

QRN Reference: DN/11/ 245376  
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Mr. E.J. Hall  
Chief Executive  
Queensland Competition Authority  
GPO Box 2257  
Brisbane QLD 4001  
Email: rail.submissions@qca.org.au

Dear Mr. Hall,

QR National Coal is responding to the Queensland Competition Authority's invitation for submissions on QR Network's proposed Alternative Form of Access for Coal Carrying Train Services. The letter is public.

In general, QR National Coal supports the form of the proposed alternative access arrangements. The proposal appears to be more workable than some elements of the recently introduced tripartite contracting arrangements in the Hunter Valley coal system. In particular, we note that QR Network proposes to continue to offer the existing Operator Access Agreements as well as the proposed alternative access arrangements. This provides End Users with an option to retain the existing Operator managed Access Rights should they be unwilling to commit additional resources to the management of access.

We support the proposal that the new access arrangements will not be retrospective but will apply to new or renewal access requests. This provides certainty for existing contract holders.

QR National Coal also notes the proposed arrangements retain the ability for an Operator that holds a portfolio of End User's Access Rights to manage short term variability in scheduling via a 'borrow-lend' process of train paths within their customer base. This is particularly important to accommodate variations in customer demand that do not perfectly match 'even railings' across the Central Queensland coal systems.

There is an element of the proposed alternative access arrangements which QR National Coal considers may impact on the efficiency of the supply chain, as detailed below.

*Train Service Entitlements:*

Under the proposed alternative access arrangements an End User will contract for capacity via an End User Agreement (EUA) that includes a schedule specifying the Train Service Entitlements (TSE). The schedule will include a description of the rollingstock and train configuration for each origin and destination, along with a Base Access Charge.

A Train Operator Agreement (TOA) between the Operator and QR Network will include the proportion of the End User's TSEs allocated to each Operator nominated by the End User.

While this proposed arrangement allows End Users to secure below rail access rights separately from haulage agreements, there is a risk of some contractual misalignment between above and below rail capacity. The sources of potential misalignment are:

- A different operating plan assumed by QR Network compared to the actual operating plan under which a Train Operator optimises efficiency; and
- The ability for an End User to contract for network capacity, without contracting matching above rail capacity.

The Access Rights required by an End User depend on the operating plan. The operating plan sets out how an Operator proposes to use the network (rollingstock, train configuration, dwell times, cycle times and other operating parameters) and consequently determines the number of TSEs required.

Under the existing Operator Access Agreements, the Operator contracts for Access Rights (TSEs) on behalf of the End User, based on its operating plan for the required End User haulage task. This ensures above and below rail capacity is matched.

Under the proposed alternative form of access, an End User may contract for Access Rights without nominating an Operator. Access Rights in the EUA will then be determined using an assumed operating plan based on reference trains and operating parameters set out in the Undertaking, rather than on the way a particular Operator would actually use the network. This may result in the End User under or over contracting for Access relative to the above rail contract.

To manage this risk, QR Network has proposed that where there are material differences between the assumed operating plan and the actual operations of the nominated Operator, QR Network may, in consultation with the End User and the Operator, amend the TSEs in the TOA.

While this will minimise misalignment of above and below rail capacity once an Operator is nominated, there is no requirement for all of an End User's Access Rights to be allocated to Operators. That is, End Users will be able to contract for network capacity, without contracting matching above rail capacity.

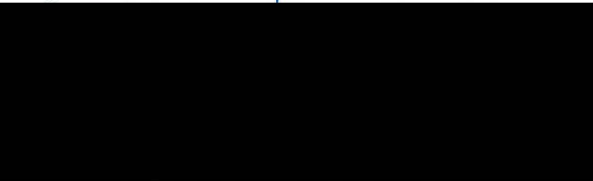
Where contracted above and below rail capacity is not matched, some capacity (either above or below rail) may be wasted, which increases overall supply chain costs. Supply chain efficiency is optimised with contractual alignment that minimises unused capacity.

To some extent this risk is addressed by Clause 4.1 of the draft End User Agreement which provides for QR Network to resume Access Rights to the degree of any underutilisation, provided it is not caused by QR Network. However, the underutilisation (measured as less than 85% of contracted TSEs) must have occurred over any four consecutive Quarters, effectively allowing misalignment for any one End User's Access Rights for up to one year.

