



Michael Carter
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The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Sirs

Application for authorisation A91241 lodged by various Wiggins Island Coal Export Terminal producers

On 14 July 2010 the Australian Competition and Consumer Commission (the ACCC) invited QR Network Pty Ltd (QR Network) to comment on application A91241 (the Application) by certain coal mining companies for authorisation (Authorisation) to engage in a collective bargaining arrangement with QR Network for the purpose of negotiating terms and conditions for access to the below-rail infrastructure comprising the Blackwater and Moura systems.

The ACCC invited QR Network to provide a response in respect of interim authorisation by 21 July 2010 and in respect of the substantive application by 11 August 2010. This letter is QR Network's response in respect of both interim authorisation and the substantive application.

QR Network has no objections to the collective bargaining arrangement set out in the Application. Indeed QR Network considers that such a collective bargaining arrangement may facilitate both the development of mutually acceptable access-related terms and conditions with coal mining companies for the Blackwater and Moura systems and the achievement of net public benefit. QR Network generally endorses the justification for the Authorisation set out in the Application. If the Authorisation is granted, QR Network will negotiate with the coal mining companies either collectively or individually or in a combination of both methods.

As the regulated operator of a natural monopoly asset, the central Queensland coal network, QR Network seeks to provide rail infrastructure development to the required standard and timeframe to meet customers' needs. QR Network is prepared either to provide funding for the developments or to permit its customers to provide that funding – the availability of the 'user funding' option will ensure that QR Network is not misusing its monopoly power. As part of its current Request for Proposal (RFP) process for incremental capacity over the Blackwater and Moura systems QR Network has recently offered 'user funding' to those RFP respondents that QR Network has identified as forming the first stage of its rail infrastructure expansion.

The Wiggins Island Coal Export Terminal (WICET) development is proposed to occur over several development stages. The Applicants comprise coal mining companies who are currently expected to participate in at least one WICET development stage. QR Network will negotiate terms and conditions for access to the below-rail infrastructure required for each WICET development stage with the Applicants relevant to that WICET development stage. Hence Authorisation for collective bargaining should be restricted to those Applicants relevant to each particular WICET development stage.

In the Attachment to this letter QR Network comments on various parts of the Application and submits several minor proposals as to how the collective bargaining arrangement should be structured. In summary these suggested improvements are:

- Authorisation should be restricted to negotiations concerning rail transport infrastructure which is owned and controlled by QR Network.
- Authorisation should cater for coal mining companies who are not currently a WICET producer (i.e. are not an Applicant) but subsequently become a WICET producer.
- The duration of the Authorisation should be restricted to the period of negotiation of access-related terms relevant to each WICET development stage.
- Authorisation should exclude network expansions conducted by QR Network in accordance with the Access Undertaking and without particular access conditions or user funding.

QR Network confirms that no part of this response is confidential and accordingly that it may be placed by the ACCC on its public register.

If you wish to discuss any part of this response, please contact Dean Gannaway, QR Network's Director Regulation and Policy, at dean.gannaway@qrnational.com.au or on (07) 3235 2055.

Yours sincerely



Michael Carter
Chief Executive Officer
QR Network Pty Ltd

29 July 2010

Attachment

Specific Comments on the Application

1. Mallesons cover letter, Section 2, Paragraph 2

QR Network notes that certain coal mining companies, including parties for which Mallesons is acting, may require access to rail infrastructure controlled by Queensland Rail as well to rail infrastructure controlled by QR Network in order to transport coal from mine to terminal. Since 1 July 2010 Queensland Rail and QR Network have been separate enterprises due to a restructuring in preparation for the public listing of QR National, QR Network's parent company.

Any references to rail infrastructure should be replaced by rail transport infrastructure as defined in the Transport Infrastructure Act 1994 (QLD) as this aligns with the scope of the declared service. QR Network does not possess market power in the construction and operation of infrastructure which is not rail transport infrastructure.

The Application extends to 'access to any other rail infrastructure necessary to support the Terminal' and 'all services relating to such access for the purpose of the Applicants to the terminal in Gladstone'. QR Network notes that this would extend to private rail infrastructure on land controlled by coal mining companies.

For these reasons QR Network considers that the authorisation should be restricted to rail transport infrastructure that is controlled by QR Network and will comprise the declared service when constructed. Similarly, the WICET project may also require investment in infrastructure which supports one or few users such as mine load outs and balloon loops. The Authorisation should not extend to collective bargaining on terms and conditions for rail transport infrastructure which supports the capacity of an individual user.

In Form B QR Network is defined to mean 'QR Network...and any other QR Group entity or any entity which may acquire the relevant rail assets'. QR Network notes that the views expressed in this letter are solely those of QR Network and that the views of other entities that fall within this definition in Form B should be sought separately.

2. Mallesons cover letter, Section 2

The Applicants are defined as 19 particular companies in Section 1 and more broadly in Section 2 to include those companies' successors and assigns, related bodies corporate, associated entities and joint venture partners. In the paragraph commencing "In addition" on page 3, it is requested that the Authorisation also apply to 'Stage 2 producers and future users of the Terminal'.

