



## QR Limited

Submission to the National Competition Council  
on the Application for Declaration  
of the Central Queensland Coal Rail Network

**19 July 2010**

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### 1 Executive Summary

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- 1.1 Pacific National Pty Ltd (**Pacific National**) has applied to the National Competition Council (**NCC**) for declaration under Part IIIA of the *Trade Practices Act 1974* (Cth) (**TPA**) of services provided by the Blackwater, Goonyella, Moura and Newlands coal railway facilities owned by QR Limited (**QR National**) in central Queensland.
- 1.2 The services described in its application are vague and uncertain. The list of facilities over which the services are provided is open-ended and broad. Pacific National has since clarified that its application relates only to below rail services. The NCC should only consider the application as seeking access to below rail services, and should only consider any declaration with respect to a clear and finite list of the minimum bundle of assets needed to provide that below rail service.
- 1.3 Pacific National has not provided any material substantiation of why the NCC can be satisfied that the relevant declaration criteria in section 44G(2) of the TPA have been made out.
- 1.4 Pacific National has made it clear that it is primarily seeking access to certain “blue” roads that are not currently used to provide the declared service in Queensland. These include facilities at the Jilalan Yard, the Callemondah yard and a freight siding at Moranbah. Pacific National wishes to obtain access to these facilities to be able to carry out rollingstock maintenance, locomotive commissioning, maintenance and repair of locomotives and rollingstock and staging and storage of trains.
- 1.5 Pacific National was also in negotiations with QR National Coal to obtain access to these facilities for those purposes (and was granted access in good faith on a short term basis) but allowed those arrangements to expire because it had decided to make alternative arrangements for its Queensland operations. QR Networks has provided sufficient access and services to Pacific National under the state access regime to allow Pacific National to establish an effective train service.
- 1.6 Furthermore, the facilities are all of such a size and nature that they are economical to duplicate to provide these services (which are outside the scope of the declared service and should not be considered to form part of a below rail service). Pacific National has already built its own duplicate facilities at Stuart, near Townsville, and is understood to be in the advanced stages of planning a further facility at Nebo.
- 1.7 As part of the declared service can be provided on facilities that are economical to duplicate, the NCC must exclude those facilities from any declaration it recommends: section 44F(4).
- 1.8 In addition, access to these facilities for the stated purposes will not materially increase competition in any of the identified downstream or upstream markets. The facilities are demonstrably economic to duplicate. And providing access to them would be contrary to the public interest. On that basis, the NCC cannot be satisfied that the service should be declared: section 44G(2)(a), (b) and (f).

## 2 Background

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### **Pacific National application for declaration**

- 2.1 On 19 May 2010, Pacific National, a wholly owned subsidiary of Asciano Ltd, applied to the NCC under section 44F of the TPA for declaration under Part IIIA of the TPA of services provided by the Blackwater, Goonyella, Moura and Newlands coal railway facilities owned by QR National in central Queensland.

### **Queensland application for certification**

- 2.2 On 17 June 2010, the Premier of Queensland, the Hon Anna Bligh MP, applied to the NCC under section 44M of the TPA for certification of the Queensland Rail Access Regime as an effective access regime for the purposes of Part IIIA of the TPA.
- 2.3 The Queensland Rail Access Regime described in the certification application is made up of:
- (a) the *Queensland Competition Authority Act 1997* (including the proposed amendments to be made by the *Queensland Competition Authority and Other Legislation Amendment Bill 2010*);
  - (b) the *Queensland Competition Authority Regulation 2007* (including amendments made by the *Queensland Competition Authority Amendment Regulation 2010*);
  - (c) QR Network's current 2008 and proposed 2010 access undertakings as accepted by the Queensland Competition Authority (**QCA**) as amended from time to time;
  - (d) the provisions of the *Transport Infrastructure Act 1994* dealing with the organisational governance arrangements for QR National (including the proposed amendments made by the *Queensland Competition Authority and Other Legislation Amendment Bill 2010*); and
  - (e) the rail safety regime established by the *Transport Infrastructure Act 1994*, which will transition to the regime established under the *Transport (Rail Safety) Act 2010* when proclaimed later this year.

### **NCC consultation process**

- 2.4 The NCC considers that the application for certification and the application for declaration give rise to substantially similar issues for consideration. It therefore proposes to consider the applications together and has called for submissions from interested parties to be made on the applications by 19 July 2010.
- 2.5 After receiving submissions from interested parties, the NCC will make draft determinations in each of the applications and call for further submissions on the draft determinations. The NCC proposes to make draft determinations within approximately 4 weeks of receiving submissions on the applications.

### **QR National's submission**

- 2.6 This submission is QR National's submission on the relevant criteria as they apply to the application for declaration. QR National makes no submission on the application for certification, except to the extent that the submission deals with issues common to both applications.
- 2.7 This submission does not contain any confidential material and the NCC may publish it on its website.

### 3 The statutory criteria

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#### Criteria for declaration application

- 3.1 Section 44G(2) of the TPA requires the NCC to be satisfied of the following criteria before recommending the declaration of a service under Part IIIA:
- (a) access (or increased access) to the service would promote a material increase in competition in at least one market (whether or not in Australia) other than the market for the service;
  - (b) it would be uneconomical for anyone to develop another facility to provide the service;
  - (c) that the facility is of national significance, having regard to:
    - (i) the size of the facility; or
    - (ii) the importance of the facility to constitutional trade or commerce; or
    - (iii) the importance of the facility to the national economy;
  - (d) access to the service can be provided without undue risk to human health or safety;
  - (e) access to the service is not already the subject of an effective access regime; and
  - (f) access (or increased access) to the service would not be contrary to the public interest.
- 3.2 This submission addresses the following matters:
- (a) the deficiencies in Pacific National's application for declaration; and
  - (b) the application of criteria (a), (b) and (f) to the specific facilities highlighted by Pacific National.
- 3.3 QR National understands the State of Queensland will be making a submission to the NCC on the application for declaration. In respect of each of the relevant criteria generally, QR National adopts the position expressed by the State of Queensland in its submission.

### 4 Pacific National's proposed service definition is deficient

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- 4.1 Part IIIA of the TPA provides for the declaration of services provided by means of essential facilities. It is not simply a means of obtaining access to the facilities for any purpose to which the access seeker hopes to put them. It is a **service** that is declared, not a facility.
- 4.2 Section 6A of the *Trade Practices Regulations 1974* provides that an application must include a 'description of the service and of the facility used to provide the service'. The description of the service which is to be provided by means of the facility(s) is of fundamental importance in assessing the application against the criteria in section 44G(2) of the TPA.
- 4.3 Pacific National has applied for a declaration of a "service" with respect to four nominated coal systems in the Central Queensland coal region. These four services are essentially defined as the use of certain narrow gauge railway track and associated infrastructure, including but not limited to a nominated number of infrastructure descriptions, all of which are assets (except for "short-term maintenance services").

