

**Asciano Submission to the QCA in
Relation to the QCA's Draft
Decision on the Aurizon Network
Proposal for a Potential Short
Term Capacity Transfer Mechanism**

May 2015

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1 INTRODUCTION AND BACKGROUND

Asciano welcomes the opportunity to make a submission to the Queensland Competition Authority (QCA) on the QCA's Draft Decision on the Aurizon Network December 2014 proposed capacity transfer mechanism.

As outlined in its January 2015 submission on this matter Asciano supports the flexible usage of access rights in order to facilitate the more efficient utilisation of both these rights and the Central Queensland Coal Network but Asciano does not believe that the Aurizon Network proposal is the most appropriate means of implementing a more flexible access rights regime. Asciano believes that Schedule G of the 2010 Access Undertaking provides the basis for a mechanism which can facilitate short term transfers.

The QCA Draft Decision on the Aurizon Network proposed capacity transfer mechanism:

- refuses to approve the Aurizon Network proposed capacity transfer mechanism; and
- outlines an alternate capacity transfer mechanism (including the provision of alternate drafting of chapter 7 of the 2014 Draft Access Undertaking (the 2014 DAU) to support the QCA's alternate capacity transfer mechanism).

Asciano does not support either the capacity transfer mechanism proposed by Aurizon Network or the alternative approach proposed by the Draft Decision as Asciano believes that Schedule G of the 2010 Access Undertaking Schedule already provides the basis for a mechanism for short term transfers if it is applied effectively and enhanced to take account of take or pay considerations.

This submission contains no confidential information and may be considered a public document.

2 OVERVIEW OF THE PROPOSED SHORT TERM TRANSFER MECHANISMS

Aurizon Network Proposed Capacity Transfer Mechanism

Aurizon Network intends to have two separate transfer processes, namely long term transfers, as per existing access agreements and short term transfers as outlined in the Aurizon Network December 2014 proposal.

The Aurizon Network short term transfer mechanism proposal is designed to allow the transfer of train service entitlements (TSEs) between holders of these entitlements in circumstances where the TSEs would otherwise not be used. Under the Aurizon Network proposal holders of TSEs will enter into their own commercial arrangements and Aurizon Network will act to facilitate this pre-agreed commercial transfer. Under the proposal the TSE transfer will be a variation to an existing access agreement and as such any transferred path will be treated as a contracted path.

Draft Decision Proposed Capacity Transfer Mechanism

The QCA Draft Decision on the Aurizon Network proposed capacity transfer mechanism considers three categories of transfers, namely:

- transfers which meet pre-approved access criteria (access criteria A) and which will occur as an 'as of right' transfer and consequently do not require Aurizon Network assessment;
- transfers which meet specified access criteria for a rapid capacity assessment (access criteria B) and which will be approved by Aurizon Network if it is satisfied that existing access rights will not be adversely affected by the transfer; and
- transfers which do not meet either access criteria A or B and which will require a detailed capacity assessment (access criteria C) before Aurizon Network can respond to approve or refuse the transfer notice.

Asciano recognises that the QCA Draft Decision removes restrictions on the short term capacity transfer mechanism which were originally proposed by Aurizon Network. For example, the QCA Draft Decision removes the proposed Aurizon Network requirements to:

- submit transfers not more than seven days prior to the lodgement of train orders in the ITP plan; and

- limit transfers to a maximum of 25 per cent of the TSEs contained in an access holder's access agreement.

Asciano believes that restrictions such as these which were proposed by Aurizon Network were not required and reduced the potential for efficiency benefits that the short term transfer mechanism seeks to realise. Asciano also notes that the QCA Draft Decision seeks to limit Aurizon Network discretion to refuse transfers and that requires more objective methods be applied to assessing whether transfers should be accepted or rejected.

Asciano supports the QCA Draft Decision position in refusing to approve the Aurizon Network proposal; however, Asciano believes that the alternative short term transfer mechanism proposed by the QCA Draft Decision does not result in a flexible and efficient transfer mechanism¹. Asciano believes that Schedule G of the 2010 Access Undertaking already contains the basis of a flexible and efficient transfer mechanism.

