, either party may refer a dispute to the Authority, which the Authority may seek to resolve either through mediation or by arbitration. The owner of a declared facility can submit, for the Authority's approval, an access undertaking.

Rather than providing an alternative mechanism for establishing an access regime, in the Queensland context, the purpose of an access undertaking is to fill out broad access obligations contained in Part 5 of the QCA Act by detailing the terms and conditions on which an owner undertakes to provide access to the service.

Amongst other things, an undertaking is designed to assist the access negotiation process, to reduce the scope for disputes between access seekers and the access provider and to provide certainty about how the Authority will deal with access disputes. This is because any access determination made by the Authority must be consistent with the approved access undertaking. Further, an approved undertaking provides a 'safe harbour' for an access provider in that any conduct in accordance with an approved undertaking will not breach the preventing and hindering access provisions of the QCA Act.

⁴ Queensland Rail. 1998, *Submission to Productivity Commission Inquiry into the Australian Black Coal Industry*, 29 May, submission no. DR66.

Where the Authority has approved an access undertaking which includes reference tariffs, certain obligations to provide information may be waived (for example, information about prices, costs and the value of the access provider's assets).

3.2 Preventing or hindering access

Given QR's vertically integrated structure, a key feature of the Part 5 (s.104 and s.125) access regime is the prohibition on an access provider, or user of a declared service, from engaging in conduct for the purpose of preventing or hindering a user's access to a declared service under an access agreement or access determination. Also referred to as preferential self dealing.

More specifically, the QCA Act indicates that an access provider or user may be taken to have engaged in conduct to prevent or hinder access where it offers access to itself on more favourable terms and conditions than it provides or proposes to provide to a competitor. Furthermore, the purpose of an access provider may be inferred from its conduct.

The two exceptions to this general prohibition are: (1) where the restriction of access is in accordance with an approved access undertaking; and (2) where such conduct is reasonable in response to an emergency. The former is the so called 'safe harbour' clause, whereby conduct that is in accordance with an approved access undertaking has not prevented or hindered access.

The Authority has information-gathering powers to assist it perform this function, including being entitled to be provided with a copy of any contract (whether voluntarily negotiated or entered into as a result of a dispute resolution process) from an access provider.

However, the operation of sections 104 and 125 has not been the subject of judicial consideration. Similarly, neither has section 44ZZ of the Trade Practices Act (on which the QCA Act provisions are based). Accordingly, it is not possible to definitively determine the court's interpretation of these sections.

3.3 The Authority's assessment of QR's draft access undertaking

In assessing QR's draft access undertaking, the Authority worked within the Queensland Government's decision on the structure of QR and treated vertical integration as a given. In this context, the Authority, potential third party operators and downstream users shared a number of concerns about incentives facing a vertically integrated access provider. These concerns were two-fold.

First, by retaining vertical integration, QR would retain an incentive to use its monopoly power in the below rail market to gain an unfair competitive advantage in the above rail market. For example, by shifting costs from its above rail operations to its below rail operations, QR could inappropriately increase its profit (or compete unfairly with other third party operators). Similarly, QR's Network Access group could pass confidential information about third party operators onto QR's above rail business groups which may assist them in a competitive tendering process. These practices would provide QR with an unfair competitive advantage in the above rail market, distorting the evolution of competition.

Second, stakeholders were concerned that the general provisions within the QCA Act, which provide for dispute resolution and which prohibit QR from engaging in preferential self dealing, may not always have provided a sufficient deterrent. For instance, in the event of a breach by QR of the preferential self dealing provisions of the Act, even if the Authority or an affected party instigated legal action against QR, enforcement is 'after the event' – that is, proving a breach occurred and seeking legal remedies takes time and lost market opportunities may result, such as a tender for hauling coal from a mine to a port. So, although there are legal remedies

for anti-competitive conduct, it would be preferable from a third party operator's perspective if such conduct did not occur in the first place, rather than relying on 'after the event' penalties.

Given these concerns, the Authority sought to consolidate below rail activities within Network Access and to include in QR's access undertaking very detailed conduct rules, including:

- public accountability — accounting and performance;
- information ring-fencing; and
- detailed access obligations and rights.

I will now go through each of these matters in turn.

4. CONSOLIDATING QR'S BELOW RAIL ACTIVITIES IN NETWORK ACCESS

As I mentioned earlier, part of the government's decision to retain a vertically integrated QR was associated with an internal restructuring so that management of the track and of the associated access arrangements is performed separately within QR. Since then, the management of below rail activities have progressively been consolidated within Network Access.

First, train control was initially the responsibility of the above-rail groups which allowed for the joint optimisation of the management of above and below rail businesses. For instance, it allows for train control decisions to be made on the basis of train scheduling concerns. However, such an arrangement becomes problematic when there are multiple train operators on the network; in particular, if a decision to assist one operator's scheduling concerns is to the detriment of another train operator.

