

asciano

Submission to the Queensland Competition Authority in
Relation to the Resubmitted 2014 Aurizon Network Draft
Access Undertaking

October 2014



Contents

Contents	3
1. Executive Summary	5
2. Framework of this Asciano Submission.....	9
3. Asciano's Position on the 2014 DAU and Broader Regulatory Issues.....	10
3.1 Asciano's Position on the 2014 DAU	10
3.2 Broader Regulatory Issues Raised by the 2014 DAU	13
4. Key Issues.....	15
4.1 Key issues from Asciano's Response to the 2013 DAU.....	15
4.2 2014 DAU Key Issue: Ring Fencing, Audit and Breach	16
4.3 2014 DAU Key Issue: Access Agreement Structure	20
4.4 2014 DAU Key issue: Pricing Principles	22
4.5 2014 DAU Key Issue: Network Development and Expansion	23
4.6 2014 DAU Key Issue: Flexibility of Access Rights.....	25
4.7 2014 DAU Key Issue: Capacity Allocation	25
5. Detailed Comment on Changes from the 2013 DAU to the 2014 DAU	28
5.1 Comments on 2014 DAU - Part 2 – Intent and Scope.....	28
5.2 Comments on 2014 DAU - Part 3 – Ring fencing.....	29
5.3 Comments on 2014 DAU - Part 4 – Negotiation Framework.....	30
5.4 Comments on 2014 DAU - Part 5 – Access Agreements.....	34
5.5 Comments on 2014 DAU - Part 6 – Pricing Principles	35
5.6 Comments on 2014 DAU - Part 7 – Capacity Allocation and Management.....	36
5.7 Changes in 2014 DAU - Part 8 – Network Development and Expansion	39
5.8 Comments on 2014 DAU - Part 9 – Connecting and Private Infrastructure.....	41
5.9 Comments on 2014 DAU - Part 10 – Reporting	42
5.10 Comments on 2014 DAU – Part 11 – Dispute Resolution and Decision Making	43
5.11 Comments on 2014 DAU – Part12 – Definitions and Interpretation	44
5.12 Comments on 2014 DAU – Schedules	46

6. Detailed Comment on the Access Agreements Attached to the 2014 DAU	53
7. Comment on the SUFA Documents Attached to the 2014 DAU.....	54
8. Comment on the Aurizon Network Proposal on the Wiggins Island Rail Project	55
9. Conclusion	57
Attachment 1- List of Asciano Submissions to 2010 AU Processes	59
Attachment 2 - Comments on Changes between 2013 DAU and 2014 DAU.....	62
Attachment 3 – Asciano’s Comments on the 2014 DAU Operator Access Agreement – Coal and Train Operator’s Agreement	156

1. Executive Summary

Asciano welcomes the opportunity to make this submission to the Queensland Competition Authority (QCA) in response to the resubmitted 2014 Aurizon Network Draft Access Undertaking (2014 DAU). In October 2013 Asciano made an extensive submission to the QCA in relation to the 2013 Aurizon Network Draft Access Undertaking (2013 DAU). Asciano understands that the QCA will continue to take this submission into account when considering the 2014 DAU.

Asciano recognises that the resubmitted 2014 DAU addresses some of the concerns raised by Asciano in its October 2013 submission; however Asciano continues to have strong concerns with both the general direction and the detailed proposed drafting of the 2014 DAU. The 2014 DAU does not meet the requirements of the QCA Act and the QCA should not approve the 2014 DAU.

Asciano does not believe that positions previously put forward by Asciano in the consultation have been addressed in any material fashion by Aurizon Network in the 2014 DAU. The submission of the 2014 DAU was an opportunity for Aurizon Network to take into account comments made on the 2013 DAU and demonstrate a level of commitment to delivering a regulatory framework that would meet the conditions of the QCA Act and reflect the interests of stakeholders, however Aurizon Network has not taken this opportunity and has delivered an access undertaking document package that does not meet the requirements of the QCA Act.

Asciano remains strongly concerned that issues relating to ring fencing and non-discrimination compliance that have previously been raised by Asciano have not been addressed in the 2014 DAU. Furthermore Asciano believes that requirements relating to non-discriminatory behavior should be extended beyond Aurizon Network related parties to cover non-discriminatory treatment of all access seekers, access holders and train operators.

Asciano has specific concerns regarding six key issues in the 2014 DAU, as outlined below. In addition Asciano has numerous concerns with the drafting and detail of the 2014 DAU and its related documents.

This submission focuses on Asciano's specific concerns with the redrafted sections of the 2014 DAU.

Key Issue: Ring Fencing Audit and Breach

A strong ring fencing and compliance regime is fundamental to facilitating third party access, particularly where the access provider is a vertically integrated natural monopoly such as Aurizon.

In its October 2013 submission to the QCA Asciano outlined numerous recommendations that needed to be addressed to ensure a ring fencing and compliance regime that would prevent discrimination, allow the identification of discrimination if it occurred and put in place a system to ensure breaches were appropriately remedied. In broad terms these recommendations have not been addressed in the DAU 2014. Thus Asciano continues to have concerns with the 2014 DAU ring fencing and compliance regime proposed.

In addition Asciano is concerned that the 2014 DAU has further weakened the ring fencing and compliance regime in relation to:

- Processes surrounding compliance auditing; and
- Limits on the sharing of services between Aurizon Network and Aurizon, with a consequent increased potential for ring fencing breaches.

Before it can be approved the 2014 DAU needs to include a strengthened ring fencing and compliance regime which includes strengthened audit processes and powers, strengthened breach and penalty regimes and a strong and clear separation of activities between Aurizon Network and Aurizon.

Key Issue: Access Agreement Structure

In August 2013 the QCA approved a suite of standard access agreements following an extensive stakeholder consultation process. Asciano understands that the QCA is seeking stakeholder views on simplifying this access agreement package.

In principle Asciano supports the concept of the simplification of this access agreement package, but Asciano would need to see a substantially developed proposal and drafting before it could be in a position to fully support such a proposal. Any proposal would need to allow train operators to hold access rights on behalf of customers.

In addition Asciano would favour a proposal that contemplated implementing a suite of prescribed access agreement clauses which could not be amended or negotiated away from. Such a suite of clauses would work towards ensuring non-discriminatory access.

In the event that the simplification of the access agreement package does not eventuate Asciano believes that the access agreements approved by the QCA in August 2013 should apply under the 2014 DAU.

Key Issue: Pricing Principles

The 2013 DAU proposed various changes in tariff structures and tariff levels. Asciano raised concerns with the significant increase to the AT2 tariff component which increased the take or pay component of the tariff structure, the proposed capacity multiplier and the proposed pricing principles relating to the Blackwater AT5 electric infrastructure tariff. The 2014 DAU has withdrawn the proposed pricing principles relating to the Blackwater AT5 electric infrastructure tariff but has not addressed the issue of the tariff structure.

In addition, the pricing principles in the 2014 DAU rely on Aurizon Network's discretionary judgement, are based on apparently arbitrary benchmarks and appear to bypass QCA approval processes.

Prior to the approval of the 2014 DAU by the QCA Asciano submits that the pricing issues it has identified in its October 2013 submission and in this current submission need to be addressed.

Key Issue: Network Development and Expansion

The section of the 2014 DAU relating to Network Development and Expansion has been extensively redrafted.

Under the 2014 DAU drafting Aurizon Network has a high level of discretion in relation to network development and expansion. Asciano is concerned that this discretion can be used to favour the

Aurizon Network related operator or customers of the Aurizon Network related operator. This level of discretion should be reduced.

In particular the 2014 DAU should be amended to introduce provisions which:

- Ensure that Aurizon Network does not unduly disadvantage or favour one operator or end user over another when undertaking negotiations and making decisions in relation to network development and expansions;
- Ensure that any party willing to invest has the right to be an investor; and
- Limit the role and powers of Aurizon Network in relation to any broader Aurizon Network coal supply chain co-ordination role contained in the DAU 2014.

Key Issue: Flexibility in Access Rights

Increased flexibility in the usage of access rights is needed to ensure a more efficient use of these access rights.

In its October 2013 submission Asciano raised major concerns with the 2013 DAU approach to managing the flexibility of access rights. This issue has not been addressed in the 2014 DAU.

The 2014 DAU should be amended to actively support initiatives which promote the flexible usage of access rights.

Key Issue: Capacity Allocation

In its October 2013 submission Asciano raised major concerns with the 2013 DAU proposed capacity allocation and capacity management provisions as these provisions replaced an objective capacity allocation process with a subjective capacity allocation process where Aurizon Network had broad discretion to choose which access seekers received access. This issue has not been addressed in the 2014 DAU, thus Aurizon Network has the potential to act to benefit its related party operator and customers of its related party operator.

Prior to the approval of the 2014 DAU by the QCA Asciano submits that clear and objective capacity allocation and capacity management processes need to be in place to ensure capacity is allocated in an equitable and transparent manner. Asciano believes that in the absence of another objective capacity allocation process being proposed at the very least the queuing capacity allocation mechanism used in the 2010 access undertaking should be reinstated.

Issues Related to 2014 DAU Drafting

In addition to the concerns relating to the six key issues as outlined above, Asciano has numerous concerns with the proposed drafting revisions of the 2014 DAU, the schedules to the 2014 DAU and the access agreement documents and user funding documents attached to the 2014 DAU. These concerns are outlined in Sections Five to Seven of this submission and Attachments Two and Three of this submission. These concerns largely focus on issues raised by the existing or revised drafting of individual clauses contained in the 2014 DAU.

In addition in this submission Asciano has also provided comment on the Aurizon Network Proposal related to the Wiggins Island Rail Project (WIRP). This WIRP proposal was recently

lodged with the QCA. Asciano's comments on the Aurizon Network WIRP proposal are at Section Eight of this submission.

Overall Asciano strongly opposes approval of the 2014 DAU in its current form for the reasons set out in this submission and Asciano's previous submission of October 2013.

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

2. Framework of this Asciano Submission

Asciano welcomes the opportunity to make this submission to the QCA in response to the resubmitted 2014 DAU. This submission also outlines Asciano's concerns arising from the:

- The Standard User Funding Agreement (SUFA) document package in Volume 2 of the 2014 DAU;
- The other standard agreements document package in Volume 3 of the 2014 DAU, particularly the access agreements; and
- The Aurizon Network paper on the Wiggins Island Rail Project Proposed Revenue and Pricing Treatment.

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

This Asciano submission is set out as follows:

- Introductory chapters 1 to 3 outline Asciano's broad position on the 2014 DAU and outline the Asciano submission to the 2014 DAU document package;
- Chapter 4 outlines six key issues that arise both from the 2013 DAU and from the redrafting in the 2014 DAU;
- Chapter 5 outlines further specific issues that arise both from the 2013 DAU and from the redrafting in the 2014 DAU including the 2014 DAU schedules;
- Chapter 6 outlines Asciano's position on the access agreements attached to the 2014 DAU;
- Chapter 7 outlines Asciano's position on the SUFA document package in Volume 2 of the 2014 DAU;
- Chapter 8 outlines Asciano's concerns arising from the Aurizon Network paper on the Wiggins Island Rail Project Proposed Revenue and Pricing Treatment;
- Chapter 9 outlines Asciano's broad conclusions including a conclusion that the 2014 DAU in its current form should not be approved by the QCA; and
- Three attachments:
 - Attachment 1 - information on recent Asciano submissions on 2010 AU QCA consultation processes;
 - Attachment 2 - tabulated comment on the changes between the 2010 AU, the 2013 DAU and the 2014 DAU;
 - Attachment 3 - tabulated comment on the changes between the Train Operations Agreement approved by the QCA in 2013, the Train Operations Agreement attached to the 2013 DAU and the Train Operations Agreement attached to the 2014 DAU.

3. Asciano's Position on the 2014 DAU and Broader Regulatory Issues

3.1 Asciano's Position on the 2014 DAU

In August 2014 Aurizon Network withdrew the Aurizon Network Draft Access Undertaking submitted to the QCA in April 2013 (2013 DAU) and resubmitted a revised Draft Access Undertaking to the QCA in August 2014 (2014 DAU).

Since October 2010 Asciano has made numerous submissions to QCA consultation processes relating to both the 2010 Access Undertaking (2010 AU) and the 2013 DAU. To the extent that issues previously raised by Asciano in QCA consultation processes are to be re-considered in the QCA assessment of the 2014 DAU, Asciano is seeking that these previous submissions be taken into account by the QCA if they are relevant to the issue under consideration. These previous submissions are outlined in Attachment 1.

Aurizon Network claims that the purpose of the access undertaking withdrawal and resubmission was to take account of consultation and feedback from industry stakeholders¹. In particular, Aurizon Network has stated²:

The 2014 DAU is the result of extensive consultation and negotiations with industry participants over a 15 month period in relation to positions reflected in the 2013 DAU. The attached 2014 DAU reflects Aurizon Network's position on the outcome of the negotiated changes to the 2013 DAU. In large parts, the 2014 DAU adopts the positions argued for by industry participants. Whilst in other parts it reflects Aurizon network's preferred position after consideration of the position proposed by industry.

The submission of the 2014 DAU was an opportunity for Aurizon Network to take into account comments made on the 2013 DAU and demonstrate a level of commitment to delivering a regulatory framework that would meet the conditions of the QCA Act and reflect the interests of stakeholders. Unfortunately Aurizon Network has not taken this opportunity and has delivered an access undertaking document package that does not meet the requirements of the QCA Act.

Positions previously put forward by Asciano in the consultation have not been addressed in any material fashion by Aurizon Network in the 2014 DAU. Asciano's submission on the 2013 DAU raised eight key issues with the 2013 DAU and these issues have not been addressed in the 2014 DAU. For example, Asciano remains strongly concerned that issues relating to ring fencing and non-discrimination compliance that have previously been raised by Asciano have not been addressed in either the 2013 DAU or 2014 DAU, and that the proposed ring fencing and non-discrimination provisions in the 2013 DAU and 2014 DAU are less acceptable than the ring fencing and non-discrimination provisions in the current 2010 AU.

¹ See for example Aurizon Media Release 11 August 2014 – Withdrawal and Resubmission of Draft UT4 to Expedite Review Process

² See Aurizon Network Correspondence to QCA 11 August 2014 - Aurizon Network Pty Ltd Draft Access Undertaking (2103 DAU) Resubmission - page 1

Similarly Attachment 2 to Asciano's submission on the 2013 DAU tabulated a detailed series on concerns with the 2013 DAU; in reviewing this table Asciano believes that of the 130 concerns raised³:

- 9 were addressed;
- 21 were partially addressed; and
- 100 were not addressed.

In preparing this submission, Asciano has been mindful of the factors set out in the QCA Act to which the QCA must have regard in determining whether or not to approve the 2014 DAU. The QCA may only approve the DAU if the QCA considers it appropriate to do so having regard to the matters outlined in section 138 of the QCA Act.

In addition, Asciano believes that it is appropriate that the QCA consider the 2014 DAU proposed pricing by having regard to section 168A of the QCA Act. Asciano believes that in broad terms the requirements of the QCA Act can be met by focussing on the objective of Part 5 of the QCA Act (Access to Services) set out in 69E, being to promote the:

...economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.

And, from section 168A, that pricing of access to a service should:

... 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....

In considering both the broader requirements of the QCA Act and the objective of Part 5 of the QCA Act, Asciano submits that the the promotion of competition is best met by requiring non-discriminatory behaviour, vertical equity, horizontal equity and transparency. In its current form the 2014 DAU does not meet these criteria.

Asciano is particularly focused on the Act requirements relating to non-discriminatory behaviour. Under the 2010 AU there was an explicit obligation that Aurizon Network could not provide more favourable terms to a related operator than it provided to competitors of the related operator. However, this obligation has been entirely removed from the 2014 DAU. As raised in Asciano's October 2013 submission this obligation must be reinstated as to do otherwise is contrary to section 168A of the QCA Act.

Requirements relating to non-discriminatory behaviour should be extended beyond Aurizon Network related parties to cover non-discrimination to all access seekers, access holders and train operators. The QCA Act was introduced during a period when Aurizon Network was Government owned and when train operators held access rights on behalf of their customers. Since 2010

³ These figures are based on the number of issues raised in Attachment 2 of the Asciano October 2013 submission to this regulatory process

Aurizon Network has sought to carry out services other than access⁴ and has negotiated access directly with customers. These developments since 2010 mean that requirements for non-discriminatory treatment of all parties should be strengthened, not removed.

To ensure all access seekers, access holders and train operators are treated in a non-discriminatory manner the 2014 DAU must restrict Aurizon Network from setting terms and conditions, including access charges that favour one party over another. The QCA should require the reinstatement the 2010 AU obligations and extension of the non-discrimination requirement to any party or entity seeking or holding access.

The redrafted 2014 DAU does not materially address concerns previously raised by Asciano. In particular Asciano believes that the following issues must be addressed in any QCA approved access undertaking:

- Aurizon and Aurizon Network's approach to ring fencing and discrimination between parties needs to be addressed. In addition the powers of the QCA to audit Aurizon Network need to be addressed. In the event of any breach of the ring fencing and discrimination provisions being identified a strong penalty regime which places strong disincentives on Aurizon and Aurizon Network to breach the ring fencing and discrimination provisions needs to be implemented.
- In relation to the broader framework and structure of access, Asciano believes that there is some potential to rationalise the access agreements, but in any event the agreements attached to the 2014 DAU are not acceptable in their current form.
- Pricing principles in the 2014 DAU - Some elements of the current pricing principles rely on Aurizon Network's discretionary judgement, are based on apparently arbitrary benchmarks and appear to bypass QCA approval processes. As such these pricing processes are not transparent.
- Network development and expansion - Under the 2014 DAU Aurizon Network has a high level of discretion in relation to network development and expansion. Asciano is concerned that this discretion can be used to favour the Aurizon Network related operator or customers of the Aurizon Network related operator. Thus the discretion allowed to Aurizon Network in relation to network development and expansion should be further restricted. In making decisions in relation to network development and expansions Aurizon Network must not unduly favour one operator or end user over another. In particular Aurizon Network should not favour an operator or end user on the basis of the funding arrangements applying to the expansion or the identity of the train operator or the end user's train operator.
- Issues related to flexibility of access rights in the 2014 DAU need to be addressed. In particular increased flexibility in the usage of access rights is needed to ensure that there is efficient use of these access rights. The access undertaking and related instruments should be amended to allow the effective and timely transfer and utilisation of access rights.
- Issues related to capacity allocation in the 2014 DAU need to be addressed. In its 2013 submission Asciano had major concerns with Aurizon Network's proposed capacity allocation and management provisions as these provisions replaced an objective capacity allocation

⁴ See for example clause 2.3 a) and clause 3.1 c) of the 2014 DAU 2014

process with a subjective capacity allocation process where Aurizon Network had broad discretion to choose which access seekers received access. This issue has not been addressed in the 2014 DAU, thus Aurizon Network has the potential to act to benefit its related party operator and customers of its related party operator. Clear and objective processes need to be implemented to ensure capacity is allocated in an equitable and transparent manner.

Overall Asciano submits that the redrafted 2014 DAU does not materially address the concerns Asciano raised in connection with the 2013 DAU, thus Asciano continues to have significant concerns with the 2014 DAU and submits that the 2014 DAU in its current form should not be approved by the QCA.

3.2 Broader Regulatory Issues Raised by the 2014 DAU

The 2014 DAU and the current QCA regulatory process have raised concerns with regulatory issues broader than the 2014 DAU redrafting. These issues are outlined below.

Separation of Regulatory Decisions

Asciano has concerns with the separation of regulatory decisions. These concerns have been raised previously with the QCA. Asciano is concerned with the approach being taken for the 2014 DAU by the QCA which separates the draft decisions on different elements of the access undertaking. In particular the QCA is expected to make a Draft Decision on maximum allowable revenue in September 2014 but will not be making a Draft Decision on pricing and policy issues until December 2014.

Asciano believes that the 2014 DAU is a single proposal where the elements of the proposal are interrelated such that decisions on these elements should not be made in isolation, but rather, a single decision has to be made by the QCA which takes into account the whole of the 2014 DAU proposal.

Asciano welcomes the QCA position that there will be a single final decision on all elements of the 2014 DAU.

Timeframes for Current Access Undertaking Process

The 2010 Aurizon Network Access Undertaking (2010 AU) was originally due to expire on 30 June 2013; however the termination date of the 2010 AU has been extended to 30 June 2015.

While there is a balance to be achieved between making a decision within the stipulated time frame and making the best decision possible by taking into account all the information available, Asciano submits that given the significance of the issues involved, the latter consideration is more important in this case. While Asciano has no fundamental concern with time extensions if the time is required for the QCA and stakeholders to take into account the information available Asciano believes that all parties should aim to finalise the 2014 DAU process by 1 July 2015 (but this time frame should not be used to force the approval of the 2014 DAU prior to all of the substantive issues raised in the regulatory consultation process being addressed).

Timeframes for Future Access Undertaking Process

Asciano notes that if approved the proposed 2014 DAU is likely to be finalised in June 2015, and will then expire in June 2017. Given the time frames required to prepare and consult on the access undertaking this implies that work on the next undertaking will commence soon after the final approval of the 2014 DAU in June 2015, with consultation on this next undertaking in 2016 and 2017. This almost constant cycle of regulatory consultation provides limited regulatory certainty for the central Queensland coal supply chain.

In considering time frames Asciano understands that following the finalisation of the 2014 DAU in 2015 a review of the QCA Act is expected. The time frames around the conduct of this review and the possible outcomes of this review may present problems in both preparing and consulting on the next undertaking as the regulatory framework which supports the undertaking may be subject to change.

Asciano submits that the relationship between time frame of the 2014 DAU and the time frame of the QCA Act review should be taken into account by the QCA and the Queensland Treasury. The time frame of the 2014 DAU should be reconsidered if it is expected that the timing of the next undertaking and the timing of the review of the QCA Act will be in conflict.

Queensland Rail Access Regime Certification

In June 2010 the Queensland Government applied to the National Competition Council (NCC) for certification of the Queensland Rail Access Regime, where this rail access regime fundamentally consisted of the QCA Act and the 2010 draft access undertaking (which was subsequently approved by the QCA). In November 2010 the NCC recommended certification of the Queensland Rail Access Regime as effective (the regime was then certified as effective for ten years in January 2011).

In making its decision the NCC referred to amendments to the 2010 access undertaking which strengthened the non-discrimination provisions, brought the ring-fencing requirements into alignment with the QCA Act and the Transport Infrastructure Act, introduced annual audits of Aurizon Network's compliance and imposed additional reporting requirements.

Asciano is concerned that to the extent that issues such as non-discrimination, ring fencing, compliance monitoring and reporting are being diluted in the 2014 DAU then the certification of the Queensland rail access regime may be questioned.

Asciano believes that in making a decision on the 2014 DAU the QCA should consider issues required to ensure the ongoing certification of the Queensland rail access regime.

4. Key Issues

This section outlines the key issues arising from this 2014 DAU regulatory consultation process.

Section 4.1 below outlines the key issues raised in Asciano's response to the 2013 DAU. The 2014 DAU did not satisfactorily address any of these key issues.

Sections 4.2 to 4.7 below raise issues arising from this 2014 DAU regulatory consultation process and / or build upon issues raised in section 4.1.

4.1 Key issues from Asciano's Response to the 2013 DAU

Asciano's submission on the 2013 DAU raised eight key issues with the 2013 DAU. Asciano provided a series of recommendations which would address these key issues. None of these key issues have been addressed in the 2014 DAU. The issues raised by Asciano in its 2013 submission are outlined briefly below.

- Preventing, Identifying and Remediating Discrimination - A strong ring fencing and compliance regime is fundamental to facilitating third party access, particularly where the access provider is a vertically integrated natural monopoly such as Aurizon. In its October 2013 submission Asciano made numerous recommendations that would prevent discrimination, allow the identification of discrimination and remedy discrimination. These recommendations need to be incorporated into the access undertaking before it can be approved by the QCA.
- KPI Reporting - A robust and consistently applied KPI reporting regime is required to allow users and operators to monitor Aurizon Network's compliance with, and its performance against, the access undertaking and access agreements. A robust KPI regime needs to be incorporated into the access undertaking before it can be approved by the QCA.
- Incentive Mechanism - As a provider of services Aurizon Network's performance should be measured and the revenue it receives should be adjusted to take account of this level of performance. An incentive mechanism based on Aurizon Network's performance will drive efficiency improvements in Aurizon Network's operations. This mechanism must provide strong incentives to treat all access holders in a non-discriminatory manner. An incentive mechanism needs to be incorporated into the access undertaking before it can be approved by the QCA.
- Reference Tariff Structure - The 2013 DAU proposed various changes in tariff structures and tariff levels. In particular Asciano had concerns with the significant increase to the proposed AT2 tariff component which increased the take or pay component of the tariff structure, the proposed capacity multiplier and the proposed pricing principles of the Blackwater AT5 electric infrastructure tariff. The 2014 DAU has withdrawn the proposed pricing principles of the Blackwater AT5 electric infrastructure tariff but has not addressed the issue of the tariff structure. These reference tariff structure issues need to be addressed before the access undertaking can be approved by the QCA.
- Allocation of Corporate Costs to Aurizon Network - The costs underpinning the 2013 DAU tariffs included a substantial increase in Aurizon Network's allocation of Aurizon corporate costs. This increase in costs raises concerns as to whether the tariffs are cost reflective. In

increasing the corporate cost allocation to Aurizon Network the corporate cost allocation to Aurizon's above rail operator has fallen, thus providing a cost advantage to Aurizon Network's related party above rail operator when competing with other above rail operators. The efficiency and transparency of corporate cost allocations need to be addressed before the access undertaking can be approved by the QCA.

- Shifting Key Clauses & Principles from the Access Undertaking to the Access Agreement - The 2013 DAU removed numerous key operational clauses and principles entirely from the access undertaking document package, and also shifted numerous principles from the access undertaking to the access agreements, thereby reducing transparency, certainty and regulatory scrutiny, and increasing potential for discriminatory behaviour. Principles and concepts removed from the access undertaking or shifted to the access agreements should be reinstated. This needs to be addressed before the access undertaking can be approved by the QCA.
- Flexibility - The 2013 DAU did not encourage flexibility in the usage of access rights. Increasing flexibility in the usage of access rights results in a more efficient use of these access rights. A mechanism which allows a substantial increase in the flexible usage of access rights needs to be incorporated into the access undertaking before it can be approved by the QCA.
- Forecasting – Asciano had raised concerns with forecasting in its October 2013 submission. Asciano understands forecasting issues have been addressed in the QCA's Draft Decision on Aurizon Network's Maximum Allowable Revenue released on 30 September 2014. Asciano will respond to this QCA Draft Decision. Asciano continues to support transparent approaches to forecasting

None of the eight key issues identified by Asciano in its 2013 submission have been substantially addressed in the 2014 DAU. Asciano is seeking that the QCA continue to take these Asciano concerns into account.

In addition to these eight issues, the 2014 DAU redrafting has heightened some existing key issue concerns and raised new key issue concerns. These new and heightened concerns are outlined in the remainder of this chapter.

