



**Submission to the  
ACCC Review of the Application for  
Authorisation A91241 by Various  
Wiggins Island Coal Export  
Terminal Producers**

August 2010

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## **1 INTRODUCTION**

Asciano appreciates the opportunity to make a submission to the Australian Competition and Consumer Commission (ACCC) on the application for authorisation from various Wiggins Island Coal Export terminal producers (the Applicants) for collective bargaining arrangements with QR Network Ltd relating to below rail infrastructure associated with the proposed Wiggins Island Coal Export Terminal (the Terminal).

Asciano gives in principle support to the application for authorisation. Asciano recognises that there are substantial public benefits arising from the development of the Terminal and the more efficient operation of the coal supply chain in central Queensland.

However, Asciano has some concerns in relation to the proposed arrangements that need to be addressed in any authorisation granted in order to ensure that the public benefits outlined by the Applicants are realised.

This submission contains no confidential information and may be considered a public document.

## **2 BACKGROUND**

Asciano, via Pacific National, is one of Australia's major coal rail haulage operators, and commenced transporting coal in Queensland in 2009 where Pacific National is the main competitor to QR's above rail business. Pacific National currently transports coal on the Blackwater system, which will serve the Terminal.

On 21 July 2010 Asciano made a brief submission on the interim application for authorisation made by the applicants. This submission expands on the 21 July Asciano submission.

On 4 August 2010, the ACCC granted interim authorisation to enable the Applicants to commence collective negotiations with QR Network in relation to below rail access.

Asciano welcomes that the interim authorisation does not extend to any information exchanges or negotiations regarding above rail services.

### **3 BENEFITS**

The benefits of allowing collective bargaining by the Applicants in relation to the Terminal are compelling. Collective bargaining is required in order to facilitate the financing and construction of the infrastructure required for access to the Terminal, and the public benefits created by the construction and ongoing operation of this infrastructure are substantial. These benefits, as identified by the Applicants, include promoting efficiency.

However, it should be recognised that these efficiency benefits will only be fully realised if there is strong competition in the above rail coal transport market. This competition can only be guaranteed by effective separation of the QR above rail and below rail businesses.

### **4 CONCERNS**

The Applicants' submission stated that there were no identifiable negative impacts on competitive outcomes. Asciano believes that there are several potential negative impacts. These potential negative impacts centre on the relationship between QR above rail and below rail businesses.

#### **4.1 Effective Separation of QR**

Asciano has concerns about the current ownership and operating structure of QR. These concerns centre on the vertically integrated nature of QR, whereby QR is the owner and operator of the monopoly below-rail assets and is also the major user of these assets as the largest above-rail service provider. In particular these concerns are based on QR's ability to leverage its market power in infrastructure to secure above rail contracts thereby undermining competition in the above rail market.

Asciano's position on the shortcomings of the current Queensland rail industry structure and the current and proposed regulatory framework and processes as they apply to the Queensland rail industry have been outlined publicly in numerous submissions<sup>1</sup>. The position put forward in these submissions may be summarised as the need for:

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<sup>1</sup> A more detailed discussion of Asciano's position on the shortcomings of the current industry structure and regulatory structure and processes can be found in numerous Asciano public submissions including the following recent submissions:

1. Asciano (2010) Submission to the Queensland Competition Authority: QR Network 2009 Draft Access Undertaking: Response to the Draft Decision February 2010

- effective separation of the above-rail and below-rail businesses, including separation at board level in order to ensure that below-rail business decisions regarding investment and access are not influenced by considerations benefitting related above rail businesses to the detriment of third party access seekers or users; and
- prohibition of preferential or discriminatory treatment, including cross subsidies and cost shifting.

If the above issues are not addressed via broader policy and regulatory changes then a competitive above rail market will not be achieved.

Given this vertical integration, competition, and hence efficiency, in above rail services will be negatively impacted by the involvement of any QR above rail entities in the collective bargaining process or by QR Network discussing or negotiating above rail matters with the Applicants.

This negative impact would be addressed, and the public benefits outlined by the Applicants would be delivered if the Applicants' collective bargaining with QR Network is limited to QR Network below rail issues.

Therefore, Asciano seeks that any authorisation be limited to collective bargaining on infrastructure QR Network owns and operates (or will own and operate when constructed) and not extend to:

- negotiations relating to infrastructure owned by other QR entities, and in particular QR entities with an above rail business; and
- negotiations relating to above rail issues with either QR Network or any other QR entity.

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2. Asciano (2010) Submission to the Queensland Competition Authority Response to the QR Network Draft 2010 Access Undertaking May 2010

3. Pacific National (2010) Application Under part IIIA of the Trade Practices Act 1974 for a Declaration Recommendation for the Services provided by Queensland Rail's Queensland Coal Network

4. Pacific National (2010) Submission to the National Competition Council Queensland Rail Network – Certification and Declaration Applications July 2010

5. Asciano (2010) Submission to Queensland Treasury Proposed Amendments to the Queensland Competition Authority Act 1997 and Transport Infrastructure Act 1994 July 2010

It should be recognised that these submissions were provided to the relevant bodies within the specific context of the issue or process that was the focus of the regulatory process.