As a result, the Authority required Network Access to assume responsibility for train control given the clear potential for a conflict of interest in having this function performed by a third party operator's competitor. Initially, QR was hesitant with this change, although they eventually agreed given the views of the Authority and stakeholders. In addition, the Authority required that QR's undertaking include Network Management Principles covering both scheduling and train control principles. These principles guide the conversion of a third party operator's capacity entitlement into specific train paths on a daily train plan. It also establishes principles for the management of traffic on the network, for example, managing delays and establishing priority, such as for passenger trains.

A second matter the Authority sought to resolve in the access undertaking was to establish an appropriate allocation of assets and management responsibilities at the interface between the above and below rail activities; that is, at stations and in marshalling yards. In the latter case, marshalling yards provide a combination of below and above-rail services. Below rail services include queuing and allowing for the re-sequencing of trains in accordance with the requirements of operators of the bulk commodity export terminals. The above rail functions include the provisioning and maintenance of rollingstock. Given the strategic significance of these assets, the Authority required that management responsibility for the below rail assets within the marshalling yards be allocated to Network Access, and not QR's operational business groups. This resulted in very detailed Line Diagrams being included in the approved undertaking depicting the allocation of management responsibility within QR for the rail infrastructure.

One matter that remained unresolved at the time of the Authority approved the undertaking related to the management of train movements within yards and between a yard and the mainline. This function has, until recently, been performed by QR's above rail business. However, as a result of a recent review of these arrangements, QR has transferred to Network Access responsibility for train control at its two major marshalling yards in the central Queensland coal network and at its Acacia Ridge freight terminal in Brisbane.

Finally, the undertaking places obligations on QR with regard to organisational restructures to safeguard against below-rail functions being transferred to an above-rail group during the term of the undertaking. It lists a range of organisational changes within QR that would necessitate QR first submitting an amending undertaking for the Authority to approve the change. For example, QR would need the Authority's approval before it could assign to a QR operational business group any of the existing functions of Network Access or any of the below-rail functions performed by QR's support groups, such as the track maintenance done by Infrastructure Services Group.

5. PUBLIC ACCOUNTABILITY

The Authority also sought to ensure that key aspects of QR's below rail activities were made transparent as another way of limiting QR's ability to use its monopoly power in the below rail market to gain an unfair competitive advantage in the above rail market. QR's public reporting requirements can be separated into two distinct categories: first, its annual financial statements; and second, its network performance indicators.

5.1 Financial statements

QR's access undertaking requires QR to produce annual financial statements for Network Access' below rail services. These regulatory accounting statements incorporate a statement of assets, a statement of earnings before interest and tax, and a statement of investments (see Table 1).

Table 1: Network Access, Statement of earnings before interest and tax, year ended 30 June 2002

	Below Rail Services Provided by Network Access			Other QR Operations and Activities \$000's	TOTAL QR \$000's
	Central Qld Coal Region \$000's	Rest of Network \$000's	Total \$000's		
REVENUE					
Access charges	351,341	197,197	548,538	-	548,538
Freight and passenger sales revenue	-	-	-	1,458,727	1,458,727
Qld Transport - Transport service contracts	-	256,412	256,412	348,983	605,395
Contributions from developers	10,322	497	10,819	571	11,390
Other	5,066	10,187	15,253	34,151	49,404
Total Revenue	366,729	464,293	831,022	1,842,432	2,673,454
OPERATING EXPENSES					
Working expenses	119,158	285,678	404,836	884,617	1,289,453
Internal Access charges by Network Access	-	-	-	545,868	545,868
(Gain)/ Loss on disposal and devaluation of assets	(37)	(5,413)	(5,450)	(314)	(5,764)
Depreciation and amortisation	74,153	81,129	155,282	180,453	335,735
Total Expenses	193,274	361,394	554,668	1,610,624	2,165,292
EARNINGS BEFORE INTEREST AND TAX	173,455	102,899	276,354	231,808	508,162

These financial statements are based on QR's management accounting records and are prepared in accordance with a detailed costing manual. The costing manual, which has been approved by the Authority, establishes the methodology by which QR's below rail costs are separated from its other costs. To do this the manual relies on three approaches, namely:

- Identification – where costs are directly incurred, or assets directly used, in the performance of a below rail function and can be extracted directly from QR's accounting system;

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- Attribution – where assets or costs are jointly used for the provision of a below and above rail function, where there is a causal relationship between the resources used and the function and where the costs or assets are attributed to those functions based on a share of cost causality;
 - Allocation – where assets or costs are jointly used for the provision of below and above rail functions, where there is no direct causal relationship between the resource used and the functions and where the costs and assets will be shared between those functions in a non-causal way.