4.2 2014 DAU Key Issue: Ring Fencing, Audit and Breach

As noted above a strong ring fencing and compliance regime is fundamental to facilitating efficient third party access, particularly where the access provider is a vertically integrated natural monopoly such as Aurizon with a stated business goal of replicating a US Class 1 Railroad.

Asciano remains concerned that the 2013 DAU, and now the 2014 DAU, contain numerous provisions that seek to weaken the existing ring fencing and compliance regime

In Asciano's October 2013 submission, Asciano set out a detailed response on issues of ring fencing, audit and breach. The submission clearly articulated why the 2013 DAU did not meet the requirements of the QCA Act in preventing, identifying and remedying discrimination.

Subsequent to our submission Asciano engaged directly with Aurizon on a number of occasions to explain and outline ring fencing compliance measures that have been effective in Asciano's experience. Given this it is particularly disappointing that, bar a couple of minor changes, Aurizon has not adequately addressed any of the issues raised by Asciano in its October 2013 submission and indeed has weakened the protections in a number of areas. In order to be approved the 2014 DAU must be consistent with section 137(1A) of the QCA Act and include provisions for identifying, preventing and remedying discrimination. The 2014 DAU continues to fail to meet these requirements.

Improvements in the 2014 DAU

Asciano recognizes that the 2014 DAU redrafting did address some Asciano recommendations put forward in October 2013 including:

- The removal of the restrictions on the QCA information gathering powers in clause 10.3.1;
- The inclusion of wording to allow QCA approval of the auditor without constraint;
- The requirement that the audit provide both a confidential report to the QCA and a public report; and
- A requirement that Aurizon's core network functions should be undertaken by Aurizon Network.

New Areas of Concern in the 2014 DAU

Asciano is particularly concerned that a number of drafting changes in the 2014 DAU have undermined the limited protection against discrimination that the 2013 DAU provided. These areas of concern are outlined below.

Audit - Despite a number of proposed improvements to the audit arrangements, drafting changes in clause 10.8 have removed the ability of the QCA to seek a compliance audit. As previously outlined, Asciano strongly believes that an annual audit of general compliance should be undertaken and that the QCA should have the additional ability to require an audit if it has reasonable concerns that a breach has occurred, or is occurring.

Clause 10.9 b) sets out various conditions the auditor should meet including approval by the QCA. One legitimate concern Asciano has is the independence of the auditor. The clause requires the auditor not to be an Aurizon employee but this is an extremely minimal level of independence. Asciano believes that the auditor should not be reliant on Aurizon for a significant amount of revenue through for example auditing or consultancy projects. Thus the conditions in clause 10.8 should include an express requirement that the auditor does not receive revenue in excess of \$1 million from Aurizon in another capacity such as consulting or financial auditing.

Asciano is supportive of the approval of an auditor for the term of the undertaking rather than an annual approach. However, if multiple year approval is to be effective not only should the QCA be able to require a replacement auditor if the auditor has been negligent, engaged in misconduct, or has a conflict of interest but also if the conditions in 10.9 b) i) to iii) (and the new clause around revenue as outlined above) are no longer met.

Ring Fencing - Drafting changes in clause 3.6 d) and clause 3.17 c) i) G) now allow a broad range of services to be provided by Aurizon Holdings to Aurizon Network. Asciano recognises that it is often more cost effective for some business services (such as finance, IT and human resources) to be provided centrally and Asciano believes that it is appropriate for Aurizon Holdings to provide these services. However, the provision of some services (such as strategy, business development, marketing and commercial management) by Aurizon Holdings for both Aurizon Network and Aurizon Network's related above rail operator would result in the potential for the transfer of confidential information from Aurizon Network to its related above rail operator and would lend itself to discriminatory behaviour, or at a minimum the near impossibility of detecting discrimination.

The terms on which these broad corporate services are provided is key and these terms should not be used as a vehicle for cost shifting between Aurizon's competitive and regulated monopoly businesses. As such Asciano recommends that a service level agreement, scrutinised by the QCA, be put in place between Aurizon Holdings and Aurizon Network that sets out the terms for the provision of these services. The service level agreement should specifically exclude services such as strategy, business development marketing and commercial, which provide the potential for discrimination to arise.

Ultimate Holding Company Support Deed - As Asciano noted in its October 2013 submission Aurizon see themselves as equivalent to a US Class 1 railroad and are seeking to implement an integrated supplier model with significant centralised functions. Yet despite this context Aurizon are only willing to take a negative obligation in the Ultimate Holding Company Support Deed – that is Aurizon Holdings would “not take any action that would cause Aurizon Network to be in breach of its obligations in the Access Undertaking”⁵. In a separated business this would be a weak obligation, but in a business structure where Aurizon Holding is providing numerous important business services to Aurizon Network this obligation needs to be much stronger. Through these services Aurizon Holdings will have significant influence over Aurizon Network's likelihood or otherwise of complying with the undertaking and other regulatory instruments. As such the obligation needs to be a positive obligation that Aurizon Holding will ensure that Aurizon Network is compliant with its undertaking.

Accounting Allocation - Asciano has been concerned for a number of years with the quality of regulatory accounting information provided. Accounting information is a key tool in identifying and preventing discrimination and Asciano remains concerned that Aurizon's costing manual has not been comprehensively updated for several years.

Clause 3.7 of the 2014 DAU betrays Aurizon Network's approach, which is to minimise the usefulness of the accounting information regime. This clause allows non regulated activities to be excluded from the Aurizon Network financial accounts. This, in essence, makes them useless. Aurizon Network's regulated and non regulated activities will share some common costs (for example accounting costs, senior management costs and IT costs). Thus it is essential to ensure that there are no cross subsidies between regulated and non regulated activities. These common costs and the cost allocations between regulated and non regulated activities must be clear and

⁵ 2014 DAU Schedule D Clause 3.1 b)

transparent and applied consistently from one year to the next. This argument equally applies to Aurizon Holdings and Aurizon Network – that is there will be key common costs between Aurizon Holdings and Aurizon Network (especially given Aurizon's stated business model) and as such, the allocation of these common costs between different functions is important. Thus the regulated accounts need to cover not only all of Aurizon Network's activities (both regulated and non-regulated) but also cost allocations relating to Aurizon Holdings.

As noted in previous Asciano submissions, for the accounting information regime to be effective an up to date costing manual reflecting Aurizon's current structure needs to be in place. Under the 2014 DAU the QCA should ensure an updated and effective costing manual is in place otherwise the protections against discrimination provided by the accounting information regime are rendered ineffective.

Issues Not Addressed in the 2014 DAU

In its 2013 submission Asciano made numerous recommendations that would prevent discrimination, allow the identification of discrimination and remedy discrimination. Asciano believes that these recommendations need to be incorporated into the access undertaking before it can be approved by the QCA. As noted above, the 2014 DAU redrafting did not address the majority of these Asciano recommendations including:

- Regular internal audits;
- An annual external compliance audit should be undertaken. Each year the audit should confirm that the previous year's audit recommendations have been effectively implemented.
- The QCA should be able to require the annual external compliance audit to be redone if there are any concerns;
- The QCA should be able to implement the recommendations of the auditor including amending the access undertaking where required;
- Aurizon Network should be required to comply with a QCA order where the QCA require a change to be made to ensure future compliance, including changes to the access undertaking and/or changes to Aurizon's compliance program;
- A confidential reporting line;
- A requirement for an internal compliance declaration from the CEO and all key senior managers across Aurizon;
- A ring fencing issues register that can be viewed by compliance auditors and the QCA; The auditor should be required to consult with all above rail operators;
- The removal of restrictions on QCA information gathering powers in clause 10.3.2 b);
- The introduction of an Infringement Penalty regime operated by the QCA similar to that enforced by the ACCC; Aurizon itself recognizes the effectiveness of a penalty regime, as it has stated⁶:

⁶ Aurizon Holdings Submission to the Competition Policy Review: Promoting Efficiency, productivity and new investment in the Australian rail freight and export infrastructure sectors June 2014 page 22

... a regulated monopoly would not foreclose downstream competition where the benefits of doing so were outweighed by the probability of detection and the cost of non-compliance (e.g. through fines, court awarded damages, more severe regulation, contractual breaches, s46, etc).

- A requirement that the Chairman and majority of the Aurizon Network board be truly independent; and
- The reinstatement of the clause in 2010 AU which requires the independent management of Aurizon Network. In relation to this issue the change to clause 3.1 h) is ineffective as it is not an active clause, the clause must state that Aurizon Network must be managed and supplied independently of the Aurizon group.

Summary of Recommendations for Improving the 2014 DAU in Order to Address Concerns Relating to Ring Fencing, Audit and Breach

The 2014 DAU should be amended to include a strengthened ring fencing and compliance regime which includes strengthened audit processes and powers, strengthened breach and penalty regimes and a strong and clear separation of activities between Aurizon Network and Aurizon.

4.3 2014 DAU Key Issue: Access Agreement Structure

In August 2013 the QCA approved a suite of standard access agreements (SAAs) following an extensive stakeholder consultation process. Asciano believes that except for the possible simplification of the SAAs as discussed below the QCA approved SAAs should apply under the 2014 DAU.

QCA's Stakeholder Notice 2 (26 August 2014) indicates that the QCA is seeking stakeholder's views on the benefit of adopting a simpler approach to the SAAs as part of the 2014 DAU. In principle Asciano supports the simplification of the access agreement contracting suite of documents. In particular Asciano is supportive in principle of the QCA's suggested option of consolidating the SAAs into two agreements which separately deal with:

- Holding access rights; and
- Train operations matters.

While Asciano supports this position in principle Asciano would need to see a substantially developed proposal and drafting before it would be able to fully support the approach proposed. In particular Asciano believes that any developed proposal must allow for both end users and train operators to hold access rights.

Asciano believes that the End User Access Agreement (EUAA) and Train Operations Agreement (TOA) previously approved by the QCA in August 2013 would be suitable as a foundation for the proposed approach on the basis that the following matters are addressed:

- The EUAA appears to exclude train operators. If the two SAA approach is adopted and the EUAA is used as a base then this removes the option for an end user to have their nominated train operator to hold access rights on their behalf. This arrangement is currently allowed via the Operator Access Agreement (OAA) and is a common form of access contracting in the Aurizon Network rail network. To ensure this option remains a train operator should be

allowed to hold an EUAA. This will require an amendment to the 2014 DAU. Such an amendment would provide end users with a choice as to how they wish their access rights to be held and managed (i.e. an end user can hold access rights directly via an EUAA and train operational matters are dealt with via a separate TOA, or alternatively an end user's nominated train operator can manage the end users access rights and train operational matters on their behalf via a combined EUAA and TOA).

- While Asciano acknowledges that the 2014 DAU deals with coal access only, the QCA should consider drafting and implementing the SAAs in such a manner that they could also accommodate non-coal carrying train services.
- Asciano sees a benefit in having a suite of prescribed standard clauses contained in the EUAA and TOA that cannot be altered or negotiated away.
 - These prescribed standard clauses should include clauses related to access rights – this will move towards ensuring that all access holders are treated in a non-discriminatory manner. In particular, prescribed standard clauses should include clauses relating to how access rights are converted to Train Service Entitlements, granted, transferred, resumed, reduced, altered by payload variances, relinquished and utilised by the access holder. Asciano can see little reason why such clauses should differ between access holders.
 - These prescribed standard clauses should include clauses related to take or pay. The take or pay method in the 2014 DAU is ultimately based on a system capping framework and a socialised system so it is essential that the take or pay method is applied consistently across all Access Holders in order to ensure that an equitable distribution of take or pay liability is borne by all access holders. Currently different take or pay approaches apply under the Access Agreements associated with each undertaking regime in which they were executed (i.e. 2001, 2005, 2008 and 2010 Access Undertakings). This means that access holders with an Access Agreement under the 2001 Access Undertaking are subject to a lower take or pay liability. This has had an unintended negative impact on access holders who have access agreements that commenced after 30 June 2006 as when take or pay is triggered for the system it is highly likely that the majority of take or pay recovery sought by Aurizon Network would be socialised among Access Holders who hold access agreements under the 2005, 2008 or 2010 Access Undertaking.
 - These prescribed standard clauses should include clauses related to reference tariffs. Reference tariffs approved by the QCA should be applied consistently across all access holders, with all access holders being charged 100 per cent of the approved reference tariffs. This is on the basis that reference tariffs are formulated on a system basis and any variations in the application of Reference Tariffs in an individual access agreement could lead to other train services operating in the relevant system to cross-subsidise those access rights. Such variation would also have negative consequences on the distribution of take or pay liability amongst Access Holders.

In principle Asciano supports consolidating the SAAs into two agreements which deal separately with holding access rights and train operations as long as the approach allows train operators to hold access rights on behalf of customers. The QCA approved EUAA and TOA are probably the most suitable documents to use as the foundation for this approach but Asciano is open to consider other options. Furthermore any review of access agreements should consider implementing a suite of prescribed access agreement clauses which cannot be amended or negotiated away from. Such a suite of clauses would work towards ensuring non-discriminatory access.

If the proposal to simplify the SAAs discussed above does not proceed then Asciano supports the implementation of the access agreements that were finalised and approved by the QCA in August 2013.

Asciano does not believe that the agreements attached to the 2014 DAU are acceptable, particularly to the extent that they are not aligned with the SAAs approved by the QCA in August 2013.

Summary of Recommendations for Improving the 2014 DAU in Order to Address Access Agreement Structure

The 2014 DAU should adopt the access agreements approved by the QCA in August 2013.

The structure of these agreements could be simplified if required but any simplification must ensure that train operators could continue to hold access. In addition Asciano supports implementing a suite of access agreement clauses which cannot be amended or negotiated away from.

4.4 2014 DAU Key issue: Pricing Principles

Asciano is concerned that the pricing principles outlined in Part 6 of the 2014 DAU are flawed as variously:

- They rely on Aurizon Network's subjective judgement. For example Aurizon Network can vary its formulation of access charges to reflect differences in cost or risk where a train service differs in cost or risk from the reference train service. Asciano is concerned that Aurizon Network's assessment of both of these factors, particularly risk, could be subjective. If this approach is to be included in an approved access undertaking then the approach used to assess cost and risk needs to be set out in the undertaking and this approach must be objective.
- They bypass QCA approval processes in some specific circumstances, such as those in clause 6.2.4 c) of the 2014 DAU. Asciano believes that all Aurizon Network reference tariffs should be subject to formal QCA approval processes; and
- They are based on apparently arbitrary benchmarks and time frames which may disadvantage some end users. For example clauses 6.2.4 o) and p) requires the socialisation of an expansion tariff among all relevant system users after ten years. This has the affect of users who do not receive any benefit from the expansion having to pay for the expansion after ten

years. Asciano believes that in this example the expansion tariff should be for the life of the asset.

In addition the pricing principles have the potential to disadvantage non-coal carrying services. Asciano recognises that the 2014 DAU relates to coal carrying services but believes that equity issues between coal carrying services and non-coal carrying services should be taken into account by the QCA where relevant.

Summary of Recommendations for Improving the 2014 DAU in Order to Address Pricing Principles

The 2014 DAU should be amended to ensure prices and pricing principles are objective and are subject to QCA scrutiny.

4.5 2014 DAU Key Issue: Network Development and Expansion

Part 8 of the 2014 DAU relates to Network Development and Expansion and has been heavily redrafted. Asciano assumes that this redrafting largely reflects the SUFA document package and other consultation and discussions between Aurizon Network and mining stakeholders. Asciano has not been involved in these discussions. (Asciano's comment on the current SUFA documentation is contained in section 7 of this submission. Asciano believes that the current 2014 DAU Part 8 will need to be re-drafted to reflect any QCA final decision on SUFA).

Asciano submits that several fundamental principles should underpin network expansion and development including:

- In undertaking negotiations and decision making in relation to network development and expansions Aurizon Network must not unduly disadvantage or favour one operator or end user over another, including disadvantaging or favouring the operator or end user on the basis of the identity of the end user's train operator or the type of funding arrangements applying to the expansion ; and
- Any party willing to invest should have the right to be an investor. The current drafting is based on an approach where only miners can be investors. This limits potential sources of investment and excludes parties from investing in infrastructure which they may use and which they may be willing to invest in.

Asciano is concerned about several broader issues in Part 8 including Aurizon Network's discretion, Aurizon Networks role in demand studies, concept studies and feasibility studies and Part 8's approach to dispute resolution.

Asciano is concerned at the level of discretion available to Aurizon Network throughout many of the clauses in Part 8, (some examples of this discretion are highlighted in section 5.7 of this submission). Asciano recognises that in some instances this discretion is limited by various criteria required to be met by Aurizon Network, requirements for notification and dispute resolution mechanisms, however Asciano believes that in practice, it may be very difficult to prove that Aurizon Network has breached these criteria, particularly (as outlined elsewhere in this submission) the 2014 DAU compliance auditing and breach penalties are deficient. Asciano is concerned that this discretion can be used to favour the Aurizon Network related operator or

customers of the Aurizon Network related operator. Thus the discretion allowed to Aurizon Network in relation to network development and expansion should be restricted. Asciano submits that the 2014 DAU Part 8 needs to be redrafted to address the broad discretion Aurizon Network has under Part 8.

Part 8 includes numerous clauses related to the processes and methodologies to be used in undertaking various studies such as demand assessment studies, concept studies and feasibility studies. In all of the processes and methodologies related to the studies in part 8 Aurizon Network acts as the co-ordinating body with broad discretion as to how the studies are directed and focused. Asciano does not believe Aurizon Network, as one participant in the coal supply chain, should take on the role of expansion co-ordinator for the coal supply chain, particularly when, in such a role, it can act to favour the Aurizon Network related operator or customers of the Aurizon Network related operator.

Asciano is concerned at the approach to dispute resolution in Part 8. Part 8 contains a separate dispute resolution process for disputes relating to network development and expansion. Asciano is concerned that in some circumstances the dispute resolution process that applies to an issue may be unclear, and in such an instance there may be potential for parties to seek to select the dispute resolution process that best meets their position. Asciano notes that some of the principles applying to Part 8 dispute resolution process in clauses 8.2.1 f) and g) are quite broad and may act to favour Aurizon Network. For example, under clause 8.2.1 g) in making a decision the QCA has to consider amongst other things:

- Aurizon Network's legitimate business interests – these are very broadly outlined via eight sub clauses in clause 8.2.1 f), although these eight sub clauses are not exhaustive; and
- Access seekers legitimate business, which are not defined or outlined.

Asciano believes that the dispute clauses should be assessed for consistency with the broader access undertaking dispute resolution approach (as found in the 2014 DAU part 11) and to the extent there is a fundamental inconsistency of approach then the broader dispute resolution clauses and approaches should apply⁷. In addition to the extent that terms such as 'legitimate business interests' are used in dispute resolution processes and approaches these terms should be outlined for all parties rather than just Aurizon Network.

Summary of Recommendations for Improving the 2014 DAU in Order to Network Development and Expansion

The high level of discretion allowed to Aurizon Network in the 2014 DAU in relation to network development and expansion should be restricted.

In particular the 2014 DAU should be amended to introduce provisions which:

- Ensure that Aurizon Network does not unduly disadvantage or favour one operator or end user over another when undertaking negotiations and making decisions in relation to network development and expansions;

⁷ Asciano notes that under the 2014 DAU clause 11.1.7 disputes under Part 8 can still be referred to dispute resolution under Part 11

- Ensure that any party willing to invest has the right to be an investor; and
- Limit the role and powers of Aurizon Network in relation to any broader Aurizon Network coal supply chain co-ordination role contained in the DAU 2014.

4.6 2014 DAU Key Issue: Flexibility of Access Rights

Increasing flexibility in the usage of access rights is needed to ensure more efficient use of these access rights. In particular the system rules and network management principles should be amended to allow effective and timely transfer and utilisation of access rights, thus increasing system efficiency and system utilisation and meeting the objective of Part 5 of the QCA Act to promote the economically efficient use of significant infrastructure.

The 2013 DAU did not encourage flexibility in the usage of access rights. Asciano raised the issue of flexibility in the usage of access rights in some detail in its October 2013 submission. The 2014 DAU has not addressed this issue in any detail.

Asciano is aware of a draft Aurizon Network proposal relating to short term transfers entitled "Flexible Use of Access Rights" being circulated within the industry. This proposal has not formally been put before the QCA. Asciano has some concerns with this proposal but given the proposal seeks to address issues related to the flexibility of access rights Asciano believes that the proposal should be put before the QCA to enable the proposal to be assessed and elements of the proposal to be incorporated into the access undertaking if this is considered appropriate by the QCA.

Asciano believes that the access undertaking needs to allow for the flexible usage of access rights before it can be approved by the QCA.

Summary of Recommendations for Improving the 2014 DAU in Order to Address Flexibility

The 2014 DAU should be amended to actively support initiatives which promote the flexible usage of access rights.

4.7 2014 DAU Key Issue: Capacity Allocation

In its 2013 submission Asciano had major concerns with Aurizon Network's proposed capacity allocation and management provisions. In particular these provisions replaced an objective capacity allocation process with a subjective capacity allocation process where Aurizon Network had broad discretion to choose which access seekers received access.

While there have been a substantial number of changes to Part 7 of the 2014 DAU these changes have not addressed the fundamental issue that Aurizon Network can continue to allocate capacity based on its subjective assessment of capacity requests before it. Clear and objective processes need to be implemented to ensure capacity is allocated in an equitable and efficient manner. Under the current proposal Aurizon Network can act to benefit their own broader commercial and / or operational interests over the interests of access seekers and / or access holders.

Clauses 7.3.3 and 7.3.4 of the 2010 access undertaking required Aurizon Network to form a queue in the order of access request receipt dates where mutually exclusive rights are being sought by

access seekers. Aurizon Network then allocated access rights to the access seeker who is first in the queue, then next in the queue, and so on. Aurizon Network is able to allocate access rights to an access seeker lower in the queue if Aurizon Network can demonstrate that their commercial performance can be improved by two specific criteria being:

- The access request later in the queue will achieve an NPV that is two per cent or more greater than an earlier access request; and
- The access request later in the queue is willing to execute an access agreement for a term of at least 10 years and which is a longer term than an earlier access request.

Importantly, where the queue order changes based on the two criteria above, Aurizon Network must inform access seekers who have been impacted by the re-ordering.

As the queuing provisions have been entirely removed from the 2014 DAU, Aurizon Network now has wide discretion as to who they allocate capacity to, based on Aurizon Network's individual assessment of the following factors as outlined in clause 4.12 c) of the 2014 DAU:

- Whether the access seeker has secured, or is reasonably likely to secure, supply chain rights;
- Whether the access seeker has secured, or is reasonably likely to secure, a rail haulage agreement for the operation of the train services that are the subject of the access application;
- Whether the access seeker or its rail operator has sufficient facilities to enable it to run train services to fully utilise the access rights sought; and
- Where the access rights are sought to transport the output of a mine, whether the anticipated output of the mine is sufficient to support full utilisation of access rights sought.

All the above factors are determined by Aurizon Network's subjective assessment of the application. Asciano believes this provides Aurizon Network with excessive discretion as to who they choose to allocate capacity to. The existence of this excessive discretion has the potential to be used to disadvantage access seekers who are seeking capacity in competition with Aurizon Network's related party operator or in competition with a third party who has a contractual relationship with Aurizon Network's related party operator.

In addition, many of the factors outlined in clause 4.12 c) of the 2014 DAU are beyond Aurizon Network's scope of being responsible for providing, maintaining and managing the rail infrastructure for the purposes of providing access. For example, the criterion related to whether a rail operator has sufficient rolling stock and maintenance and provisioning facilities is an issue for the train operator and the end user to resolve rather than Aurizon Network.

Furthermore Aurizon Network's requirement for access seekers to demonstrate that they meet the clause 4.12 c) factors outlined above is excessive – this requirement has the potential to hinder the provision of access. For example, the criterion related to supply chain rights includes a series of factors which would not be known with certainty by an access seeker in the early stages of the project.

It would be difficult under the 2014 DAU approach to capacity allocation to verify that the Aurizon Network assessment of the above factors was carried out in a consistent and non-discriminatory manner as the 2014 DAU does not describe how these assessments should be undertaken nor

does it require Aurizon Network to demonstrate how the assessment was conducted across access seekers.

Asciano believes that there needs to be a clear and defined objective capacity assessment and allocation process in the 2014 DAU that is both transparent and equitable. Asciano believes that clauses 7.3.3 and 7.3.4 of the 2010 access undertaking met these criteria, and in the absence of another objective capacity allocation process being proposed the queuing capacity allocation mechanism should be reinstated in the approved access undertaking.

Overall Asciano continues to have concerns that the process outlined in the 2014 DAU provides excessive levels of discretion to Aurizon Network in allocating capacity. Asciano submits that there needs to be a clear objective capacity assessment and allocation process in the 2014 DAU that is both transparent and equitable, and in the absence of another objective capacity allocation process being proposed the queuing capacity allocation mechanism used in the 2010 access undertaking should be reinstated.

Summary of Recommendations for Improving the 2014 DAU in Order to Address Capacity Allocation

The 2014 DAU should be amended to ensure that there is an objective capacity allocation mechanism in place which is both transparent and equitable.

5. Detailed Comment on Changes from the 2013 DAU to the 2014 DAU

Asciano has numerous concerns with the changes to the drafting of the 2014 DAU. This section contains detailed comments on the changes to the 2014 DAU from the 2013 DAU.

A more detailed tabulated set of comments on changes between the 2010 AU, the 2013 DAU and the 2014 DAU is contained in Attachment Two of this submission.

5.1 Comments on 2014 DAU - Part 2 – Intent and Scope

In its October 2013 submission Asciano raises the concern that there is a fundamental shift away from the clear statement of intent in the 2010 AU of “Non Discriminatory Treatment”, where the clause 2.2 of the 2010 AU sets out a statement of intent in relation to non-discriminatory treatment. Aurizon Network may believe that this issue has been addressed via its changes in 2014 DAU clauses 2.2 e) and 2.2 f); however Asciano does not believe that this is the case. The 2014 DAU still lacks a clear and unambiguous statement supporting non-discriminatory treatment of all access seekers and access holders.

Asciano queries the removal of the term “commercial” in clause 2.2 a), where the clause refers to the “commercial negotiation of access agreements”. Asciano believes that negotiations between arms length parties are very likely to be commercial and the removal of the word “commercial” raises concerns that negotiations between Aurizon Network and some counterparties including Aurizon Network’s related party operator may involve non-commercial terms favourable to the counterparty. Asciano understands that the deletion of the word “commercial” was due to the concerns of another stakeholder. Asciano’s concerns with the removal of the word “commercial” could be substantially addressed if it were replaced by a term such as “non-discriminatory”.

Clause 2.2 b) i) outlines numerous characteristics required of access and utilisation processes, such as efficiency, timeliness, commerciality etc. Asciano strongly believes that flexibility should be included in this listing in clause 2.2 b) i).