- 4.4 Rather than seeking to describe a service and to specify the facility used to provide the service, Pacific National has simply provided a broad, non-exclusive list of facilities that Pacific National would like to be able to use, presumably for any purpose it sees fit.
- 4.5 Pacific National has made a vague and over-reaching application which erroneously applies the nature of the access regime in Part IIIA. By failing properly to specify the service it is seeking access to, it has denied QR National and other interested parties, as well as the NCC, of the ability properly to respond to its application for declaration.
- 4.6 The fact that Pacific National has failed to specify a service to be declared also means that it has distorted the true underlying facility (below rail facilities) by mixing contestable above rail services.
- 4.7 Pacific National has now clarified, in its letter to the NCC of 14 July 2010, that its description of the service is intended only to apply to below rail services. On that basis, the NCC should not consider anything other than the below rail service in assessing Pacific National's application.
- 4.8 It is also not acceptable for Pacific National to seek declaration of a service that is provided by means of a vague and non-exclusive list of facilities. The NCC notes in paragraph 2.29 of its Guide to Declaration of Services under Part IIIA that:

*"In the Sydney Airport decision, the Tribunal considered an application for declaration of the service of making available the freight aprons, hard stands and other areas to enable other persons carrying on other activities to provide their own services. The Tribunal said that 'a facility for the purposes of the Act is a physical asset (or set of assets) essential for service provision' (at 82). The relevant facility is therefore comprised of 'the minimum bundle of assets required to provide the relevant services subject to declaration' (at 192).<sup>1</sup>*

- 4.9 Pacific National has not specified the "minimum bundle of assets" required to provide a below rail service. It has instead described the maximum bundle of assets. The NCC must exclude from its consideration those assets that go beyond the minimum bundle. In its letter of 14 July 2010 to the NCC, Pacific National asserts that the facilities it describes are the minimum bundle of assets necessary to provide the below rail services. However, it is not possible for an open-ended, non-exclusive list of facilities to be described as a "minimum bundle".
- 4.10 In preparing this submission and assessing the minimum bundle of assets essential for providing the relevant service QR National has assumed the appropriate description of the service is a train service between two points within the nominated system (i.e. the loading, transportation and unloading of a commodity) consistent with railway declarations in most state based access regimes and those previously recommended by the NCC to the relevant Minister. That is, QR National assumes that the appropriate definition is for "below rail services" not "above rail services". The QR Networks 2008 Access Undertaking (**Undertaking**) defines these as follows:

*"**Below Rail Services**" means the activities associated with the provision and management of Rail Transport Infrastructure, including the construction/maintenance and renewal of Rail Transport Infrastructure assets, and the network management services required for the safe operation of Train Services on the Rail Transport Infrastructure, including Train Control Services and the implementation of Safeworking Procedures.*

*"**Above Rail Services**" means those activities, other than Below Rail Services, required to provide and operate Train Services, including Rollingstock provision, Rollingstock maintenance, non Train Control related communications, train crewing, terminal provision and services, freight handling and marketing and administration of those services.*

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<sup>1</sup> [http://www.ncc.gov.au/images/uploads/Declaration\\_Guide.pdf](http://www.ncc.gov.au/images/uploads/Declaration_Guide.pdf) p.24

- 4.11 Pacific National has now clarified (in its letter to the NCC of 14 July 2010) that it is only seeking declaration of below rail services. QR National notes, however, that Pacific National refers in its application to facilities for “parking” of rollingstock. If by “parking”, Pacific National means “stowage” (the short term parking of trains during a total system shutdown), then this is already part of the declared service in Queensland. However, if by “parking”, Pacific National means “storage” of trains, then this is not part of a below rail service and something that the access seeker needs to arrange itself for its needs. Facilities for storage of rollingstock are beyond the minimum bundle of assets required to provide a below rail service.
- 4.12 Pacific National has also not provided any substantiation in its application as to why the NCC can be satisfied that the various criteria in section 44G(2) of the TPA are made out. It is not appropriate for Pacific National to make an application for declaration of a service, and then leave it to other interested parties to convince the NCC why it should not be satisfied. In particular, Pacific National has not demonstrated why access to a more broadly defined service or a broader range of facilities will lead to an increase in competition, is not economical to duplicate or is in the public interest.

## **5 Pacific National is seeking access to certain peripheral services and “blue” roads**

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### **Peripheral services**

- 5.1 The operation of a railway service may comprise a number of composite services. As explained above, the QR Networks Undertaking seeks to provide certainty to both the access provider and access seekers by clearly specifying the scope of services covered by the Undertaking. It separately identifies and defines “below rail services” and “above rail services”.
- 5.2 To the extent that Pacific National is seeking a declaration (or the NCC considers it may recommend a declaration) that includes certain composite services, section 44F(4) of the TPA requires the NCC to consider whether it would be economical for anyone to develop another facility that could provide part of the declared service. Therefore, even if the main service relating to below rail services is uneconomic to duplicate, the NCC must separately consider whether it is uneconomic to duplicate facilities that allow for part of the declared service. Therefore, if it is economic to duplicate facilities to provide short-term maintenance, train provisioning or storage of locomotives and wagons, then the NCC must not declare that part of the service, even if it were otherwise satisfied that it should.
- 5.3 Pacific National has expressed the view that certain facilities should be made available under the Queensland access regime precisely for the provision of these distinct, non-core services. We address below why each of these is economic to duplicate for the provision of these distinct services. On that basis, the NCC cannot be satisfied that it should recommend the declaration of a service that includes these distinct, non-core services and additional facilities over which to provide them.

### **The facilities already declared in Queensland are the “minimum bundle” required**

- 5.4 QR National considers that the Central Queensland rail infrastructure identified in the *Queensland Competition Authority Regulation 2007* represents the minimum bundle of assets essential to providing the relevant service. Access to this infrastructure is already available through the Queensland access regime. It is therefore not necessary or desirable to declare access to the service or a broader range of facilities under Part IIIA, and there is already an access regime in place for that minimum bundle of assets.

- 5.5 This approach of declaring the minimum bundle of facilities required to provide the declared service is consistent with the approach taken in other jurisdictions. For example, the Hunter Valley Coal Network includes only the minimal level of facilities described in the ARTC Access Undertaking, as demonstrated by the Hunter Valley Coal Network line diagrams<sup>2</sup>.
- 5.6 Pacific National has not previously sought to expand the description of the services or the facilities over which they are supplied under the relevant mechanisms in the Queensland access regime. Specifically, Pacific National has not:
- (a) requested that any particular rail infrastructure be assessed as rail transport infrastructure (and therefore declared) and transferred to QR Network for the purpose of seeking access to those facilities. This process is outlined in clause 2.2(h) of the 2008AU and includes referral of any dispute to the QCA; and
  - (b) sought a recommendation for Ministerial Declaration under section 77 of the QCA Act where it is of the view that the relevant facility is not rail transport infrastructure.
- 5.7 This is despite the fact that the state-based regime provides a materially lower threshold for declaration in that the criteria in section 76 of the QCA Act does not include a significance test and only requires the access would promote competition, as opposed to materially promote competition as required under criteria (a) in section 44G(2) of the TPA.
- 5.8 Pacific National should not be assumed to have applied for declaration under Part IIIA because it has tried and failed to achieve its desired level of coverage under the Queensland regime.
- 5.9 If the broad range of facilities included in the application for declaration were essential for providing an effective train service, one would expect that Pacific National might have sought to exhaust pathways to access available to it under the state access regime before seeking declaration under Part IIIA, particularly given Pacific National's allegations in its letter to the NCC of 14 July 2010 that it has been refused access and frustrated in its attempts to gain access by QR National.

#### **Specific "blue" roads**

- 5.10 In its submissions to Queensland Treasury on the proposed amendments to the *Queensland Competition Authority Regulation*, Asciano (Pacific National's parent) identified a number of specific "blue roads" as facilities that should be included in the scope of the declared services under the current Queensland access regime to be used in order to be provided a number of distinct, non-core services. While Pacific National's application for declaration to the National Competition Council is vague and broad, in its letter to the NCC of 14 July 2010 clarifying certain matters, Pacific National has now itself specified these same facilities as being those which it is specifically seeking access. The specific facilities are:
- (a) Jilalan Number 4 Road (to allow better management of Jilalan Yard and to complete reliability and safety examinations);
  - (b) Jilalan Road providing access to the commissioning shed leased by Siemens (to allow access to workshops and commissioning facilities);
  - (c) two new Jilalan provisioning roads passing signals 49A/B and 50A/B (to allow access to train staging and sequencing);
  - (d) Moranbah freight siding (to allow access to field repairs); and

<sup>2</sup> [http://www.artc.com.au/library/ARTCS3090007\\_HV.pdf](http://www.artc.com.au/library/ARTCS3090007_HV.pdf)

- (e) Callemondah road to access commissioning shed/EDI shed (to allow access to workshops and commissioning facilities).
- 5.11 In addition, Pacific National and other parties making submissions to Queensland Treasury on the proposed amendments to the *Queensland Competition Authority Regulation* also specified the following additional facilities as being of concern:
- (a) access to Rolling-Stock and Components Services (RACS) in Rockhampton Yard (to allow access to workshops); and
  - (b) Aldoga Bank.
- 5.12 QR National proposes to provide some detail about each of these facilities and address the key criteria in section 44G(2)(a), (b) and (f) in detail in the context of access to these facilities.
- 5.13 While QR National has tried to provide images and photographs of these facilities to assist in understanding their size and operations, QR National would certainly be willing to facilitate a site visit to any or all of these facilities by the NCC to assist it in its consideration of these issues, if the NCC thought this would be useful.