In QR Network's view, any coal mining company that wishes to obtain rail access capacity to the Terminal, irrespective of development stage, should be permitted to join the named Applicants subject to the Authorisation being put in place and gain the same protection as they will have from it in respect of the Trade Practices Act. This would allow the Authorisation to be 'open to all coal producers', as described in Section 3.13(c) of Form B. QR Network notes that it has held discussions with coal miners other than the 19 named companies about rail access to the Wiggins Island Coal Terminal.

One of the principal benefits which support the collective bargaining process is the reduction in the number of parties QR Network must negotiate. This reduces transaction costs and limits the potential for dispute resolution by one party to the negotiation which may impact on the project timing. However, in the absence of an open invitation to the collective the expected benefits may not emerge.

QR Network is not familiar with the terms of the exclusive mandate held by the Applicants for the development of WICET and therefore is not in a position to definitively comment on whether the Authorisation may have anti-competitive outcomes in terms of access to the terminal by non-Applicants through their exclusion from a collective bargaining process.

3. Mallesons cover letter, Section 2

In the first bullet point on page 3 the statement is made that '...QR Network has agreed to undertake expansions.....' This is incorrect as no expansion agreement has been reached yet. QR Network has offered to undertake these expansions, subject to agreement of mutually acceptable terms.

4. Mallesons cover letter, Section 2

In the second bullet point on page 3 the 20 year term proposed by QR Network was for the determination of capital recovery charges from customers using QR Network-funded infrastructure. Similarly in the fourth bullet point reference is made to the 10 year duration of take or pay access agreements. There is no logical link between these periods of time and the duration of the Authorisation, which applies to the development of these commercial arrangements up to their execution, not their implementation. The Authorisation should not extend beyond a period reasonably expected to allow for the negotiation and agreement of terms and conditions of multiple stages of the terminal development, not the expected life of the agreements themselves.

5. Form B, Section 2(a), 'Description of the contract, arrangement...'

This section is not restricted to major staged developments of incremental capacity where significant capital expenditure commitments are required. It would also apply to minor access contracts, perhaps to utilise a minor amount of excess capacity resulting from better than expected operational efficiency at the WICET terminal.

QR Network's draft access undertaking submitted to the QCA commits QR Network to undertake capacity expansions where the expected capital costs of the associate rail transport infrastructure enhancements are less than \$300 million. The terms and conditions of access to the capacity created by these enhancements will be negotiated pursuant to the QR Network Access Undertaking. Accordingly, there is no requirement for collective bargaining for these expansion projects and the scope of the authorisation should be restricted to a major staged development with a capital cost in excess of \$300m.

6. Form B, Section 3(a)

QR Network is not 'currently the sole owner of the below-rail infrastructure and sole service provider of below-rail services in Queensland'. The State, not QR Network, owns the below-rail infrastructure operated by QR Network, which has a lease interest over it. Both Queensland Rail and ARTC are accredited railway managers for providing below rail services in Queensland. QR Network notes that these errors are repeated in Section 1.1 ('Access to the Terminal by rail' and 'Ownership changes...') of the submission.

7. Form B, Section 1.2(b)

QR Network does not understand the view expressed that 'the DAU itself may be suggestive of collective bargaining as an appropriate mechanism'. The DAU is intended to achieve provision of access on fair and equitable terms by means of a tariff structure applicable to all users unless particular risk factors apply. If they do apply in respect of a particular access customer, QR Network considers that the differentiation in terms applicable to that customer should be negotiated between QR Network and the producer in question, and not collectively with unaffected access customers. QR Network, however, agrees that the practical implementation of user funding would entail discussion and agreement between the various user funders.

8. Form B, Section 1.3(a)

QR Network endorses fully the need to achieve alignment of capacity between the terminal and the below-rail infrastructure. However, as stated above, the duration of commercial arrangements designed to ensure adequate capital recovery by QR Network bears no logical relationship to the duration of the Authorisation.

9. Form B, Section 3.7

QR Network does not agree with the statement 'Until the initial negotiations have been concluded, QR Network will not be in a position to proceed to the next phase of the project, being the design and feasibility stage....' QR Network regularly provides industry briefings to which industry participants, including the Applicants, are invited. At these briefings QR Network has advised attendees that some of the Blackwater and Moura projects are in the feasibility stage.

However QR Network acknowledges that commercial negotiations need to be conducted so that the parties have substantially reach agreement of commercial terms reached before the technical feasibility work can be completed and then commercial close achieved.

10. Form B, Section 3.12

The statement at the bottom of page 29 that 'User Funded Expansions may be triggered when QR Network declines to undertake an expansion project which is considered necessary by producers' is misleading. User Funded Expansions may also be triggered when QR Network agrees to undertake an expansion project which is considered necessary by producers, if they do not wish to accept QR Network's commercial terms for funding that expansion.

11. Form B, Section 4.2(a)

QR Network notes that the Application gives no reason for implying that QR Network needs to be prevented from 'attempting to delay and stall access'.