Clause 2.2 e) ensures that Aurizon Network acts in a manner consistent with the QCA Act sections 100(2) to 100(4) and 168C. The issue with this clause is that these sections do not prevent Aurizon Network from providing favourable terms to third parties (i.e. parties unrelated to Aurizon Network). While at first glance this may not appear to be an issue, this would permit Aurizon Network to offer more favourable below rail terms to one third party access holder (for example a miner which has Aurizon Network’s related party operator as its above rail service provider), than the below rail terms it may offer to another third party access holder. Note that these favourable terms may not necessarily be price related - they may relate to operational issues or capital expenditure issues. Asciano submits that this concern should be addressed in the access undertaking by strengthening the non-discrimination and ring fencing provisions. For example, the undertaking should require that Aurizon Network must not provide more favourable terms of access to non-related parties where these parties have an above rail haulage agreement with an Aurizon Network related party.

Clause 2.2 f) ensures Aurizon Network can negotiate away from the access undertaking. Asciano has concerns that Aurizon Network will use this discretion to negotiate away from the access undertaking for some access seekers and access holders but not others. The access undertaking must include a clear statement that all access seekers and access holders will be treated in non-discriminatory manner.

Clause 2.4 relates to the sale of electricity by Aurizon Network. Asciano recognises that the sale of electricity is not governed by the access undertaking, however Asciano believes that given Aurizon Network's position it should provide a commitment that the supply and sale of electricity by Aurizon Network to third party operators should be on identical terms to the supply and sale of electricity to Aurizon Network's related party operator. Under clause 2.4 b) Aurizon Network is not required to supply and sell electricity on terms that would be unreasonable and uncommercial. Asciano believes that Aurizon Network's supply and sale of electricity to all parties including its related party operator should be on identical terms and these terms should be commercial.

5.2 Comments on 2014 DAU - Part 3 – Ring fencing

General comments on the 2014 DAU ring fencing are made above in section 4.2 of this submission.

Under clause 3.1 c) Aurizon Network continues to be able to undertake unregulated services in competitive markets leading to concerns related to the allocation of shared overheads and accounting separation. In particular Aurizon Network justifies its regulated costs by using stand alone business cost comparators, however to the extent other non-regulated services are provided by Aurizon Network then the concept of Aurizon Network as a regulated stand alone business may not be supportable.

Under clause 3.2 a) iii) Aurizon Network continues to be able to favour a non-related third party; such an action may be undertaken if the non-related third party has a commercial agreement with another Aurizon entity, such as an above rail operator. This issue is becoming more concerning to Asciano as an increasing number of non-related entities (who may use Aurizon's above rail services) contract for access directly with Aurizon Network. Similarly clause 3.6 a) ii) limits direction by a related operator but does not exclude direction from a non-related third party which has a commercial agreement with another Aurizon entity. Asciano believes this broad issue should be addressed to ensure Aurizon Network does not act to unduly benefit third party access holders who use Aurizon's above rail services.

In relation to clause 3.4 b) Asciano queries the insertion of the word "only" into the clause, such that now access related functions may only be performed by Aurizon Network. While Asciano recognises that this prevents other Aurizon entities from performing access functions the wording may inadvertently prevent third parties from performing access functions. For example it may prevent a miner or train operator from becoming the rail infrastructure manager on a connected piece of infrastructure such as a mine loop. Asciano believes that the intent of the wording should be clarified.

Under clause 3.6 c) Aurizon Network employees whose duties primarily involve access functions may not be seconded or transferred to Aurizon marketing for less than six months. Asciano

strongly believes that the separation between all Aurizon Network employees (regardless of their roles) and above rail marketing should be stronger; there should be no ability for employees of Aurizon Network with information relating to Aurizon's above rail competitors to be seconded or transferred to Aurizon above rail marketing.

Asciano is strongly concerned that drafting changes in clause 3.6 d) and clause 3.17 c) G) both act directly against the intent of ring fencing Aurizon Network as these clauses allow Aurizon corporate staff to provide services such as strategy and marketing to Aurizon Network.

Clause 3.20 relates to a protected information register and new drafting in clause 3.20 b) iv) relates to a requirement that the register will now contain details of protected information compliance breaches. Asciano believes that there needs to be a penalty regime in place for such confidentiality breaches and a means of remedying the breach. As outlined in section 4.2 of this submission a strong penalty regime is needed to enforce ring fencing and non-discrimination compliance. Otherwise a compliance breach can be recorded, but while there is no adverse impact on Aurizon Network there is likely to be an adverse impact on the party whose information has been disclosed.

5.3 Comments on 2014 DAU - Part 4 – Negotiation Framework

Part 4 of the 2014 DAU has been extensively redrafted. Asciano understands that much of this redrafting reflects discussions between Aurizon Network and mining stakeholders. Asciano has not been involved in these discussions.

While Aurizon Network has redrafted Part 4, the negotiation framework is fundamentally the same as the framework put forward in the 2013 DAU. A majority of the concerns raised in Asciano's previous submission on the 2013 DAU have not been addressed in the 2014 DAU redrafting - the 2014 DAU drafting continues to reflect Aurizon Network's preference for a monopolistic negotiation framework over a regulated and more transparently equitable negotiation framework. In particular the 2014 DAU contains steps within the negotiation framework that would allow for discriminatory treatment of access seekers by Aurizon Network.

Asciano is concerned by the Part 4 approach to negotiation as the natural monopoly of Aurizon Network and the vertically integrated nature of Aurizon allows for the possibility of Aurizon Network disadvantaging one operator or end user over another via the use of the commercial negotiation framework.

Asciano strongly supports a negotiation framework that provides certainty, transparency and strong regulatory oversight. Such a framework ensures that the negotiation and granting of access by Aurizon Network is non-discriminatory and efficient for all access seekers, access holders and end users.

The negotiation and granting of access by Aurizon Network must follow a process that outlines every stage from access request to finalisation of an Access Agreement. This approach removes the potential for subjective decision making by Aurizon Network as to the terms on which they negotiate and grant access. Having a descriptive and transparent negotiation framework prevents the potential for situations where access seekers are treated inconsistently as Aurizon Network would be obligated to treat access seekers consistently.

Furthermore, as addressed in Asciano's October 2013 submission, the removal of the queuing arrangements from Part 4 of the 2014 DAU is concerning. As Aurizon Network no longer has a requirement to establish a queue for access and advise Access Seekers of their place in the queue, Aurizon Network has a substantially expanded scope as to who they negotiate with and how they choose to negotiate. Asciano believes that a queueing approach, as required by the 2010 access undertaking, should be re-established so that an objective test and process for capacity allocation is used. The current 2014 DAU approach allows Aurizon Network to subjectively negotiate and allocate access and given this subjectivity this approach is not acceptable.

Detailed Comment on Part 4 of the 2014 DAU

Clause 4.3 d) of the 2014 DAU provides that within 10 business days of receipt of an access application, Aurizon Network may request that the access seeker provide information regarding the access seeker's ability to fully utilise their requested access rights – the information includes factors such as whether the access seeker has a customer for the access rights, has supply chain rights, has a rail haulage agreement, has rolling stock, has provisioning facilities, has maintenance facilities, has storage facilities and has mine output that is sufficient to use the access rights sought. Asciano continues to be concerned with the level of information required to receive a response to an access application. Asciano has concerns with the above process as:

- It delays the access request;
- It may incur unnecessary additional costs in instances where the additional information sought does not assist in the access request process;
- It is based entirely on Aurizon Network's discretion as to whether or not they request the additional information; this discretion has the potential to be applied unequally between different access seekers;
- It is based entirely on Aurizon Network's assessment of whether the information provided by the Access Seeker is satisfactory; and
- This information may be of commercial benefit to Aurizon Network's related above rail operator. Asciano recognises that there are ring fencing provisions in place to prevent the transfer of such information, but as outlined by Asciano in its October 2013 submission and in this submission in sections 4.2 and 5.2, Asciano has concerns as to the effectiveness of the ring fencing regime and the lack of effective audit processes and breach penalties (as evidenced by the breaches of the 2010 AU).

Furthermore, under clause 4.3 e) if an access seeker does not respond within 20 business days of an Aurizon Network request for additional information Aurizon Network is able to terminate the access application. Asciano is concerned that this clause when combined with Aurizon Network's ability to subjectively request additional information will result in the potential for the negotiation process to be controlled by Aurizon Network in order to delay or terminate access applications.

Asciano has previously expressed concerns with clause 4.4 e) i) which allows Aurizon Network to reject an access application if the access rights sought via the access request do not commence within three years. These concerns remain after new drafting at clause 4.4 e) ii) of the 2014 DAU which states that Aurizon Network has discretion as to whether to reject an access application if

the access rights are proposed to commence on a date more than five years after the receipt date, or where the access rights are proposed to commence on a date between three and five years after the receipt date, if a series of factors are taken into account. The factors to be taken into account include the lead times necessary to allow infrastructure, facilities and equipment to be in place in order to use the access rights, including mine development and transport logistics chain development such as the acquisition of rolling stock, rolling stock facilities and the development of rail infrastructure. Aurizon Network's assessment of these factors is subjective.

Asciano is very concerned that the ability of Aurizon Network to reject an access application based on its discretion has the potential to result in situations where Aurizon Network could delay or even prevent access applications from proceeding. Asciano believes that many of the factors to be considered by Aurizon Network under clause 4.4 e) are beyond Aurizon Network's role as a rail network provider and place unnecessary restrictions on an access seeker undertaking its business (for example, the factors to be considered by Aurizon Network may place unnecessary time frames and restrictions on competitive tenders and investment decisions).

Clause 4.5 in the 2014 DAU allows an access seeker to vary their access application if the variation is not a material variation. A similar process has also been inserted in section 4.10.2 e) to j), which allows an access seeker to vary their access application during the negotiation of an access agreement. These allowances for variation were suggested in Asciano's previous response to the 2013 DAU. While these processes would be of significant benefit, Asciano has some concerns with the wording.

Under clause 4.5 b) Aurizon Network has discretion in deciding whether a variation to an access proposal is a material variation. This discretion effectively allows Aurizon Network to suspend work on an access proposal. Asciano believes that this discretion has the potential to be misused if, for example, there was an access application for the same access task from a related party operator and a third party operator and the third party operator made a relatively minor change to its access application. Asciano's concerns with this issue are compounded by the definition of material variation in Part 12.1 of the 2014 DAU as the definition of material variation is quite broad. For example minor changes in the way a train service is operated (such as a change in loading time by say 10 minutes or changing a mine load out to an adjacent mine load out on the same spur line) while meeting the definition of a material variation, may not actually impact on system operation or capacity consumed. Asciano believes that the material variation definition should have some defined threshold relating to the impact of the variation on system operation or the capacity consumed. This would limit Aurizon Network's discretion while still allowing Aurizon Network to suspend work on an access proposal when an access application change substantially impacts system operation or the capacity consumed.

Clauses 4.8 a) and b) relate to the situation where there are multiple applications for the same access task – in this case the end user may nominate one of the operators to act on its behalf. Asciano queries what would occur if the end user did not nominate one of the operators (perhaps because an above rail operations tender has not been finalised). Asciano believes that the drafting should allow for the negotiations to continue with all potential operators in these circumstances.

Clauses 4.10.1 d) and e) are new drafting in the 2014 DAU and now state that if capacity previously offered to access seekers cannot be provided after it has been planned for by Aurizon Network, then the negotiation period ceases and any access applicant will need to start again at the beginning of the access negotiation process. This would mean that the access seeker would have to submit a new access application in the future once capacity becomes available to try and acquire the remaining portion of access rights originally sought. Asciano believes that this is inappropriate as the access seeker is disadvantaged despite having met all the conditions required under the access undertaking. Asciano believes that Aurizon Network should be required to explain why the capacity could not be delivered and the access seeker affected by this shortfall in capacity should have a right to the first tranche of any further new capacity that may be developed or otherwise becomes available – that is this tranche should be placed in a capacity queue. A capacity queue offers the access seeker more certainty in acquiring access rights. The AU 2010 provided for such a queue so it is unclear why this approach has been removed from the 2014 DAU. Asciano believes that this approach must be reinstated.

During access negotiations an Interface Risk Assessment is typically undertaken or reviewed. Clause 4.10.2 c) is now drafted to include a list of specific factors to be addressed during the Interface Risk Assessment where an access seeker's operations differ from existing train services. "Train services" is defined as a train operation on the rail infrastructure from a specified origin to a specified destination. As the definition of train services is so broad, it is unclear how Aurizon Network would treat an access seeker's train operation as being different to existing train services. This new wording raises the potential for a subjective assessment by Aurizon Network.

Some of the factors listed in the assessment of differentiation between train services include special shunting movements, different driver methodology, different loading or unloading methods, different speed of the train and whether there are requirements to augment the rail infrastructure. These differential factors may not have an impact on Aurizon Network's overall risk, for example, shunting is often performed off Aurizon Network's network in private depots or yards and driver methodology may not impact on operations outside of the driver's cab. Such specified factors should be limited to what Aurizon Network is reasonably required to know and jointly assess with the access seeker for the purposes of performing their role as a railway manager and maintaining a safe and effective network.

During the negotiation period Aurizon Network can terminate an access application if they believe the access seeker cannot address the factors in 4.12 c). These factors include supply chain rights, the availability of rolling stock, provisioning facilities, maintenance facilities, storage facilities and mine output. Asciano believes that some of this information may be difficult to provide or demonstrate during the development phase of a project and as such usage of clause 4.12 c) to terminate an access application may be hindering access for a viable project.

Furthermore, under clause 4.12 d) iii) if a dispute relating to the cessation of negotiations occurs Aurizon Network will be taken to have complied with the undertaking regardless of the outcome of the dispute if it has acted in good faith and made a reasonable attempt to comply. Asciano has concerns with this clause as Aurizon Network may breach the undertaking but have no consequence applied to it. (In practice, it may be very difficult to prove that Aurizon Network has not acted in good faith or made a reasonable attempt to comply). For example if there was an

access application for the same access task from a related party operator and a third party operator Aurizon Network may be able to frustrate the application of third party operator via the use of a cessation notice and not have to deal with any consequences of such an action. Asciano believes that this clause is unduly in Aurizon Network's favour and Aurizon Network should be liable if it has been negligent or if it has breached the QCA Act, access undertaking or any relevant agreement.

Under clause 4.12 e) Aurizon Network can recover its costs from the access seeker in instances where negotiations have ceased. The continued inclusion of this clause in the 2014 DAU is unacceptable, particularly as Aurizon Network has wide discretion to cease negotiations. Asciano believes that in instances where negotiations cease both parties should bear their own costs, (assuming both parties entered the negotiations in good faith).

Asciano has a serious concern in relation to the wording of clause 4.12 of the 2014 DAU relating to Aurizon Network's ability to cease negotiations. There is a lack of detail surrounding the conditions by which Aurizon Network can issue a negotiation cessation notice and the timeframes in which they can do so. Unless these processes are well defined Aurizon Network has broad discretion as to how they approach these terminations.

In addition Aurizon Network is not required to justify why a cessation of negotiation has been triggered. Aurizon Network must be required to explain their reasoning relating to any cessation of negotiations.

5.4 Comments on 2014 DAU - Part 5 – Access Agreements

There are no fundamental changes to Part 5 of the 2014 DAU; consequently Asciano refers the QCA to Asciano's previous response on the 2013 DAU. Further comments on the drafting of the operator access agreement and train operations agreement are contained in Attachment 3 of this submission.

As discussed in this submission at section 4.3, the QCA approved a suite of standard access agreements in August 2013 following a stakeholder consultation process. Asciano believes that these the QCA approved agreements should apply under the 2014 DAU.

It has been suggested that the approved suite of access agreements could be simplified. Asciano supports simplification in principle, however Asciano would need to see a developed proposal before it would be able to support any specific proposed approach. Asciano would only support a proposal that allows for both end users and train operators to hold access rights.

In addition Asciano would support an approach to the access agreement structure which includes a requirement for a series of prescribed standard clauses to be contained in all access agreements that cannot be altered or negotiated away. This would contribute to ensuring that all access holders are treated in a non-discriminatory manner.

Asciano does not believe that the agreements attached to the 2014 DAU are acceptable, particularly to the extent that they are not aligned with the suite of access agreements approved by the QCA in August 2013.

5.5 Comments on 2014 DAU - Part 6 – Pricing Principles

Asciano is concerned that new wording in clause 6.2.2 b) allows Aurizon Network to vary its formulation of access charges away from the relevant reference tariff in order to reflect the difference in cost or risk where the train service in question differs from the cost or risk of the reference train service. Asciano is concerned that Aurizon Network's assessment of cost and risk could be very subjective as no detailed provision is included in the 2014 DAU that specifies how this is conducted. If such an approach is to be contemplated then the access undertaking must outline how Aurizon Network will assess the differentiation of a train service, and any relevant benchmark access charges must be included in the access undertaking to ensure access pricing transparency.

This new wording is particularly concerning for non-coal carrying services, as these train services will not meet the criteria of a reference train service. This wording provides Aurizon Network absolute discretion on how it applies access pricing for these train services. Clause 6.2.3 of the 2014 DAU explicitly references non-coal carrying services and allows Aurizon Network to differentiate access prices when no reference tariff applies. Aurizon Network should clarify its pricing and price differentiation approach for non-coal carrying train services so that there is a degree of transparency in access pricing for non-coal carrying services. For example similar non-coal carrying services should be charged a similar access price.

Aurizon Network has included new wording in the 2014 DAU under clause 6.2.4 in relation to expansion tariffs for coal carrying services. Where an expansion is required for a train service sought by an access seeker, which is not funded by Aurizon Network, Aurizon Network must seek the QCA's acceptance of their proposal regarding how they assessed and calculated the new expansion tariff. Asciano has the following concerns in the approach proposed for Expansion Tariffs in the 2014 DAU:

- Clause 6.2.4 c) allows Aurizon Network to provide new or varied indicative reference tariffs to the QCA as information only which is separate to their pricing proposal. If these indicative reference tariffs will apply to an access seekers and / or access holders then Aurizon Network should be obliged to formally submit the indicative reference tariffs to the QCA for approval before they can apply the indicative reference tariff.
- Clauses 6.2.4 i) to k) set out the criteria for establishing a new expansion tariff. The term highest reference tariff is introduced and if this tariff, on a dollar per net tonne basis, is increased by more than 5 per cent then Aurizon Network is to submit a new expansion tariff to the QCA for approval as opposed to having the expansion made part of any existing reference tariff. Asciano is concerned that there appears to be no explicit justification for the 5 per cent benchmark.
- Clauses 6.2.4 o) and p) state that the expansion tariff must only apply for ten years and at the end of this term the expansion tariff will be socialised with the relevant system reference tariff. This is of particular concern to Asciano as there is no explanation as to why an expansion tariff survives as a separate tariff for only ten years. Asciano believes that the tariff should be for the life of the asset. The automatic socialisation of the expansion tariff into a system reference tariff would lead to train services that do not receive any benefit from the expansion work

having to pay for the expansions. This in turn will result in tariffs which are not cost reflective and which send inefficient pricing signals. These clauses should be amended so that for the life of the asset only the users of an expansion have to pay for the expansion. Asciano believes that these clauses provide the potential for Aurizon Network to ensure socialised reference tariffs for both Aurizon Network funded expansions and third party funded expansions.

- Clause 6.2.5 b) proposes a distance discount and an associated formula. The concept of the discount and the formula need further scrutiny and clarification to ensure they are equitable for a user funding their own infrastructure. The distances applied in the formula, in particular the upper and lower limits of the spur length being 100 and 25 kilometres do not seem to be based on any assessment of costs but rather seem to be arbitrary limits.

Note that in clause 6.3.2 b) there is a drafting issue - the clause would seem more reasonable if the word "subsequently" was replaced with "concurrently" (or a similar word).

The inequitable treatment of non-coal carrying train services is also extended to the pricing approach of clause 6.4.1 b). Where available capacity is potentially insufficient to satisfy the requests for access rights of all current and likely access seekers, Aurizon Network may determine the highest access charge for a train service which they deem as the maximum access charge. Aurizon Network may then quote this maximum access charge to all access seekers in relation to the available capacity regardless of whether any of those access seekers have an ability to contribute to the common costs or irrespective of the access charges payable in existing access agreements for similar train services. Aurizon Network then has discretion on who they allocate that available capacity to base on the maximum access charge. Asciano has a concern that these provisions would disadvantage those that cannot afford to pay Aurizon Network's deemed maximum access charge. It is highly likely under this scenario that a non-coal carrying train service would lose in this bidding process simply on the basis that non-coal carrying freight tasks are generally less profitable than a coal carrying task. This approach is not consistent with the Queensland Government's *Moving Freight*⁸ strategy where their focus is to prioritise rail freight over road.

Asciano notes that clause 6.4.1 c) specifically states that this bidding process does not apply to coal carrying services that are subject to reference tariffs which confirms that the intention of these provisions are most likely to be for non-coal carrying train services. The QCA should closely examine the long term impact of this approach on non-coal carrying train services as it could potentially have adverse impacts on the wider Queensland economy.

5.6 Comments on 2014 DAU - Part 7 – Capacity Allocation and Management

General comments on the 2014 DAU capacity allocation and management are made above in section 4.7 of this submission.

⁸ Moving Freight: A strategy for more efficient freight movement issues by the Queensland Government Department of Transport and Main Roads, December 2013

Clauses 7.1 c) to e) and clause 7.2 to 7.5 include both new drafting and drafting from the 2013 DAU. These clauses address how access rights will be allocated and prioritised. As outlined above Asciano believes the approach put forward by Aurizon Network remains far too subjective, and Aurizon Network need to provide an objective process by which access rights are prioritised and allocated.

The 2014 DAU has, if anything, made Aurizon Network's requirements for the allocation of capacity more onerous. For example now under clause 7.2 of the 2014 DAU an access seeker is required to demonstrate whether the access seeker is seeking access rights that will be used for a person other than themselves will have or is likely to have a customer for those access rights.

Asciano believes that there should be no requirement for an access seeker to demonstrate these factors in order to be allocated access rights. These requirements are excessive and provide scope to Aurizon Network to refuse access rights to an access seeker; and by refusing access rights to a third party access seeker Aurizon Network has the potential to benefit its related party operator. Thus the Aurizon Network proposed capacity allocation approach has the potential to discriminate between access seekers.

In the 2014 DAU Aurizon Network has introduced the concepts of mainline paths and track segments – these concepts are of concern to Asciano. For example the new clause 7.3 b) allows a renewing access seeker to change the origin or destination as long as the access rights:

- Continue to have the same requirement for mainline paths as the existing train service; and
- The origin of the train service for the renewal and the origin of the train service under the existing access rights relating to the renewal are located on the same track segments.

The 2014 DAU definition of mainline paths and track segments refers to the preliminary information of the 2014 DAU Schedule A. This preliminary information refers to corridor maps and line diagrams that specify mainline paths and track segments but corridor maps and line diagrams have not been included in the 2014 DAU. Thus the details of the mainline paths and track segments are not known and therefore it is difficult to assess the benefits and disadvantages of this approach when major components are unknown. The mainline paths and track segments should be provided by Aurizon Network to allow a transparent assessment of clause 7.3.

Clause 7.6 relates to system rules and has been amended in the 2014 DAU. The provisions now allow access holders to make submissions that a new system rule be implemented or an existing system rule be amended. However, Asciano has several concerns with the approach taken by Aurizon Network as follows:

- Clauses 7.6.3 d) and e) relate to the system rules and contain wording that restricts the QCA. Asciano believes such wording is inappropriate in an access undertaking which is regulated by the QCA. Furthermore the wording in these clauses implies that if system rules are equally disadvantageous for all users they should be acceptable to the QCA. Asciano believes that while system rules should treat all users equitably the rules should be aiming to be advantageous to all users by providing frameworks that encourage increased supply chain capacity.

- Clause 7.6.4 b) requires that Aurizon Network will review the system rules where access holders who hold at least sixty per cent of the affected train paths in the relevant coal system notify Aurizon Network that they are seeking a review⁹. However, under clause 7.6.4 c) Aurizon Network continues to have full discretion as to whether they amend the system rules. Asciano believes that Aurizon Network should be required to submit system rules proposals or amendments suggested by access holders in clause 7.6.4 b) to the QCA for formal consultation with the amendments being subject to the QCA approval process. Aurizon Network should not have full discretion as to what changes are (or are not) put forward to the QCA for approval.
- Under clause 7.6.4 e) where no submissions are received from affected persons within 20 business days then the amendments of the system rules put forward by Aurizon Network are automatically taken to have been made. Asciano believes that any amendment of system rules should be subject to a regulatory approval process overseen by the QCA regardless of whether submissions are received. Submissions made by parties should also be submitted to the QCA, not Aurizon Network, consistent with other approval processes.
- Under clause 7.6.4 f) ii) A) 2) Aurizon Network is only obligated to provide the QCA with submissions from affected persons. Based on the definition of affected persons in clause 7.6.4 c) i) A) affected persons only include access holders and access seekers whose train services will be affected by the amendments and their customer. Asciano believes this is too restrictive and is subjective as it based on Aurizon Network's assessment of whether access holders and access seekers are affected by the amendments. All system users of the relevant system rules should be considered as affected persons. This means they should be notified of any amendments and given the opportunity to make submissions in response to any amendment of system rules directly to the QCA. System users should include customers, access holders, access seekers, train operators, parties with rail interfaces and parties which own or operate loading or unloading terminals.

Overall the above points emphasise the need for system rules to be made part of the undertaking (in the same way as network management principles) in order to ensure regulatory oversight of this major operational document.

Other issues that should be addressed in relation to Part 7 of the 2014 DAU include:

- Any approved access undertaking should reinstate the 2010 access undertaking resumption, transfer and relinquishment provisions (see Asciano's previous response to the 2013 DAU on this issue); and
- The concept of ancillary access rights and how they are used is unclear – this should be clarified in any approved access undertaking to ensure consistent treatment is applied to both the transferors and transferees of access rights.

⁹ Note that Aurizon Networks related operator would most likely hold sixty percent of train paths in all of the relevant coal systems, so while conceptually Asciano has no issue with the approach in reality such a review is only likely to be initiated by Aurizon Network's related party operator.

5.7 Changes in 2014 DAU - Part 8 – Network Development and Expansion

General comments on the 2014 DAU network development and expansion are made above in section 4.5 of this submission.

Clause 8.2.1 a) provides (with some limitations) that nothing in the undertaking obliges Aurizon Network to expand the network or prevents Aurizon Network from expanding the network. Asciano submits that this broad over-arching discretion in relation to network expansion should be limited by the QCA approved undertaking, the QCA approved SUFA documentation and any other relevant QCA approved instruments.

Clause 8.2.1 b) allows Aurizon Network, at its discretion, to fund an expansion without requiring commercial terms. Asciano is concerned that this may allow Aurizon Network the option of agreeing to fund an expansion on advantageous terms to the end user when the end user has an Aurizon above rail haulage agreement. Thus this clause has the potential to allow Aurizon Network to favour one operator or end user over another. This clause should be redrafted to address this issue.