#### **Jilalan Yard**

- 5.14 Jilalan Yard is made up of:
- (a) Up & Down line – these are the new QR Network “bypass roads” which form the main through roads past the Jilalan facility.
  - (b) Provisioning roads (signals 49A/B & 50A/B) – these are the new QR National Coal provisioning roads, and are the primary location where QR National Coal provisions its trains.
  - (c) Wagon maintenance facility – this is a new QR National Coal wagon maintenance facility
  - (d) Jilalan Yard Up & Down and Nos 1 & 2 Roads – these QR Network roads are primarily used for empty and loaded trains not running into Jilalan yard and includes staging and sequencing trains into the port facilities. QR National Coal has provisioning facilities on Nos 1 and 2 Roads.
  - (e) Jilalan Yard Nos 3 to 12 Roads – these roads form the original Jilalan Yard. Roads 3 and 5-8 are allocated to QR Network and Roads 4 and 9-12 are allocated to QR National Coal. None of these roads are full length roads, and therefore cannot be used for staging and sequencing of trains to the port. These roads are used for shunting and repositioning of rollingstock, light maintenance (rollingstock examinations) and wagon stowage. At this stage, QR National Coal is the only user of QR Network’s Roads 3 and 5-8.
  - (f) The remainder of the Jilalan facility is QR National Coal’s rollingstock maintenance facilities, including (amongst other things) a locomotive maintenance shed, a wagon maintenance facility and an additional maintenance facility currently used as a locomotive commissioning shed.
- 5.15 Figure 1 is a line diagram of Jilalan Yard showing these facilities. Note that the line diagrams are schematics and not drawn to scale. They can give a distorted view of the relative size and location of roads and facilities. The lines that are green are those that are referred to as “blue roads”. Figure 2 is a satellite image of Jilalan Yard. Figures 3 to 6 are aerial photographs of the facilities at Jilalan Yard.