As around 90 per cent of below rail expenses can be directly identified (as against attributed or allocated), the risk of cost-shifting between above and below rail groups is constrained.

QR's regulatory financial statements are required to be independently audited to ensure that they have been prepared in accordance with the methodology and format set out in the costing manual. The regulatory statements for 2001-02 received an unqualified audit opinion.

5.2 Network performance indicators

QR is required to produce quarterly and annual reports on the performance of its network on the basis of a number of key performance indicators.

The quarterly reports provide public information on the performance of QR's rail network across eight indicators, including: reliability (i.e. the healthy unhealthy split), measuring delays and their cause (above, below, unallocated), the extent of temporary speed restrictions and train cancellations.

QR is currently developing a train control impartiality indicator. This indicator aims to demonstrate whether QR has acted impartially in providing train control services to both QR above rail operators and non QR rail operators operating on its network.

QR is also required to produce an annual network performance report. The annual report provides information on how QR Network Access manages any access inquiries, performance against negotiation timelines and complaints by non-QR party's that QR has breached its ring fencing obligations and the number of non-ring fencing issues referred for dispute resolution.

The public key performance indicators can be thought of as representing a macro or industry view of QR's performance, and they are quite distinct from the individual performance indicators that are being developed and will be one element within the performance regime within individual access agreements.

6. INFORMATION RING-FENCING

QR's access undertaking also contains detailed rules governing the handling of a third party operator's confidential information which, if passed onto a QR above rail business group, may adversely affect the third party's ability to effectively participate in a competitive tender process for providing a train service.

The Authority required QR's access undertaking to include robust measures to protect the confidential information of access seekers. Such measures were essential in instilling confidence in the access regime – that competing QR above rail group will not acquire nor misuse confidential commercial information disclosed as part of an access application. Consequently, the access undertaking addresses in great detail the procedures for handling and limiting the flow of confidential information from Network Access to other parts of QR (in particular, QR above rail).

The Authority had to recognise that QR operates as an integrated railway business, with control over all aspects of its operations. For example, Network Access relies on other internal service providers, such as the Infrastructure Services group and Technical Services group, to assist in responding to an access application. Consequently, the access undertaking's ring-fencing provisions protect any sensitive confidential information belonging to an access seeker from flowing outside Network Access, except to certain specified persons and/or groups within QR. In this way the flow of an access seeker's confidential information is as restricted as possible. There is a greater risk of a breach, when, for example, more people/parties within QR (excluding Network Access) become exposed to third party operator's confidential information.

So although Network Access is a separate business unit, the way QR functions as an integrated business has necessitated complicated ring-fencing arrangements.

However, ring-fencing measures are effective only to a certain point, given that QR's Chief Executive potentially has access to commercially sensitive information of both the third party access seeker and the QR above rail business groups. That is, in a vertically integrated business, 'convergence' will still occur at some point, even with ring-fencing measures in place.

Other ring-fencing measure in QR's access undertaking include requiring Network Access employees moving to other QR business groups to undertake a debriefing process, which serves as a reminder of QR's obligations relating to the management of confidential information. In addition to this, senior personnel are required to abstain from work for a period of three months on any matter relating to confidential information they have had previous exposure to.

Enforcing the ring-fencing measures poses a number of challenges: (1) it is difficult to prove that a breach of a ring-fencing provisions has occurred; and (2) the costs associated with instigating legal action often acts as an impediment. However, in order to overcome these problems, the Confidentiality Deed contained in QR's access undertaking provides avenues for pursuing liquidation damages claim for a ring-fencing breach which includes a reversal of the onus of proof. That is, if an access seeker can establish that its confidential information is in the possession of a QR Operational Business group, QR is obligated to pay the access seeker an amount of \$10,000 by way of liquidated damages, unless QR can establish that the QR group came into possession of the confidential information by other means other than as a result of a breach of the ring-fencing obligations.

7. DETAILED ACCESS OBLIGATIONS AND RIGHTS

Given the concerns that QR may manage the network in a manner that favours its own train operator, QR's access undertaking is comprehensive and sets out in detail what is 'acceptable' conduct for the access provider. Given that many of these access obligations relate to the day-to-day management of the network, QR's access undertaking is also a quite complex document. This serves to provide certainty for both QR and access seekers about how the access regime should operate in order to minimise the scope for disputes. Moreover, it provides a certain level of protection for QR, giving it the knowledge and assurance that its conduct is not in breach of the Act if it accords with the approved access undertaking. In this sense, QR is protected from action under the preventing and hindering access provisions of the Act.

A higher level undertaking without that degree of detail may not have provided sufficient protection of the parties' interests, given the incentives faced by QR as a vertically integrated access provider. Perhaps equally as important is the market perceptions flowing from this structure. Potential third party operators need to have confidence that the access regime is sufficiently robust and contains adequate protections of their interests before they would have confidence in the above-rail market in Queensland.