Clause 8.2.1 c) i) provides Aurizon Network with broad discretion as to whether it constructs (or permits construction of) an expansion based on technical and economic considerations. This discretion is restricted by requirements related to a feasibility study, but the under clause 8.2.1 c) i) the feasibility study does not apply where there has been a material change in circumstances. The assessment as to whether there has been a material change in circumstances appears to sit with Aurizon Network, thus the restriction on Aurizon Network's discretion in this clause may be illusory. This clause should be redrafted to address this issue.

Clause 8.2.1 l) ii) allows Aurizon Network to elect to fund and construct customer specific branch lines or rail infrastructure on its own account as long as this does not disadvantage another access seeker who is seeking capacity. Asciano is concerned that this Aurizon Network ability to elect to build infrastructure may be used to favour certain access seekers (for example access seekers with above rail agreements with Aurizon Network's related party operator) while not directly disadvantaging other access seekers. Asciano believes that such an approach is inequitable and criteria should be placed on Aurizon Network's decision making relating to entering into arrangements to fund and / or construct rail infrastructure which benefits one party (whether or not it disadvantages another party).

Clauses 8.2.2 b) to g) address the issue of reprioritising access seekers. These clauses allow Aurizon Network to permit an access seeker with a proposed expansion later in the expansion sequence to be reprioritised if it agrees to terms ninety days earlier than an access seeker earlier in the sequence. These clauses could be used to allow access seekers favoured by Aurizon Network to jump the queue as the agreement of terms is an issue which is largely within Aurizon Network's control. Asciano recognizes that the reprioritisation is subject to QCA oversight but remains concerned that these clauses may be used to disadvantage or favour one operator or end user over another.

Clause 8.2.3 largely relates to the process by which Aurizon Network undertakes a demand assessment. Asciano believes that in seeking information 8.2.3 b) that there should be an explicit requirement that any information obtained for use in the demand assessment or generated through the demand assessment process only be used for the demand assessment and not be shared with other parties, and in particular not be shared with Aurizon Network's related party operator. Any demand assessment report should be made available to all relevant parties, namely all impacted mines, train operators and supply chain participants. This demand assessment report can be redacted if necessary.

Clause 8.5 relates to feasibility studies. Clause 8.5 h) provides that in circumstances where the capacity to be created by an expansion is insufficient to meet the needs of all the access seekers then Aurizon Network has the discretion to determine which access seekers fund the feasibility study (subject to certain limitations in clause 8.5 h)). Similarly 8.5 t) i) allows Aurizon Network to withdraw a provisional capacity allocation if in Aurizon Network's view an access seekers circumstances have changed (subject to certain limitations in clauses 8.5 t) and u)). Asciano is concerned that this Aurizon Network discretion may be used to favour some access seekers over others.

Clause 8.6 a) ii) states that railway operators cannot fund feasibility studies (except where they are specifically identified by a customer) and similarly clause 8.8 a) states that expansions can only be funded by an access seeker if it is acting on behalf of a customer. Asciano has previously raised concerns relating to this issue in various submissions on the SUFA process. Asciano's position continues to hold its previously stated position that given train operators are active participants in the coal supply chain they should not be prevented from being involved in funding the expansion process if they are willing to fund the process. More generally, any willing party should be allowed to be involved in funding the expansion process. Asciano believes that explicitly excluding potential sources of funding for expansion based on the supply chain role of the source of funding is unlikely to benefit the coal supply chain. Further to this point Asciano notes that Aurizon Network, a related party to a train operator can fund expansions, which may in turn benefit Aurizon Network's related operator.

Clause 8.7 vii) relates to the role of the QCA where a studies funding agreement has been delayed or failed. Under this clause the QCA needs the approval of all relevant access seekers to progress the study. Asciano believes that a lower threshold than "all" may be more reasonable in instances where there are multiple access seekers. For example a threshold of sixty six per cent or greater would establish a clear majority.

Clauses 8.9.9 requires that after the first SUFA agreement is concluded Aurizon Network review SUFA and consult with funding users and access seekers and then submit any amendments to the QCA in the form of a draft amending access undertaking. Asciano believes that in this process Aurizon Network should also consult with other impacted parties (for example train operators and other end users).

Clause 8.1.1 b) places Aurizon Network in the role of supply chain coordinator, requiring Aurizon Network to act in a way that facilitates an appropriate balance between all elements of the supply chain in order to maximise performance. Aurizon Network has complete discretion in assessing

whether the supply chain balance is appropriate. Asciano has commented on this issue in its October 2013 submission. Asciano opposes any suggestion that Aurizon Network should be the supply chain co-ordinator. Due to both its monopoly position and vertically integrated position Aurizon Network's proper role is as a participant in the coal supply chain rather than the co-ordinator of the supply chain. By seeking to position itself as the Queensland coal chain co-ordinator, Aurizon Network is seeking to put itself in a position where it can advantage it's related above rail operator.

Asciano does not believe that any Aurizon Network role as a coal supply chain co-ordinator is consistent with the section 138(2) of the Act. The legitimate business of the access provider is to provide access. The access provider should not seek to extend its business to coordinating upstream, downstream and related markets.

Clause 8.11.3 e) outlines a process whereby if access holders for sixty per cent of a system's train paths seek a capacity assessment, then Aurizon Network will engage an expert to undertake the assessment. Asciano's concern with this approach is that Aurizon Networks related operator would hold sixty percent of train paths in the relevant coal systems, so while conceptually Asciano has no issue with the approach in reality such a capacity assessment process is unlikely to be utilised.

Clause 8.13 relates to the acceptance of capital expenditure projects by interested parties and in particular clause 8.13.7 g) relates to compliance. In particular clause 8.13.7 g) states that in relation to clause 8.13 substantial compliance occurs if Aurizon Network's acts or omissions do not comply, but that this non-compliance does not change the outcome of the vote. Asciano believes that this approach is indicative of an organisational culture where regulatory compliance is viewed as optional rather than compulsory. Asciano believes that a regulatory breach which does not impact a substantive outcome is still a regulatory breach and should be treated as a breach and rectified. Any regulatory breach should be investigated to identify the cause of the breach so the cause can be remedied. Asciano is particularly concerned that the approach to compliance outlined in 8.13.7 g) is indicative of Aurizon Network's broader approach to compliance including ring fencing and non-discrimination compliance.

5.8 Comments on 2014 DAU - Part 9 – Connecting and Private Infrastructure

General comment on 2014 DAU Part 9

There have been a substantial number of changes to Part 9 of the 2014 DAU when compared to the 2013 DAU. Asciano assumes that these changes are largely intended to reflect the QCA's Final Approval of the Standard Rail Connection Agreement which occurred in late April 2013 (at about the same time as the 2013 DAU was submitted to the QCA).

Asciano believes that the QCA approved Standard Rail Connection Agreement should be used for connections between Aurizon Network and private rail infrastructure.

Detailed Comment on 2014 DAU Part 9

Asciano remains concerned that various clauses in section 9 continue to be at Aurizon Network's discretion. For example;

- The assessment of the connection proposal under 9.1 c) is at Aurizon Network's discretion; and
- The assessment of whether preconditions are met under 9.1 e) is at Aurizon Network's discretion.

Asciano recognises that Aurizon Network's discretion in some of the matters related to connection is limited by requirements for information provision and the availability of dispute resolution; however fundamentally Aurizon Network discretion remains in relation to the assessment of the connection and the setting of the annual service charge. This discretion may be used to favour Aurizon Network's related party operator or an end user who is a customer of Aurizon Network's related party operator.

Clause 9.1 f) requires that if Aurizon Network refuses to enter the Standard Rail Connection Agreement Aurizon Network will notify the proponent providing reasons. Asciano believes that there should also be a requirement to notify the QCA if such a refusal occurs in order to ensure reasons for refusal remain consistent and in order to allow the reasons for refusal to be taken into account by the QCA in any future regulatory review of the Standard Rail Connection Agreement.

Clause 9.1 g) effectively allows Aurizon Network to be responsible for designing, constructing, project managing and commissioning the connection. Asciano believes that the responsibility for designing, constructing, project managing and commissioning the connection should be at the discretion of the proponent of the connection rather than Aurizon Network.

5.9 Comments on 2014 DAU - Part 10 – Reporting

General comments on the 2014 DAU reporting are made above in section 4.2 of this submission which addresses key issues related to ring fencing and compliance. The issues of ring fencing, compliance and reporting are heavily inter-related.

Drafting changes in clause 10.8 have removed the ability for the QCA to seek a compliance audit. Asciano strongly believes that an annual audit of general compliance should be undertaken but if this cannot be done then at the very least the QCA should have the ability to seek a compliance audit.

Clause 10.9 b) sets out various conditions the auditor should meet – these conditions should include an express condition that the auditor not receive revenue in excess of \$1 million from Aurizon in another capacity such as consulting or financial auditing. Furthermore clause 10.9 b) iv) should be expanded to allow the appointment of a replacement auditor if the auditor is in breach of 10.9 b) i) to iii) (i.e. the auditor is an employee of Aurizon, not qualified etc.) or if the auditor is in breach of the new condition outlined above that the auditor has not received revenue in excess of \$1 million from Aurizon in another capacity.

5.10 Comments on 2014 DAU – Part 11 – Dispute Resolution and Decision Making

General Comment on 2014 DAU Part 11

There have been a substantial number of changes to Part 11 of the 2014 DAU.

Under the 2010 access undertaking clauses 10.1.4 f) and h) allowed the QCA to consider issues such as the effectiveness of the supply chain and efficiency and equity in some specific types of disputes. These clauses have been deleted in the 2014 DAU but Asciano believes that the QCA should continue to be able to take issues such as efficiency and equity into account in dispute resolution. For example:

- Under the 2010 access undertaking clause 10.1.4 f) a dispute based on a situation where capacity is granted to a party other than the party at the head of the queue required Aurizon Network to demonstrate to the QCA that a reduction or elimination of other sources of revenue would reasonably be expected to occur as a consequence of Aurizon Network not providing access. Asciano recognises that to the extent that the 2014 DAU has removed queuing then this clause does not now apply however Asciano believes that in any dispute over the priority of access then Aurizon Network should bear the onus of demonstrating the benefit of its decision to the whole supply chain, particularly in instances where Aurizon's above rail operations are the beneficiary of the Aurizon Network decision.
- Under the 2010 access undertaking clause 10.1.4 h) a dispute over supply chain operating assumptions is required to be addressed by reference to a series of criteria including reference to the efficient operation of, and investment in, the coal supply chain and the equitable treatment of customers. Asciano believes that in any dispute criteria such as the efficient operation of, and investment in, the coal supply chain and the equitable treatment of customers should continue to be major factors to be considered by the arbitrating body.

Asciano believes that in relation to dispute resolution processes the QCA should maintain and strengthen its power in relation to being able to:

- Require Aurizon Network to demonstrate the benefit of its decisions to the whole supply chain, particularly in instances where Aurizon above rail is the beneficiary of the Aurizon Network decision; and
- Consider efficiency issues and equity issues in disputes.

These powers were available in a limited form in the 2010 access undertaking, and they should be maintained and strengthened in any approved 2014 access undertaking.

Detailed Comment on 2014 DAU Part 11

Clause 11.1 a) requires disputes to be resolved in accordance with part 11 of the access undertaking except for disputes under Part 3 (Ring Fencing) and Part 10 (Reporting). Asciano recognises that clause 3.23 of Part 3 and clause 10.7 of Part 10 are concerned with a complaints and audit process respectively; however these clauses should not be the exclusive remedy for ring-fencing and reporting disputes. Asciano believes that Part 11 should broadly apply to the

whole access undertaking. Asciano notes that Part 8 (Network Development and Expansion) has clauses relating to dispute resolution but, as outlined in clause 11.1.7, disputes under Part 8 can still be referred to dispute resolution under Part 11. Asciano believes that a similar approach should apply to Part 3 and Part 10.

Clause 11.1.1 c) iii) relates to disputes where the end user holds access and has been amended to remove a right for the end user or train operator (as relevant) to participate in discussion between the parties if desired. That is 2013 DAU clause 10.1.1c) iii) B) has been deleted; Asciano believes that this clause should be reinstated, as while the end user or train operator may not wish or need to be a party to dispute they are likely to be affected by the dispute and may be in a position to provide additional information relating to the dispute.

Clause 11.1.2 b) states that in the context of the chief executive resolution process all communications to resolve a dispute are made on a without prejudice and confidential basis. Asciano believes that there may be potential issues with this requirement if the dispute goes to mediation or to the QCA. Asciano believes that it should be clarified if this confidentiality extends beyond the time frame of the chief executive resolution process.

Clause 11.1.3 d) B) requires the mediation process to have run for 4 months before the parties can progress to the next step. Asciano queries whether such a long time period is required or whether a shorter period such as 30 to 60 days is sufficient, particularly as the parties can agree to extend the mediation time frame if required.

Clauses 11.1.3 relates to mediation and clause 11.1.4 relates to expert determination. Under the current drafting in the 2014 DAU it appears that if the dispute is not subject to an expert determination then the dispute may be referred to mediation if agreed by the parties. A dispute may then be referred to the QCA following mediation (as per 11.1.5 a) iii) B)). This wording implies that if a dispute is not subject to expert determination and if one of the parties does not agree to mediation then dispute does not progress, and in effect the dispute cannot be resolved. Asciano is seeking that the wording of these clauses be redrafted to clarify the dispute resolution process. If this drafting is maintained then Asciano does not believe that this is an effective dispute resolution mechanism.

5.11 Comments on 2014 DAU – Part 12 – Definitions and Interpretation

Detailed Comment on 2014 DAU Part 12

Asciano has concerns with following definitions in part 12 of the 2014 DAU.

Access Seeker – As in the 2013 DAU the term Access Seeker excludes all Train Operators which is a concern for Asciano as it limits a Train Operator's ability to seek and be granted Access Rights. Throughout Part 4 of the 2014 DAU it predominantly refers to the process by which an "Access Seeker" requests for Access Rights by the submission of an Access Application. As Train Operators are excluded in the definition of Access Seeker it implies that Train Operators cannot request for Access Rights by the submission of an Access Application.

Commercial Terms - The definition of Commercial Terms in the 2014 DAU specifies that a varied or additional take or pay arrangement is allowed for as a commercial term. This is concerning as it raises issues surrounding Aurizon Network's intent to differentiate between customers and access holders in regard to take or pay clauses which apply to access holders and / or customers.

Material Variation – Material Variation is a new definition in the 2014 DAU. The definition states that a material variation is a variation to an access application that materially alters the access rights sought by the access seeker and includes for example changes in loading and unloading times or changes in origin or destination. Asciano has concerns with the definition as changes in loading and unloading times or changes in origin or destination may result in no changes to the access rights sought. The definition is too restrictive and could be applied in such a manner that potentially requires access seekers to re-start the access request process for minor changes. The concept of material variation should be limited to variations which require an entirely new capacity analysis to be conducted by Aurizon Network.

Stowage – The definition of Stowage has been substantially altered from the 2010 AU. In the 2010 AU stowage meant

- Dwell; and
- The short-term storage of trains on the rail infrastructure at locations specified by Aurizon Network when an access holder cannot operate train services due to a temporary interruption.

Under this definition stowage does not include storage of individual items of rolling stock or the long-term storage of trains.

This term in the 2014 DAU has been broadened so that it now includes the storage of trains on rail infrastructure at locations specified by Aurizon Network during a possession.

Asciano's concern is that this definition lessens Aurizon Network's obligation to provide stowage for trains as a result of a temporary interruption (for example a train breakdown or a temporary outage at an unloading facility). Asciano believes that an unambiguous obligation to provide stowage should be reinstated.

In addition it should be noted that the current access agreement states under recital 2 c) that:

Aurizon Network is required to provide the Operator with certain benefits, rights and services in accordance with.....the definition of "Access" in the QR Network's Access Undertaking, and to the extent that these requirements are relevant to the Operator's Access Rights it is intended the terms on which they are provided are detailed in this Agreement.

Where the term "Access" in the access undertaking means the non-exclusive utilisation of a specified section of rail infrastructure for the purposes of operating train services and where the term "Train Service" in the access undertaking means the running of a train between specified origins and destinations by the operator (including any stowage).

Given the obligations to provide stowage exist in the 2010 access undertaking and the current access agreements Asciano believes this obligation should be unambiguously continued into the 2014 DAU.

Train Operator - Based on the definition of Train Operators, Train Operators are not protected by the non-discriminatory principles outlined in section 3.2 of the 2014 DAU which specifically state that Aurizon Network will not engage in conduct for the purpose of preventing or hindering an Access Seeker's or Access Holder's Access and unfairly differentiate between Access Seekers in a way that has a material adverse effect on the ability of one or more of the Access Seekers to compete with other Access Seekers. The reasoning behind Aurizon Network's drafting of this term to exclude Train Operators must be clarified. Asciano believes that any person or entity that submits an Access Application should be treated as an Access Seeker on a fair and equitable basis.

Similarly, the definition of Train Operator implies that a Train Operator must be nominated by an End User to operate Train Services under a Train Operations Agreement to be treated as a Train Operator under the terms of the 2014 DAU. This again seems to highlight the intent where the Train Operator is excluded from making an Access Application and being apart of the negotiating process under Part 4 of the 2014 DAU. As the completion of a Train Operations Agreement occurs after the finalisation of the Access Application and negotiation process, it seems the intention is for the Train Operator to be excluded in the processes leading up to acquiring Access Rights until a Train Operations Agreement is in place.

Furthermore it should be noted that the Railway Operator in the 2014 DAU means those terms given to it in the *Transport Infrastructure Act 1994* (TIA) which includes an End User's nominated Train Operator. The term in the TIA means a person who operates rolling stock on a railway. As the terms Access Seeker does not explicitly exclude Railway Operators, Asciano seeks clarity as to whether 'a person who operators rolling stock on a railway' (as defined in the TIA), such as Pacific National, can be treated as an Access Seeker under this scenario.

Overall the reasoning and intent behind Aurizon Network's exclusion of Train Operators from the term Access Seeker must be scrutinised by the QCA and possible confusion in the definitions of Train Operator and railway operator should be addressed.

5.12 Comments on 2014 DAU – Schedules

Asciano has numerous concerns with the Schedules attached to the 2014 DAU, these are outlined below:

Schedule A – Preliminary, Additional, and Capacity Information

Asciano's response to the 2013 DAU Schedule A still applies to the 2014 DAU Schedule A. Asciano has an additional concern relating to Schedule A of the 2014 DAU relating to redrafting which states that Schedule A clause 1 h) now includes plans specifying track segments and mainline paths. As indicated in section 5.6 of this submission these track segments and mainline paths (along with maps and diagrams) have not been attached to the 2014 DAU and on this basis it is impossible to assess if the inclusion of the concepts of track segments and mainline paths are beneficial or disadvantageous.

Schedule B – Access Application Information Requirements

Asciano's response to the 2013 DAU Schedule B still applies to the 2014 DAU Schedule B. Asciano has an additional concern relating to new drafting as under Schedule B additional information is now required by Aurizon Network prior to processing an access application. As outlined in section 5.3 and Attachment 2 of this submission the additional information required is excessive and unnecessary and may be used by Aurizon Network to delay the processing of an access application.

Schedule C – Operating Plan Requirements

Asciano's response to the 2013 DAU Schedule C still applies to the 2014 DAU Schedule C. Asciano has additional concerns as schedule C now contains new a new requirement that information on profiling and veneering be included in operating plans. However, these functions are typically managed and controlled by miners at the mine load out, and consequently a train operator may not have detailed specifications relating on profiling and veneering. The profiling and veneering information requirement should not be required in a train operator's operating plan as the purpose of such a plan is to outline the components of train service operation directly under the control of the train operator. Given this Aurizon Network should consider other ways to manage profiling and veneering.

Further to this issue Asciano is aware that Aurizon Network, in conjunction with coal miners has developed a *Coal Dust Management Plan (CDMP) 2010*¹⁰ to manage coal dust emissions on the network. Key measures proposed under the CDMP to reduce coal dust emissions include the adoption of improved loading techniques, load profiling, installation of veneering stations and sill sweeping. These all occur at the mine load out, which is outside the control of the train operator.

In addition Schedule C clause 3 includes a requirement for the train operator to include in the operating plan the "method of operation". The concept of "method of operation" seems quite broad, this concept should be clarified.

Schedule D – Ultimate Holding Company Support Deed

As outlined in section 4.2 of this submission Asciano believes that the Ultimate Holding Company Support Deed should include a positive obligation on Aurizon Corporate to ensure that Aurizon Network meets its obligations.

Schedule E – Regulatory Asset Base

Clause 1.3 a) extends by two months the time frame available for Aurizon Network to prepare its annual capital expenditure report for QCA. Asciano queries why this additional time is needed for Aurizon Network to prepare the report.

Clause 1.4 a) removes the four week time frame requirement on Aurizon Network for rolling QCA approved capital expenditure into the capital asset base. Asciano queries why this time frame requirement has been removed.

Clause 2.2 a) i) B) implies that if capital is invested into a project and then part way through the project a decision is made to not proceed with the project then the capital invested on the project

¹⁰ Found at <https://www.ehp.qld.gov.au/management/coal-dust/emissions.html>

would be included in the regulatory asset base. Similarly clause 2.2 a) ii) allows the costs of concept studies, pre-feasibility studies, feasibility studies and other studies to be capitalised into the regulatory asset base. Asciano is concerned that these clauses result in Aurizon Network inflating the regulatory asset base if they undertake studies into marginal projects or actually invest in these projects and then decide not to proceed with the project prior to completion. Asciano recognises that there are prudence tests attached to clause 2.2 but believes that these tests should be strengthened as this clause may otherwise result in an artificially inflated regulatory asset base.

In relation to assessing prudence of scope clause 3.2 d) viii) limits the QCA to only consider submissions from Funding Users and Aurizon Network. Asciano believes that the QCA should not be limited in this way and the clause should also allow QCA to consider submissions from other parties (Note that this issue also arises in Schedule E 4.3 c) vii) and Schedule E 5.3 c) ix) – Asciano believes that in these instances the QCA should be able to consider submissions from other parties).

Clause 3.3 a) requires that an asset not be stranded if it meets the requirements of 3.2 d) v), namely that the asset:

...promotes the economically efficient operation of, use of or investment in Rail Infrastructure, whether present or future (for example ...

Asciano believes that this condition is too broad, particularly as it references the future – given future states are unknown Asciano believes that the clause in 3.2 d) v) should state:

...promotes the economically efficient operation of, use of or investment in Rail Infrastructure.

Schedule F – Reference Tariff

Asciano's response to the 2013 DAU Schedule F still applies to the 2014 DAU Schedule F. Asciano has various additional concerns relating to Schedule F of the 2014 DAU including:

- Clause 1.3 d) indicates that the commercial terms of access operate in accordance with an access agreement on the same terms as a standard access agreement applicable to coal carrying train services. That is, unless an access agreement is in accordance with the terms set out in the standard access agreement the train services contained in the access agreement will not be treated as a reference train service. This provision allows Aurizon Network to negotiate away from the standard access agreement terms in a manner which can be either be more or less favourable to an access seeker or access holder. Asciano is concerned that under this clause Aurizon Network has the discretion to:
 - Negotiate commercial terms with one access seeker or access holder which disadvantage or favour other access holders or access seekers; and
 - Negotiate tariffs that differ from the reference tariff with one access seeker or access holder which disadvantage or favour other access holders or access seekers.

Asciano believes that the discretion allowed to Aurizon Network under this clause should be limited to prevent discrimination between users.

- Clause 1.3 e) outlines that train service entitlements are based on trains being available for operation 24 hour per day and 360 days per year and operate in a cyclic manner in accordance with the distribution set out in the Master Train Plan. Such an approach may be inconsistent with the way in which train service entitlements are calculated in access agreements. Given the access agreement has precedence over the access undertaking Asciano believes that ultimately the train service entitlements are calculated as set out in an access holder's access agreement. The existence of different approaches to train service entitlements provides a potential for mismatches and confusion in relation to train service entitlements. Asciano believes that Aurizon Network is obligated to have capacity available to deliver the train service entitlements required in access agreements and discussion of train service entitlements in the 2014 DAU should be consistent with train service entitlements used in access agreements.
- Clause 2.2 e) is new drafting that relates to the application of reference tariffs where an access holder has operated more than one train service with the same origin and same destination and the access charges are based on different reference tariffs for these train services. The provision outlines that the charge will firstly be based on access charges set on the highest applicable reference tariff on a dollars per net tonne basis up to the applicable train service entitlement and then on the basis of access charges set based on the next highest reference tariff on a dollars per net tonne basis up to the applicable train service entitlement and so on. Asciano questions why different access charges should apply for train services with the same origin and destination. If train services operate between the same origin and destination then these train services should be subject to the same access charge. This price differentiation must be clarified and justified by Aurizon Network to ensure it is in accordance with the pricing criteria of section 168A of the QCA Act.
- Clause 2.3 addresses the calculation of cross system train services. This calculation has been changed in the 2014 DAU. The AT2 tariff of both systems will be charged if the train service operates on constrained rail infrastructure (that is Coppabella to Hay Point, Newlands to Abbot Point and Burngrove to the Port of Gladstone) or otherwise the destination system AT2 tariff applies. In almost every case, both AT2 tariffs would be applicable for a cross system train service on the basis that access to at least one of the track sections identified by Aurizon Network would be required to get to port terminals. Asciano believes that if only one of these identified track sections is used by the cross system train service than only that applicable AT2 tariff should apply. For example, under the Aurizon Network proposal a mine origination on the section of track between Gregory and Burngrove (i.e.; in the Blackwater system) operating to Dalrymple Bay would have to pay the Blackwater AT2 tariff for Burngrove to Gladstone even though this cross system train service did not utilise the section of track between Burngrove and Gladstone. Asciano believes that in this example only the Goonyella AT2 tariff should be applicable to the cross system train service. As a matter of principle trains should not pay for infrastructure that they do not use.

Further to the issue of cross system tariffs the current Aurizon Network proposal is that the AT4 tariff used on a cross system train service should be the AT4 tariff in the originating

system. Asciano believes that a more reasonable approach is to adopt the AT4 tariff of the system that the train service predominantly operates on to minimise any cross subsidies that may occur by applying the originating system's AT4 tariff.

Asciano also questions the applicability of the cross system train service reference tariffs in the 2014 DAU for train services without train service entitlements. As the existing reference tariffs were derived from existing train service entitlements, any ad hoc cross system train service revenue generated is additional revenue collected by Aurizon Network which would not have been originally taken into consideration when deriving the system allowable revenue.

- Clause 2.4 outlines the calculation of take-or-pay charges – this section has changed substantially since the 2010 AU. Asciano has raised concerns in relation to the proposed take-or-pay methodology in its October 2013 submission. Asciano opposes the new approach as it is inflexible and favours certain access holders, in particular access holders with access agreements executed prior to 30 June 2006. Asciano believes that the existing approach as adopted in the 2010 AU is sufficient.
- In clause 2.4 d) i) A) the gross tonne kilometres associated with Wiggins Island Coal Terminal as a destination or those gross tonne kilometres associated with an expansion tariff are not taken into account when calculating the take-or pay for access agreements agreed under the 2001 Undertaking. Asciano believes that this price differentiation between access agreements agreed under the 2001 Undertaking (when Aurizon Network's related operator was the only above rail operator) and other access agreements must be closely scrutinised by the QCA to ensure that these clauses are not in fact favouring Aurizon Network's related party operator.