Figure 1: Line diagram of Jilalan Yard

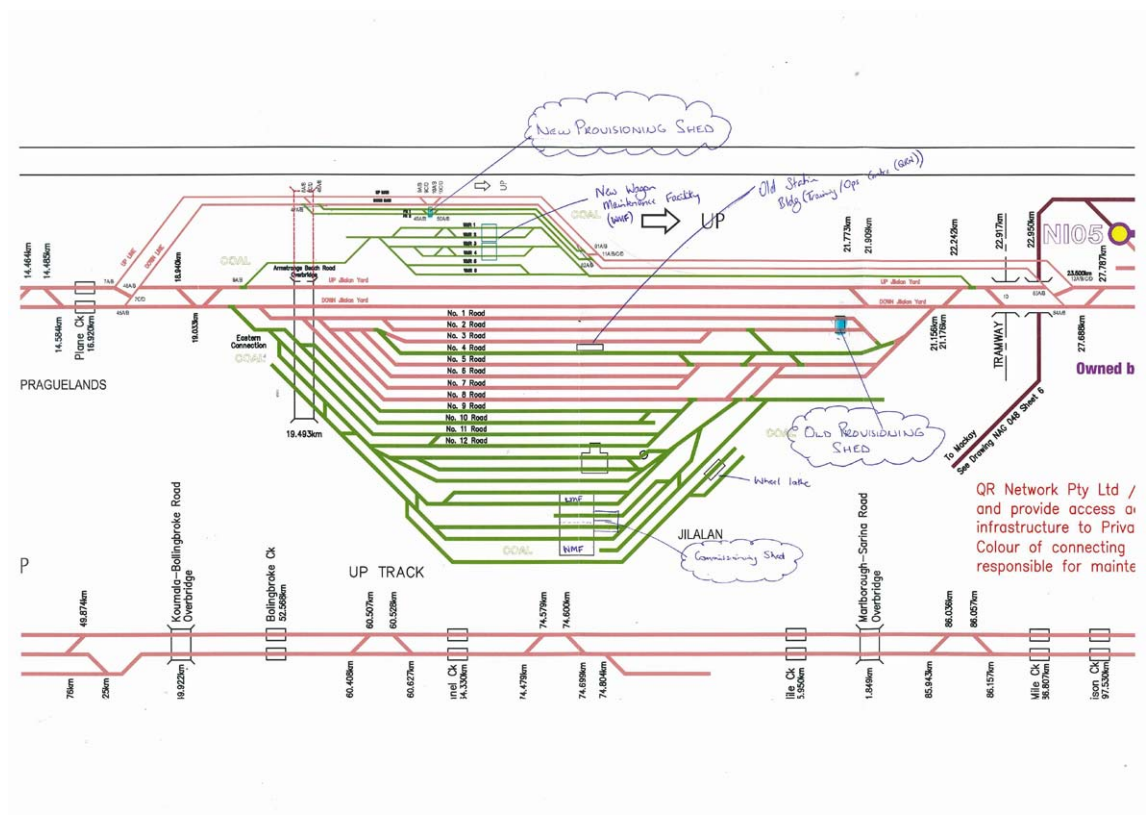


Figure 2: Satellite image of Jilalan Yard



Figure 3: Aerial image of Jilalan Yard

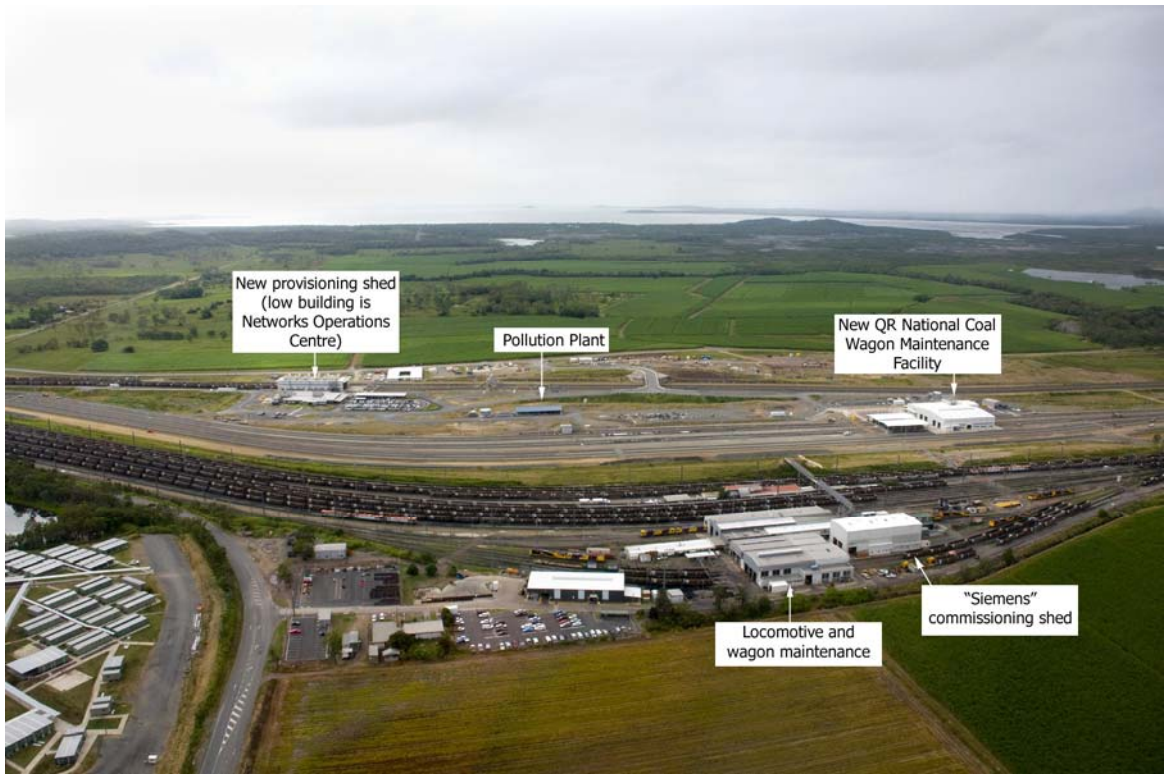


Figure 4: Aerial image of Jilalan Yard



Figure 5: Aerial image of Jilalan Yard

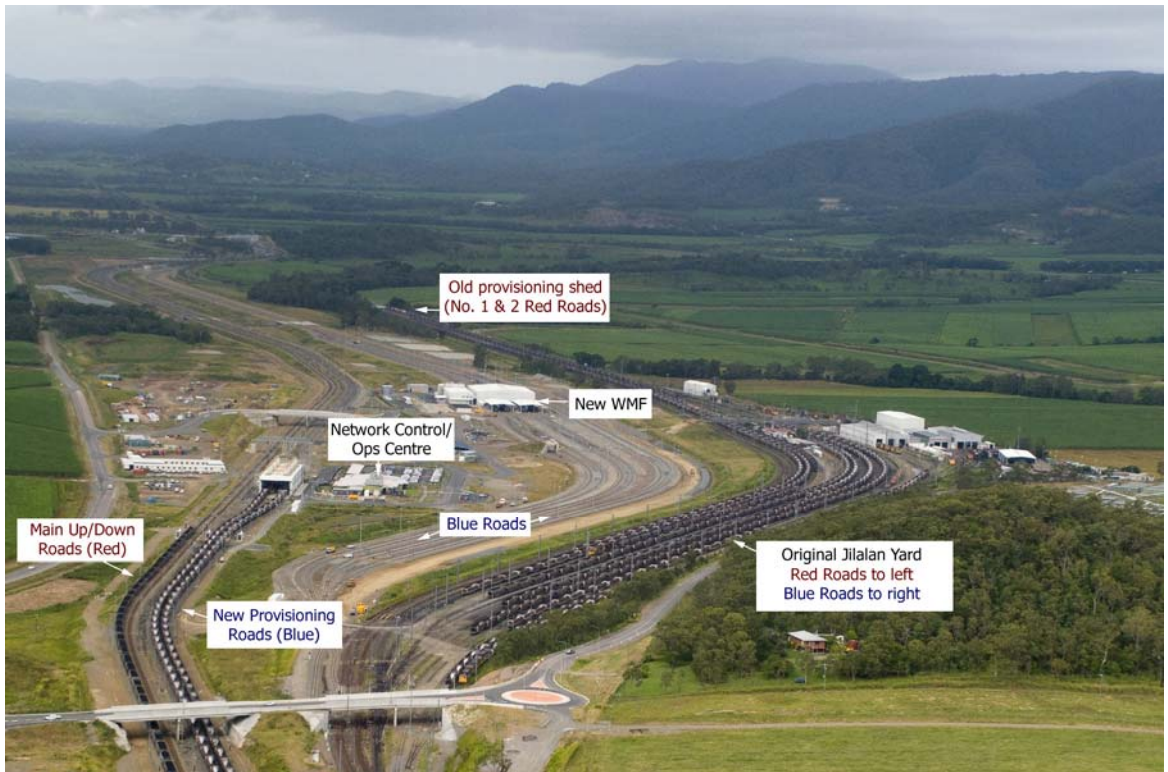


Figure 6: Aerial image of Jilalan Yard



### **Jilalan Number 4 Road**

- 5.16 Jilalan Number 4 road is 900 metres long and located within the old Jilalan yard (see Figures 1 and 2). It is located in the middle of the 7 open access “red” roads in the Jilalan yard. Jilalan Number 4 road is sometimes used to describe both Jilalan Number 4 road and Jilalan Number 3 Straight when used in combination (with a combined length of 2100 metres). That is, while Jilalan Road 4 is not a full length road, a full train can be held in a combination of Road 4 and Road 3 straight, but this will block use of other parts of the yard and in particular, access to QR National Coal’s “blue” roads.
- 5.17 Jilalan Number 4 Road is used by QR National Coal for light maintenance of locomotives (while still attached to the train). It is occupied 24 hours a day. Unhealthy trains (trains with locomotive or wagon faults) are placed in the road for attention or maintenance. Light maintenance activity is completed on locomotives and rollingstock, including rollingstock examinations (which is a 7 hour event, and is required regularly). It is also used for locomotive changes, placement of shunt locomotives and shunting of wagons.
- 5.18 No third party currently has access to Jilalan Number 4 road. It is used exclusively by QR National Coal.
- 5.19 Pacific National has indicated that it wishes to have access to this road to use it for light maintenance activities undertaken on a unit train. It should be noted that maintenance services are not currently part of the defined “transportation by rail” service under QR Network’s Undertaking and have never formed part of the declared service. Nor is QR National aware of maintenance activities being part of a declared rail access service in any other Australian jurisdiction.
- 5.20 There is clear evidence that this facility can be economically duplicated. QR National is aware that Pacific National is in the advanced stages of planning and approval of a new facility at Nebo that is likely to contain roads of sufficient length to meet its maintenance needs. When Pacific National entered the Queensland Rail Freight market, it built a rail yard at Stuart, near Townsville, on land it acquired itself for a smaller rail operation than it currently operates in the Central Queensland Coal Region. The fact that such development was logistically and economically possible clearly demonstrates that the facilities can be duplicated economically.
- 5.21 In its letter to the NCC of 14 July 2010, Pacific National states:
- “It should not be assumed that an asset such as a railway yard is economical to duplicate merely because it is of a much smaller scale than the rail network to which it is attached.... The fact that assets such as railway yards are sometimes duplicated may simply demonstrate a desire by a new entrant rolling stock operator to avoid reliance on the incumbent monopolist, rather than be viewed as a demonstration that it is economical to duplicate those assets for the purpose of section 44F(2) of Part IIIA of the Act.”*
- 5.22 The fact that assets such as railway yards are sometimes duplicated (as Pacific National has already done at Stuart and appears to be preparing to do at Nebo) shows that they are not prohibitively expensive, that land is not expensive or difficult to obtain, and that presumably rational above rail operators see them as appropriate private investments to undertake to support their services. Indeed, Pacific National suggests a new entrant might proceed to build one simply to avoid dealing with the access holder of the main system. Pacific National cannot assert that these facilities are not economical to duplicate, when it has itself already duplicated them.