Further comments in relation to specific elements of the proposed agreements are set out in the attached table.

If you require clarification or have any queries, please feel free to contact me on (07) 3235 3929, or Robin Laver on (07) 3235 5215.

Regards,



David Hamblyn  
A/ National Access Manager  
QR National Coal

## End User Agreement - specific comments

Clause	Subject	Meaning	QR National Coal comment
9.3(a)	Claims in respect of non-provision of Access	End User may not make a claim against QR Network in relation to non-provision of access except to the extent that a Train Service is cancelled as a result of a failure by QR Network to make the network available for an Operator to operate the Train Service at the Scheduled time in the Train Schedule; and QR Network was unable to schedule the Train Service at a 'reasonable alternative time'.	There is no definition of 'reasonable alternative time'. The Operator may have asset utilization or operational constraints that limit the number of reasonable alternative times that it can use a train path to operate the Train Service. This should be defined as 'at a reasonable alternative time agreed with the Operator', and could be subject to a dispute resolution and/or agreement of time parameters such as within a week.
4.2 (i)	Relinquishment and Transfer		Numbering needs amending.
16.1	Relationship with Train Operations Agreement-	Where a dispute is referred to an Expert, Loss Adjuster, Arbitrator or the QCA, either party MAY notify the other party that an Operator should be a party to that referral and if so, then the relevant Operator MUST be (i) notified of the referred matter; and (ii) provided with a copy of the Dispute Provisions in the End User Agreement. The Operator must also agree to the appointment of any Loss Adjuster, Expert or Arbitrator and is treated as a party to the dispute.	QR National Coal supports this provision as it enables an Operator to participate in a dispute to protect its interests.

### Train Operator Agreement - specific comments

Clause	Subject	Meaning	QR National Coal comment
5 (a)(iii)	Effect of the End User's variation of nomination of the Operator	This clause provides for QR Network to notify an Operator where an End User has changed the access rights nominated to that Operator.	QR National Coal requests that a minimum period of notice be provided for an Operator, to allow for rolling stock, crewing and other operational planning.
7 (c) (iii)	Interaction of Rights		Incorrect reference - should be 7(c) (ii)
<b>Reference - Schedule A</b>			
2.4 (g)	Obligation to provide security	If the Operator considers its financial circumstances have changed such that Security would no longer be required, the Operator may request QR Network in writing... to review the creditworthiness of the Operator and QR Network will undertake the review.	QR National Coal considers this provision should be subject to the dispute resolution process, in the event that an Operator and QR Network are unable to reach agreement over the need for Security.
3 (i) (iv)(B)	Weighbridges and overload detectors	The cost of conducting a weighbridge test will be met by the Party giving notice ... in the event that the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in Part 6 of Schedule 2.	There is no provision for an End User to question the accuracy of a weighbridge. This may be better provided for in the End User Agreement. The End User should be able to initiate a test of weighbridge or overload detector accuracy. The End User is the ultimate beneficiary of tonnages transported and has an interest in the accuracy of tonnages measured. Where the End User requests the test, the End User should also bear the cost of the test should the weighbridge be found to be functioning accurately.

Clause	Subject	Meaning	QR National Coal comment
7.2 (c )	Maintenance of the Nominated Network	QR Network will not be liable for any claim by the Operator as a result of Operating Restrictions imposed by QR Network, (unless the Operating Restriction was a result of a breach of the agreement by QR Network).	<p>QR National Coal does not support this clause on the basis that Operating Restrictions impose additional costs on an Operator.</p> <p>The definition of Operating Restrictions should be refined to differentiate between operating restrictions resulting from factors outside QR Network's control (such as wet weather events) and operating restrictions which could have reasonably been avoided had QR Network chosen to maintain the network in a different manner.</p>
23.1 (c)	Relationship with End User Agreement	This clause provides that if the Operator is notified of a matter to be referred to an Adjudicator under an End User Agreement then the Operator must comply with the provisions of that End User Agreement governing the referral of the matter including the payment of costs of the Adjudicator. The Operator must agree that those Dispute Provisions do not apply to any dispute under the Train Operator Agreement in relation to the matter referred to the Adjudicator under the End User Agreement and agrees that the decision of the Adjudicator is binding on the Operator.	QR National Coal considers this clause should be amended to remove the requirement for an Operator to comply with the provisions of an End User Agreement, to which it is not a party.