Other areas of concern in Schedule F are listed in Attachment 2 to this submission

Schedule G – Network Management Principles

As per Asciano's previous submission in October 2013, Asciano continues to have concerns in relation to Schedule G, Network Management Principles including:

- Under section 4 of Schedule G Aurizon Network has introduced the concept of a strategic train plan (STP). The purpose of the STP is to provide an indication of the existing capacity that is anticipated by Aurizon Network to be necessary to meet its obligations in relation to train service entitlements for a subsequent period of at least one year but no more than two years commencing on 1 July. Asciano believes that the STP should also include an indication of what available capacity is anticipated as such an indication will assist access holders and access seekers in planning of train services.
- Clause 4 c) of Schedule G states that Aurizon Network is not obligated to prepare a STP in relation to all train service entitlements in all coal system in aggregate, but they may prepare a separate STP for each coal system, for groups of coal systems or a combination of individual and groups of coal systems. Asciano is concerned that this clause provides Aurizon Network with broad discretion to prepare an STP, and this discretion may be used to hide useful information relating to capacity (for example Aurizon Network may combine the STPs of two systems to hide over-capacity in one system and under-capacity in another system). It is also not clear what form the STP will take (for example the STP could include train graphs, train service entitlements, time block outs). Asciano believes that there should

be a prescribed STP format for each system that provides indication of train service entitlements that can be met, train service entitlements that cannot be met and available capacity by train paths. All such information should be set out by branch line in the system to allow users to understand what and what is not available in relation to system capacity. This will significantly assist users in planning future train services.

- Clause 7.4 b) includes new drafting that relates to Aurizon Network procedures when receiving daily train plan (DTP) variation requests. In particular the clause addresses circumstances when Aurizon Network may not have sufficient time to satisfy the request (at clause 7.4 b) iii)) and circumstances when Aurizon Network are not liable if they make or refuse to make a requested variation (at clause 7.4 b) iv)). Asciano assumes that Aurizon Network act in good faith and reasonably attempt to satisfy all DTP variation requests based on their obligations in the access undertaking so the requirement for these explicit provisions is questioned. These additional provisions which provide Aurizon Network with additional protection in the 2014 DAU are not required if Aurizon Network seeks to conduct such requests in good faith at all times.
- Clause 9.4 c) gives Aurizon Network the ability to depart from the application of the traffic management decision matrix following a network incident or force majeure event. Asciano is concerned that any departure from the traffic management decision matrix should only be reserved for circumstances where Aurizon Network either has no other options available to restore the network to normal operations or the departure is required for safety reasons. In addition Asciano believes under such circumstances there must be a maximum period for which the departure is allowed.
- Clause 9.6 requires Aurizon Network to provide information each month to each access holder on the number of train paths the access holder was entitled to, the number of train paths planned in monthly train plan, the number of train paths operated and the extent to which the access holder's train service entitlement was used. Asciano believes that the information provided under clause 9.6 should also include the number of train paths cancelled and the reasons for these cancellations. This will allow access holders to evaluate the train service entitlements they require for the remainder of the year and will allow for an indication of any potential take or pay liability.
- Clause 10.2 c) iii) B) introduces a pooled entitlement concept; Asciano believes that this pooled entitlement concept should be clarified. In particular Asciano notes that under the current access undertaking an access holder should have the ability to submit train orders less than its train service entitlements for a particular origin to destination pair and concurrently submit train orders for a different train service entitlement for a particular origin to destination pair as long as it is within that access holder's total portfolio of train service entitlements. Asciano is seeking clarity on whether the existing process outlined above is similar or identical to the pooled entitlement concept.
- Clause 10.2 c) iii) introduces and applies the term mainline path to the path that will be deemed to be scheduled and operated against the first origin to destination pair (i.e. the under-ordered train service entitlements). As previously raised in this submission in section

5.6, the details of the mainline paths are not specified in the 2014 DAU¹¹ and until they are clearly specified the merit of an approach using the concept of the mainline path cannot be evaluated. Based on the apparent intent of the mainline path concept as applied in this clause, Asciano believes the concept restricts the flexible use of an access holder's train service entitlements. The mainline path requirement should be removed from his provision.

- Clause 10.3 a) iv) introduces the concept of mainline paths into the contested train path management process. This clause now restricts an access holder's request for a train path that is being contested as it requires the contested train path to be within the scope of their pool of mainline paths. Asciano does not agree with this approach on the basis that it restricts an access holder's use of their train service entitlements. The mainline path requirement should be removed from this provision. More broadly Asciano questions whether the concept of mainline paths in the 2014 DAU is required at all on the basis that train service entitlements are not derived from such a concept.

Other areas of concern in Schedule G are listed in Attachment 2 to this submission.

Schedule H – Explanatory Diagrams and Flowcharts

Asciano has no comment on Schedule H.

Schedule I – Confidentiality Agreement

Schedule I is a new pro forma confidentiality agreement which is attached as a schedule to the 2014 DAU due to new wording in Part 3 of the 2014 DAU which gives an access seeker the right (but not the obligation) to enter the confidentiality agreement attached at Schedule I.

Asciano's main concern with the confidentiality agreement at Schedule I is that the requirement for confidentiality must remain even if the agreement is terminated due to cessation of negotiations or withdrawal of access application as per Schedule I clause 5 a). In particular Asciano believes that Aurizon Network's obligations under the confidentiality deed should continue for a sufficient period (for example 10 years) following the events specified in clause 5 a).

Clauses 6.1 and 6.2 e) indicate that giving notice by email requires Aurizon Network's consent. Asciano is unsure as to why Aurizon Network's consent is needed for this method of giving notice.

Asciano also has concerns that Aurizon Network's obligations are limited to those specified in Part 3 of the access undertaking. As indicated in this submission and previous submissions Asciano has significant concerns about the disclosure provisions in Part 3 of the access undertaking, and given this confidentiality agreement is only as strong as the obligations in Part 3 the agreement may be insufficient (i.e. the confidentiality agreement is only as strong as the obligations in Part 3 and given that Part 3 is weak, this confidentiality agreement does not provide substantial additional protection).

¹¹ The definition of mainline paths in the 2014 DAU refers to maps which have not been provided.

6. Detailed Comment on the Access Agreements Attached to the 2014 DAU

Given Asciano's role in the coal supply chain as an above rail operator, Asciano has focussed on the Operator Access Agreement – Coal (SOAA) and the Train Operations Agreement (TOA). Asciano continues to have numerous concerns with the changes to the drafting of the access agreements attached to the 2014 DAU.

Asciano has chosen not to restate its detailed comments in relation to the SOAA and TOA due to the fact that the access agreements proposed in the 2014 DAU have not fundamentally changed from the 2013 DAU. Consequently Asciano's previous detailed comments in relation to the Operator Access Agreement – Coal (SOAA) and the Train Operations Agreement (TOA) as addressed in its response to the 2013 DAU still stand for the agreements attached to the 2014 DAU.

Asciano notes that the TOA attached to the 2013 DAU was submitted to the QCA in April 2013; however in August 2013 the QCA approved a TOA following an extensive consultation process. Asciano believes that the TOA approved by the QCA in August 2013 is preferable to the TOA attached to the 2013 DAU and this approved TOA should replace the TOA in the 2013 DAU. Aurizon Network has not explained why the TOA approved so recently should not be adopted by Aurizon Network.

More broadly Asciano submits that, in the absence of any proposal to simplify the access agreement document package, all of the access agreements approved by the QCA in August 2013 should be included in the 2014 DAU.

A summary of Asciano's concerns are outlined in Attachment 3 to this submission.

7. Comment on the SUFA Documents Attached to the 2014 DAU

Asciano has made numerous submissions to the QCA on SUFA related issues. These submissions are listed in Attachment 1 to this submission. Asciano's position on SUFA related issues has not changed. The proposed SUFA documentation should not be approved by the QCA until the following issues are addressed:

- The SUFA documentation should ensure that any party willing to invest should have the right to be investor. The current drafting is based on an approach where only miners can be investors. This limits potential sources on investment and excludes parties from investing in infrastructure which they may use and which they may be willing to invest in.
- The SUFA documentation should ensure that the SUFA process does not provide a potential channel for the Aurizon Network business and the related above rail business to work around regulatory controls such as ring fencing.
- The SUFA documentation should ensure that Aurizon Network cannot act to select capital expansion projects which favour Aurizon's above rail business and / or which favour Aurizon's above rail business customers.
- The SUFA documentation should ensure that there is no differentiation between access seekers regardless of whether the access seekers are an Aurizon Network related party and a third party, or two third parties.

Asciano notes that the QCA has recently released an extensive series of exposure drafts of each of the SUFA agreements in the lead up to an expected release of a draft decision on SUFA in October 2014.

Asciano is not making detailed comment on the SUFA documentation attached to the 2014 DAU. Asciano will comment on the SUFA draft decision to be released by the QCA in the near future.

8. Comment on the Aurizon Network Proposal on the Wiggins Island Rail Project

Overview

In August 2014 Aurizon Network submitted a document to the QCA relating to the proposed revenue and pricing treatment of the Wiggins Island Rail Project (WIRP). The paper discusses how WIRP has been treated in the 2013 DAU. Asciano understands that despite the 2013 DAU being withdrawn and replaced with the 2014 DAU that Aurizon Network's proposed revenue and pricing treatment of WIRP remains unchanged.

Asciano Position on WIRP Volume Forecasts

Aurizon Network states that for the purposes of pricing they set WIRP volume forecasts at ninety per cent of contracted volumes. Asciano queries whether such an assumption is realistic given the current depressed price for seaborne coal, the recently announced Chinese draft coal quality regulations and the fact that one of WIRP's forecast users recently appointed voluntary administrators. Asciano believes that it may be more prudent to use a lower volume forecast until volumes are proven.

Asciano Position on WIRP Pricing

WIRP involves numerous infrastructure costs including Moura system upgrades and Blackwater system duplication (and electrification of this duplication). Aurizon Network is proposing to socialise some of these WIRP costs within the Blackwater and Moura coal systems. In particular Aurizon Network is proposing to allocate one seventh of the cost of the Blackwater system duplications to existing Blackwater system customers.

The Aurizon Network WIRP pricing document argues that the socialisation of WIRP costs into the costs underpinning the existing Blackwater tariffs will be beneficial to all users of the Blackwater system as this will result in a cheaper dollars per net tonne access rate. Such a position is misleading as:

- The volume forecast has been selected to derive a cheaper access rate. As stated above Asciano believes this is overly optimistic. The tariff calculations should be re-done using more realistic WIRP volume forecasts.
- A higher Blackwater system volume forecast will increase the likelihood of the Blackwater system take or pay being triggered, especially as it includes WIRP forecast volumes that are overly optimistic. All users subject to take or pay for the year, including those existing users that do not benefit from the WIRP investments, will be paying a higher take or pay liability as a result.

Notwithstanding Asciano's opposition to incorporating WIRP costs, if the costs were to be incorporated Asciano notes that there have been various delays in the WIRP process and any proposal to incorporate costs must be based on actual commissioning dates rather than currently expected commissioning dates which may be overly optimistic.

Overall Asciano opposes the WIRP pricing proposal as it:

- Results in parties which do not use WIRP related infrastructure having to fund WIRP related infrastructure via the Aurizon Network access tariffs; and
- Exposes parties using the Blackwater system to take or pay exposures generated by Aurizon Network's treatment of WIRP costs and volumes.

Asciano believes the proposed WIRP pricing may result in parties which do not use WIRP related infrastructure having to fund WIRP related infrastructure; this is inefficient and as such this is counter to the object of Part 5 of the QCA Act to "promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided".

Asciano believes that the QCA should consider separate access prices for existing users and new users where existing user's prices are based on the proportion of the capital expenditure from which they benefit.

Other Concerns with the Aurizon Network WIRP Proposal

Asciano also has concerns regarding various other components of the WIRP proposal as outlined below.

Asciano has concerns with the revenue deferral and smoothing approach proposed by Aurizon Network. Given that the forecast volumes are expected to be lower than proposed by Aurizon Network, Asciano believes there is merit in considering whether the WIRP assets in the regulatory asset base should be reduced to reflect the lower volumes. A possible approach is to set aside WIRP capital until it is required to meet demand. There are provisions in Schedule A of the 2010 access undertaking that allows for this approach but these have been removed from the 2014 DAU. In addition the revenue deferral approach relies on the WIRP tonnage profile. Ultimately any smoothing must be based on actual volumes rather than currently forecast or currently contracted volumes.

Asciano believes that Aurizon Network should clarify how permanent volume reductions will be addressed. In particular Asciano is concerned that other users will be subject to higher tariffs as a result of any permanent volume reductions. These higher tariffs may in turn place other volumes at risk. As stated above Asciano believes there is merit in considering whether the WIRP assets in the regulatory asset base should be reduced to reflect the lower volumes.

9. Conclusion

Asciano welcomes the opportunity to make this submission to the QCA in response to the 2014 DAU. Asciano previously made an extensive submission to the QCA in relation to the 2013 DAU. Asciano understands that the QCA will take this 2013 submission into account when considering the 2014 DAU.

Positions previously put forward by Asciano in the consultation process have been addressed in the 2014 DAU; as such Asciano continues to submit that both the 2013 DAU and 2014 DAU do not meet the requirements of the QCA Act.

Asciano has specific concerns regarding several key issues in the 2014 DAU, as outlined below.

- **Ring Fencing Audit and Breach** - In its October 2013 submission Asciano outlined numerous issues to be addressed to ensure the ring fencing and compliance regime that would prevent discrimination, allow the identification of discrimination if it occurred and put in place a system to ensure breaches were appropriately remedied. These issues have not been addressed in the DAU 2014. In addition Asciano is concerned that the 2014 DAU has further weakened the ring fencing and compliance regime in relation to weakened compliance auditing processes and weakened restrictions on the sharing of services between Aurizon Network and Aurizon. Prior to approval the 2014 DAU must be amended to address the issues identified by Asciano.
- **Access Agreement Structure** - In August 2013 the QCA approved a suite of standard access agreements following stakeholder consultation. Asciano understands that the QCA is seeking stakeholder views on simplifying this access agreement package. In principle Asciano supports the concept of simplification, but would need to see a substantially developed proposal before it could fully support such a proposal. In order to gain Asciano's support any proposal would need to allow train operators to hold access rights on behalf of customers. In the event that the simplification of the access agreement package does not eventuate Asciano believes that the access agreements approved by the QCA in August 2013 should apply under the 2014 DAU.
- **Pricing Principles** - In its October 2013 submission Asciano outlined numerous issues with tariff structures and tariff levels including concerns with the AT2 tariff, the AT5 tariffs and the proposed capacity multiplier. While the 2014 DAU has withdrawn the proposed AT5 tariff it has not addressed other pricing issues. In addition, the pricing principles in the 2014 DAU rely on Aurizon Network's discretionary judgement, are based on apparently arbitrary benchmarks and appear to bypass QCA approval processes. Prior to approval the 2014 DAU must be amended to address the issues identified by Asciano.
- **Network Development and Expansion** - Under the 2014 DAU Aurizon Network has a high level of discretion in relation to network development and expansion. Asciano is concerned that this discretion can be used to favour the Aurizon Network related operator or customers of the Aurizon Network related operator. This level of discretion allowed to Aurizon Network in relation to network development and expansion should be restricted. In particular the 2014 DAU should be amended to introduce provisions which ensure that Aurizon Network do not unduly disadvantage or favour one operator or end user over another when undertaking negotiations and making decisions in relation to network development and expansions and ensure that any party willing to invest has the right to be investor.

- Flexibility in Access Rights - In its October 2013 submission Asciano raised concerns with the 2013 DAU approach to the managing the flexibility of access rights. This issue has not been addressed in the 2014 DAU. The 2014 DAU should be amended to actively support initiatives which promote the flexible usage of access rights.
- Capacity Allocation - In its October 2013 submission Asciano raised concerns with the 2013 DAU proposed capacity allocation and capacity management provisions as these provisions replaced an objective capacity allocation process with a subjective capacity allocation process where Aurizon Network had broad discretion to choose which access seekers received access. This issue has not been addressed in the 2014 DAU. Prior to approval the 2014 DAU must be amended so that an objective capacity allocation process is in place.

In addition to the concerns outlined above, Asciano has also raised numerous concerns with the proposed drafting revisions of the 2014 DAU, the schedules to the 2014 DAU, the access agreement documents attached to the 2014 DAU, the user funding documents attached to the 2014 DAU and the Aurizon Network WIRP pricing proposal. Asciano is seeking that all of these concerns also be taken into consideration by the QCA.

Overall Asciano submits that the redrafted 2014 DAU does not materially address the concerns Asciano raised in connection with the 2013 DAU, thus Asciano continues to have significant concerns with the 2014 DAU and submits that the 2014 DAU in its current form should not be approved by the QCA.

Attachment 1- List of Asciano Submissions to 2010 AU Processes

Since October 2010 Asciano has made numerous submissions to QCA consultation processes. Asciano is seeking that, to the extent that the content of these previous submissions to the QCA is relevant, these submissions be considered in the QCA's determination in regard to the 2014 DAU.

In particular Asciano notes that there are numerous issues where consultation is still ongoing. To the extent that the 2014 DAU mirrors previous Aurizon Network positions on these issues then previous Asciano submissions on these issues should be seen as comment on the Aurizon Network 2014 DAU proposals.

Submissions made by Asciano to QCA are as follows:

Access Undertaking – UT4

Asciano Submission – October 2013

Asciano Submission – January 2014

Asciano Submission – March 2014

Access Undertaking Time Extension

Asciano Submission – May 2014

Connection Agreements

Asciano Submission – October 2011

Asciano Submission – September 2012

Asciano Submission – March 2013

Costing Manual

Asciano Submission and Attached Report– August 2011

Electric Traction Pricing - DAAU Consultation 2011

Asciano Submission and Attached Report – April 2012

Asciano Submission – September 2012

Asciano Submission and Attached Report – November 2012

Electric Traction Pricing - DAAU Consultation 2013

Asciano Submission – June 2013

Asciano Submission – August 2013

GAPE Pricing - DAAU Consultation 2012

Asciano Submission – October 2012

GAPE Pricing - DAAU Consultation 2013

Asciano Submission – May 2013

Incentive Mechanism

Asciano Submission – August 2012

Middlemount Pricing

Asciano Submission – May 2014

Revenue Cap Adjustments

Asciano Submission – January 2011

Asciano Submission – June 2012

Asciano Submission – December 2012

Asciano Submission – November 2013

Review of Reference Tariffs

Asciano Submission – May 2011

Asciano Submission – June 2012

Standard Access Agreements

Asciano Submission – September 2011

Asciano Submission – October 2012

Standard User Funding Agreement Consultation

Asciano Submission – March 2011

Asciano Submission – August 2013

Asciano Submission – December 2013

Asciano Submission – June 2014

System Rules - Capricornia

Asciano Submission – October 2011

Asciano Submission – August 2013

Asciano Submission – October 2013

System Rules – Goonyella and North Bowen Basin

Asciano Submission – September 2011

Asciano Submission – September 2013

Attachment 2 - Comments on Changes between 2013 DAU and 2014 DAU

The attached table contains Asciano's comments on changes between the 2010 AU and the 2013 DAU and 2014 DAU. This table is effectively an update of the table in attachment 2 of the Asciano October 2013 submission. In particular this table identifies whether the 2014 DAU addressed issues raised by Asciano in its October 2013 submission.

The table uses colour coding as follows:

- Green – Asciano's concerns with this 2013 DAU section were addressed in the corresponding section of the 2014 DAU;
- Amber - Asciano's concerns with this 2013 DAU section were partially addressed in the corresponding section of the 2014 DAU;
- Red - Asciano's concerns with this 2013 DAU section were not addressed in the corresponding section of the 2014 DAU;
- Blue – new section.

Note that in this Attachment 2 references to Attachment 4 refer to Attachment 4 of the Asciano October 2013 submission.



2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
PART 2: INTENT AND SCOPE					
Part 2, 2.3 (e) Intent	This clause requires Aurizon Network establish principles and processes to guide cooperation within the coal supply chains to maximise the performance of the supply chain on an annualised basis.	Part 2, 2.2 (e) (iv) Intent	There has been a slight rewording of this clause as the words "on an annualised basis" have been removed.	Given that the System Forecast and Take or Pay is assessed annually, the establishment of principles and processes to guide cooperation with all elements of the coal supply chains to maximise the performance should remain on an annualised basis.	Aurizon Network has not changed this to address Asciano's concerns.
Part 2, 2.4 (e) Intent	This clause states that Aurizon Network cannot refuse to sell or supply (and procure) electric energy to an access seeker, access holder or nominated railway operator if Aurizon Network or related party sells or supplies a Related Operator with electric energy.	Part 2.4 Electricity Supply	This Aurizon Network obligation has been removed.	Aurizon Network can now refuse to supply electric energy on the basis that it does not have the legal ability to do so or because terms were not acceptable to them. The obligation as in the 2010 AU should remain on the basis that it ensures Aurizon Network do not treat any access seeker, access holder or operator more favourably than another in relation to the provision of electric	Redrafted to be consistent with 2010 Access Undertaking.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				energy.	
Part 2, 2.4 (e) Intent	This clause states that the sale and supply of electric energy is not part of Access except as specifically referred to in this undertaking.	Part 2.4, (b) (i) Electricity Supply	This clause states that it is acknowledged that "the supply of electric energy by Aurizon Network is not a supply of Access Rights or otherwise governed by this undertaking (except to the extent that any Reference Tariff includes EC)" (where EC is an electric energy tariff).	This re-wording narrows the exception. The supply of electric energy by Aurizon Network should be governed by the undertaking. The drafting is unclear on what is governed and not governed in relation to Aurizon Network's supply of electric energy. For example it should be clarified how the AT ₅ tariff (which is subject to the revenue cap arrangement in the undertaking) would be treated.	This has been deleted by Aurizon Network.
Part 2, 2.4 (e) Intent	This clause outlines the dispute resolution process (as per Part 10.1) in relation to Aurizon Network's refusal to sell or supply electric energy to an access seeker, access holder and / or nominated railway operator.	Part 2.4 Electricity Supply	This dispute section has been removed as a result of the insertion of 2.4 (b) (ii) that allows an Access Holder or Train Operator to acquire electric energy from a 3 rd party.	The dispute resolution process should still be referenced, as if a dispute arises in relation to Aurizon Network's supply of electric energy this is the mechanism that should be used. It is likely that electric energy would continue to be supplied by Aurizon Network so a clear dispute process needs to	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				remain in the undertaking.	
	This clause does not exist.	Part 2.4 (c) Electricity Supply	A new clause has been inserted which states that " Schedule G sets out the principles which will govern the arrangements for pricing of electric traction services in Blackwater System, and recovery by AN of electric system costs".	This clause assumes that Schedule G, Principles for Pricing of Electric Traction Services in the Blackwater System is approved. This clause should be removed. For Asciano's detailed views on schedule G refer to Asciano's specific comments in both the body of this submission and Attachment 4 of this submission.	This has been deleted by Aurizon Network.
Part 2, 2.6 Draft Incentive Mechanism	This clause requires Aurizon Network to consult with access seekers, access holders, customers and any affected Infrastructure service provider in relation to how the revenue cap adjustment provisions in the undertaking might be amended to provide an incentive framework that provides Aurizon Network with an incentive to operate and invest in the network that promotes efficiency in the coal supply chain. It also	This clause does not exist.	The entire section in relation to Draft Incentive Mechanism has been removed from the 2013 DAU.	There needs to be some form of incentive mechanism prescribed in the undertaking to promote efficiency in the supply chain. Refer to Asciano's specific comments on the incentive mechanism in both the body of this submission and Attachment 4 of this submission.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	outlines the process of how such an incentive mechanism is approved.				
PART 3: RINGENCING					
Part 3, 3.1 (d) Ring-fencing – Organisational Structure	This clause requires that if there is a change in corporate structure where a Related Operator becomes responsible for matters integral to the provision of Below Rail Services, Aurizon Network is obligated to submit a Draft Amending Access Undertaking to the QCA for approval.	Part 3.1 Ring-fencing – General Provisions	This Aurizon Network obligation has been removed.	This Aurizon Network obligation needs to be reinstated to ensure Aurizon Network operates at “arm’s-length” from Aurizon. As long as Aurizon remains vertically integrated, such provisions should remain to ensure Aurizon Network operates independently.	Aurizon Network has not changed this to address Asciano's concerns.
Part 3, 3.1 (e) Ring-fencing – Organisational Structure	This clause states that Aurizon Network and the QCA may agree to jointly review the appropriateness of yard control services at yards other than Major Yards (being Callemondah, Jilalan, Coppabella, Pring, Paget and Rockhampton) continuing to be performed by a Related Operator. It also obligates Aurizon Network to take whatever reasonable steps are required to implement the findings of any such review after approval by the QCA.	Part 3.1 Ring-fencing – General Provisions	This Aurizon Network obligation has been removed.	This Aurizon Network obligation needs to be reinstated. Rail yards and yard control continue to be integral to the operation of train services. The ability for a QCA and Aurizon Network joint review of yard control services should remain Asciano would strongly encourage that such a review takes place as this will ensure that the most	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				appropriate body manages the relevant yards and terminals.	
	This clause does not exist.	Part 3, 3.1 (b) Ring-fencing – General Provisions	This new clause specifically outlines that as a subsidiary of Aurizon, Aurizon Network's financial performance, capital expenditure program and business plan are consistent with good corporate governance, subject to oversight by the board and senior management of Aurizon.	<p>The commercial decisions of Aurizon Network should be made at an "arm's-length" basis from Aurizon. There continues to be concerns that Aurizon's vertical integration will provide Aurizon Network's Related Operator with a competitive advantage as the Aurizon Network and Related Operator's financial performance, capital expenditure programs and business plans are coordinated and integrated across the whole of Aurizon.</p> <p>Refer to Asciano's specific comments on concerns regarding Aurizon's vertical integration in the body of this submission.</p>	While 3.1 (h) has been inserted where "Access provided by Aurizon Network is managed and supplied independently from other members of the Aurizon Group who compete in up/downstream markets that depend on Access to the service utilising the Rail Infrastructure", the concern of the same Board overseeing Aurizon Network's commercial decisions still remains.
Part 3, 3.1 (b) Ring-fencing – Organisational Structure	This clause states that Aurizon Network's primary function is to manage the provision of Below Rail	Part 3, 3.1 (c) and (g) Ring-fencing – General	Clause 3.1 (c) states that Aurizon Network provides a regulated access service, together with	Aurizon Network has highlighted that they will conduct unregulated services in competitive	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	Access Agreements and Access Holders.	Provisions	<p>providing unregulated services in competitive markets.</p> <p>Clause 3.1 (g) specifically states that Aurizon Network is required by the Transport Infrastructure Act to maintain an independent board of directors which supervises arm's-length dealings in respect of access between Aurizon Network and any Related Operators.</p>	<p>markets. This raises concerns as Aurizon Network's primary function should be to provide access via its regulated and ring fenced network. Unregulated activities should either be undertaken by a separate entity or scrutinised by the QCA. For example, the regulated revenue Aurizon Network recovers should not be used to subsidise their unregulated activities.</p> <p>Refer to Asciano's specific comments in body of this submission relating to both general concerns' regarding Aurizon's vertical integration and Aurizon Network's independent directors.</p>	
Part 2, 2.2 Non-Discriminatory Treatment	This clause outlines guidelines where Aurizon Network will not unfairly differentiate between Access Seekers and Access Holders in negotiations and provision of access. It also outlines	Part 3, 3.2 General Principles of Non-Discrimination	This clause appears to have the same broad intent as the previous 2010 AU clause with the exception that the complaint process is not specified in this section.	A specific complaint lodgement process relating to non-discriminatory treatment should be included in the undertaking.	No change. Whilst clause 3.23 will broadly address the complaints handling process, a more specific process for