### **Jilalan Road providing access to Siemens commissioning shed**

- 5.23 QR National Coal owns locomotive and wagon maintenance facilities in the Jilalan Yard. As part of these facilities, QR National Coal owns a locomotive commissioning facility (which is an

- 5.24 It is expected that the commissioning activity will continue for some time. However, once complete, the facility will return to general maintenance activity.
- 5.25 Commissioning activity can be undertaken in any area that has 2-3 locomotive lengths of track and electrical overhead access. A commissioning shed would ordinarily cost between \$5 million to \$10 million.
- 5.26 Commissioning of locomotives involves:
- (a) utilisation of specialised test and monitoring equipment to assess locomotive performance to design and order specification;
  - (b) installation of connecting componentry (eg overhead pantograph for connection to electrical overhead power lines);
  - (c) initial power up checks and system diagnostics;
  - (d) simulation testing to prove system performance and integrity;
  - (e) rollingstock inspections to validate physical integrity; and
  - (f) completion of successful trial journey(s) prior to sign off to enter operational service
- 5.27 There is no requirement that commissioning activities be undertaken locally. Locomotives can be commissioned remotely of the planned area of operation, as long as access to suitable mainline track is available for trial runs. QR National Freight is currently considering commissioning locomotives in Queensland for use in Western Australia, shipping them from Queensland to Western Australia after commissioning for deployment. QR National is aware that Pacific National has access to existing facilities in Brisbane (the port where locomotives arrive) and at Stuart (Townsville). Pacific National could also reasonably negotiate to use EDI facilities in Maryborough for commissioning purposes. Given the relatively low cost of developing its own commissioning shed, Pacific National could also:
- (a) locate a suitable siding on the Central Queensland rail network and build commissioning facilities (eg disused track at Yukan near Mackay);
  - (b) incorporate commissioning facilities into its planned Nebo rail yard; or
  - (c) invest in the maintenance facilities already in use by Pacific National Coal at Bulk Road in Auckland Point yard, Gladstone. (Attachment 1 to this submission is a set of pictures of this activity occurring at Gladstone.)
- 5.28 The commissioning shed is currently used exclusively by QR National Coal. Pacific National was permitted to access the facility (and Siemens' licence to use the shed was amended to allow it to commission Pacific National locomotives there) for a period of 18 months from January 2009 until 30 June 2010.

- 5.29 Pacific National has alleged in its letter to the NCC of 14 July 2010 that QR National has refused it access to this facility. This is not the case.
- 5.30 In late 2008, Pacific National and QR National Coal explored opportunities to enter into a reciprocal infrastructure sharing arrangement. The arrangement would have allowed QR National Coal to provide services to Pacific National in Queensland while Pacific National would have provided services to QR National Coal in NSW. Following due diligence on the proposal, QR National Coal elected not to pursue this two-way arrangement.
- 5.31 In place of the reciprocal arrangement, QR National Coal commenced negotiations with Pacific National to reach a long term one-way agreement to provide services to Pacific National in Queensland. Delivery of the services, in particular access to commissioning sheds in Jilalan and Callemondah, commenced in January 2009 under the terms of a short term agreement where access was provided to Pacific National in good faith in the absence of agreed terms (including price) in the expectation that a long term agreement would be reached.
- 5.32 The short term arrangement was extended several times. Negotiations between Pacific National and QR National Coal confirmed by December 2009 that Pacific National intended to make independent arrangements to support its Queensland operations. QR National Coal confirmed a willingness to provide short term support and recommence negotiations for long term support if ever required. However, Pacific National did not wish to take the services and they expired on 30 June 2010.
- 5.33 On that basis, QR National is unable to understand how Pacific National has been refused access or now insists that it requires access when it had previously indicated a preference and an intention to make independent arrangements for its Queensland operations.

#### **Two new provisioning roads passing signals 49A/B and 50A/B**

- 5.34 Two new provisioning roads were built as part of the recent expansion of the Jilalan Yard. They can be seen in the diagram at Figure 1 and the aerial photo in Figure 5. These roads are “blue” roads and have QR National Coal provisioning facilities built over the tracks roughly at the mid-point between their connection points to the main UP/DOWN bypass roads. The roads are long enough to hold two full length trains (2100 m each).
- 5.35 Pacific National has sought access to these roads for staging and sequencing.
- 5.36 Access is not required to these roads to undertake staging and sequencing at the Jilalan Yard. QR Network, as the network operator and owner is responsible for ensuring sufficient capacity for staging and sequencing for the efficient operation of the network.
- 5.37 The staging and sequencing of trains for planned capacity of 129 million tonnes per annum is only necessary on “red” roads at both Coppabella and the bypass roads at Jilalan. This is based on capacity modelling (which was subject to an extensive review process between QR Network, the Queensland Competition Authority and the Queensland Resources Council in 2005-06<sup>3</sup>) which indicated the following investments were required to support 129 mtpa export through the Goonyella system<sup>4</sup>:
- (a) Coppabella Yard Upgrade - to provide a staging area for loaded trains towards the ports of Dalrymple Bay and Hay Point, as well as staging empty trains to the mines; and

<sup>3</sup> This review process also involved independent expert review by Halcrow.

<sup>4</sup> QR Network Access (2006), *Coal Rail Infrastructure Master Plan 2006*, p.7

<http://www.qrnetwork.com.au/Infrastructure-services/coal-infrastructure-master-plan.aspx>

- (b) Jilalan Upgrade (bypass roads) - to allow loaded coal trains to bypass the congested area around Jilalan Yard and to allow loaded coal trains to be staged and sequenced into the pits to maximise pit utilisation.
- 5.38 In relation to forecast increases in the Goonyella system capacity to 140 million tonnes per annum QR Network has identified that an additional holding road may need to be constructed at either Jilalan or Coppabella. Access to the Jilalan provisioning roads would not avoid the requirement to build the additional holding road. Beyond 140 mtpa there will almost certainly be a requirement to build at least one additional road required between Yukan and the port of Hay Point and may also require the addition of two roads.<sup>5</sup>
- 5.39 QR National Coal developed these provisioning roads for the purpose of being able to provision its trains efficiently in both loaded and empty directions. They have enough linear capacity to allow a provisioned train to clear the provisioning facility so that a following train can commence its provisioning activity without delay. QR National Coal currently fully utilises these provisioning roads on a 24hr/7 day a week basis.
- 5.40 No third parties currently have access to these roads. Allowing third party access would significantly decrease efficiency and utilisation of these roads due to co-ordination losses associated with multiple operators on the roads. Ultimately, this lost capacity compared with current operations will need to be shifted to other roads in the Jilalan yard with the impact of reducing total coal system supply chain capacity from its current levels.
- 5.41 The roads' purpose is for provisioning. The roads are not, as Pacific National asserts in its letter to the NCC of 14 July 2010, used primarily "to manage the staging of empty traffic to ensure that traffic moves to the port facilities at Dalrymple Bay and Hay Point in an efficient manner". As provisioning is a maintenance activity, the roads have been expressly excluded from the rail access regime and these roads are not available under QR Network's Undertaking.
- 5.42 Where limited staging or resequencing of trains does occur on these roads it is for the purpose of optimising QR National Coal's fleet allocations to realign to forward service plans and crew rostering requirements. The QR Network management principles included in the 2009 Draft Access Undertaking included an additional Rule 7 to allow QR Network to prioritise an Access Holder's train services at the request of the operator provided this does not impact another operator's services. Pacific National's response to the discussion paper and its submission to the QCA supported these amendments. Providing access to an additional operator on these roads would materially reduce the flexibility to QR National Coal of managing its rollingstock effectively and efficiently.
- 5.43 These two new provisioning roads are valued at approximately \$80 million. Given the total value of Pacific National's rollingstock investment to date likely exceeds \$700 million and an operating yard similar to what is being considered by Pacific National at Nebo likely costs \$100-150 million, this cost is not uneconomical for a third party to invest to support its own activities and further coal system growth. Land would be able to be procured along the corridor at suitable, if not, optimal locations.

#### **Moranbah freight siding**

- 5.44 The Moranbah Freight siding is approximately 800m long and originally served as a general freight depot. The siding is not currently used as a freight depot but QR National Coal has proposed using it from time to time for rollingstock storage.
- 5.45 Pacific National has submitted to Queensland Treasury that access should be provided to the Moranbah freight siding under the QCA Act access regime to allow it to undertake field repairs. It

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<sup>5</sup> Draft 2010 Coal Rail Infrastructure Master Plan

has also asserted, in its letter to the NCC of 14 July 2010, that it uses this asset to complete unscheduled, in-field maintenance and repairs, and is otherwise unused (while also asserting that QR National has refused Pacific National access to the siding). In fact, the siding is unused by anyone. The activities mentioned by Pacific National are undertaken on “red” roads at Moranbah.

