26 September 2019

Mr. Charles Millsteed
Chief Executive Officer
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Brisbane QLD 4001

Submitted via QCA online portal

Dear Mr. Millsteed

Further Submission – Queensland Rail's 2020 Draft Access Undertaking

Pacific National (PN) welcomes the opportunity to provide a further submission on Queensland Rail (QR)'s 2020 Draft Access Undertaking (2020 DAU) and Standard Access Agreement (SAA). We thank QR for its willingness to engage with PN and other stakeholders on drafting concerns on certain operational matters in the 2020 DAU/SAA.

QR has agreed to address PN concerns and reinstate the Operating Requirements Manual in the 2020 DAU and reinstate 'good faith' provisions in the SAA drafting. Accordingly, these matters can be considered by the QCA as collaboratively reached positions between PN and QR. However, despite agreement on some of these operational matters, we have failed to reach agreement with QR on our proposed changes to address the operational issues raised in PN's November 2018 submission (Attachment A).

The QCA will now need to make a decision on whether PN's or QR's position on these operational matters better satisfy the object of Part 5 of the *Queensland Competition Authority Act* (QCA Act).

PN still has fundamental concerns with the 2020 DAU (and SAA)

PN remains strongly of the view QR has not sufficiently justified that its 2020 DAU has had appropriate regard to the QCA approval criteria in s. 138(2) of the QCA Act. The overarching objective of Part 5 of the QCA Act is the importance of promoting competition in upstream and downstream markets (s. 69 E).

As argued in PN's July submission on the QCA Draft Decision on the 2020 DAU, QR's 2020 DAU pricing objectives (for non-coal carrying train services) provide no incentives or aspirations to encourage above rail competion by increasing the volume of freight moved on rail relative to road. This is a failure to regard s. 138(2) (a) and (g) and s. 69E of the QCA Act.

It is likely QR will resist pricing reform within the economic regulatory framework, and will either claim it is a government policy decision or will cite 168A (a) of the QCA Act as the reason for no pricing reform in the 2020 DAU. We submit neither arguments hold true. The economic regulation framework is not premised on ownership – it is not the role of the QCA (or QR) to speculate on future government policy decisions. Moreover, criterion 168A (a) is not applicable to the QR North Coast Line (NCL) to the extent it historically, currently and in the future is never going to 'generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved'.

QR states it has a high degree of dependence on Transport Service Contract (TSC) revenue on this system indicating a lack of commercial viability. In the 2016–17 financial year, the NCL received approximately $48 million in access charges, compared to $125 million in TSC subsidies.

Even if QR received more access revenue by increasing access charges (which it is proposing through the application of the current pricing objectives and CPI escalation in the 2020 DAU), the amount of the TSC subsidy would decrease proportionately but it would still not be commerical. Conversely, further access charge increases will force remaining rail freight onto road (on the Bruce Highway) stranding rail network assets, and reducing competition in upstream/downstream rail freight markets.

The QCA must have regard to the s. 168 pricing principles for its decision to make an access determination or decide whether to approve the 2020 DAU. Given the above, it should afford little or no weight to 168A (a) and no weight to s. 168 A (c) which is not applicable to QR as it is not a vertically integrated freight operator.

Incentives to reduce costs or otherwise improve productivity – a new pricing rule

Instead the QCA should be guided by the other two pricing principles with particular weighting to principle 168A (d) to provide incentives to reduce costs or otherwise improve productivity. Accordingly, in order for the QCA to discharge its obligations under the QCA Act, it must require an amendment to the the 2020 DAU to include a road to rail modal shift pricing rule (the addition of clause 3.1.3 Road to rail modal shift).

The application of the rule requires QR to demonstrate to the QCA and rail operators (and other upstream and downstream stakeholders) how pricing on the NCL and Mt Isa. Line has been set to encourage road to rail modal shift through lower access charges. QR states heavy vehicle road access charges are a major source of competition and price pressures, accordingly this rule is akin to a 'promoting effective competition in upstream and downstream markets' pricing rule (s. 69E).

The rule should be coupled with a restriction on escalation (CPI or otherwise) of the access charges during the five-year term of the 2020 DAU. Importantly, the road to rail modal shift pricing rule should take precedence over any conflict between the other pricing rules through an amendment to clause 3.4.

Performance reporting and compliance

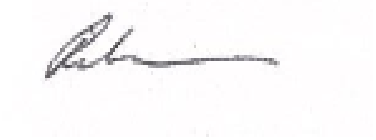
A modern economic regulation framework should set the performance reporting metrics within the 2020 DAU (SAA) with annual compliance reporting to the QCA and stakeholders. QR's proposal to establish a Regional Network User Group for each of its major rail systems to focus on operational and productivity improvements for the rail supply chain in the 2020 DAU is a step is the right direction (and acceptable to PN) but falls short. This is because QR's only compliance metric is to *convene* a group (subject to several conditions).