3 ASCIANO POSITION ON THE NEED FOR A NEW SHORT TERM TRANSFER MECHANISM

Asciano believes the 2010 Access Undertaking already contains a mechanism for short term transfers, and, while varied, this mechanism is also contained in the 2014 DAU. Schedule G of the 2010 Access Undertaking provides a mechanism for short term transfers. In particular Appendix 2 of Schedule G of the 2010 Access Undertaking contains a contested train path decision-making process under clause (c) (i) and (ii):

- i) *any requirement for giving priority to certain Train Services or certain Unloading Facilities identified within the System Rules;*
- ii) *if:*
 - *an Access Holder submits Train Orders for less than its Nominated Weekly Entitlement for one Train Service Entitlement ("First Entitlement") and the path is not allocated in accordance with paragraph (i); and*
 - *that Access Holder also submits Train Orders for a different Train Service Entitlement in excess of its Nominated Weekly Entitlement,*

¹ In their Supplementary Draft Decision on Aurizon Network 2014 Draft Access Undertaking: Capacity Transfer Mechanism – April 2015, the QCA considered that their proposed amendments would result in a flexible and efficient transfer mechanism in the 2014 DAU (Section 3.3, p.12.)

then the path will be allocated to those other Train Orders in the manner requested by the Access Holder and that allocation will be documented and is deemed to be performed of the First Entitlement by QR Network for the purposes of scheduling the Access Holder's future Train Orders;

Under the above mechanism access holders can under order on one set of TSEs and over order on another set of TSEs thus allowing an operational transfer. If the above mechanism is applied in the scheduling process it could provide an effective short term transfer mechanism.

Asciano recognises that amendments to this Schedule G approach are needed to:

- include specific train services to enable the transfer of access rights; and
- allow a transfer of TSEs to be taken into account for take or pay purposes.

Overall Asciano believes that Schedule G of the 2010 Access Undertaking provides the basis for an effective short term transfer mechanism which could be further enhanced by ensuring the TSE transfers are also taken into account for take or pay purposes.

4 ASCIANO COMMENT ON THE DETAILS OF THE DRAFT DECISION'S PROPOSED SHORT TERM TRANSFER MECHANISM

Section 3 above outlines the existence of a short term transfer mechanism in the 2010 Access Undertaking, and consequently the short term transfer mechanism as proposed in the Draft Decision is not needed in its current form. However, if the QCA decides to further pursue the Draft Decision's proposed short term transfer mechanism, Asciano believes that the proposal needs to be modified. In particular the proposal must address issues with both the Aurizon Network proposal and the QCA Draft Decision proposal.

Issues with Aurizon Network Proposal

As outlined in the January 2015 Asciano submission the Aurizon Network short term transfer mechanism proposal had numerous issues which must be addressed. These issues include:

- the need for Aurizon Network imposed restrictions on transfers to be removed;

- the need for transfers to be audited to ensure transfers are undertaken on a transparent and equitable basis;
- the need for Aurizon Network discretion in relation to transfers to be limited (in particular transfer mechanisms should be outlined in the undertaking and acceptance and rejection of transfers should not be at the discretion of Aurizon Network); and
- the need for implementation issues to be addressed. These issues include the contractual framework underpinning transfers, the treatment of access under different access agreements and undertakings and various planning and procedural issues,

These issues need to be addressed in any approved short term transfer mechanism. Asciano recognises that the approach proposed by the QCA Draft Decision addresses some of the issues listed above, but issues relating to Aurizon Network discretion and implementation of any proposal have not been fully addressed.

Issues with QCA Draft Decision Proposal

Asciano believes that the QCA Draft Decision proposal adds unnecessary complexity to the short term transfer mechanism. Asciano believes the QCA Draft Decision proposal is ineffective as a short term transfer mechanism as:

- it requires the terms and conditions of existing access agreements to be amended in order to allow access holders to apply the short term transfer mechanism. Making amendments across all pre-existing access agreements would be problematic and having short term transfer mechanism provisions contained in individual access agreements would provide the potential for Aurizon Network to treat access holders differently;
- both criteria A and B transfers require the same mainline path to be utilised by the transferred TSEs. This approach:
 - restricts the potential for trades which would add to system efficiency;
 - is based on a concept that is yet to be defined in the 2014 DAU, and as such it is uncertain as to how it would operate in practice; and
 - appears to be inconsistent with the QCA's Draft Decision on Aurizon Network's 2014 DAU where mainline criteria has been removed from

the contested train path decision making process under section 8 of Schedule G of the 2014 DAU²;

Requirements for criteria A and B transfers to use the same mainline path should be amended to take account of the issues outlined above.