- 5.46 Freight depots are excluded from the scope of the declared “transportation by rail” service. As highlighted above, maintenance services are also excluded from the declared service. Undertaking field repairs constitutes maintenance services.
- 5.47 The siding is too short to hold a full train and so cannot contribute additional network capacity. It can be used to hold wagons or part of a train. A number of alternate underutilised private sidings exist within the Central Queensland coal region where the Pacific National or other access seekers could negotiate access. Pacific National provides no details of what efforts have been made to negotiate access with these parties.
- 5.48 The current condition of the siding is poor and has been assessed as needing remediation works to return it to the minimum standard necessary to hold rollingstock either short or long term.
- 5.49 The Moranbah Freight siding is economic to duplicate. Based on the land acquisition costs for the Jilalan project (average land value of \$71,000 per hectare) and current estimates for construction of two passing loops in the Goonyella system (\$15.9 million and \$16.1 million) the cost of constructing a facility of sufficient length to hold a full size Goonyella train is not uneconomic for an operator who expects to obtain 30% market share.
- 5.50 As indicated in paragraph 5.44 QR National Coal proposes to utilise its own facility to store rollingstock. In providing access to Pacific National, QR National Coal would be required to identify suitable alternate locations or construct a new facility to provide the capacity to store wagons. Clearly, the construction of a siding for either wagon storage or undertaking field repairs is economic to duplicate.
- 5.51 By way of comparison, QR National Coal has successfully arranged commercial access to disused sidings in NSW to undertake maintenance activities. It is open to Pacific National and other third parties to negotiate commercial access to sidings on the Central Queensland system to undertake the activities Pacific National contemplates here.

#### **Callemondah Yard – road to commissioning shed**

- 5.52 As part of its locomotive facility at Callemondah, QR National Coal owns a maintenance facility occasionally used for commissioning locomotives (sometimes referred to as the “EDI Commissioning Shed”). A diagram and satellite image of the Callemondah Yard are at Figures 7 and 8. These show the location of the maintenance/commissioning shed.

Figure 7: Line diagram of Callemondah Yard

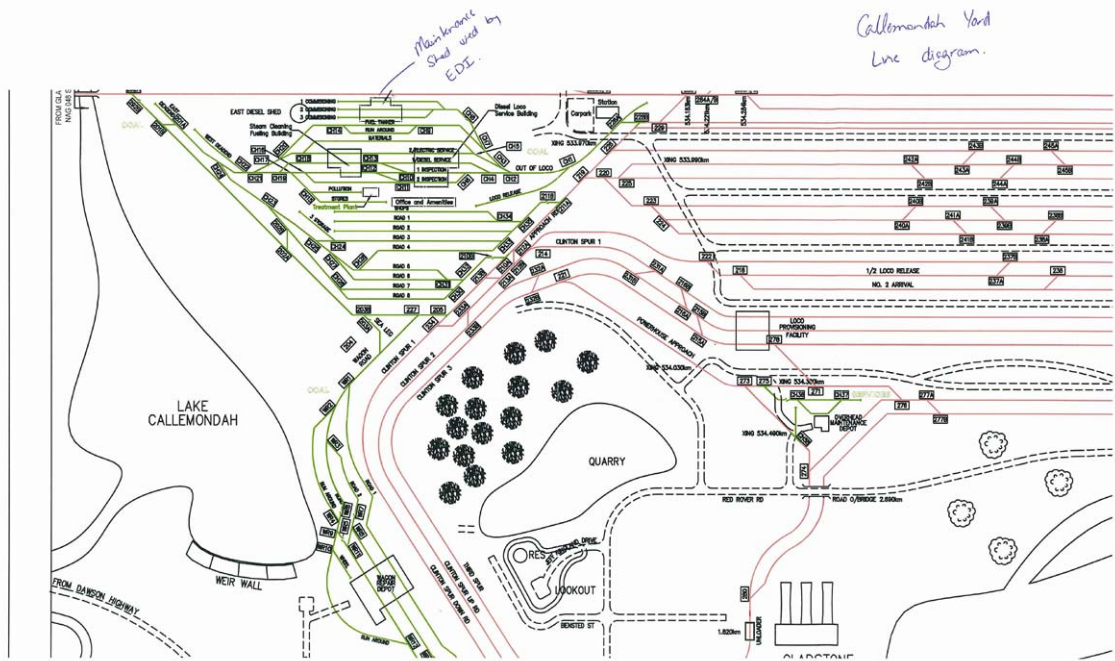
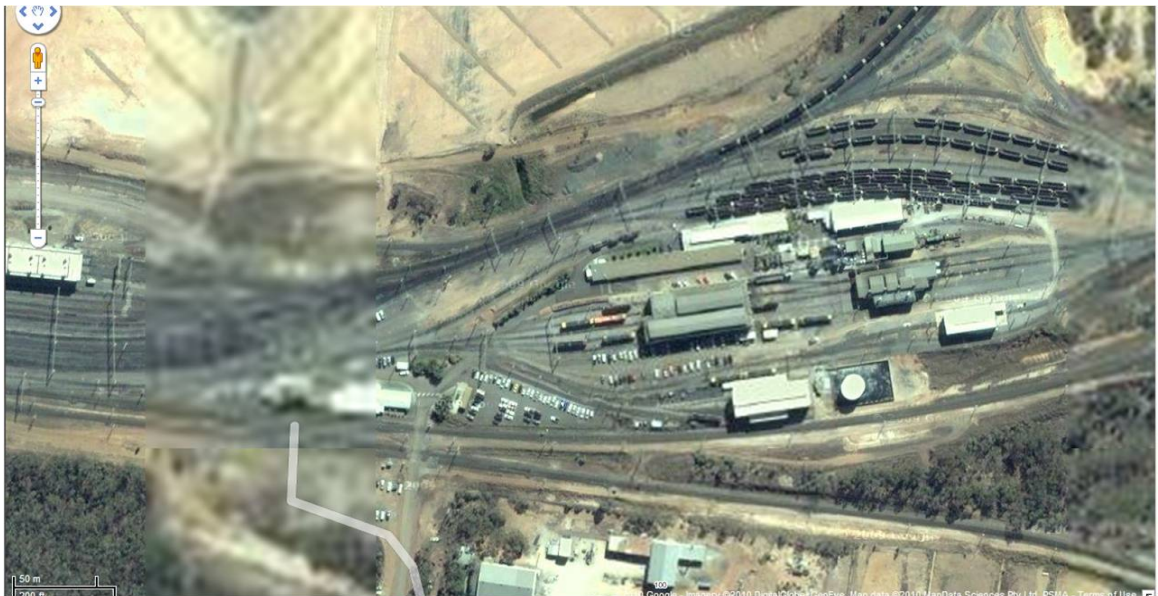


Figure 8: Satellite image of Callemondah Yard



5.53 There is one main “blue” road that connects the shed to the “red” roads of the main Callemondah Yard. The shed can accommodate three locomotives within its workshop area and a further two locomotives adjacent to the workshop.

- 5.54 EDI operates in this shed to provide services to QR National Coal. EDI does not have any lease or licence over the facility. It is simply permitted to use the facility to deliver its contracted services to QR National Coal.
- 5.55 Pacific National has used this facility for commissioning for a period of time under the short term arrangements mentioned above, however these arrangements expired on 30 June 2010 after Pacific National indicated its decision to undertake its commissioning activities elsewhere rather than continue to negotiate for access to these facilities. QR National finds it difficult, then, to understand how Pacific National has been frustrated by QR National in its access to these facilities, as it asserts in its letter to the NCC of 14 July 2010.
- 5.56 QR National Coal currently uses the shed to complete rectification (maintenance) works on its 4000/4100 series locomotives. Once this program of work is finished, the facility will return to being a general maintenance facility where a variety of rollingstock maintenance activities will be conducted.
- 5.57 Pacific National has sought access to the road leading to this shed to allow access to the workshops and commissioning facilities in the shed. Pacific National has had commercial access to this road and the shed in the past, and could continue to do so if it is prepared to reach agreement on commercial terms for access to the shed. In recent discussions and correspondence, Pacific National has confirmed to QR National Coal that it no longer wants to enter into such an agreement.
- 5.58 As explained earlier in relation to the commissioning facilities at the Jilalan Yard, commissioning can be undertaken remotely (e.g. at the port in Brisbane or at Pacific National's own facility in Stuart, near Townsville). Access to this particular facility is not essential for Pacific National to be able to operate a coal hauling service in Central Queensland.
- 5.59 Furthermore, the services provided in the shed are maintenance activities and outside the scope of the declared service in this and every other rail access regime. It would not be appropriate to declare access to a road whose sole use is to access maintenance services.