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	complaint processes.		This process is now contained in a generalised form in Section E – Complaints and Waiver 3.22.	If discriminatory treatment undertaken by Aurizon Network was proven this would be considered a major breach of the undertaking, hence a specific complaints process to deal with this area should be re-included in the undertaking. Otherwise from an access holder's perspective it seems that the process has been weakened.	complaints specific to ring fencing is needed due to the vertically integrated nature of Aurizon.
Part 3, 3.2 (a) General Principles of Non-Discrimination and Independence	3.2 (a) included the words "QR Network will not, and will procure that its Related Parties do not:"	Part 3, 3.2 (a) General Principles of Non-Discrimination	Clause 3.2 (a) only includes the words "Aurizon Network will not:" The words "and will procure that its Related Parties do not:" has been removed.	This wording now means that Aurizon Network does not have an obligation to procure that its Related Parties comply with 3.2 (a). The previous 2010 AU wording needs to be reinstated given that Aurizon Network and its related parties remain vertically integrated.	No change. Asciano notes the new insertion 3.2 (a) (iii) (B) in relation to a 'port owned or operated by the Related Party where the port is connected to the Rail Infrastructure'.
Part 3, 3.2 (c) General Principles of Non-Discrimination	This clause states that Aurizon Network must not engage in any activity or conduct (or agree to engage	Part 3, 3.2 (d) General Principles of Non-	This clause has the same broad intent as the 2010 AU but only states that Aurizon Network will not	The previous 2010 AU wording needs to be reinstated given that Aurizon Network and its	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
and Independence	<p>in such activity or conduct), either independently or with Related Operators, which has the purpose of, or results in or creates, or is likely to result in or create:</p> <ul style="list-style-type: none"> (i) anti-competitive cost shifting; (ii) anti-competitive cross-subsidies; (iii) anti-competitive price or margin squeezing. 	Discrimination	engage in these activities. Aurizon Network engaging in these activities with a Related Operator is no longer specifically mentioned.	<p>related parties remain vertically integrated.</p> <p>Asciano continues to be concerned about the potential for Aurizon Network to be engaged in anti-competitive cost shifting, cross subsidies and price and margin squeezing.</p>	
Part 2, 2.5.1 Ultimate Holding Company Support Deed	<p>This clause states that Aurizon Network will procure that the Ultimate Holding Company (UHC) provides a deed in favour of the QCA which obliges the UHC to ensure that all Aurizon parties will take such actions as are necessary to enable Aurizon Network to comply with its obligations under this undertaking where it is reliant on any Aurizon party in order to do so.</p> <p>The clause contains detailed requirements that Aurizon parties are required to meet.</p>	Part 3, 3.3 Aurizon Holdings to Execute Deed in Support of this Part 3	<p>This clause refers to a deed outlined in Schedule D that Aurizon Network will request its UHC to provide. In the deed, it is required that the UHC:</p> <ul style="list-style-type: none"> (a) Must not direct or request Aurizon Network to act in contravention of its obligations in Part 3 (Ring-fencing) of the undertaking; (b) Must not disclose Protected Information received from Aurizon Network as permitted by 	<p>The 2010 AU clause was more prescriptive around the UHC's obligations. The new clause is more simplified and substantially weakens the intent of the clause.</p> <p>Asciano believes that these provisions should be strengthened to ensure the UHC has the responsibility to ensure Aurizon Network operates at an "arm's length" from Aurizon.</p> <p>Refer to Asciano's specific comments in body of this submission</p>	<p>No change.</p> <p>The UHC Deed has further been reduced as the management separation section in the deed has been removed. This section required Aurizon Network's executive officer be maintained at the same or greater level of seniority within the organisational structure as the position of the executive manager for a Related Operator.</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			<p>the undertaking to any 3rd party unless consent is given;</p> <p>(c) Allows for Aurizon Network's executive officer be maintained at the same or greater level of seniority within the organisational structure as the position of the executive manager for a Related Operator.</p>	relating to the UHC Deed.	<p>The removal of this requirement raises concerns that Aurizon Network's executive officer may be at a lower level than the executive manager for a Related Operator creating potential issues in negotiations and dealings between Aurizon Network and its Related Operator.</p>
Part 3, 3.4.3 Transfer of Aurizon Network Employees within the Aurizon Corporate Group	Clause 3.4.3 (c) states that if activities affect or could affect the access of 3 rd Party access holders or seekers, then Aurizon Network must ensure no Aurizon Network employees is transferred to such a Related Operator or working group.	Part 3, 3.6 Staffing of Aurizon Network	<p>Clause 3.6 (b) (ii) and (iii) states that the undertaking does not restrict secondments of employees or prevent Aurizon Network staff ceasing work with Aurizon Network and working for a Related Operator as long as the handling of Protected Information requirements are followed as per the undertaking.</p> <p>Clause 3.6 (b) (v) allows</p>	The intent of these new provisions in the 2013 DAU appears to be the opposite to the intent of the previous provisions. Effectively, Aurizon Network has removed restrictions on allowing employees to be easily transferred between Aurizon Network and the Related Operator. The 2010 AU provisions must be reinstated as a minimum to ensure 3 rd	<p>A new clause 3.6 (c) has been inserted which states that any Aurizon Network employee whose duties primarily involve the performance of Access-related functions (<i>not defined</i>) may not be seconded/transferred to the Marketing Division on a temporary basis (</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			Aurizon Network to engage in other service activities as long as it does not relate to Below Rail Services.	<p>party information is not shared with their Related Operator.</p> <p>The undertaking should also include restrictions around transfers from a Related Operator to Aurizon Network. Stricter transfer practices must be in place. (For example employees could sign agreement to not work for Related Operator for a period after ceasing work with Aurizon Network. This would be no different conceptually to employees agreeing not to work for a competitor for a period of time after ceasing work with the firm).</p>	<p>less than 6 months).</p> <p>Asciano believes that at the least "Marketing Division" should be replaced with "Related Operator" as it should not just be restricted to this one small functional area of their related operator.</p> <p>The words "on a temporary basis (i.e. less than 6 months)" should be removed. If an Aurizon Network employee whose duties are primarily involved with access-related functions they should not be allowed to be seconded or transferred to any areas of their related operator, regardless of whether it is temporary or not.</p> <p>Asciano comments</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					further on this issue in this submission.
Part 3, 3.3.1 and 3.3.2 Accounting Separation	<p>This clause specifically outlines that Aurizon Network will develop financial statements on an annual basis:</p> <ul style="list-style-type: none"> (a) in accordance with relevant legislation and Australian accounting standards; (b) which will include a supplementary set of statements identifying Aurizon Network's business in respect of the rail infrastructure regulated by the undertaking; (c) which will be audited within 6 months of the end of the Year to which the financial statements relate, or such longer time as agreed by the QCA. <p>Section 3.3.2 also includes specific audit requirements that the Auditor has to perform in relation to the financial statements.</p>	Part 3, 3.7 Accounting Separation	This clause states that Aurizon Network will develop on an annual basis, the financial statements required by, and in accordance with, Part 10 and that it will only include Below Rail Services regulated by the undertaking and will not include information relating to any other business conducted by Aurizon Network.	<p>Similar to clause 3.1 (c) Aurizon Network is seeking to conduct other activities that are not regulated. As Aurizon Network is ring fenced and regulated, any unregulated activities should be scrutinised by the QCA. For example, regulated revenue Aurizon Network recovers should not subsidise their unregulated activities.</p> <p>In addition, as outlined in the body of this submission, Asciano believes that the auditing requirements should be maintained and strengthened and the Costing Manual as required under the QCA Act should also be reviewed given the numerous changes in Aurizon's structure which have occurred.</p>	Aurizon Network has not changed this to address Asciano's concerns.
	This clause does not exist.	Part 3, 3.8, 3.9	New sections in the 2013	While Asciano welcomes	Aurizon Network has

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
		and 3.10 Management of Aurizon Network	DAU specify the management separation of the Aurizon Network executive team from its Related Operator and how they are appointed.	Aurizon Network management separation, this should be further developed to ensure there are robust and independently audited measures and processes in place to guarantee Aurizon Network management separation from their holding company and Related Operator.	not changed this to address Asciano's concerns.
Part 3, 3.4 Management of Confidential Information	Similar intent as 2013 DAU drafting although the clause refers to Confidential Information.	Part 3, 3.11 and 3.12 Protected Information	Under these clauses Protected Information has replaced Confidential Information. Clause 3.11 (j) has been introduced to deal with the handling of Protected Information in the EUAA and TOA.	Asciano believes that clause 3.11 (j) is too broad. From an operator's perspective the operator would seek assurance that an end user would only be provided information related to that particular end user's access rights in an operator's TOA.	The words 'for Access Rights utilised for the benefit of that End User', have been inserted.
	This clause does not exist.	Part 3, 3.15 Disclosure of Protected Information to Marketing Division	Introduction of a section to specifically state that Aurizon Network must not disclose Protected Information to the Marketing Division of Aurizon Above Rail Group.	Asciano strongly questions why this is disclosure rule is only restricted to the Marketing Division of Aurizon Above Rail Group. Protected information should not be disclosed to anyone at all	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				in the Aurizon Above Rail Group, including consultants and contractors.	
Part 3, 3.4.2 Flows of Confidential Information within the QR Corporate Group.	Under this clause the list of people and areas with access to Protected Information within the Aurizon Group was much more limited. The disclosure of Protected Information to these people or areas was still subject to the process for managing confidential information flow.	Part 3, 3.16 Person or Business Units with Access to Protected Information	There appears to be an increase in the people and areas with access to Protected Information within the Aurizon Group. The people or areas listed can obtain access to Protected Information without the need to comply with clause 3.17 (Process for Authorised Disclosure of Protected Information).	<p>There appears to be an increase in the people and areas with access to Protected Information within the Aurizon Group.</p> <p>Each of these people and areas need to be assessed and reasons need to be provided justifying their need for access. In particular Asciano questions why senior executives of the Aurizon Group are included, particularly if the senior executive is involved in current or potential above rail operations. The number of people and areas with access to Protected Information should be reduced.</p> <p>Any people or area on the listing must be subject to the compliance process listed in clause 3.17.</p>	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Part 3, 3.5 Decision Making Part 3, 3.6 (d) Complaint Handling	Outlines decision making principles.	Part 3 Ring-fencing	This has been removed from the undertaking.	These decision making principles should be reinstated and expanded, specifically around decision making processes in relation to the negotiation and management of access.	Aurizon Network has not changed this to address Asciano's concerns.
Part 3, 3.4.2 (j) Flows of Confidential Information within the QR Corporate Group.	Similar intent as 2013 DAU drafting.	Part 3, 3.19 Protected Information Register	More clarity has been provided in relation to the establishment and maintenance of a register for Protected Information flow within Aurizon Group. 3.19 (d) allows for QCA to view the register upon their request.	Asciano suggests that clause 3.19 (d) includes a process where the QCA audits the register as part of their annual audit process to ensure Aurizon Network has complied with the handling of Protected Information within Aurizon Group.	This clause now allows for the QCA to conduct audit on the register in accordance with Part 10.
Part 3, 3.4.3 (a) and (b) Transfer of Aurizon Network Employees within the Aurizon Corporate Group	Similar intent as 2013 DAU drafting.	Part 3, 3.20 Mandatory Protected Information Training and Exit Certificates	This clause outlines that all Aurizon Network employees must undertake training to ensure they are aware of the Protected Information obligations and that exit certificates and debriefing session must be undertaken for all employees leaving Aurizon Network to work	Asciano believes that additional provisions should be included on the consequences if Aurizon Network breaches these obligations in relation to the handling of Protected Information. At the present time there are no consequences as a result of Aurizon	No changes have been made in relation to Asciano's concerns relating to consequences if a breach occurs. Aurizon Network has inserted provisions for all employees leaving Aurizon Network to

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			for another Aurizon Group business unit.	<p>Network disclosing Protected Information wrongly.</p> <p>Exit certificates and debriefing sessions should also be undertaken for all employees ceasing employment with Aurizon Network (not just those going to work for another Aurizon Group business unit).</p>	<p>undertake debriefing.</p> <p>A new insertion 3.21 (a) (ii) requires Aurizon Group employees working in the Marketing Division (excluding employees not involved in coal transport areas) to be aware of the management of Protected Information. This should not just be limited to those in the Marketing Division dealing with coal. It should apply to all of Aurizon. Aurizon should ensure Protected Information remains protected.</p>
	This clause does not exist.	Part 3, 3.21 Secure Premises	This new clause seeks to ensure Aurizon Network has security measures in place.	<p>Asciano believes that the broad nature of this clause means that the clause does not add much value.</p> <p>Asciano suggests rewording clause 3.21 (b)</p>	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				to require Aurizon Network to be located in facilities separate to the Related Operator".	
	This clause does not exist.	Part 3, 3.23 Waiver by the QCA	This new clause allows Aurizon Network to apply in writing to the QCA for a waiver of some or all of its obligations under Part 3 (Ring-fencing) on either a temporary or permanent basis.	This clause must be removed. As long as Aurizon Network remains vertically integrated, ring-fencing obligations should apply at all times for Aurizon Network. There should be no ability for Aurizon Network to have their ring fencing obligations waived.	Aurizon Network has not changed this to address Asciano's concerns.
Part 3.7 and 3.8.1 Audits Responsibility for Rail Infrastructure – Line Diagrams	Clause 3.7 obligates Aurizon Network to conduct an audit annually in relation to clauses 3.4 (Management of Confidential Info), 3.5 (Decision Making) and 3.6 (Complaint Handling). Matters to be considered in the audit (at the request of the QCA) include: <ul style="list-style-type: none"> Aurizon Network engagement in cost shifting between regulated and non-regulated activities. Aurizon Network engagement in 	Part 3 Ring-fencing	This entire section has been removed.	These provisions must, at a minimum, be reinstated in the undertaking. Ideally the audit provisions should be strengthened. Refer to Asciano's specific comments in body of this submission relating to the 2013 DAU audit provisions.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	<p>margin squeezing.</p> <ul style="list-style-type: none"> • Aurizon Network refusing access to facilities and discriminating between related operators and 3rd parties. • Aurizon Network's compliance with capacity allocations as per the undertaking. • other issues that the QCA reasonable believes an audit is necessary. <p>3.8 .1 covers Aurizon Network's obligation to make available and keep up to date line diagrams.</p>				
Part 3, 3.8.2 Transfer of Rail Transport Infrastructure from QR Party	This clause obligates Aurizon Network to some extent to take over rail infrastructure owned by other Aurizon parties if it's proven to be a declared service.	Part 3 Ring-fencing	These provisions have been removed.	This clause should be re-included to ensure consistency with Transport Infrastructure Act.	Aurizon Network has not changed this to address Asciano's concerns.
PART 4: NEGOTIATION FRAMEWORK					
Part 4, 4.1 (d) Access Application	This clause states that an Access Seekers may request a copy of any Preliminary	Part 4, 4.1 (b) Overview	4.1 (b) (i) states that Preliminary Information (i.e.; those defined in	This clause assumes that information listed in clause 1 of Schedule A is	This clause has been redrafted to state Aurizon

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	Information that is not provided on Aurizon Network's website which Aurizon Network will provide within 14 days.		clause 1 of Schedule A) is now only attainable from their Website. This is also repeated in clause 4.2(b). Preliminary Information as listed in Schedule A includes civil infrastructure and Rolling stock interface standards.	actually available on their website. This is not an issue as long as information on the website is current and complete. Clause 4.2 (d) should place a strong obligation on Aurizon Network to ensure all Preliminary Information is made available on their website (i.e. 'reasonable endeavours' wording should be 'best endeavours').	Network must keep Preliminary Information current and accurate.
Part 4, 4.1 (f) and (g) Access Application	Clause 4.1 (f) places obligations on Aurizon Network to provide copies of notices to the relevant Customer if an Access Application included contact details of a Customer. Clause 4.1 (g) places obligations on Aurizon Network to notify each Access Seeker with details of the queue if a queue is established. If there is any change in the order of the queue Aurizon Network must again notify each Access	Part 4 Negotiation Framework	The queuing arrangements have been removed from Part 4. Part 7.5 of the 2013 DAU now deals with mutually exclusive rights, which has replaced queuing. Refer to clause 7.5 and 7.5.2 below.	The removal of the queuing provisions is problematic as Aurizon Network now has more freedom as to who they negotiate access rights with. (i.e. the capacity allocation system is now more subjective). This may allow Aurizon Network to make decisions more favourable to their Related Operator. It will now also be more difficult to demonstrate	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	Seeker involved.			that Aurizon Network has treated Access Seekers in a discriminatory manner.	
	There is no specific clause in relation to providing Capacity Information although clause 3 of Schedule D may apply.	Part 4, 4.2 (c) Initial Enquiries	This clause states that prospective Access Seekers may lodge a request for Capacity Information with Aurizon Network and Aurizon Network will respond within 10 Business Days.	Asciano notes that there are currently only two above rail coal haulage operators on the network. Thus either rail operator could deduce the access rights the other operator holds. Given this situation there should be some consideration given by Aurizon Network as to whether the capacity information may raise confidentiality issues.	This clause has been partially redrafted to address Asciano's concerns. Section 3 of Schedule A has been redrafted to state that Aurizon Network will only provide capacity information as long as they do not breach their obligations in the undertaking, access agreements or confidentiality agreements.
Part 4, 4.2 Acknowledgement of Access Application	This clause has a similar intent to the 2013 DAU but Aurizon Network can only request the following information within 10 business days: (a) Additional information, if reasonably needed to prepare an IAP. (b) Clarification of the	Part 4, 4.3 (c)(ii) (A) Access Application	Within 10 business days after receipt of Access Application, Aurizon Network can request the Access Seeker for the following, which was not previously included in the undertaking (a) Evidence or information	The additional information that Aurizon Network can request under 4.3 (c) (ii) (A) should not be required to be provided in order for an access seeker to receive an Access Application response. This will delay the access request process and increases Aurizon	No change. Information that Aurizon Network can request under clause 4.12 (c) still applies. Whilst the new insertion 4.3 (f) states that a person does not fail to comply with

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	<p>information that has been provided in the request for Access.</p> <p>An Access Seeker also had 30 days after Aurizon Network's request to respond with additional information. Clause 4.2 (d) allowed Aurizon Network to reject Access Request if sufficient information is not provided.</p>		<p>regarding their ability to fully utilise the requested Access Rights which may include factors as per clause 4.11 (c) (Supply Chain Rights, Rolling stock, provisioning, maintenance and storage facilities and mine output).</p> <p>(b) Information from other providers or infrastructure to be used as an entry or exit point to the Rail Infrastructure such as operation so unloading facilities.</p>	<p>Network's ability to cease the access application.</p> <p>Clause 4.3 (d) allows Aurizon Network to cease an Access Application if requested information is not received by them within 20 business days of their request. This has the potential to be used differentially against different access seekers.</p>	<p>presenting additional evidence if they have reasonable grounds demonstrating that the evidence or information is not available, this is based on Aurizon Network's assessment of what constitutes reasonable evidence.</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Part 4, 4.2 (c) Acknowledgement of Access Application	This clause has a similar intent to the 2013 DAU but the date of the Access Application lodgement is deemed to be the date of receipt.	Part 4, 4.4 (b) Acknowledgement of Access Application	This states that the Acknowledgement Notice will be the date on which the Access Request will be "deemed" (where Aurizon Network believes all sufficient info has been provided) to have been received.	This is different from previous arrangements where the Access Request lodgement date was deemed to be the date of receipt. Asciano believes the 2010 AU timing should be used.	Aurizon Network has not changed this to address Asciano's concerns.
Part 4, 4.2 (e) (ii) (A) Acknowledgement of Access Application	This clause allows Aurizon Network to fund Customer Specific Branch Lines if they believe it is commercially sound for them to do so. If the Customer Specific Branch Line was to be funded by Aurizon Network, Aurizon Network must continue to apply the negotiation framework Part 4 to complete the Access Application.	Part 4, 4.4 (c) Acknowledgement of Access Application	<p>This clause states that if an Access Application cannot be progressed in the absence of an Expansion or Customer Specific Branch Line (clause 8.2 and 8.7), Aurizon Network can provide notice to suspend (before or after issuing of IAP) pending agreement on what Expansion or Customer Specific Branch Line is required and how it will be funded.</p> <p>Note that the definition of Expansion now also excludes Connecting Infrastructure and any capital expenditure that involves Asset Replacement Expenditure.</p>	<p>Asciano questions the need for the suspension provisions on the basis that if the access request is suspended it would be pending the negotiation outcome of an Expansion and/or Customer Specific Branch Line works.</p> <p>If such a suspension process is in place a register / queue should be created to keep track of access requests dependent on an Expansion and/or Customer Specific Branch Line works.</p> <p>There should be no requirement for an Access Seeker to write to Aurizon Network every 6</p>	No change with the exception of an insertion of a new clause 4.4 (f) that gives access seekers an ability to suspend and dispute Aurizon Network's rejection of their access application prior to it being rejected.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			<p>Clause 4.4 (f) also puts the obligation on an Access Seeker to write to Aurizon Network every 6 months to confirm an ongoing requirement for the suspended Access Request, inform them of any changes and if requested by Aurizon Network provide evidence that they will fully utilise the requested Access Rights.</p> <p>Clause 4.4 (g) allows Aurizon Network to cease a suspended Access Request if the actions are not performed by the Access Seeker in clause 4.4 (f).</p>	<p>months and provide evidence that they still have intention to fully utilise the Access Rights. Access requests are non-binding, and on this basis having such an obligation on Access Seekers would be an additional administrative burden. Aurizon Network on the other hand should be obligated to inform relevant Access Seekers if there are changes to an Expansion or Customer Specific Branch Line that impact on their pending Access Request.</p>	

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	This clause did not exist.	Part 4, 4.4 (d) Acknowledgment of Access Application	Where a Provisional Capacity Allocation (as defined under clause 8.5(i)) has been granted, Aurizon Network may suspend negotiations pending the outcome of negotiations with the holder of the Provisional Capacity Allocation.	Asciano believes that such a suspension needs to be made specific to only the Provision Capacity Allocation access rights directly related to all or part of a particular Access Request.	Aurizon Network has not changed this to address Asciano's concerns.
	This clause did not exist.	Part 4, 4.4 (e) Acknowledgment of Access Application	This clause allows Aurizon Network to reject an Access Application if the access rights sought in the Access Request do not commence within 3 years.	Asciano believes that this requirement should be removed as it is too restrictive. This limits an Access Holder's ability to seek information and progress long term projects.	This clause is a new insertion. Clause 4.4 (e) (ii) now takes into account additional factors if the access rights are proposed to commence on a date more than 3 years but not more than 5 years before then Aurizon Network may reject the application. Additional factors include infrastructure requirements, mine development, transport logistics chain development (including rolling stock acquisition), export terminal and

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					<p>the likelihood of the access seeker being able to use the access rights sought.</p> <p>Similar to our previous reasoning, Asciano believes that this is too restrictive and hence it should be removed. Its inclusion would limit an access seeker's tendering processes even further if advance access rights cannot be confirmed or sought.</p>
Part 4, 4.2 (g) Acknowledgement of Access Application	This clause allowed an Access Seeker to submit revised information on their Access Request prior to the issuing of an IAP.	Part 4, 4.4 Acknowledgement of Access Application	This provision no longer exists.	Asciano believes that the opportunity should be given to an Access Seeker to revise information relating to their Access Request instead of ceasing current one and submitting a new one.	<p>This clause is a new insertion. Clause 4.5 allows an access seeker to vary their application prior to an IAP being issued if the change is not a Material Variation.</p> <p>The definition of Material Variation should simply relate to any changes that</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					would cause Aurizon Network to have to completely re-do their capacity assessment. For example; a change in origin or timeframe may not impact on their capacity assessment so it should not be classified as a Material Variation. Note that this definition also applies for variations allowed for during negotiation under clause 4.10.2 (e) to (j).
Part 4, 4.3 (c) (vii) Indicative Access Proposal	Under this clause the IAP expires 90 days after issuing, or such later date as agreed between the parties.	Part 4, 4.5 (e) Indicative Access Proposal	Under this clause the IAP expires 60 business days after issuing.	Asciano believes that this clause should continue to allow for parties to agree to a later date of expiry for the IAP.	No change apart for factoring in additional timeframes for suspensions.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Part 4, 4.3 (e) and (h) (ii) Indicative Access Proposal	This clause allows an Access Seeker to refer to the dispute resolution process if they are not satisfied with the Access Application process.	Part 4, 4.5 Indicative Access Proposal	These provisions no longer exist.	The dispute resolution process in Part 11 of the 2013 DAU allows for a dispute resolution when an Access Seeker is negotiating for access. Not when they are seeking access. This dispute resolution process should be extended to cover the period from the lodgement of an access request to the execution of an Access Agreement.	Part 11 has been redrafted to broadly cover disputes in relation to the operation of, or anything required to be done by Aurizon Network under the undertaking.
Part 4, 4.4 (b) and (c) Notification of Intent	This clause allows an Access Seeker to provide notification of their IAP acceptance after expiration of the IAP within 6 months. Aurizon Network will provide a revised IAP if required to do so.	Part 4, 4.6 Notification of Intent	These provisions no longer exist.	In the 2013 DAU an IAP will expire after 60 days. There needs to be a provision for parties to at least agree on an extension of an IAP time frame.	Clause 4.6 (e) has had the following words inserted "unless otherwise agreed by Aurizon Network and the Access Seeker"; the IAP expires 60 business days after the later of..... Apart from this slight amendment there is still no clear process that allows for the extension of the IAP.
Part 7, 7.3.2 Competing Applications	This clause has a similar intent to the 2013 DAU, although it is not as clear as	Part 4, 4.7 Multiple Applications for	A new section has been inserted to deal with multiple Access Requests	Asciano believes that clause 4.7 (a) (i) should include a provision to	A new clause 4.8 (b) has been inserted that outlines how a

