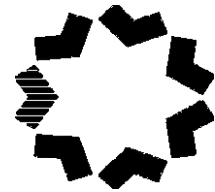


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Media Statement

DRAFT RECOMMENDATIONS ALLOW FOR QUEENSLAND RAILWAYS TO OPERATE UNDER THE QUEENSLAND RAIL ACCESS REGIME

The National Competition Council today released its draft recommendations on several applications relating to third party access to rail infrastructure in Queensland.

The Council is considering an application by the Queensland Government for certification of the Queensland Rail Access Regime as an effective access regime. If the Queensland regime is certified, regulation of access to certain rail infrastructure in Queensland, including the Central Queensland Coal Network (CQCN), will be subject to the Queensland Competition Authority (QCA) Act.

At the same time, the Council is examining a set of applications by Pacific National for the CQCN to be declared under the national third party access regime in Part IIIA of the Trade Practices Act (TPA). If the national regime applies, access issues would be dealt with under the TPA by the ACCC.

Having reviewed these applications and considered a first round of submissions from interested parties, the Council proposes to recommend to the Commonwealth Treasurer (who is the decision maker in respect of the Queensland Government's certification application) that the Queensland Rail Access Regime be certified as an effective regime for a period of 10 years.

This means that the Council will recommend to the Queensland Premier (who is the decision maker for the declaration applications) that the railway services provided by the CQCN not be declared and therefore not brought under the national regime.

The Council is now seeking submissions on its draft recommendations prior to finalising its recommendations. The closing date for further submissions is 14 October 2010.

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DRAFT RECOMMENDATIONS ALLOW FOR QUEENSLAND RAILWAYS TO OPERATE UNDER THE QUEENSLAND RAIL ACCESS REGIME (cont.)

The Council's draft recommendations and related information are available on the Council's website - www.ncc.gov.au

Summarising the Council's recommendations: in relation to the Queensland Government's certification application, Council notes that:

- Pacific National (in particular) argues that for the Queensland Rail Access Regime to be certified as effective it must be able to prevent QR National from treating its rail operations any differently than those of rival third party rail operators and that, in the context of the proposed privatisation of QR National as a vertically integrated rail operator, the Regime cannot be effective;
- the Queensland Government submits that the issue of whether QR National is vertically integrated is not a matter for the Council and the Regime meets the requirements for certification in the TPA.

In reaching its preliminary view on the certification application the Council accepts that recent amendments to the Queensland Rail Access Regime have strengthened its operation.

In the Council's view, while the proposed structure and sale of QR National is relevant to the context in which the Council must make its recommendations, the TPA does not allow for the broad approach to considering a certification application that Pacific National suggests.

The Council has concluded in a number of past recommendations that the process of certification does not involve an assessment of whether an access regime is 'optimal'. In the Council's view the TPA requires that it considers only whether an access regime addresses the principles set out in clause 6 of the Competition Principles Agreement and accords with the objects of Part IIIA of the TPA. On this basis the Council has reached a preliminary view that the regime should be certified as effective.

In relation to the declaration applications made by Pacific National, the Council is required to consider whether the six declaration criteria (a) to (f) in s44G of the TPA are met.

In the Council's view criteria (a), (b), (c), and (d) are met. These criteria relate to, respectively: access materially promoting competition; the relevant railways being uneconomical to duplicate; national significance and safety.

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DRAFT RECOMMENDATIONS ALLOW FOR QUEENSLAND RAILWAYS TO OPERATE UNDER THE QUEENSLAND RAIL ACCESS REGIME (cont.)

However, the Council is not satisfied that criteria (e) and (f) are met.

Criterion (e) precludes declaration where services are subject to an effective state access regime. Given the Council's conclusion in relation to the Queensland Government's certification application this criterion is not met.

Criterion (f) requires that the Council is satisfied that access is not contrary to the public interest before recommending declaration.

In this case, the Council is concerned that the regulation of third party access to the relevant Queensland railways may be less effective under the national access regime than under the QCA Act. Under the QCA Act, QR National will be bound by a detailed access undertaking whereas if access to the railways is declared under the national scheme the ACCC may have to arbitrate a large number of access disputes on a case by case basis.

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For Further Information:

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