- criteria A transfers requires transferred TSEs to be a shorter distance than the original transferor's TSEs but the transferee will be charged at a pricing rate equivalent to what the transferor would have paid. This does not provide a strong incentive for transferees to seek a trade. From a pricing perspective Asciano is concerned that this results in a departure from the reference tariffs and in effect acts as a transfer fee paid by the transferee on a per service basis, (the Aurizon Network proposal did not use transfer fees)³. In addition it is unclear as to how this approach impacts on the take or pay of the transferee and other system users;
- criteria B transfers rely on the ability of Aurizon Network to carry out a rapid capacity assessment. This ability is highly reliant on Aurizon Network having a baseline capacity established for each coal system. This requires a baseline capacity to be developed and approved by the QCA prior to any rapid capacity assessments being conducted by Aurizon Network. Asciano believes that until a baseline capacity is defined, established and validated the rapid capacity assessment under criteria B cannot be conducted. The QCA's Draft Decision of the 2014 DAU Aurizon Network includes a process to determine the Aurizon Network baseline capacity (2014 DAU clause 7A.4.1 (a) (i) and (ii)). If the QCA's Draft Decision proposal is implemented any transfers under criteria B would be ineffective until a baseline capacity was established.
- the QCA Draft Decision proposal allows Aurizon Network up to three months to assess criteria C transfer requests. Given this lengthy timeframe Asciano believes that any criteria C transfers should not be considered a short term transfer. Furthermore, it should be clarified whether criteria C transfers are intended to replace the longer term transfer process as outlined in sections 7.3.6 and 7.3.7 of the 2010 Access Undertaking. If this is the case Asciano is concerned that the ability for a customer to initiate a transfer has been entirely removed. (Asciano notes that in the QCA's Draft Decision marked up version of clause 7.4.2 of the 2014 DAU these sections are marked for deletion).

² Refer to clause 8.2 (c) (iii) of QCA's Draft Decision of the 2014 DAU, marked up version, where the words 'if it uses the Mainline Path that would have been used by the First Entitlement' has been deleted.

³ Refer to Aurizon Network Discussion Paper on Potential Short Term Transfer Mechanism – December 2014, p.13.

- the QCA Draft Decision is proposing that Schedule 2 of the standard access agreement include the daily TSEs which are able to be accommodated at the nominated loading and unloading facilities⁴. As these elements of the supply chain are outside the control of Aurizon Network Asciano believes it is inappropriate for Aurizon Network to determine whether or not there is sufficient capacity at these facilities to accommodate the transfer. This risk should reside with the transferee and their contractual relationships with their customers and/or the facilities. In addition this proposal may be further complicated where more than one operator holds access rights for the same loading facility or where more than one mine utilises the same loading facility;
- the QCA Draft Decision is proposing that train services for the transferred access rights do not vary from the nature or type of the transferor's access rights⁵. Asciano believes the interpretation of this is just as ambiguous as the 'like-for-like' train service originally proposed by Aurizon Network;
- the QCA Draft Decision is proposing (clause 7.4.2 (c) (ii)) that a short form access application be adopted for transfers. Asciano is concerned that this has the potential for Aurizon Network to treat transfer requests differently which may disadvantage certain access holders. If such an approach is adopted there needs to be clear criteria of when a short form access applications can be used and a template of a short form access application should be established and consistently applied across all access holders;
- the QCA Draft Decision is proposing (clause 7.4.2 (j)) that Aurizon Network can reject a transfer when an access agreement (new or variation for the transfer) is being negotiated as long as they provide reasons. Asciano is highly concerned that this provides Aurizon Network with full discretion to approve or refuse a transfer. Asciano believes a rejection this late in the transfer process should not be allowed unless there is clear objective evidence that the proposed transfer cannot proceed;
- the QCA Draft Decision is proposing (clause 7.4.2 (h) (v)) the way in which access agreements must be negotiated for transfers. This has a potential to benefit certain access holders over others. The QCA Draft Decision proposes that the nominated access rights from a transferor, in respect of an origin and destination, must be first taken from the access agreement entered into first in

