



Tuesday, 30 October 2012

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

Dear Mr Hall

Asciano Response to the QCA Draft Decision on Proposed Standard Access Agreements

Asciano welcomes the opportunity to comment on the July 2012 Queensland Competition Authority (QCA) Draft Decision on the QR Network proposed alternate standard access agreements. These alternate standard access agreements could be characterised as access agreements which separate rights and obligations related to rail access between the train operator and the end user.

Asciano previously made a submission to this regulatory process in response to the initial QR Network proposal for alternate standard access agreements.

Asciano broadly supports the QCA Draft Decision although there are some areas where Asciano seeks to comment further. These areas include:

- **Time-frames involved in transferring between operators:** The Draft Decision states that end users can reallocate entitlements with at least 48 hours notice, with any such reallocation taking into account network constraints. This is similar to the process in place in the Hunter Valley. Asciano believes that this time frame should be achievable by an operator in a normal operating environment.
- **Information sharing between parties:** The Draft Decision proposes changes to the Access Undertaking at section 3.4 (e) which relate to information sharing between the parties.

In its August 2011 Submission Asciano argued that the contracting framework should allow confidential information to be transferred, where recipients of the information would be bound by relevant confidentiality conditions.

In the Draft Decision's proposed Access Undertaking amendments sections 3.4 (e) i), ii) iii) and iv) the wording used is such that QR Network, a train operator or an end user "*may disclose*" to another party certain information. Asciano believes that to the extent that this information to be disclosed is operational and is required by the relevant party to meet its contractual obligations (or expected contractual negotiations in the event that agreements are being negotiated) or otherwise relates to safety then the requirement for disclosure should be stronger than the current wording that the information "*may*" be disclosed.



Asciano believes that where information is required by the relevant party to meet its contractual obligations or relates to safety then the information should be provided. In these circumstances if the information is confidential then, before the information is provided, the party which owns the information should provide written consent to the release of the information, where this consent should not be unreasonably withheld.

Similarly, to the extent that any information to be disclosed is not required by the relevant party to meet its contractual obligations and does not relate to safety then disclosure of the information should be subject to the general ring fencing, disclosure and confidentiality provisions of the access undertaking and attendant agreements.

While Asciano supports the transfer of information required by a party to meet its obligations, Asciano is concerned that section 3.4 may be used to transfer information inappropriately. Of particular concern to Asciano is, that as currently drafted, section 3.4 e) iii) and iv) have the potential for QR Network to provide confidential end user information to its related above party rail operator, particularly where an access agreement is being negotiated. Asciano believes that this section needs to be redrafted or amended to ensure that any information transfer between QR Network and its related entity is at arms length.

- **Rights of End Users in Relation to Train Operations Agreements:** The Draft Decision proposes changes to the Access Undertaking at section 4.5.3 which relate to the end user having the right to be present at any negotiations between the operator and QR Network. This section should clarify whether the end user has any rights or standing in these negotiations or is there in the capacity of observer and to ensure broad consistency and alignment between end user agreements and operator agreements. Asciano believes that the end user should attend in the role of an observer.

In addition to the specific comments above Asciano wishes to raise a more general issue in relation to the suite of access agreements being developed. In the near future it is expected that there will be an end user access agreement and an operator's access agreement. However, to date there has been no indication of developing a separate ancillary services access agreement. Such an agreement will be required when end users hold access but operators need to position trains and undertake other ancillary movements not directly linked with the end user's access. Asciano believes that a single ancillary services agreement with operators which allow operators to undertake ancillary movements and covering all of the operator's ancillary movements is an appropriate approach to addressing this issue.

Currently when there are ancillary train movements for purposes such as maintenance, repair, provisioning, stowage, crew change and positioning these services are charged under the regulated tariffs as though they are coal carrying services although this is evidently not the case.

This regulated tariff is essentially derived by dividing the system allowable revenue by coal volumes. Given that these ancillary services are not coal carrying services then QR Network is receiving a windfall revenue gain outside the system allowable revenue by charging these services as though they are coal carrying services.

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Asciano believes that ancillary services should be subject to both a different pricing regime and to a simpler access agreement.

Feel free to contact me on 02 8484 8056 to discuss this submission.

Yours faithfully

A handwritten signature in black ink, appearing to read "Stuart Ronan". The signature is fluid and cursive, written on a light-colored background.

Stuart Ronan
Manager Access and Regulation