

Briefing Note for Economics and Governance Committee

Inquiry into the Queensland Competition Authority Amendment Bill 2018

Queensland Treasury

Briefing on submission received from Queensland Resources Council (QRC)

Issues

- Treasury considers that the competition and economic concerns expressed by the QRC will be considered as part of the Queensland Competition Authority's (QCA's) open, transparent and structured review of the declarations.
- Since 2010, regulated entities, users and other stakeholders have been aware the declarations would expire in September 2020 and be subject to a declaration review process.
- The legislation requires the QCA to give its declaration recommendations to the Minister for the QCA between September 2019 and March 2020. While the commencement of the review is a matter for the QCA, given the scope of the work required, it is expected the QCA will commence the review as soon as possible, once there is certainty about the amendments to the access criteria.
- The declaration review will involve an assessment of the services against the access criteria. The criteria are designed to ensure that access regulation is applied appropriately. The amendments to the access criteria have been developed following extensive review in this area, including by the Australian Productivity Commission.
- The review will involve public consultation and the competition and economic concerns raised by the QRC will be examined in the review, along with concerns raised by other stakeholders.
- Reviews of this kind are an important element of the Queensland Government's commitment to regulatory best practice by ensuring that the impacts of regulatory intervention, such as the declaration, are transparently assessed.
- An amendment to the QCA Act to extend the declaration as proposed by the QRC would require a regulatory impact statement (RIS) process under the Regulatory Impact Assessment system. This RIS process would involve a similar amount of time, expense and assessment as will be required to conduct the QCA's review of the declaration. For this reason, Treasury considers there is no practical benefit to extending the declaration by legislative mechanism.
- A legislative extension of the declaration may not provide the regulatory certainty the proponents seek given there is a declaration revocation process set out under the QCA Act which allows access providers to seek revocation of a declaration at any time.

Background

- The following services are declared under Queensland's access regime (section 250 of the QCA Act):
 - Aurizon Network's (AN) Central Queensland Coal Network (CQCN);
 - Dalrymple Bay Coal Terminal (DBCT); and
 - Queensland Rail's intrastate rail network.
- These declarations are due to expire in September 2020 (section 248 of the QCA Act).
- Six to 12 months prior to the expiry, the QCA is required to review and then recommend to the Minister responsible for the QCA whether each service should be declared for a further period (section 87A of the QCA Act). The Minister will then decide whether to declare each service (section 84 of the QCA Act). Both the QCA's recommendation and the Minister's declaration decision are based on a strict application of the access criteria (see sections 86 and 87C of the QCA Act).
- The QRC has requested the Bill be expanded to include a provision to legislatively extend the declaration of the CQCN. In short, the QRC considers:
 - the CQCN remains monopoly infrastructure and that there will be significant negative consequences if it is no longer regulated; and
 - the declaration review process will be distracting and costly, and create regulatory uncertainty that will stall investment in the mining industry, including key freight and coal supply chains, pending conclusion of the review.

Briefing Note for Economics and Governance Committee

Inquiry into the Queensland Competition Authority Amendment Bill 2018

Queensland Treasury

Briefing on submission received from Aurizon Network (AN)

Issues

- There are diverging views amongst stakeholders on how the legislation requires the Queensland Competition Authority (QCA) to apply the pricing principles in its decision on whether to approve a draft access undertaking.
- AN's submission considers that the pricing principles are something the QCA is required to satisfy as part of its decision on whether it is appropriate to approve a draft access undertaking. In support of its view, it has referred to language used in the explanatory notes from 2008 for the insertion of the pricing principles into the QCA Act as something that provides the QCA with "overriding guidance".
- The pricing principles are included as part of the list of matters to which the QCA must have regard when making an access determination and deciding whether to approve a draft access undertaking (sections 120 and 138 of the QCA Act). Treasury understands the QCA considers the pricing principles to be an important consideration, however, this does not mean that they have an elevated status or primacy over the other factors the legislation requires it to have regard to, such as the legitimate business interests of the access provider, the interests of users of the service and the broader public interest.
- Given the diverging stakeholder views, Treasury considers that in an already complicated regulatory process, the Bill, by removing references to the pricing principles in sections 100, 138A and 168C of the QCA Act, makes an important clarification for stakeholders in the application of the pricing principles.
- As described in the explanatory notes accompanying the Bill, the pricing principles are an important consideration in that the QCA must have regard to these principles when deciding whether to approve a draft access undertaking or make an access determination (along with the other matters to which regard must be had). The weight to be given to the pricing principles is a matter for the QCA to determine as part of these decisions. The QCA is not required to satisfy each pricing principle in deciding whether to approve a draft access undertaking or make an access determination.
- This is also consistent with how the corresponding pricing principles are applied by the Australian Competition and Consumer Commission in the Commonwealth Government's National Access Regime.
- The Bill includes a specific transitional provision that ensures that the pre-amended Act will continue to apply any draft access undertaking or draft amending access undertakings currently on foot. This includes the QCA's assessment of Aurizon Network's 2017 draft access undertaking (otherwise known as 'UT5').

