



30 August 2013

Mr Paul Bilyk
Director, Rail and Ports
Queensland Competition Authority
GPO Box 2257
Brisbane Qld 4001

By email: rail@qca.org.au

Dear Paul,

Aurizon Network's 2013 Standard User Funding Agreement DAAU

Vale Australia Pty Ltd (**Vale**) welcomes the opportunity to provide a submission to the Queensland Competition Authority (**QCA**) in respect of the proposed Standard User Funding Agreement draft amending access undertaking (**DAAU**) submitted by Aurizon Network Pty Ltd (**Aurizon**). Vale believes this issue is vital to provide an opportunity to efficiently expand the rail network given that Aurizon is unlikely to invest in any significant investments unless they gain additional access conditions.

Vale Australia Pty Ltd has been an active participant in the Queensland Resources Council's (**QRC**) efforts to develop an agreed industry position regarding this matter. We note that the QRC will be submitting an industry submission, from these discussions, to the QCA. Vale takes this opportunity to endorse the QRC's submission to the QCA. Vale supports the detailed submission and issues raised in the QRC submission and provides some additional matters that Vale believes clarifies its position.

Under section 7.6 of QR Network's 2010 Access Undertaking (UT3), Aurizon Network was required to consult with stakeholders to propose a Standard User Funding Agreement (**SUFA**) to submit to the QCA. The initial SUFA documentation was submitted to the QCA in December 2010. Stakeholders identified concerns with this proposal and further consultation commenced with Stakeholders to develop a structure to accommodate the concerns with the original proposal. Vale believes there has been significant progress as a result of this consultation process between the Stakeholders and Aurizon. Vale acknowledges the improved Aurizon consultation process for SUFA as it has been an issue that Vale has raised concerns with during past amendments.

While the consultation process has been an improvement, Vale does still have some concerns with the final position that has been reached in the consultation with Aurizon as Vale does not believe it provides a credible funding alternative that will promote competition in the funding of major expansions of the rail network. Vale supports the detailed drafting and issues that have

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been identified in the QRC submission. Vale believes the drafting changes and issues raised are important to ensure that SUFA becomes a credible and efficient alternative to the Aurizon funding option.

Further to the detailed drafting issues presented by the QRC submission, Vale would like to highlight some other concerns it believes are appropriate.

Under section 7.5.5 (a) of UT3, it provides for all Access Seekers to choose to fund the costs of an Extension even if Aurizon Network is willing to do so. Yet in the Aurizon Standard User Funding Agreement (SUFA) – Explanatory Notes (Volume 1), page 3, section 1.1, it implies that this option will only be available “When Aurizon Network opts not to fund an extension.....” or “....where infrastructure funding from Aurizon Network is not fully available.” Vale believes these statements are contrary to the requirements of UT3 and the process and availability of any proposed SUFA should remain an option even if Aurizon is willing to do so. Vale is concerned that if this is not specifically stated as part of the requirements, then SUFA will not be a credible alternative funding option to create competition in the funding of Extensions of the rail network.

Vale acknowledges the new SUFA model was developed to address the taxation concerns of previous versions. This is a complex area due to the nature of the transaction which requires a third party to fund the development of a new asset that it will not have any rights to own. As a result of this complexity there are many components of this model that are likely to require private rulings from the Australian Taxation Office before there is a guarantee that the structure works from a taxation perspective. Vale does not propose for the QCA or others to seek an alternative, but believes any decision on this DAAU must consider the consequences of an unfavourable outcome of a private ruling required as part of the SUFA model. Any unfavourable private ruling is likely to have a serious impact on the viability of SUFA as a competitive funding option.

Vale believes an understanding of how SUFA is included in the expansion process will be critical to determining if the current process becomes effective. Until now there has been very limited information presented by Aurizon on the expansion process generally and how SUFA is incorporated into the expansion process. Whilst the SUFA documents presented provide an understanding of how the funding of an Extension will be achieved, it does not identify how this process links to the expansion process. Vale believes it is important to develop this understanding of the expansion process to ensure it does not discriminate against an Access Seeker wishing to user fund their participation in the Extension. Vale believes the link to the expansion process is critical to the success of SUFA to ensure the credibility and effectiveness of SUFA as an alternative funding option for Extensions, and to provide the desired competition.

Vale does not plan to outline detailed statements or drafting in this submission as we support the drafting and issues that will be raised in the QRC submission that has been provided on behalf of industry. Vale considers the development of a credible and efficient investment framework to be one of the most critical objectives for the future competitiveness of the Queensland Coal Industry. SUFA must provide a credible solution that cannot easily be discriminated against and provide a real funding alternative to Access Seekers to provide a competitive market for funding of Extensions of the rail network.

In summary, Vale does still have concerns that:

1. Aurizon only views this proposal as an option if they do not wish to fund, rather than a competitive funding option.
2. The resolution of the taxation issues with the model are subject to several private tax rulings.
3. The link between the SUFA documents and the expansion process is not clear.

Given the timing of this submission and the upcoming development of the new Access Undertaking, Vale also believes it is important that any SUFA and expansion process issues are quarantined as UT3 issues and do not become part of any negotiation or trade off in developing the new Access Undertaking.

We appreciate the opportunity to provide these comments.

For further information regarding this advice please contact myself on (07) 3136 0911.

Yours sincerely,



Bob Skuza
Manager Logistics
Vale Australia Pty Ltd