7.1 Detail

The amount of detail in QR's access undertaking is quite pervasive and touches on a broad range of network management matters. By way of illustration, QR's access undertaking runs to some 135 pages whereas the access undertaking for the ARTC, which is not vertically integrated, is around 90 pages in length.

For instance, QR's access undertaking includes detail on many of the matters outlined above such as the Network Management Principles that guide scheduling and train control. It also prescribes the type of scheduling information QR is required to provide to Access Holders.

In addition, the Authority has approved a standard access agreement for coal carrying train services. The purpose of the agreement is to simplify and hasten the access negotiation process and to reduce the areas of dispute. The Standard Access Agreement provides a starting point for access negotiations between QR and an access seeker. Moreover, it becomes the default access agreement in circumstances where negotiations have failed.

Indeed, there are two such agreements, one for the circumstances where the access holder is the train operator and the other where the access holder is an end user (eg a coal mine) who has purchased the access rights with a view to sub-contracting train operations to a third party. While both forms of the standard agreement contain a consistent set of access rights and obligations, the additional contracting structure was seen to be necessary to ensure that there was a legally valid allocation of access obligations between the access holder and the train operator (with whom QR does not have a direct contractual relationship).

In QR's case, the detail in both the Network Management Principles and QR's Standard Access Agreement has been necessary to ensure certainty and transparency for both access seeker and access holder/operator. They also instil confidence in the above rail market, resulting in investment and growth opportunities. In the absence of QR's vertically integrated structure, it is likely that the detail included in these documents would not be warranted as the perception about QR exercising its discretion as a network manager to the disadvantage of third party operators would not exist.

7.2 Complexity

One consequence of the level of detail in the access undertaking is that the access terms and conditions are also quite complex. In developing its draft standard access agreement, QR had sought the right to suspend train operations or even terminate the agreement on the basis of an access holder's non-compliance with the train service description or for breaches of safety or environmental requirements.

QR argued that it needed these remedies to ensure that it would be able to effectively manage the network for all train operators and also to ensure that it was managing the network in accordance with its own safety and environmental obligations.

In the circumstances where a network operator was vertically separated, requesting such suspension and termination rights may be quite reasonable. It could be anticipated that, in the event that a problem did arise, then both the network manager and the third party train operator would have a common incentive to seek to resolve the problem to the mutual satisfaction of both parties.

However, in the circumstances where a railway is vertically integrated, third party train operators may not be confident that the network manager would seek to resolve the problem in a cooperative manner. For instance, in its submission on the standard access agreement, Pacific National (a potential third party operator which has in the past been interested in gaining access to QR's network) was very concerned at giving QR what they termed 'hair trigger' suspension rights. In particular, it was questioned why a third party operator would even consider engaging in lengthy negotiations with QR to gain access rights, conduct similar negotiations, say with a mine, to gain a rail haulage contract and make a significant investment in rolling-stock if it thought that it could have its access agreement terminated for a relatively insignificant breach of safety.

Much of the complexity in the standard access agreement is a result of seeking to get an appropriate balance between the right for QR to effectively manage the network but in a way that hinders the access for third party train operators.

In seeking to resolve this matter, the Authority required the access agreement to be amended to ensure that there was a degree of proportionality between the breach and the remedy, whether it be suspension of train services or termination of the agreement. For instance, rather than simply being able to terminate an agreement for a breach of safety, the Authority required that QR first suspend the train service and that the safety breach be material. In the case of environmental matters, the Authority required that QR only be able to terminate an agreement in the circumstances where the train operator had failed to comply with the directions of the Environmental Protection Agency or a court.

8. EFFECTIVENESS OF REGIME

Third party access to QR's intra-state rail network has been possible since its declaration in March 1998. However, for much of this time, the effectiveness of this regime has probably been hampered by the lack of detail and certainty for potential third party entrants. This added detail and certainty has progressively been introduced since December 2001, first with the Authority's approval of QR's access undertaking and then with the subsequent approval of the standard access agreements for the coal carrying train services.

I believe that the undertaking and the access agreements provide a balanced framework within train operators and end users can test the contestability of above rail train operations in Queensland. This has recently been reflected in the central Queensland coal network, where a number of coal companies have conducted competitive tenders for the provision of coal haulage. In the case of the proposed Rolleston mine, contestability of the construction and operation of a 100 km spur was also tested.

However, currently, there are no third party operators on the network that are competing directly with QR. As a result it is probably still too early to give a thorough assessment of the effectiveness of the regime; in particular, in its ability to facilitate the signing of an access agreement between QR and a third party train operator and to manage the day-to-day access matters that will arise once a new entrant has commenced operations.

Thank you.