#### **RACS in Rockhampton Yard**

- 5.60 The Rollingstock and Component Services (RACS) workshops in Rockhampton undertake major maintenance, manufacture and overhaul of locomotives and wagons including the following services:
- (a) Electric Locomotive and Diesel Locomotive overhaul, repair and modification. This includes component changeout, maintenance, replacement of high and low tension wiring, bogie wheel alignment, weight distribution, upgrading cabs with improved driver control
  - (b) Coal and Freight Wagon modification, servicing and heavy repair; including collision and derailment repairs
  - (c) Paint and Grit Workshop has the capability for grit blasting and painting of: major sub-assemblies, components, parts, rotatable components and complete wagons, locomotives, track machines
  - (d) Track Maintenance Equipment
  - (e) Light and Heavy Fabrication and repair of Rollingstock components.
- 5.61 QR National owns these workshops at Rockhampton.

- 5.62 Pacific National submitted to Queensland Treasury that access to a “blue” road in Rockhampton should be made available under the rail access regime to allow access to the RACS in Rockhampton. As RACS are maintenance services, they are not part of the declared service in the Queensland rail access regime (or any other rail access regime) and so it is not appropriate to declare access to a road that has the sole use of providing access to services that are commercial services outside the scope of the declared service.
- 5.63 Pacific National has developed its own maintenance facility at Stuart in Townsville to service its freight business requirements. This facility was developed at an estimated cost of \$20 to \$30 million and supports a low margin intermodal service market segment subject to intensive competition and the cost pressure of road haul substitutes<sup>6</sup>. It is clear, then, that these facilities are economical to duplicate as actual duplication has already occurred.
- 5.64 Pacific National could also secure commercial access to maintenance facilities belonging to others (such as Downer EDI in Maryborough). This is what has happened in NSW, where both Pacific National and QR National Coal have entered into agreements with Varley and United Group Goninan for the provision of maintenance services.
- 5.65 These contestable services are undertaken in a highly competitive environment with a number of potential suppliers. Declaring these services and facilities would not promote competition within these markets.

#### **Aldoga Bank**

- 5.66 For completeness, QR National notes that in responses to Queensland Treasury’s recent review of the current declaration as part of the consultation on the proposed amendments to the *Queensland Competition Authority Regulations* Xstrata argued that access should be made available to land at Aldoga Bank to support the proposed Aldoga Yard facility required for the WICET development.
- 5.67 QR National Coal does not own any land at Aldoga Bank nor is there any rail yard in existence at Aldoga Bank, so there are no current “blue” roads to which access is excluded. Xstrata and other third parties are in the same position as QR National Coal, in that they would need to negotiate arrangements with third party landholders to secure land at Aldoga for these purposes.

#### **Access to these peripheral services at these “blue” roads will not lead to a material increase in competition**

- 5.68 Part IIIA of the TPA requires that access (or increased access) to the service would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the service: section 44G(2)(a).
- 5.69 In its application, Pacific National has identified a number of upstream and downstream markets that it believes would experience a material increase in competition as a result of the declaration it is seeking. These markets are identified as:
- (a) the rail haulage market;

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<sup>6</sup> Extract from Toll media release:

Eighteen months of planning, plus 12 months in construction, has seen the creation of this world class facility development, at a cost of approximately \$20m. Construction will shortly commence on a new distribution warehouse for QRX, train maintenance facilities and additional improvements will take the investment over \$30m.

<http://www.toll.com.au/media/2005/12052005.pdf>

- (b) the market for coal mines and coal tenements in central Queensland; and
  - (c) the market for globally traded coking coal.
- 5.70 Pacific National has already entered the market for rail haulage in Queensland without the benefit of declaration under Part IIIA. It has achieved close to 20% market share in its first year of operation in Queensland. To argue that there will be a material increase in competition in this or any of the other alleged markets, it may be presumed that it is suggesting that it is those elements it is seeking to have declared beyond what is currently the subject of declared access in the Queensland access regime that will deliver these competition benefits.
- 5.71 As will be clear from the detail set out below, accessing the additional services and facilities represented by the “blue” roads which are currently outside the scope of the declared services and facilities in Queensland is not essential to providing an effective rail haulage service for coal and may, in fact, lead to inefficiencies in the operation of the current “red roads”.
- 5.72 These services can all be provided at other facilities, both existing and potential. It is not essential that Pacific National be provided with these services at the same location as QR National Coal. These services can feasibly be provided at other points in the system.
- 5.73 This is also clear from QR National Coal’s experience in New South Wales.
- 5.74 In NSW, “red” roads are owned by the Australian Rail Track Corporation (**ARTC**) and “blue” roads are controlled by Pacific National. There are also “yellow” roads, which are private sidings and balloon loops.
- 5.75 At no time since QR National Coal commenced operations in NSW in 2005 has it been given access to any Pacific National “blue” roads.
- 5.76 QR National Coal began operations using only ARTC “red” roads. It then negotiated commercially to obtain operational rights on privately owned balloon loops at mines and sidings (“yellow” roads). These rights were then extended to include provisioning and light maintenance activities. Leases were then negotiated with ARTC for disused sidings at Cripple Road (for wagon storage and light maintenance and inspections) and Incitec Pivot at Kooragang Island.
- 5.77 This strategy has allowed QR National Coal to grow to 30% market share without having any access to Pacific National “blue” roads in the Hunter Valley. QR National Coal has now grown to the point where it can consider investing in its own facilities.
- 5.78 QR National Coal expects its current arrangements will likely support its business for only a further 5 to 6 years due to overall industry growth and QR National Coal’s plans to maintain or increase its share of that growth. QR National Coal is currently evaluating investing in its own yard in the Hexham region. The commitment date for this project is still expected to be 12-18 months away.
- 5.79 It is clear, then, that access to maintenance, commissioning, provisioning and storage services on “blue” roads was not essential for QR National Coal to enter and build market share in the market for rail haulage services in New South Wales; nor has it proved any impediment to Pacific National entering and securing substantial market share in Queensland.
- 5.80 It also follows that if access to these services and “blue roads” is not needed for competition in rail haulage (and will not result in a material increase in competition in rail haulage) then there can be no expected material increase which will flow through to the coal tenements markets or the globally traded metallurgical coal markets.