Background

- Section 168A of the QCA Act establishes four pricing principles for the purposes of the Queensland access regime. Specifically, it provides that: “the pricing principles in relation to the price of access to a service are that the price should:
 - 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; and
 - allow for multi-part pricing and price discrimination when it aids efficiency; and
 - not allow a related access provider to set terms and conditions that discriminate in favour of the downstream operations of the access provider or a related body corporate of the access provider, except to the extent the cost of providing access to other operators is higher; and
 - provide incentives to reduce costs or otherwise improve productivity.”
- The pricing principles are included in the list of factors the QCA must have regard to when it makes an access determination under section 120 of the QCA Act or when it is deciding whether it is appropriate to approve a draft access undertaking under section 138 of the QCA Act.
- The inclusion of nationally consistent pricing principles and objects clauses for access regimes was a reform as part of the COAG *Competition and Infrastructure Reform Agreement 2006*.
- As part of amendments made to the QCA Act in 2010, references to the pricing principles were also included in sections 100, 138A and 168C of the QCA Act. These sections relate to the extent to which an access provider can differentiate between access seekers or users in the negotiation or provision of access to the service. The Bill repeals the references to the pricing principles in the context of the differentiation issue.

s

Briefing Note for Economics and Governance Committee

Inquiry into the Queensland Competition Authority Amendment Bill 2018

Queensland Treasury

Briefing on submission received from Dalrymple Bay Coal Terminal User Group (DBCT User Group)

Issues

- Treasury considers that the competition and economic concerns expressed by DBCT User Group will be considered as part of the Queensland Competition Authority's (QCA's) open, transparent and structured review of the declarations.
- Since 2010, regulated entities, users and other stakeholders have been aware the declarations would expire in September 2020 and be subject to a declaration review process.
- The legislation requires the QCA to give its declaration recommendations to the Minister for the QCA between September 2019 and March 2020. While the commencement of the review is a matter for the QCA, given the scope of the work required, it is expected the QCA will commence the review as soon as possible, once there is certainty about the amendments to the access criteria.
- The review will involve an assessment of the services against the access criteria. The criteria are designed to ensure that access regulation is applied appropriately. The amendments to the access criteria have been developed following extensive review in this area, including by the Australian Productivity Commission.
- The declaration review will involve public consultation and the competition and economic concerns raised by DBCT User Group will be examined in the review, along with concerns raised by other stakeholders.
- Reviews of this kind are an important element of the Queensland Government's commitment to regulatory best practice by ensuring that the impacts of regulatory intervention, such as the declaration, are transparently assessed.
- An amendment to the QCA Act to extend the declaration as proposed by the DBCT User Group would require a regulatory impact statement (RIS) process under the Regulatory Impact Assessment system. This RIS process would involve a similar amount of time, expense and assessment as will be required to conduct the QCA's review of the declaration. For this reason, Treasury considers there is no practical benefit to extending the declaration by legislative mechanism.
- A legislative extension of the declaration may not provide the regulatory certainty the proponents seek given there is a declaration revocation process set out under the QCA Act which allows access providers to seek revocation of a declaration at any time.

Background

- The following services are declared under Queensland's access regime (section 250 of the QCA Act):
 - Aurizon Network's (AN) Central Queensland Coal Network (CQCN);
 - Dalrymple Bay Coal Terminal (DBCT); and
 - Queensland Rail's intrastate rail network.
- These declarations are due to expire in September 2020 (section 248 of the QCA Act).
- Six to 12 months prior to the expiry, the QCA is required to review and then recommend to the Minister responsible for the QCA whether each service should be declared for a further period (section 87A of the QCA Act). The Minister will then decide whether to declare each service (section 84 of the QCA Act). Both the QCA's recommendation and the Minister's declaration decision are based on a strict application of the access criteria (see sections 86 and 87C of the QCA Act).
- The DBCT User Group has requested the Bill be amended to legislatively extend the declaration of DBCT and the CQCN. In short, the DBCT User Group considers:
 - it is of critical importance to the continuation of investment in the Goonyella coal supply chain that there is certainty about the ongoing reasonable terms of access to the CQCN and DBCT
 - the amendments to the access criteria are new and largely untested and there is a material risk the criteria may be interpreted differently to how government or stakeholders thought they might operate.