#### 4.2 Identity and Nature of Rail Infrastructure Subject to Collective Bargaining

The current application allows the Applicants' negotiations to address all expansions to the Moura and Blackwater systems. As outlined in the Application (page 2) the Applicants are seeking authorisation to engage in collective bargaining with QR Network Ltd for the purpose of:

*"... negotiating terms and conditions, including price, for access to the below rail infrastructure comprising the Blackwater and Moura rail systems including all expansions to these systems, as well as access to any other rail infrastructure necessary to support the Terminal and below rail infrastructure to support the reallocation of capacity from Barney Point to the Terminal and RG Tanna Coal terminal as well as all services relating to access for the purpose of the Applicants transporting coal to the Terminal"*

Asciano believes that this allowance is too broad. The ability to engage in collective bargaining on all expansions on the Moura and Blackwater systems for twenty years may provide opportunities to delay or prevent expansions serving users not among the Applicants and is not required to deliver the public benefits outlined by the Applicants. The collective bargaining should be limited to expansions which are demonstrably linked to rail capacity needed to service the Terminal.

Asciano also queries what is intended by the phrases"

*... access to other rail infrastructure necessary to support the Terminal*  
and

*...all services relating to access for the purpose of the Applicants transporting coal to the Terminal.*

Some QR entities which primarily operate above rail businesses also own and / or operate infrastructure such as sidings and rail yards which may be considered below rail assets. Asciano's concern is that the phrases above could be read to include assets owned by QR National's above rail business, such as sidings and rail yards, and assets owned by other QR related entities. This raises the potential for a

negative impact as involvement of QR above rail entities in the collective bargaining process is detrimental to competition in above rail services.

Asciano seeks that the authorisation explicitly limit the collective bargaining to infrastructure QR Network owns and operates (or will own and operate when constructed) and not include infrastructure owned by other QR entities, and in particular QR entities with an above rail business regardless of whether they own and / or operate any below rail assets.

#### 4.3 Length of the Authorisation

An authorisation for twenty years is being sought based on the staged timetable for Terminal, infrastructure and mine expansion, the need to align infrastructure and port expansion and the need to have time frames aligned with contractual commitments, including rail access agreements.

Asciano accepts that the authorisation period needs to be of sufficient length to allow for staged development of the Terminal and to allow long term contracts to underpin the capital development of the Terminal and infrastructure. However Asciano has concerns that twenty years may be too long. The collective bargaining authorisation primarily relates to rail access negotiations with QR Network. Such access agreements are typically ten years, although they may be longer in circumstances where additional infrastructure needs to be financed.

Asciano seeks that the authorisation period should be either ten years or, alternatively, should be aligned with the duration of the rail access agreement, but in any event should not be more than twenty years. Potential Identity of Track Owner:

The QR Network assets are currently planned to be sold by the Queensland Government. The Applicants are seeking authorisation to collectively bargain with any other QR group or any other entity which may acquire the relevant rail assets.

Asciano seeks that the authorisation explicitly not extends to collective bargaining with any QR entity with an above rail business. As discussed above, collective bargaining with a QR above rail business has the potential to negatively impact competition in above rail services.

Asciano is aware that there is currently a proposal by the Queensland Coal Industry Rail Group (QCIRG) to purchase sections of QR Network from the Queensland Government. Some of the Applicants are members of the QCIRG.

Asciano has previously made a public submission to the ACCC on the QCIRG indicating it did not have any particular concern with the QCIRG proposal to acquire sections of the QR Network and indicated that the proposed acquisition may address concerns regarding QR's vertical integration by resulting in an actual separation of above-rail and below-rail assets and businesses, thus reducing incentives and opportunities for discriminatory behaviour in relation to above-rail operators, and increasing transparency. Furthermore the involvement of the ARTC in the proposed acquisition as an independent manager and operator of the below-rail network minimises any potential for QCIRG to act in a discriminatory manner.

Asciano is seeking that in the event that the QCIRG or a similar entity acquires sections of QR Network prior to the conclusion of the authorisation process the ACCC consider the nature and structure of the acquiring body in its authorisation decision. A structure similar to the current QCIRG structure with only the below rail network being purchased, and the involvement of an independent manager and operator of the below-rail network should not create any concerns.

## **5 CONCLUSION**

The benefits of allowing collective bargaining by the Applicants in relation to the Terminal are compelling. However, in order for these benefits to be delivered Asciano submits that the following factors need to be considered when assessing the merits of the authorisation:

- the authorisation should seek to ensure that above and below rail negotiations are separated, with collective bargaining only permitted for QR Network below rail assets; and
- the authorisation should seek to explicitly limit the collective bargaining to infrastructure QR Network owns and operates (or will own and operate when constructed) and not include infrastructure owned by other QR entities

It should be recognised that efficiency benefits will only be fully realised if there is strong competition in the above rail coal transport market and that this competition



can only be guaranteed by effective separation of the QR above rail and below rail businesses.