### **The services and facilities provided on the “blue roads” are economical to duplicate**

- 5.81 Part IIIA of the TPA requires the NCC to be satisfied that it is uneconomical for anyone to develop another facility to provide the service: section 44G(2)(b). As highlighted above at paragraph 5.2, the NCC must also consider whether it would be economical to duplicate a facility to provide **part** of the service, and if so it must not declare that part of the service: section 44F(4).
- 5.82 For each of the “blue roads” identified by Pacific National, it is clear that the services being sought can be provided at other facilities. It is not essential that they provided at these particular locations.
- 5.83 It is also clear that the facilities required to be duplicated in order to provide rollingstock maintenance services, commissioning of locomotives, provisioning of trains and storage of locomotives and wagons requires a relatively small footprint and in the scheme of the capital investment by access seekers in the Central Queensland rail haulage market, would not represent a disproportionate investment for those access seekers. This is particularly the case given the current full utilisation of these facilities by QR National Coal (or in the case of Moranbah, the expenditure required to remediate the facility).
- 5.84 Furthermore, it is not essential for these services to be provided at facilities at the relevant port. They can be and are provided remotely. An access seeker wishing to duplicate QR National Coal’s facilities could construct its own facilities elsewhere in the Central Queensland rail system.
- 5.85 Pacific National will have to discontinue its current practice of provisioning trains at the port of Newcastle to support Hunter Valley Coal Chain optimisation activity. It is planning to build a full yard at Greta, some 50kms from Newcastle, as its main yard and for its own exclusive use. An article on the development in the *Newcastle Herald* (2 July 2010) states that “the Greta facility will allow the provisioning of trains and will provide for stowage and track-side maintenance of [Pacific National’s] rail fleet”<sup>7</sup>. This decision by Pacific National demonstrates that it is not necessary to have maintenance and provisioning facilities in close proximity to the unloading point/port. This activity by Pacific National in NSW runs counter to its assertion in its letter of 14 July 2010 to the NCC that locating these facilities in close proximity to the ports in Queensland is “crucial” to it being able to provide a rail haulage service.
- 5.86 Nor would it be expected that an access seeker would have any difficulty finding an appropriate parcel of land adjoining the rail system. Indeed Pacific National was able to do precisely that when it constructed its rail yard at Stuart, near Townsville, on land it acquired. It also appears to be preparing to construct a new facility at Nebo.

### **Declaring access to the services and facilities provided on the “blue roads” is not in the public interest**

- 5.87 Part IIIA provides that the NCC must not recommend a service for declaration unless it is satisfied that access (or increased access) to the service would not be contrary to the public interest: section 44G(2)(f).
- 5.88 Providing access to the “blue” roads sought by Pacific National (detailed above) would be contrary to the public interest. Requiring access to “blue” roads to provide services such as rollingstock maintenance, provisioning of trains, commissioning of locomotives and storage of locomotives and wagons will only mean that QR National Coal will need to use “red” roads to undertake those activities for itself, since it is currently at or near full capacity on its “blue” roads used for these purposes. This would then lead to operational inefficiencies and congestion on the declared facilities, with a consequent reduction in export volumes.

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<sup>7</sup> ‘Greta Project Boosts Jobs’, *Newcastle Herald* (2 July 2010)

- 5.89 QR National Coal developed the new provisioning roads for the purpose of reducing congestion in the old Jilalan yard and to release capacity to support throughput in the Goonyella supply chain. Where access is provided to a third party on these and other “blue” roads this will only further increase congestion and lead to coordination failures and conflicts in the scheduling of trains for above rail activities.
- 5.90 The rail network yards that support the three major port precincts are Callemondah, Jilalan and Pring. These are the focus of intense activity for throughput and above rail activities.
- 5.91 The Goonyella coal chain is experiencing congestion issues between Jilalan and the Port of Hay Point where QR National Coal trains queuing on the section between the port and Jilalan are waiting for a road to become free in old Jilalan. Providing capacity to a third party operator on the new Jilalan Roads may result in QR National Coal having to provision on roads 1 and 2 in Jilalan Yard. This would only further serve to restrict the throughput capacity of the Goonyella supply chain. Similar throughput issues are being experienced with congestion in NSW when throughput roads are also used for provisioning activities as evident by the following extract from the Hunter Valley Corridor Capacity Strategy<sup>8</sup>:
- The locomotive provisioning process requires trains to be stabled while the locomotives are detached, moved to No 3 road, provisioned, and then returned to their train. One solution to this would be to provide provisioning facilities on additional, and potentially all, departure roads. However, this would still result in trains occupying departure roads for an extended time, which will continue to cause unacceptable congestion. Also, the NCIG terminal will have no provisioning facilities, meaning that locomotives would need to shuttle between NCIG and Kooragang for provisioning if the facility remains at Kooragang, further increasing congestion.*
- 5.92 Any increase in congestion within the Jilalan precinct and consequential reductions in operational efficiency of the Goonyella supply chain may result in reductions in supply chain throughput and an increase in vessel queuing time as the supply chain capacity is reduced to less than contracted tonnages. The ACCC has considered the issue of increases in vessel queue times in its consideration and approval of the Dalrymple Bay Coal Terminal Queue Management System (QMS). The applicant for the request for authorisation of the QMS estimated demurrage costs in the order of \$17,000 per vessel (or 509 cents per tonne).<sup>9</sup> Accordingly any avoided private costs by the applicant will result in cost transfers and deadweight losses to other supply chain participants.
- 5.93 The Australian Competition Tribunal's summary of the reasons for its decision on the review of Pilbara Iron Ore Railway declarations also notes that ‘where there was high demand for a line, there would be severe logistical and commercial constraints imposed on third parties to ensure there was no interference with the owners’ highly flexible business models. Access would also delay the owners’ future expansion plans or changes in operating practices or technology’.<sup>10</sup> While the Tribunal's reasoning on this issue is not known in detail and relates to the service of point to point operations, the principles which underpin the determination are applicable to part of the service (i.e. Cost exceeds the benefits, but at a significantly smaller scale).
- 5.94 The new Jilalan facility has been developed to support the current and future capacity forecasts for QR National Coal. Where these above rail facilities are declared this will materially impact on

<sup>8</sup> Australian Rail Track Corporation (2009) Hunter Valley Corridor Capacity Strategy, [http://www.artc.com.au/library/news\\_2009-07-07.pdf](http://www.artc.com.au/library/news_2009-07-07.pdf) p.31

<sup>9</sup> Australian Competition and Consumer Commission (2008) Determination - Application for revocation of authorisations A30239-A3024 1 and substitution by A91060-A91062, p. 30-31 <http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D08+17306.pdf&trimFileTitle=D08+17306.pdf&trimFileFromVersionId=825594>

<sup>10</sup> Insert reference to ACT decision on Pilbara

an operator's incentive to invest and lead to inefficient reductions in scale to ensure sufficient capacity exists only to meet the immediate needs of the business. This will have further impacts on investment in new yard facilities to support tonnage growth in the Blackwater and Newlands systems which will need to be undertaken in support of new port developments and expansions to existing ports.

- 5.95 The development of new yards with limited capacity to manage surge or constrain flexibility will increase the probability that congestion in and around those facilities will reduce the reliability of the relevant coal system and require additional investment in rail infrastructure and rollingstock to achieve the planned throughput.
- 5.96 These outcomes represent inefficient investment and utilisation of rail infrastructure which is in direct conflict with the objective of the third party access regime in clause 6(5)(a) of the Competition Principles Agreement<sup>11</sup>.
- 5.97 All of these negative impacts mean that the NCC cannot be satisfied that the declaration sought by Pacific National would not be contrary to the public interest.

## **6 Conclusion**

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- 6.1 The NCC should only consider Pacific National's application for declaration as being for a below rail service, and only with respect to the minimum bundle of services necessary to provide that service.
- 6.2 Pacific National has not provided any substantial evidence to support its application, and so the NCC cannot be satisfied that the criteria in section 44G(2) have been made out. It must not, therefore, recommend declaration of the service.
- 6.3 With respect to the particular "blue" roads Pacific National has specified as being appropriate to be included in the declaration of the service, these are all of a size and nature that they can be economically duplicated. On that basis, they must be excluded from any recommendation of declaration the NCC might be otherwise minded to make: section 44F(4).
- 6.4 Furthermore, QR National has demonstrated that there would be no material increase in competition by making this incremental addition to the scope of the declared service (beyond what is already available under the existing regime in Queensland), that these facilities are all able to be duplicated economically, and that providing access to them would be contrary to the public interests. The NCC cannot be satisfied, then, that the criteria in section 44G(2)(a), (b) and (f) have been made out and must reject the application for declaration.

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<sup>11</sup> As revised 13 April 2007

# Attachment 1 Pacific National maintenance activity at Auckland Point