Accordingly, and in addition to QR's proposal, PN re-affirms its recommendation to modify clause 6.7 (SAA) performance level reporting (which gives effect to Schedule 5) to include commitment dates in the SAA for parties to establish an agreed performance reporting regime and performance levels.

QR needs to submit an intermodal freight SAA for QCA approval

As per our previous submission, and light of the above, QR needs to submit an intermodal freight SAA for QCA approval which exclusively covers the intermodal freight (and bulk) operating on the NCL (and the Mt Isa. Line) – in particular Schedules 3 and 5.

Yours sincerely



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Attachment 1 - Outstanding issues from PN's November 2018 submission

While we submit a new freight and bulk SAA needs to be drafted for the North Coast Line and Mt. Isa Line, we have failed to reach agreement with QR on our proposed changes to address the operational issues raised in PN's November 2018 submission.

Relinquishment fees

QR proposed excessive relinquishment fee requirements - if an access holder seeks to permanently relinquish a train path they must pay a relinquishment fee equivalent to 80 per cent of the present value of the aggregate take or pay charges payable on the path to the end of the contract term. This not only acts as disincentive to long term contracting it is also excessive compared to other rail networks.

The QCA's Draft Decision agrees with PN – the relinquishment fees proposed by QR are inappropriate and they must be removed for non-reference tariffs. However, for the reasons above, PN remains concerned they are still applied to reference tariffs and should be removed.

Special events

Special events and possessions scheduling have a highly disruptive impact on freight train operations. QR should be obligated under the Network Management principles to use reasonable endeavours to find alternative train paths for freight train paths impacted by all possessions (including special events). Accordingly, we recommend modification of the Daily Train Plan Principles clause 2.2 (f) to include an additional clause (iv) to mandate the requirement to find alternative paths.

Definition of 'on time' performance

QR should hold itself accountable to the same on time performance windows (for scheduling, performance and reporting) as it prescribes for its freight rail operators. PN notes most networks allocate a 15-minute leeway either side of an arrival/departure time to determine if a freight train is on time. PN requires the amendment and consistency throughout the 2020 DAU/SAA.

2020 DAU Schedule F 2.4 Disputes

The 2016 Access Undertaking (clause 2.4 of the Network Management Principles) requires that if there is a dispute between QR and an access holder in relation to a change in the master train plan then the change will not occur until the dispute is resolved under the Access Undertaking. Such a dispute could be lodged a day prior to the master train plan taking effect and the resolution of such a dispute may take several months. We do not agree with QR's position to remove this clause; clause 2.4 of the Network Management Principles must be retained in the 2020 DAU.

Schedule H 13.4 Liability for Network

The proposed inclusion of clause 13.4 a) iv) seeks to further shift risk from QR to rail operators and access holders. Under this clause, except in relation to negligence, QR is not liable for damage arising from the condition of the network, the failure of the network, the maintenance of the network or the failure of the network to meet performance levels (where these performance levels, as set out in Schedule 5 of the agreement, are currently undefined).

PN does not accept the amendment as it further reduces QR's liability and shifts risk to access holders and rail operators. QR should be responsible for its own performance and if it cannot meet its performance targets then it should be liable for the consequences of not meeting these targets. QR's customers should not be required to bear the risk of QR being unwilling to accept the risks which may arise from its inability to meet performance targets.

PN's position is a risk should be borne by the party best able to manage the risk. QR is best placed to manage the risk of not meeting its own performance targets and so should bear this risk. Shifting this risk to access holders/rail operators who cannot manage the risk results in economically inefficient outcomes. This clause should be removed.

Schedule H 13.5 Claims in respect of delays to Train Movements

The definition of 'emergency' contained in footnote 3 to clause 13.5 b) vii) should be shifted to the Definitions section of the SAA.

Schedule H 15.2 Termination of Operator by Queensland Rail

Clause 15.2 a) should be amended to read:

"the Operator fails in any material respect to perform or comply with this agreement, other than where this Agreement excludes the Operator's liability for that failure, or where the Operator is not otherwise liable under this Agreement for that failure"

This wording protects the rail operator from termination of an agreement for failure where it was not liable.

Schedule H 15.4 Termination by the Operator

A new subclause should be added to clause 15.4 allowing the rail operator to terminate the agreement if QR fails to comply with safety related obligations under the SAA.

QR can terminate the agreement in the event the rail operator fails to comply with safety related obligations under the agreement (clause 15.2) and, given the importance of safety, PN requires the wording be reciprocal.

Schedule H Clause 18.2 Adjustment for Material Change

This clause allows QR to force increased costs on to freight access holders/rail operators in the event of a change in taxes, a change in law or a change in credit (including a change in funding). However, these changes may relate in in full or in part to the QR passenger network.

Changes in taxes, laws and credit may be beyond QR's control, however passing these costs through to freight access holders and rail operators is an example of QR attempting to shift risk on to its freight customers. This clause should be re-drafted to re-balance impacts and responsibilities for material changes and ensure cost allocation is split appropriately between freight and passenger.

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