

John Hall  
Chief Executive Officer  
Queensland Competition Authority  
GPO Box 2257  
Brisbane Qld 4001

Dear John,

### **QR NETWORK'S 2008 ACCESS UNDERTAKING**

I refer to the QCA's Draft Decision (the Draft Decision), released on 25 September, on QR Network's draft 2008 Access Undertaking (the 2008 Undertaking). I note that the QCA has proposed to reject the 2008 Undertaking, and that the QCA has identified the changes to the 2008 Undertaking that would address its concerns. The QCA has sought comments from stakeholders on these proposals prior to making a final decision on the 2008 Undertaking.

As you are aware, the ownership and management of QR Ltd's rail network has been transferred to QR Network Pty Ltd, effective from 1 September, 2008. The impact of this is that QR Ltd is no longer legally entitled to give an access undertaking to the Queensland Competition Authority (QCA) in relation to the network now owned and managed by QR Network. Although the QCA has not yet accepted the withdrawal of QR Ltd's 2005 Access Undertaking (the 2005 Undertaking), I believe that the 2005 Undertaking is no longer effective in relation to services provided by QR Network.

I am keen to ensure that a valid and workable access undertaking is in place as soon as possible in relation to QR Network's services which are declared under the *Queensland Competition Authority Act 1997* (QCA Act). I believe that this is important in order to provide certainty to all stakeholders, including access seekers, access holders and end customers, as well as QR Network.

In order to achieve this outcome, I am:

- withdrawing QR Network's draft 2008 Undertaking, as submitted to the QCA on 29 July 2008; and
- submitting a revised draft 2008 Undertaking in accordance with section 136 of the QCA Act, addressing the concerns that the QCA has raised in the Draft Decision.

In view of the above, please find attached QR Network's revised 2008 Undertaking. This 2008 Undertaking is in the same form as for the previous submission, other than for amendments intended to address the concerns that the QCA has raised in the Draft Decision. In particular:

- Pring has been included in the definition of "Major Yards";
- The definition of "Major Yards" has also been amended to reflect the existing arrangements regarding the provision of train control services. In particular, a distinction has been made between signalled and unsignalled track at the yards at Rockhampton and Portsmouth. These amendments alter the effect of clauses 3.1(b)(vii) and 3.1(c)(iv).

- the Operator Standard Access Agreement has been amended to exclude QR Network's previously proposed amendments to Clauses 14 and 15 of Schedule B, which included an indemnity from the operator (as Access Holder) for any claims against QR Network under common law from the operator's customer in the event of negligence.

QR Network has also amended the 2008 Undertaking to include the proposed amendments in sections 2.9(a) and 2.9(b) of the Draft Decision.

QR Network maintains that it is appropriate that the Operator Standard Access Agreement address in full the consequence of any non-compliance with the Access Agreement by QR Network (including as a result of breach or negligence), including the potential for an operator's customer to make a common law claim against QR Network. However, QR Network acknowledges that this issue has not been created by restructure of QR Ltd and, as a result, QR Network is prepared to accept the view that this issue should not be dealt with as part of the 2008 Undertaking. In this regard, QR Network will seek to address this issue as part of the standard access agreements that will be developed in accordance with the 2009 Undertaking.

This formal submission comprises this letter, together with a disk containing the following documents:

- A clean copy of the revised 2008 Undertaking, including the Operator and Access Holder Standard Access Agreements;
- A copy of the revised 2008 Undertaking, including the Operator and Access Holder Standard Access Agreements, marked up against the version submitted to the QCA by QR Network on 29 July 2008; and
- A copy of the revised 2008 Undertaking, including the Operator and Access Holder Standard Access Agreements, marked up against the 2005 Undertaking

QR Network confirms that this information is suitable for publication by the QCA.

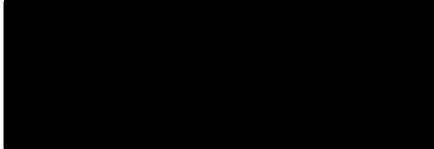
The disk also contains additional information requested during discussions with the QCA Secretariat and updated documents referred to in the Draft Decision, such as various agreements between QR Ltd and QR Network, including:

- the Confidentiality Deed; and
- Train Operations Management Agreements.

These documents have also predominantly addressed the minor matters raised by the QCA including section 2.9(c) of the Draft Decision. This information does not form part of the formal submission, and accordingly QR Network requests that the information is not published. QR Network will also amend the Internal Access Agreements to give effect to the minor amendments proposed by the QCA in section 2.9(d).

Please contact Gayle Andrews on 3235 5476 should you have any queries regarding the 2008 Undertaking.

Yours faithfully



Mike Carter  
Executive General Manager  
QR Network Pty Ltd

6 October 2008