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	the 2013 DAU in relation to the treatment of multiple operators competing for same access rights for the same customer.	same Access	<p>seeking the same access rights.</p> <p>If one of the parties that applied is a Customer, Clause 4.7 (a) (i) states that Aurizon Network will treat the Customer as the Access Seeker and Aurizon Network may negotiate solely with that Customer.</p>	<p>allow the Customer to nominate an Operator that Aurizon Network can negotiate with.</p> <p>Under clause 4.7 (a) (ii) if only railway operators apply then the customer has to nominate the railway operator Aurizon Network is to negotiate with. Asciano believes that this may limit above rail competition if the access request is submitted before any above rail tender is complete.</p> <p>Asciano has a concern as to how confidential information is managed and shared by Aurizon Network in this scenario of multiple Access Requests seeking the same access rights. Asciano believes confidentiality issues should be clarified.</p>	<p>customer nominates a Railway Operator to act on its behalf.</p> <p>Though, this still requires a customer to nominate their railway operator if only railway operators applied for the same access. Asciano believes that this will limit above rail competition, especially relating to tendering processes.</p> <p>The confidentiality issue has also not been addressed.</p>
	This section does not exist.	Part 4, 4.8 Train Operations	This is a new section that deals with a Train Operator putting in a	Asciano believes that the clause could include an option for a Train	Aurizon Network has not changed this to address Asciano's

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			<p>request to commence negotiations for a TOA. This must be in writing containing:</p> <ol style="list-style-type: none"> 1. Identify of End User 2. Provide a copy of the notification from the End User nominating them as Train Operator. 3. Any information required by an Access Request or information reasonably required to complete the TOA. 	Operator to refer to an existing Access Requests/IAP already completed by either the End User or themselves for the Access Rights being included in the TOA.	concerns.
Part 4, 4.5.1 (f) Negotiation Period	<p>This provision allowed for a portion of access rights being sought being negotiated and provided if the total rights sought could not be provided.</p> <p>Clause 4.5.1 (f) (ii) also contemplates whether Infrastructure Enhancements can be altered to provide all or part of the access rights sought.</p>	Part 4, 4.9.1 (d) Negotiation Period	Under this clause if an Access Application is ceased because available capacity is reduced or Infrastructure Enhancements contemplated in the IAP are not developed, then before cessation Aurizon Network and the Access Seeker will discuss the matter with a view to agree alternative means of providing access.	This new provision means that the Access Application ceases if access rights cannot be provided. The provisions should allow that any portion of access rights that is available to be negotiated.	<p>This clause has been partially redrafted to address Asciano's concern under clause 4.10.1 (d) and (e).</p> <p>Asciano is still concerned that the portion of access rights not available will simply cease. This portion of unavailable rights</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					should instead be put in a queue until available capacity becomes available.
Part 4, 4.5.2 Issues to be Addressed During Negotiations	This clause does not exist.	Part 4, 4.9.2 (d) Issues to be Addressed During Negotiations	This new provision allows Aurizon Network to seek further evidence of an Access Seeker's ability to fully utilise the requested access rights (including matters in clause 4.11 (c)) and from other providers of infrastructure such as operators of unloading facilities. The Access Seeker must provide such information within 20 business Days of Aurizon Network's request.	<p>The requirement to have secured mine and to prove that sufficient rail operator facilities can support train services may be hard to demonstrate as it may be being negotiated concurrently with the access negotiations (given that rail access is often the constraint in the supply chain it is not unreasonable that rail access be sought prior to the finalisation of other negotiations).</p> <p>Asciano is concerned that these provisions could hinder or prevent access unnecessarily.</p>	<p>No change.</p> <p>A listing of additional reasoning under clause 4.10.2 (c) (iii) has been inserted where an IRMP is required to be conducted. Note that IRMPs are generally conducted or reviewed by parties during negotiations. Therefore, Asciano questions the value in including it in the listing at this earlier stage.</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Part 4, 4.5.2 (e) Issues to be Addressed During Negotiations	This clause placed obligations on Aurizon Network to investigate and design any necessary Infrastructure Enhancements to accommodate the access sought.	Part 4, 4.9.2 Issues to be Addressed During Negotiations	This provision has been removed.	This 2010 AU clause should be reinstated to place obligations on Aurizon Network to investigate ways to assist the Access Seeker in obtaining access rights.	No change. A new clause 4.6 (b) (vii) only requires Aurizon Network to provide information on expansions required if the information already exists or is reasonably available.
Part 4, 4.6 Negotiation Conditions	This clause has a similar intent to 2013 DAU but is more specific around conditions to when Aurizon Network can issue a Negotiation Cessation Notice.	Part 4, 4.11 Cessation of Negotiations	This section allows Aurizon Network to cease an access application if Aurizon Network considers that an Access Seeker has materially failed to comply with the provisions of this Undertaking. Clause 4.11 states that the Negotiation Cessation Notice is to be provided at anytime during a Negotiation Period.	Asciano is concerned as there is no timeframe around when a Negotiation Cessation Notice is to be issued and there is no opportunity for an Access Seeker to put a position to counter Aurizon Network's belief that provisions have not been comply with. Asciano notes that the issuing of a Negotiation Cessation Notice is also noted in Clause 4.3 (b) and 4.3 (d); this would not be within the Negotiation Period if Aurizon Network was to issue a notice. This should be clarified.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Part 4, 4.6 (c) Negotiation Conditions	<p>Under this clause Aurizon Network has the option to cease negotiations on the basis of (amongst other things):</p> <ol style="list-style-type: none"> 1. whether an Access Seeker has secured or likely to secure port capacity. 2. whether an Access Seeker has secured or likely to secure rail haulage. 3. the speed and timeliness of the Access Seeker in conducting its negotiations. 	Part 4, 4.11 (c) Cessation of Negotiations	<p>Aurizon Network now have an option to cease negotiations on the basis of the additional following reasons (amongst other reasons):</p> <ol style="list-style-type: none"> 1. whether an Access Seeker has secured, or is reasonably likely to secure Supply Chain Rights (mine right through to port). 2. whether the Access Seeker or its Rail Operator has sufficient facilities (including Rolling stock, provisioning, maintenance and storage facilities). 3. whether the mine has enough output to support full utilisation of Access Rights sought. 	<p>Asciano strongly opposes this additional wording. The requirement to demonstrate these requirements may be difficult as they may be being negotiated concurrently with the access negotiations (given that rail access is often the constraint in the supply chain it is not unreasonable that rail access be sought prior to the finalisation of other negotiations).</p> <p>Asciano is concerned that this provision could hinder or prevent access unnecessarily.</p>	<p>No change.</p> <p>The insertion of clause 4.12 (c) (i) now allows Aurizon Network to cease negotiations if they believe there is no customer for the access rights sought (disregarding the Access Seeker's ability to attract a Customer in the future) or the Train Operator is no longer the Train Operator for the relevant Access Seeker/Holder. This further restricts an access seeker seeking access.</p>
Part 4, 4.6 (f) Negotiation Conditions	This clause has a similar intent to 2013 DAU but did not state that an Access Seeker agrees to pay	Part 4, 4.11 (e) Cessation of Negotiations	This clause now states that Aurizon Network have the right, at its option, to recover its	<p>The 2010 clause should be reinstated.</p> <p>Clause 4.11 (a) (iii)</p>	<p>No change.</p> <p>Note that under clause 4.12, the</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	Aurizon Network's costs if clause 4.6 (a) (iii) applies.		reasonable costs incurred in negotiations from the Access Seeker if clause 4.11 (a) (iii) applies. It also states that 'By submitting an Access Application the Access Seeker agrees to pay Aurizon Network's costs as referred to in this clause 4.11 (e)' including 3 rd party costs.	<p>should not be based on Aurizon Network's reasonable opinion that the Access Seeker had no genuine intention. Rather it needs to be proven by evidence that the Access Seeker had no genuine intention to obtain and use access rights sought.</p> <p>In addition, the words 'By submitting an Access Application the Access Seeker agrees to pay Aurizon Network's costs as referred to in this clause 4.11 (e)' should be removed. The clause pre-empts that an Access Seekers automatically accepts to pay for these costs if sought by Aurizon Network.</p>	<p>words "Aurizon Network considers on reasonable grounds that" and "Aurizon Network is forming an opinion as to whether the circumstances", have been deleted.</p> <p>Aurizon Network has inserted a new clause 4.12 (d) (iii) which states that despite dispute outcomes, Aurizon Network is taken to have complied with the undertaking and is not liable. Aurizon Network has given themselves further protections.</p>
Part 4, 4.7 Capacity Notification Register	Under this clause if Aurizon Network ceases negotiations due to available capacity being reduced or because infrastructure Enhancements expected to not eventuate then the Access Request will be included in the Capacity	Part 4 Negotiation Framework	This entire section does not exist.	Similar arrangements to the 2010 AU should be re-included in the 2013 DAU. These arrangements should allow Access Seekers to continue negotiations once the next tranche of	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	Notification Register.			capacity becomes available.	
PART 5: ACCESS AGREEMENTS					
Part 5, 5.1 Development of Access Agreement	Provision did not exist.	Part 5, 5.1 (d) Development of Access Agreement	<p>This is a new provision where if parties cannot agree on terms of the Access Agreement it can be referred to the QCA for dispute resolution.</p> <p>Clause 5.1 (d) (i) states that it would be "resolved by the QCA or an expert, as applicable, by completion of" the relevant form of Standard Access Agreement in clause 5.1 (c).</p>	<p>Asciano agrees with the ability to have QCA or an expert to resolve such a dispute, although parties should still be given the option to negotiate variances to the standard form agreements.</p> <p>In addition, if Aurizon Network has negotiated or is negotiating similar access agreements with another Access Seeker, the terms Aurizon Network offered to them should not be more favourable to what Aurizon Network is offering in the dispute.</p>	Aurizon Network has not changed this to address Asciano's concerns.
Part 5, 5.1 Development of Access Agreement	Provision did not exist.	Part 5, 5.2 Access Charges under Access Agreement	A new provision has been inserted to state that Train Service Entitlements are associated with the characteristics of "Train Service Type". Train Service Type is contained in Part A of Schedule 2 of the Standard Access Agreement which	Asciano believes that these provisions in the undertaking and Standard Access Agreement are too restrictive. The introduction of Train Service Type diminishes the flexibility of access rights for an Access Holder.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			<p>includes details such as:</p> <ul style="list-style-type: none"> • Customer • Train Service compliance, commitment and expiry date • Coal System • Whether it is a reference train or not • Origin and destination • Loaded and empty km • Depot and time at depot • Maximum Dwell times • Whether it is a through running train service type (i.e.; adjoins to another network) • Max time at loading/unloading facility • Maximum payload • Condition access rights (dependent on Expansion) <p>5.2 (b) states that Access Charges will be calculated by reference to</p>	<p>For Asciano's detailed views on Train Service Type refer to Asciano's specific comments in the body of this submission.</p>	

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			Train Type.		
Part 5, 5.3 Access Agreement For New or Renewed Related Operator Train Services	Clause 5.3 (a) states that if Aurizon Network develops an Access Agreement with an Aurizon Party for new or renewed Related Operator Train Services it will be subject to the undertaking. Clause 5.3 (b) in particular, states that where an Access Agreement with an Aurizon Party for a new or renewed Related Operator Train Service is consistent with the Reference Tariff and Standard Access Agreement, Aurizon Network will be deemed to have complied with clause 5.3 (a).	Part 5 Access Agreement	This entire section has been removed.	This provision needs to be re-included to ensure that Aurizon Network does not have the ability to negotiate more favourable terms with their Related Operator.	Aurizon Network has not changed this to address Asciano's concerns.
Part 5, 5.4 Disclosure of Access Agreement	Clause 5.4 (a) obligates Aurizon Network to provide to the QCA upon their request the below rail aspects of Access Agreements (including Access Charges). 5.4 (b) obligates Aurizon Network to permit disclosure of the Access Agreements to the public, subject to non-disclosure elements outlined in 5.4 (c).	Part 5 Access Agreement	This entire section has been removed.	This provision needs to be re-included to ensure that Aurizon Network does not have the ability to negotiate more favourable terms with their Related Operator.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
PART 6: PRICING PRINCIPLES					
Part 6, 6.1.3 Establishment of Access Charges for Related Operators	This clause outlines that in developing an Access Agreement with Related Operators, Aurizon Network will not establish Access Charges for Train Services for the purpose of preventing or hindering Access by a 3 rd party access seeker into any market in competition with the Related Operator providing those Train Services.	Part 6 Pricing Principles	This provision has been removed.	This provision needs to be re-included to ensure that Aurizon Network does not have the ability to negotiate more favourable terms with their Related Operator.	No change. A new provision has been inserted under clause 6.2.2 (b) where it clearly allows Aurizon Network to vary Access Charges to reflect the difference in cost of risk of providing a Train Service. This gives Aurizon Network freedom to cost risk however they choose, which is concerning.
Schedule A, 3.2 Customer Group Acceptance of Projects	This clause has a similar intent to the 2013 DAU but the customer voting group was defined as all Customers and Access Holders who do not have Customers, who have responsibility for Reference Tonnes. 3.2.1 (f) states that the acceptance of the capital expenditure is assessed on each customer group's weighted Reference Tonnes	Part 6, 6.2.4 Access Charges for Train Services that Require an Expansion	This section deals with how the capital cost of an Expansion project is incorporated or not incorporated in an existing Reference Tariff. 6.2.4 (a) (iv) allows Aurizon Network to seek acceptance by Customers and Access Holders without Customers to vote as per clause 8.10 (Acceptance of Capital Expenditure Projects by	The voting process in 8.10 excludes Railway Operators. As Railway Operators are an active participant of the coal supply chain they should have voting rights particularly if the project impacts on train operations (e.g. it impacts on traction type, train length, train payload etc.).	This entire section has been replaced. It now contains more detail than before on how Expansions are made part of reference tariffs. Clause 6.2.4 (c) states that Aurizon Network may provide new/varied indicative Reference Tariffs to the QCA which will be

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			<p>Interested Participants).</p> <p>6.2.4 (a) (iv) (A) also allows Aurizon Network to seek approval directly from the QCA.</p>		<p>separate to their application seeking approval of the new/varied Reference Tariffs to the QCA. Asciano believes that the indicative Reference Tariffs should also form part of their submission.</p> <p>New sections 6.2.4 (i) to (k) set out the criteria for establishing a new Expansion tariff. If the Highest Reference Tariff and Expansion assumptions on a \$/Net Tonne basis result in more than 5% increase, Aurizon Network is to submit to the QCA a new Expansion Reference Tariff. Otherwise the Highest Reference Tariff will be applicable for the Train Service. Aurizon Network</p>

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					<p>needs to explain what the 5% threshold is based on. Also, this test does not consider any consequential capacity impacts the Expansion and new Train Service will have on existing services/coal system.</p> <p>Clauses 6.2.4 (o) and (p) state that the Expansion Tariff must only apply for a period of 10 years from QCA's approval. Beyond 10 years the Expansion Tariff will be socialised with the relevant System Reference Tariff. This socialisation could cause existing Train Services to subsidise the expansion Train Service. And it is unfair to existing users if the Expansion does not</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					benefit them.
Schedule F, Part B, 4.1.1 Reference Tariff for New Coal Carrying Train Services	This clause has a similar intent to the 2013 DAU but there is a variance on assessment of whether Train Service is made part of existing Reference Tariffs or a new one is developed.	Part 6, 6.2.5 Reference Tariff for New Loading Points and Private Infrastructure	This introduces a test of whether a Train Service utilising private or Customer Specific Branch Line will be subject to existing Reference Tariffs or new Reference Tariffs.	This approach requires further scrutiny and clarification to ensure it is equitable for a user funding their own infrastructure.	No change. Aurizon Network has converted a Maximum Revenue Contribution to a Minimum Revenue Contribution. Asciano believes that this method still needs to be tested to ensure it is equitable amongst users.
Part 6, 6.1.2 (d) and (e) Limits on Price Differentiation	This clause states that Aurizon Network will give Access Seekers the opportunity to incorporate rate review provisions in the Access Agreement. 6.1.2 (e) specifically deals with an Access Holder's ability to contest that Aurizon Network has developed Access Charges for another Access Holder for a similar Train Service.	Part 6.2.7 Access Charge review Provisions	This clause has removed the provision in the 2010 AU that allows an Access Holder to contest Aurizon Network for applying a different access charge to another access holder in contravention of the limits on price differentiation.	This provision needs to be re-included to ensure that Aurizon Network does not have the ability to negotiate more favourable terms with their Related Operator.	Aurizon Network has not changed this to address Asciano's concerns.
Part 6, 6.3.1 (b) Rail Infrastructure Utilisation	This provision has similar intent but is worded to include the consideration of expansions: "Where Available Capacity is limited, and Aurizon Network reasonably considers that	Part 6, 6.4.1 (b) Rail Infrastructure Utilisation	This clause now states that if the "Available Capacity is potentially insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers",	6.4.1 (c) implies that Aurizon Network has the ability to set Access Charges so that they can achieve above regulated return. This raises concerns as Aurizon	New wording in clause 6.4.1 (c) specifically states that clause 6.4.1 (b) does not apply to coal carrying Train Services. Asciano

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not commercially justified..."		<p>then Aurizon Network can go through a process to determine and quote the Maximum Access Charge to all the Access Seekers seeking access rights.</p> <p>6.4.1 (c) outlines that the setting of Access Charges under 6.4.1 does not relate to Train Services subject to Reference Tariffs.</p>	Network's primary function should be to provide access via its regulated and ring fenced network. Unregulated activities should either be undertaken by a separate entity or scrutinised by the QCA. For example, the regulated revenue Aurizon Network recovers should not be used to subsidise their unregulated activities.	believes this creates a disadvantage for non-coal carrying services where these services could potentially be subject to access charges at the discretion for Aurizon Network.
Part 6, 6.5.2 to 6.5.5 Access Conditions	<p>This section deals with how Aurizon Network agrees with an Access Seeker on certain Access Conditions before access rights can be granted to them which at the same time would mitigate Aurizon Network's financial risk.</p> <p>Clause 6.5.4 in particular covers the only instance where they can seek to vary the WACC in relation to Access Conditions arrangements.</p>	<p>Part 6, 6.9 Commercial Terms</p> <p>Part 8, 8.7 Contracting for Capacity</p>	<p>This clause has been replaced by section 6.9, Commercial Terms which is defined as conditions in addition to the relevant Standard Access Agreement, including:</p> <ul style="list-style-type: none"> (a) An upfront contribution (b) A payment of an AFC (all or in part) (c) A varied or an additional take or pay arrangement (d) Access Charges calculated on varied WACC. 	<p>Previously, the undertaking required Aurizon Network to seek QCA approval of any varied WACC arrangements.</p> <p>Aurizon Network may now have the freedom to negotiate deals with an Access Seeker allowing them to recover above regulated returns.</p> <p>Asciano is concerned as there is less transparency under these new provisions and Aurizon Network no longer has to</p>	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				go through QCA approval of Access Conditions.	
	Provision did not exist.	Part 6, 6.9 (c) Commercial Terms	<p>This allows an Access Seeker to enter into a User Funding Agreement if they choose to.</p> <p>Anything under a User Funding Agreement is not subject to the undertaking.</p>	<p>Asciano believes that clarity in relation to these provisions is required. In particular there should be clarity surrounding an Access Seeker's inability to raise a dispute to the QCA as it would not be subject to the undertaking.</p> <p>This could lead to a disconnect between access rights in the undertaking and user funding arrangements outside of the undertaking which the access rights are dependent upon.</p>	Aurizon Network has not changed this to address Asciano's concerns.
PART 7: AVAILABLE CAPACITY ALLOCATION AND MANAGEMENT					
Part 4, 4.6 (c) Negotiation Conditions	<p>This provision allows Aurizon Network to refuse access rights based on three factors being:</p> <ul style="list-style-type: none"> (a) Secure port capacity, and or (b) Secure rail haulage, and or (c) Speed and timeliness of Access Seeker 	Part 7, 7.2 General Requirement for Allocation	<p>This provision allows Aurizon Network to refuse available access rights if the Access Seeker does not demonstrate the following:</p> <ul style="list-style-type: none"> (a) Rights to load and unload, (b) Supply chain rights, 	<p>Asciano strongly opposes this additional wording.</p> <p>Asciano is concerned that this provision could hinder or prevent access unnecessarily.</p> <p>Asciano's views on this issue are further outlined</p>	<p>No change. Aurizon Network has made the wording even stronger (for example; "holding" and "having" Supply Chain Rights, rail haulage contracts, Customers, etc.) Thus this clause is</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	conducting negotiations.		<ul style="list-style-type: none"> (c) Contract for rail haulage, (d) Sufficient facilities (including Rolling stock provisioning, maintenance and storage facilities), (e) Sufficient output from the mine to support full use of access rights, and (f) Rights from other providers of infrastructure (entry and exit to network). 	in the body of this submission.	more concerning then previously.
Part 7, 7.4 Committed Capacity	<p>This clause has a similar intent to the 2013 DAU with variations of timeframes and Aurizon Network's requirement to have in place a Committed Capacity Register.</p> <p>Clause 7.4 (d) places obligations on Aurizon Network to notify an Access Holder that their rights are about to expire.</p> <p>The definition of 'Renewal Application' included a term called 'Replacement Mine'.</p>	Part 7, 7.3 (a) (ii) Renewals	Wording now states "the person nominated by the Access Holder's Customer..."	Asciano queries whether the word 'person' be replaced with 'Railway Operator' in this clause. Clarity is required.	No change. The insertion of a new clause 7.3 (b) allows renewal rights to have variations in origin/destination so long as it utilises the same Mainline Paths and Track Segments. As addressed in this submission, Asciano is concerned that the terms Mainline Paths and Track Segments have not been adequately defined.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	This allows an Access Holder to renew rights from an alternative origin for the new term.	Part 7, 7.3 (c) (iv) Renewals	This clause restricts an Access Seeker to only renew access rights by execution of an Access Agreement no less than 12 months prior to the expiry of the Access Rights.	This clause is too restrictive, it should be sufficiently flexible to allow Aurizon Network and the Access Holder to agree to renew within a shorter period based on certain circumstances.	This clause has been redrafted to allow execution of an agreement within a lesser time prior to expiry as agreed by Aurizon Network. This should be jointly agreed between the parties; not just agreed by Aurizon Network.
		Part 7, 7.3 (e) (i) Renewals	The provision states that an agreement can only be renewed for a term based on the lesser of 10 years and the remaining life of the relevant mine.	<p>This clause is too restrictive, it should be sufficiently flexible to allow Aurizon Network and the Access Holder to agree to renew for a shorter period based on certain circumstances (for example the shorter time frame could reflect the time frames of other key variables).</p> <p>In addition Asciano believes that Aurizon Network's obligation to notify an Access Holder before their access rights expire should be reinstated. This should be an obligation placed on Aurizon Network as the</p>	<p>No change.</p> <p>The insertion of a new clause 7.3 (b) to allow renewal rights to have variations in origin/destination so long as it utilises the same Mainline Paths and Track Segments may partially address Asciano's Replacement Mine concerns. Though this cannot be fully understood until Mainline Paths and Track Segments are adequately defined.</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				<p>network provider.</p> <p>In addition Asciano believes that the Replacement Mine provisions in relation to renewals should be re-introduced. As long as equivalent rights are utilised there should be no issues from a capacity perspective.</p>	
Part 7, 7.3.6 Capacity Relinquishment and Transfer	<p>This clause covers provisions related to relinquishment or transfer of access rights.</p> <p>Clause 7.3.6 (l) allows for transfers to occur, that is less than a 2 year period, with zero transfer fee.</p>	Part 7, 7.4.2 Transfers	<p>Relinquishment fee and transfer fee requirements have been removed.</p> <p>This clause introduces the term Ancillary Access Rights meaning: “Access Rights (that will use Available Capacity without the need for Expansion or Customer Specific Branch Line) that are ancillary to Transferred Access Rights to the extent required by a Transferee, in addition to the Transferred Access Rights, to provide complete Train Paths using the Transferred</p>	<p>Asciano believes that the only scenario where ancillary access rights may be required is for a transfer that is cross-system.</p> <p>Relinquishment of access rights by an Access Holder is no longer covered in the undertaking. Asciano believes that relinquishment fees should be addressed in the undertaking to ensure all access holders are treated equally.</p> <p>The transfer fee calculations have been</p>	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			Access Rights for the Transferee's origin to destination.	removed from the undertaking. Asciano believes that transfer fees should be addressed in the undertaking to ensure all access holders are treated equally. The provision that allows a transfer to occur, less than two years, with zero transfer fee has been removed; this clause should be reinstated.	
Part 7, 7.3.3 and 7.3.4 Requests for Mutually Exclusive Access Rights And Formation of Queue	Similar intent in 7.3.3. Clause 7.3.4 outlines Aurizon Network's requirement to form a queue for mutually exclusive access rights. Access Applications received by Aurizon Network at the earliest time is treated as first in the queue. 7.3.4 (d) allows Aurizon Network to allocate access rights to an Access Seeker who is not first in the queue based on commercial performance being: (a) NPV Value that is 2% or	Part 7, 7.5.2 Capacity Allocation for Mutually Exclusive Access Applications	The queuing provisions have been removed. Aurizon Network can now choose which Access Seeker they enter access agreements with. They can reject Access Seekers that cannot demonstrate matters such as supply chain rights, haulage agreement, above rail facilities and rolling stock (4.11 (c)).	The removal of the queuing provisions is problematic as Aurizon Network now has more freedom as to who they negotiate access rights with. (i.e. the capacity allocation system is now more subjective). This may allow Aurizon Network to make decisions more favourable to their Related Operator.	No change. Note clause 7.5.2 (e) clearly states that Aurizon Network can prioritise a proposed access agreement ahead of a proposed non-coal access agreement. Asciano questions whether this is unfair to non-coal carrying services.
	(a) NPV Value that is 2% or	Part 7, 7.5.2 (f) Capacity Allocation for	Where Aurizon Network has the opinion it is not practical to determine	It will now also be more difficult to demonstrate that Aurizon Network has	Aurizon Network has not changed this to address Asciano's

