

5 June 2015

John Hindmarsh  
Chief Executive Officer  
Queensland Competition Authority  
Level 27  
145 Ann Street  
BRISBANE Q 4000

Dear Sir,

**SUBMISSION ON QUEENSLAND RAIL'S 2015 DRAFT ACCESS UNDERTAKING  
("2015 DAU")**

Thank-you for this opportunity to provide a submission on Queensland Rail's 2015 Draft Access Undertaking ("2015 DAU").

The process of developing and approving a new undertaking for Queensland Rail (QR) has been a long and difficult one. Consideration of the 2013 DAU had reached an advanced stage, with the release of the QCA's Draft Decision in October 2014. Unfortunately QR chose to end that process in December 2014.

The 2015 DAU reflects very little of the Draft Decision in terms of pricing and non-pricing matters, a point highlighted by QR's ceiling tariff, which is more than 2.4 times the tariff suggested by the QCA. NHC strongly objects to QR's proposed reference tariff, its proposed ceiling tariff, the methodologies which QR adopts in order to justify its claims, and QR's claims as to the very limited role which the QCA ought to have in determining the tariff.

The proposed tariff is not competitive with that of New Hope Corporation's Australian competitors, yet relates to the poorest quality below rail asset, which results in high above-rail costs.

The consideration of the reference tariff for QR under the new undertaking did not begin with the 2015 DAU. In fact, the process reached an advanced stage with the release of the 2014 Draft Decision. While we understand the need for the 2015 DAU to be considered on its merits, the key issues remain the same. The draft decision reflected the views of the QCA following a rigorous examination of the issues and an extensive consultation process. QR's rejection of the vast majority of the QCA's draft decision is extremely unhelpful and disappointing.

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New Hope Corporation considers that it is not appropriate for the QCA to approve QR's 2015 DAU under section 138(2) of the QCA Act for the reasons set out in its submissions. Volume 1 of our submission includes an overview of our five volume submission. A copy of the overview is attached for your convenience.

Thank-you for your consideration of our submission.

Yours faithfully,  
**NEW HOPE CORPORATION LIMITED**



**Shane Stephan**  
Managing Director

Enc.

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## Overview of NHC Submissions

NHC considers that QR's 2015 DAU is not appropriate having regard to each of the matters set out in section 138(2) *Queensland Competition Authority Act 1997* (Qld) (the **QCA Act**). In particular, it fails to give sufficient weight to the following matters in section 138(2) QCA Act:

- (a) the object of Part 5 of the QCA Act – particularly regarding the efficient operation of and use of significant infrastructure (not just investment in infrastructure by QR);
- (b) the public interest;
- (c) the interests of persons who may seek access to the service (not just the interests of QR as owner and operator which appears to be QR's sole focus);
- (d) the pricing principles mentioned in section 168A – include not just 168A(a) that QR incorrectly asserts is somehow a 'cornerstone' or 'paramount' but principles such as that in 168A(d), namely to 'provide incentives to reduce costs or otherwise improve productivity'; and
- (e) any other issues the authority considers are relevant.

As is evident from QR's supporting submissions, QR seeks to instead give its own interests and earning what it considers an appropriate return on investment, a priority and paramount status that is not reflected in the regulatory framework which guides the QCA's consideration of the 2015 DAU.

NHC's submissions contain a wide variety of suggestions about how the 2015 DAU should be amended in order to be appropriate for the QCA to approve (after properly weighing up the factors to be had regard to in section 138(2) QCA Act). Those suggestions particularly concern the West Moreton system tariff, adjustment charges to apply the tariff to 1 July 2013, the investment framework and standard access terms.

In regard to the proposed tariffs, NHC strongly objects to:

- (a) QR's proposed reference tariff of \$19.41/'000 gtk.
- (b) QR's proposed 'ceiling tariff' of \$34.92/'000 gtk.
- (c) QR's attempt to define the QCA's role as being limited to the determination of a notional tariff which will have no relevance to actual tariffs for the term of the undertaking, while suggesting that QR should be entrusted with the determination of the actual tariff.
- (d) The methodologies which QR adopts in order to justify its claims.

The proposed tariff is more than double that of NHC's Australian competitors, yet relates to the poorest quality below rail asset; an asset which causes NHC's above rail costs to be in the order of ■% higher than the average of its competitors on a cents per net tonne kilometre basis. QR suggests that the QCA's role is to determine a ceiling tariff based on QR's preferred methodology, and not to concern itself with matters such as the competitiveness of the actual tariff. We strongly disagree. The competitiveness of the tariff and the impact which this has on the competitiveness of current and potential users of the system is clearly relevant to the matters under s. 138(2)(a),(d),(e) and (h) of the QCA Act. It is key to whether the tariff is appropriate and will result in efficient use of the infrastructure.

The consideration of the reference tariff for QR under the new undertaking did not begin with the 2015 DAU. In fact, the process was at an advanced stage in October 2014 with the release of the QCA's draft decision on the 2013 DAU ("the 2014 Draft Decision"). While we understand the need for the 2015 DAU to be considered on its merits, the key issues remain the same.

The 2014 Draft Decision reflected the considered views of the QCA following a rigorous examination of the issues and an extensive consultation process; a process which included the additional step of issuing a Consultation Paper on pricing issues. QR's rejection of the vast majority of the QCA's 2014 Draft Decision is extremely unhelpful and disappointing. The proposed ceiling tariff of \$34.92/000gtk, when compared to tariff proposed in the 2014 Draft Decision of \$14.29/000gtk, demonstrates the extent of QR's failure to seek to resolve this issue.

NHC expects that a properly developed building block approach which addresses the above concerns will result in a tariff which is competitive and sustainable and which will not result in further loss of volumes on the system. NHC considered that the tariff presented in the 2014 Draft Decision was at the top end of the range which could be said to achieve these objectives.

The QCA has the powers it needs to require an appropriate undertaking to apply to QR's rail infrastructure, and it is critical for the West Moreton system coal producers that this opportunity to require an appropriate undertaking is not lost.

While QR has revised the 2015 DAU from previous DAUs, many of the remaining issues have been longstanding ones throughout the entire regulatory process. NHC considers that the majority of its previous submissions remain relevant – such that although this is a new process they are attached in Annexure B for consideration by the QCA as part of this process.