⁴ Draft Decision 3.3 (b) of the QCA Supplementary Draft Decision on Aurizon Network 2014 Draft Access Undertaking: Capacity Transfer Mechanism – April 2015

⁵ As outlined in the QCA Supplementary Draft Decision on Aurizon Network 2014 Draft Access Undertaking: Capacity Transfer Mechanism – April 2015 under 'Like-for-like train service', p.17.

time (for example access rights for a specific origin and destination are to be transferred from a UT1 access agreement before a UT2 access agreement). Then the nominated access rights are transferred and included in the transferee's access agreement which is most recent (for example if a transferee has a UT2 and a UT3 access agreement the transferred access rights will be included in the UT3 access agreement). Asciano believes such a prescriptive approach is restrictive and inflexible for both the transferor and transferee. Both the transferor and transferee should have the freedom to select which access agreement the nominated access rights come out of and which access agreement the transferred access rights go into respectively.

In addition this Draft Decision proposal does not take into account the different take or pay arrangements between UT1 access agreements and UT2 or UT3 access agreements. Any Final Decision should clarify how the take or pay obligations of transferred access rights from a UT1 access agreement into a UT2 or UT3 access agreement, and vice-versa, will be treated. This is needed to ensure that the allocation of take or pay liability is borne by the appropriate access holder.

A further concern with this Draft Decision proposal is that it has the potential to benefit certain access holders. Clause 7.4.2 (h) (v) allows transferred access rights to be added to an existing access agreement which the transferee (or its customers or train operator) holds. This exception allows a transferee to include it into an access agreement that they hold of their choosing (either a UT1, UT2 or UT3 access agreement). This would not be a concern if the take or pay arrangements were consistent across all access agreements. However, because the take or pay arrangements for UT1 access agreements are different from other access agreements Asciano is concerned that this exception will potentially benefit access holders who hold UT1 access agreements. The take or pay liability an access holder has under a UT1 access agreement is much smaller than a UT2 or UT3 access agreement. Pacific National does not hold UT1 access agreements but is aware that other access holders have UT1 access agreements. The QCA should assess the potential impacts which this disparity has in relation to take or pay impacts and ensure that some access holders are not adversely impacted by this exception.

5 CONCLUSION

Asciano does not support the short term transfer mechanism proposed by the Draft Decision as Asciano continues to believe that Schedule G of the 2010 Access Undertaking Schedule already provides the basis of an effective mechanism for short term transfers if it is applied effectively and enhanced to take account of take or pay considerations. Rather than develop a new short term transfer mechanism the process in Schedule G needs to be enhanced and then practically applied.

However, if the QCA decides to further pursue the Draft Decision's proposed short term transfer mechanism, Asciano believes that any revised QCA proposal must address the following issues:

- the QCA Draft Decision currently requires that existing access agreements will need amendment. Any new or revised proposal should seek to remove or minimise this requirement;
- the QCA Draft Decision currently requires that the same mainline path to be used for the transfer. Any new or revised proposal should seek to remove this requirement;
- the QCA Draft Decision currently requires an assessment of capacity in non-network assets such as loading stations. Any new or revised proposal should seek to remove this requirement;
- the QCA Draft Decision currently requires that train types do not vary for both the transferor and transferee. Any new or revised proposal should seek to remove this requirement;
- the QCA Draft Decision currently requires a de facto form of transfer fee. Any new or revised proposal should seek to remove this requirement;
- the QCA Draft Decision currently prescribes which access agreements access is transferred to and from. Any new or revised proposal should seek to remove this prescription;
- any new or revised proposal must ensure that Aurizon Network has very limited discretion and in particular that Aurizon Network treats all transferors and transferees equally (especially in regard to transfer acceptance and rejection);
- any new or revised proposal must ensure that the issues relating to differences in take or pay treatment between different access agreements are comprehensively addressed. In particular this issue should be addressed

in such a manner that access holders are treated equally and access holders are not adversely impacted by the differences in take or pay treatments between access agreements.

Overall Asciano continues to believe that Schedule G of the 2010 Access Undertaking Schedule already provides the basis of an effective mechanism for short term transfers, however if the Schedule G approach is not adopted by the QCA then Asciano is seeking that the matters outlined above be taken into account in any QCA Final Decision.