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	<p>more than first in queue. (b) An Access Seeker willing to execute for 10 year or more term.</p> <p>.</p>	Mutually Exclusive Access Applications	<p>which Access Seeker they negotiate with for available Access Rights, Aurizon Network can elect to prioritise the execution of Access Agreements with those Access Seekers based on the later of the Acknowledgement Notice of the Access Applications or the date 3 years prior to the date when Access Rights are sought in the Access Application.</p> <p>For those Access Seekers remaining, they will be suspended and clause 4.4(c) applies.</p>	<p>treated Access Seekers in a discriminatory manner.</p> <p>Asciano's views on this issue are further outlined in the body of this submission</p>	concerns.
Part 7, 7.1 (a) Network Management Principles	This clause states that Aurizon Network will perform scheduling, train control and provide capacity related information in accordance with the Network Management Principles. The clause does not specifically cover dispute processes in relation to the Network Management Principles (presumably normal dispute	Part 7, 7.6.1 (b) Compliance with Network Management Principles	This clause states that any dispute between an Access Holder and Aurizon Network in relation to compliance with the Network Management Principles will be dealt with in accordance with the dispute process set out in the relevant Access Agreement.	As the Network Management Principles are set out in Schedule H of the undertaking and to ensure all Access Holders are treated consistently and fairly, the dispute process must be set out in the undertaking not in the access agreement.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	resolution processes in Part 10 would apply).				
Part 7, 7.1 (b) to (e) Network Management Principles	States that Aurizon Network must submit Draft System Rules.	Part 7, 7.6.3 Making the Initial System Rules for a Coal System	Outlines the process for the approval of System Rules. 7.6.3 (a) states that Aurizon Network must consult with Access Holders, Access Seekers and Railway Operators in the process.	The 2013 DAU should specify that a formal QCA consultation and approval process be undertaken in relation to the establishment of system rules. Consideration should be given to include System Rules as part of the undertaking or alternatively refining the Network Management Principles to incorporate more specific scheduling principles.	This clause has been redrafted to include more detail surrounding the QCA submission and approval process. It also allows Access Holders (minimum 60%) to notify Aurizon Network that they want System Rules in place (if they do not already exist) which Aurizon Network is then obligated to draft and submit it to the QCA. Asciano has commented on this in the body of this submission.
	Provision did not exist.	Part 7, 7.6.4 Amending the System Rules	Outlines the process for System Rule Amendments (replacements and removal).	There is no requirement for QCA approval in relation to amendments of the System Rules. Asciano is concerned with this position as Aurizon Network can simply replace or remove	This clause has been redrafted to allow Access Holders (minimum 60%) to notify Aurizon Network that they want System Rules amended.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				<p>System Rules after consultation.</p> <p>Asciano believes that any amendments to System Rules must be subject to a formal QCA approval process.</p>	<p>Though clause 7.6.4 (c) still gives Aurizon Network full discretion of whether they wish to amend the System Rules. Under clause 7.6.4 (e) if no submissions are received from Affected Persons the amendments are taken to have been made. If submissions are received from Affected Persons than Aurizon Network must notify the QCA and request their approval. Based on clause 7.6.4 (c) (i) (A), it seems Affected Persons do not include Train Operators. This means that submissions received from Train Operators will not be submitted to the QCA for consideration (see 7.6.4 (f) (ii) (A) (2).</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					This is very concerning to Asciano.
Part 7, 7.3.5 Capacity Resumption	This clause addresses Aurizon Network's ability to resume access rights if over a consecutive four quarters period an Access Holder does not at least utilise 85% of their Train service entitlements.	Part 7 Available Capacity Management and Allocation	This section has been removed.	Asciano believes that it is important to have access rights resumptions outlined in the undertaking to ensure consistency of how rights are resumed by Aurizon Network.	Aurizon Network has not changed this to address Asciano's concerns.
Part 7, 7.3.7 Customer Initiated Capacity Transfers	This clause addresses how transfers are to be treated if it was initiated by a Customer. 7.3.7 (ii) specify states that under this scenario the terms of the Old Access Agreement relating to Take or Pay and Relinquishment Fees will apply for those access rights in the new Access Agreement.	Part 7 Available Capacity Management and Allocation	This section has been removed.	Asciano believes that Take or Pay and Relinquishment Fees provisions should remain the same when those access rights transferred to another Access Holder for the remaining term of the Access Agreement.	Aurizon Network has not changed this to address Asciano's concerns.
PART 8: NETWORK DEVELOPMENT AND EXPANSIONS					
Part 7, 7.5.4 (c) Incremental Investments	Where Aurizon Network refuses to undertake funding an Extension on the basis it is Significant Investment: (a) it must provide the QCA with a statement stating reason, or (b) Where the refusal is a	Part 8 Network Development and Expansions	These provisions have been removed.	Asciano believes that these provisions should be reinstated as Aurizon Network investments are overseen by the same Board that oversee their Related Operator. This raises concerns regarding	No change. A new clause 8.2.1 (c) lists the situations when Aurizon Network is obligated to construct an Expansion.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	<p>decision by their UHC, they must get the UHC to provide a statement stating reason.</p>			<p>the potential for discriminatory behaviour.</p>	<p>Clause 8.2.1 (c) (iii) (A) states that an Expansion is funded by several means one being when Aurizon Network is obliged by the undertaking to do so. The only situations when Aurizon Network is obliged to fund an Expansion is when they have entered into commercial arrangements with funding users or when Asset Replacement Expenditure as covered in clause 8.2.1 (d) is required to maintain existing capacity on the Rail Infrastructure as governed by the terms of the Access Agreements.</p> <p>Clause 8.2.1 (k) obligates Aurizon Network to enter into access agreements with relevant Access</p>

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					<p>Seekers for capacity created by the Expansion. If there is residual available capacity (i.e.; not contracted in Access Agreements) it is unclear how this capacity is allocated.</p> <p>Note that expansion capacity is treated as Committed Capacity (i.e.; excluding from Available Capacity).</p>
	Provision did not exist.	Part 8, 8.2.2 Interdependent and Sequential Nature of Expansions	This clause outlines the principle that multiple expansions incrementally build on each other in sequence to increase capacity. The capacity expected to be created by an Expansion later in the sequence cannot be unconditionally allocated until the outcome of the Expansions earlier in the sequence is known.	<p>The principle outlined in this clause may be problematic for a customer who is developing a mine to line up with the Expansion later in the sequence. They could commit to fund an Expansion for a certain level of capacity only to have their access rights reduced in the future.</p> <p>Aurizon Network should bear the risk that if this situation occurs they fund</p>	<p>There is no change on the sequential nature of Expansions. Clauses 8.2.2 (b) to (g) have been inserted allowing Aurizon Network to reprioritise and reallocate capacity amongst Access Seekers due to delays in proposed Expansions or an Access Seeker having access agreements,</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				the difference to ensure that the capacity that was intended to be created is actually created. Aurizon Network bear this risk on the basis that the capital project was designed and built by Aurizon Network, so they are in the best position to manage the risk.	Commercial Terms or a User Funding Agreement ahead of other Access Seekers. This creates further uncertainty.
Part 7, 7.5.2 (a) Extension Process	This clause has a similar intent to the 2013 DAU clause. Clause 7.5.2 (v) and (vi) did apply a rule for Access Applications received that will utilise 70% of Planned Capacity.	Part 8, 8.2.3 Determination of Sufficient Demand for an Expansion	Under this clause Aurizon Network will make its determination of an Expansion based on information such as Access Applications, its own market intelligence, expressions of interest processes, liaison and consultation with participants in coal supply chains and Supply Chain Groups and expert advice.	Asciano seeks clarity on the definition of "Supply Chain Group", for example does this group include Railway Operators. This provision should also include an ability for any party to submit Expansion requirements, where Aurizon Network would be obligated to carry out studies and planning and if required construct and / or fund the expansion.	A new term, 'Demand Assessment' has been introduced to cover these information types. Within 10 business days Aurizon Network will commence a Demand Assessment if there is proposed capacity at the port, an Access Seeker submits an application for capacity that cannot be satisfied or an Access Seeker makes a written request to Aurizon

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					<p>Network to conduct one (provided that they are acting on behalf of a Customer).</p> <p>In clause 8.2.2 (f) Aurizon Network seeks to request further information from Access Seekers which includes the status of coal reserves, project development, mining tenure and approvals and out-loading capacity assets or rights. It must be acknowledged that there is no requirement for Access Seekers to provide such information when requested and when they do not provide such information it should not be a reason for Aurizon Network to delay the Demand Assessment or</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Part 7, 7.5 Network Investment	Not specifically covered. Aurizon Network's recovery of cost is partially covered in 7.5.5 (m).	Part 8.3 to 8.5 Principles for Concept Studies Principles for Pre-feasibility Studies Principles for Feasibility Studies	Under this clause concept studies will be undertaken and funded by Aurizon Network where they consider it appropriate to do so. Clauses 8.4 and 8.5 cover the topic of pre-feasibility and feasibility studies (whether funded by Aurizon Network or other funders). Clause 8.5 (j) obligates Aurizon Network to issue an IAP within 20 business days once the Studies Funding Agreement for a feasibility study becomes unconditional to those Access Seekers funding the study and grant those Access Seekers their portion of Provisional Capacity Allocation. Clause 8.5 (k) allows Aurizon Network to withdraw Provisional Capacity Allocation from an Access Seeker if: (a) Aurizon Network believes they will not fully	This provision allows Aurizon Network to take whatever action it considers appropriate to reallocate withdrawn Provisional Capacity Allocation however they choose. This is concerning if the reallocation is used to favour some access seekers or holders over others. Any reallocation should be transparent and based on an objective set of criteria. (For example the reallocation could be offered to the next Access Seeker whose Access Application has been suspended). This provision also allows Aurizon Network to cease the expansion or even reprioritise the sequence of Expansions. This creates uncertainty for the Funders.	Expansion work. Under clause 8.2.4 (d) Aurizon Network will seek information from relevant Customers for their Demand Assessment. This is inconsistent with Aurizon Network requesting information under 8.2.2 (f) where information is sought from Access Seekers. Clause 8.3 (d) states that where an Access Seeker wishes to fund a Concept Study, they must be acting on behalf of a Customer. An Access Seeker should have the option to choose to fund a Concept Study whether backed by a Customer or not. This is similar in sections 8.4 and 8.5

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			utilise the access rights or (b) the Access Seeker does not execute an agreement in relation to funding/constructing the Expansion within 6 months, or a longer agreed period, after the completion of the feasibility study		<p>for pre-feasibility and feasibility studies.</p> <p>In clause 8.4 (c) if Aurizon Network discovers an Expansion that could remove a Capacity Shortfall, Access Seekers must satisfy requirements such as participating in a process to acquire port capacity, having Exploration Permits, credible program for their mine development, etc. before they are considered to participate in funding the Pre-feasibility study. This seems overly cumbersome and onerous for a pre-feasibility study, particularly as Access Seekers selected by Aurizon Network to fund the studies are not guaranteed any future capacity created by future</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					<p>Expansions. Similar requirements are required by Aurizon Network in their selection process under 8.5 (Feasibility Studies).</p> <p>In clause 8.5 (h), where Aurizon Network's Target Capacity turns out to be insufficient Capacity for all relevant Access Seekers, Aurizon Network will go through a selection process to determine who gets to fund the Feasibility Study. Criteria include ratio of coal reserves to the Access capacity sought, the likelihood of continuing to extract such coal reserves over time, etc. Again, this is excessive given it relates to the funding of a study.</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					Section 8.6 (Funding of Studies) does not allow a Railway Operator to fund Studies unless it is backed by a Customer. These limitations should be justified by Aurizon Network. Studies should be able to be funded by any participant including railway operators.
Part 7, 7.5.5 User Funded Infrastructure	<p>This clause has a similar intent to the 2013 DAU clause but with the following exceptions.</p> <p>7.5.5 (d) states that operating and maintenance costs will be included in the Reference Tariffs and are not required to be funded by Access Seekers.</p> <p>7.5.5 (f) states that Aurizon Network is required to fund the unfunded portion of the costs of a Significant Investment (capped at 30% of total and not more than \$300m).</p>	Part 8, 8.6 User Funded Expansions	This clause covers the process where a user funds the cost of Expansions to create additional capacity.	<p>Asciano believes that the definition of "Funding User" needs to be clarified as it only includes Access Holders, Access Seekers and Customers, where none of these terms seem to include a Railway Operator. The term "Customer" also seems to be contrary to the terms "Access Holder" and "Access Seeker"</p> <p>Clause 8.6.5 states that any capacity or capacity shortfalls as a result of User Funded Expansions</p>	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	7.5.5 (l) where the Extension creates excess Available Capacity the costs of creating the Available Capacity may not be incorporated into the RAB initially and instead may be carried forward for inclusion in the RAB at a later date (treated as Excluded Capital Expenditure in 3.2.2 of Schedule A)			will be dealt with in the relevant User Funding Agreement. This issue needs to be addressed in the undertaking rather than the agreements as the treatment of User Funded Expansions could impact on the existing capacity of the system and other users.	
Part 11, 11.3 Contracting for Capacity in Coal Supply Chains	This clause outlines how Access Rights are reduced when there is a Change in Existing Capacity. Clause 11.3 (v) covers how capacity is reduced for each Conditional Access Holder.	Part 8, 8.7.2 Capacity Shortfalls	Clause 8.7.2 (c) states that the Conditional Access Rights of each Conditional Access Holder are reduced in accordance with its Access Agreement.	Asciano has a concern with Conditional Access Rights being subject to negotiation in access agreements. Given this issue relates to system capacity, the method of how Access Rights are reduced for each Access Holder should be specified in the undertaking to ensure consistent and non-discriminatory treatment.	No change. Clause 8.10.3(f) (ii), where Aurizon Network will bear the cost of the Shortfall Expansion if the Capacity Shortfall was caused by their negligence should be further strengthened such that Aurizon Network are obligated to prevent capacity shortfalls from occurring in the first place.
Part 11, 11.1.3 Supply Chain Operating Assumptions	This clause has a similar intent to the 2013 DAU clause, though 11.1.3 (c) obligates Aurizon Network to	Part 8, 8.8.2 System Operating Assumptions	Similar intent.	Asciano believes that "System Operating Assumptions" needs to be defined in the 2013 DAU.	No change. Clause 8.11.2 (f) states Aurizon Network, as soon as

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	review assumptions at least once a year.			Given that the System Operating Assumptions relate to the supply chain, supply chain users should have a role in the process of determining System Operating Assumptions.	reasonably practicable after the Approval Date should make available the System Operating Parameters. Asciano is concerned that the development of these parameters does not have regulatory oversight.
Part 11, 11.1.4 Regular Review of Capacity	This clause has a similar intent to the 2013 DAU clause.	Part 8, 8.8.3 (b) Capacity Review	This clause states that Aurizon Network will undertake a review of capacity if the System Operating Assumptions are varied in a way that materially decreases the Existing Capacity.	As part of the regular review of capacity there should be a process conducted to periodically audit Aurizon Network's Master Train Plan to ensure Train Service Entitlements are allocated consistently and fairly across users by Aurizon Network.	Aurizon Network has not changed this to address Asciano's concerns.
Part 11, 11.2 Coal Rail Infrastructure Master Planning	This clause has a similar intent to the 2013 DAU clause with the following exceptions. Clause 11.2.1 (b) states that it must contain a horizon of up to three years or longer.	Part 8, 8.9 Network Development Plan	This provision obligates Aurizon Network to develop a Network Development Plan for the medium to long term.	The period of medium to long term needs to be clarified. The undertaking no longer obligates Aurizon Network to include certain elements in the Network Development Plan;	This clause has been partially redrafted to specify that the Network Development Plan will include a review of existing capacity and operational constraints, an

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	<p>11.2.1 (c) required Aurizon Network to establish forum including certain participants, where this forum will act as a consultative body for the purposes of Aurizon Network's master plan (11.2.1 (d)).</p> <p>11.2.1 (e) also requires Aurizon Network to involve the forum heavily on the development of the master plan.</p> <p>Section 11.2.2 (Content of Master Plan) outlines what must be contained in the master plan, including its capacity analysis, impact on capacity during construction and measures for limiting this impact.</p>			<p>Asciano believes that the undertaking should continue to outline what elements are required in the Network Development Plan. In addition Asciano believes that Aurizon Network should consult with relevant parties in developing the plan.</p>	<p>overview of opportunities for increasing existing capacity, a comparison of opportunities for increasing existing capacity and the studies and investigations that Aurizon Network expects to undertake. However, still does not specifically outline elements of the Network Development Plan.</p>
Schedule A, 3.2.1 (a) Identification of Customer Groups	Under this clause a Customer Group is defined as all Customers and Access Holders without Customers who have Reference Tonnes.	Part 8, 8.10.3 (a) Identification of Interested Parties	States that the persons eligible to participate in a vote for capital expenditure projects are Interested Participants.	This term "Interested Participants" does not include Railway Operators. There is merit in including Railway Operators as they are likely to be impacted by any capital investment in the network.	Clause 8.13.3 (b) has been inserted to allow a Customer to nominate its Access Seeker or Access Holder. Both these terms exclude Train Operators which is concerning to Asciano.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				It is also not clear whether existing Access Holders, where their access rights will be impacted by the capital expenditure, will have voting rights. This should be clarified.	
Schedule A, 3.2.1 (a) (i) Identification of Customer Groups	This clause has a similar intent to the 2013 DAU clause but a Customer's vote is based on Reference Tonnes.	Part 8, 8.10.4 Voting Rights	<p>Clause 8.10.4 (b) outlines that each Interested Participant's votes will be weighted by multiplying its vote by the number of Affected Train Paths for that Interested Participants.</p> <p>Vote Proposals will relate to scope or standard of capital works, expenditure to be included in RAB and cost allocation principles for Reference Tariff variations.</p>	<p>The coal supply chain is designed to move tonnes rather than create train paths. Asciano believes that tonnes are a better basis of voting rights.</p> <p>Clause 8.10.4 (c) limits voting to access rights that will be in force five years after the acceptance is sought. This could be problematic to those with shorter term access rights, as they will not be eligible to vote but their access rights and access charges may be affected.</p>	<p>No change. Additional wording is included under clause 8.13.4 (a) where only those Affected Train Paths that would be affected by including the amount of capital expenditure for the relevant capital expenditure project into the Regulatory Asset Base. Asciano disagrees with this approach as it will exclude parties that may be impacted by capacity changes (rather than reference tariffs).</p>
Schedule A, 3.2.2 Customer Group Voting Process	Clause 3.2.2 (e) has similar intent to the 2013 DAU clause where Aurizon Network can form a view to	Part 8, 8.10.5 Acceptance Process	Clause 8.10.5 (d) states that where an Interested Participant votes 'no', there is requirement for	Asciano questions the requirement for Interested Participants to justify their rejection.	<p>No change. Clause 8.13.5 specifies that the Expansion is treated</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	reject a 'no' vote in the voting process but it requires Aurizon Network to seek QCA approval to disregard any votes on the basis that a specific object is not bona fide.		<p>them to fully justify their reason and provide evidence if they believe their access rights will be impacted.</p> <p>Clause 8.10.5 (e) outlines that where a vote has not been received from an Interested Participant, Aurizon Network would deem their votes as accepted.</p> <p>Clause 8.10.5 (f) also allows Aurizon Network to reject a 'no' vote if they believe the reasons that were provided are not reasonable.</p> <p>Clause 8.10.5 (g) sets a 60% of aggregated Affected Train Paths as a pass for capital projects. This 60% excludes the no votes that Aurizon Network rejected as per 8.10.5 (f).</p>	<p>The current voting process appears subjective given that Aurizon Network can exclude a 'no' vote from the process if they believe the justification from the Interested Participant isn't adequate.</p> <p>Asciano believes that the provision where any rejection of votes by Aurizon Network should be approved by the QCA should be reinstated.</p>	<p>as accepted once at least 60% of aggregated Affected Train Paths from Interested Participants that have accepted have been received. Affected Train Paths are restricted to those that are impacted by reference tariff impacts.</p> <p>Clause 8.13.5 (g) has been inserted for the QCA to approve any of Aurizon Network's rejected votes.</p>
PART 9: CONNECTING PRIVATE INFRASTRUCTURE					
Part 8, 8.3 Connecting Infrastructure	This clause has a similar intent to the 2013 DAU clause although clause 8.3	Part 9 Connecting Private	Similar intent.	Aurizon Network's obligation to carry out negotiation, design and	Clause 9.1 (c) has been inserted to state that Aurizon

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	<p>(b) obligates Aurizon Network to do all things reasonably necessary, and in a timely manner, to ensure that the Connecting Infrastructure is physically connected to the Rail Infrastructure and to facilitate the movement of trains.</p> <p>8.3 (c) also obligates Aurizon Network to provide train control and planning services for the Connecting Infrastructure in a manner consistent with the Aurizon Network operated network.</p>	Infrastructure		construction in a timely manner and their obligation to provide train control for entry and exit needs to be stated in the 2013 DAU.	Network will review the written proposal from the Private Infrastructure Owner in a timely fashion (note, there is still no obligation for Aurizon Network to ensure the connection is completed in a timely manner).
Part 8.1 to 8.2 Interface Considerations	<p>The following provisions were included in Part 8:</p> <p>Clause 8.1 – Interface Risk Management Process outlines Aurizon Network's obligation to ensure that the interface risk is appropriately managed.</p> <p>Clause 8.1.5 obligates Aurizon Network to provide training to Access Seekers and Holders if it is part of a control in the risk assessment.</p>	Part 9 Connecting Private Infrastructure	These sections have been removed from the undertaking.	Asciano believes that there is merit in having these elements prescribed in the undertaking to ensure consistency between different access seekers and access holders, ensure that minimum standards are set and ensure the safe operation of the network.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	Clause 8.2 – Environmental Risk Management Process outlines, the requirement for the Access Seeker or Holder to commission a qualified person to prepare an environmental risk review (an EIRMR).				
PART 10: REPORTING					
Part 9, 9.2 Annual Reports	Similar intent.	Part 10.1 Annual Reports	This clause requires the submission of financial statements within 6 months of the end of the financial year in accordance with the costing manual.	Asciano believes that the Costing Manual must be reviewed in its entirety given the significant changes in Aurizon's corporate structure.	Aurizon Network has not changed this to address Asciano's concerns.
Part 9, 9.2.3 Maintenance cost report	Under this section reportable line items to the QCA included. <ul style="list-style-type: none"> mechanised maintenance general track maintenance structures and facilities maintenance trackside system maintenance electrical overhead maintenance telecommunication maintenance 	Part 10, 10.1.3 Annual Maintenance Cost Report	Under 10.1.3 (b) (B), Aurizon Network is obligated to report actual maintenance costs publicly that include: <ul style="list-style-type: none"> ballast undercutting rail grinding (for mainline) rail grinding (for turnouts) resurfacing (for mainline) ultrasonic track testing 	Asciano believes that the items listed under the 2010 AU for the QCA report should be included in the 2013 DAU public report. Aurizon Network should also present the report in a format that shows actual maintenance against forecast maintenance dollars. Mechanised maintenance has been removed from	While rail grinding (for turnouts) has been removed, ultrasonic track testing has been replaced with General Track Maintenance which includes maintenance of track, structures, civil works, signalling, electrical overhead and telecommunication

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	Aurizon Network has an obligation to report actual maintenance against forecast maintenance.		<p>Clause 10.1.4 (c) (ii) outlines the report that goes to the QCA.</p> <p>Clause 10.1.4 (c) states that the Goonyella to Abbot Point System will not be reported on an independent basis.</p>	<p>the list of items reportable to the QCA under 10.1.4 (c) (ii). This should be re-included.</p> <p>The costs associated with GAPE traffic needs to be reported separately on the basis that GAPE users are subject to separate Reference Tariffs This ensures there are no cross-subsidies across systems.</p>	<p>systems.</p> <p>.</p>
<p>Part 9, 9.1 Quarterly Network Performance e Reports</p> <p>Part 9, 9.2.5 Operational Data Report to the QCA</p>	This clause has a similar intent to the 2013 DAU clause although quarterly performance reports were published.	Part 10, 10.1.5 Annual Operational Data Report	<p>Clause 10.1.5 (a) now allows Aurizon Network to provide their Ultimate Holding Company the report, to so that they can provide to the ASX, prior to it being published.</p> <p>Parameters that used to be reported on a quarterly basis are only required to be reported annually.</p> <p>Clause 10.1.5 (c) states that the Goonyella to Abbot Point System will not be reported on an independent basis.</p>	<p>The quarterly reports and annual operational data report has been merged into one annual report. Asciano's view, as outlined in this submission, is that operational reports should be monthly and should contain additional data as outlined in this submission).</p> <p>The performance of GAPE traffic needs to be reported separately on the basis that GAPE users are subject to separate Reference</p>	<p>This clause has been partially redrafted to address Asciano's concerns to revert back to quarterly reports to the QCA.</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				Tariffs. By providing GAPE performance separately this allows users to make a better informed assessment of the performance received compared to the access charges paid.	
Part 9, 9.3 Capital Expenditure and Regulatory Asset Base Reports	This clause requires Aurizon Network to provide the QCA with reports regarding their capital expenditure, RAB roll-forward. These reports are public.	Part 10, 10.1.6 Annual Regulatory Asset Base Roll-Forward Report	Report requirements are now contained in Schedule E.	These reports should continue to be made public.	Aurizon Network has not changed this to address Asciano's concerns.
Part 9, 9.5 Information Requested by the QCA	This clause has a similar intent to the 2013 DAU clause but the QCA can request information for the purposes of the QCA performing its function in accordance with the undertaking or an Access Agreement (including conducting audits).	Part 10, 10.3 Information Requested by the QCA	Clause 10.3.2 (a) has removed the QCA's ability to request information from Aurizon Network for the purposes of conducting an audit.	<p>The ability of the QCA to request information from Aurizon Network for the purposes of conducting an audit must be re-included.</p> <p>The QCA should be given more powers to request audits on any matters relating to the undertaking and Access Agreements.</p>	<p>No change.</p> <p>Clause 10.4 has been inserted in relation to Conditions Based Assessment to be conducted no later than 6 months prior to this Undertaking expiring. There needs to be an Reference Tariff adjustment mechanism where Aurizon Network's Rail Infrastructure has deteriorated by more than it should</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					have (i.e.; not maintained to standard which users are paying for).
Part 10, 10.3 Audit Process	Similar intent with the one exception where 'clause 2.2, Non-Discriminatory Treatment was included in this audit process.	Part 10, 10.8 Audit Process	Outlines how an audit is conducted annually in relation to 3.22 Complaint Handling, 10.6 Reporting, and 10.7 Compliance Audits Requested by the QCA, 6.2 Price Differentiation and Schedule E Regulatory Asset Base.	Need to re-include <u>Non-Discriminatory Treatment</u> in the audit process as it is a regulated service.	No change. Under clause 10.5 the appointed Compliance Officer is to be an Aurizon Network Employee appointed by their Executive Officer. Asciano sees merit in having an independent Compliance Officer.
PART 11: DISPUTE RESOLUTION AND DECISION MAKING					
Part 10, 10.1.1 (b) Disputes	Similar intent.	Part 11, 11.1.1 (b) Disputes	This provision states that, unless otherwise agreed in writing, any disputes in connection with an Access Agreement or TOA shall be dealt with under the provision of the relevant Access Agreement or TOA.	Based on past experiences, Asciano has had disputes where we have been confined to carry out the dispute process in the Access Agreements. This made the dispute process more complex and time consuming. <u>The dispute process should be outlined in the Undertaking and take precedence over any access agreement.</u> There should also be an	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				option were the QCA can be chosen by the parties to arbitrate before expert determination.	
Part 10 Dispute Resolution and Amendment Process	Provisions did not exist as EUAA and TOAs were not in place.	Part 11, 11.1.1 (c) Disputes	Introduced dispute process where an EUAA and TOA are involved.	<p>Clause 11.1.1 (c) (iii) needs to be more clear surrounding at what point, what notice and participation an EU and Train Operator gets. For example, if a Train Operator disputes Aurizon Network's decision making in relation to contested train paths, the EU that is notified should only be the EU whose paths were impacted (and vice-versa).</p> <p>An additional clause to state that written consent must be provided by the party that submits the Dispute Notice prior to any other parties being notified should also be included in these provisions.</p>	Aurizon Network has not changed this to address Asciano's concerns.
Part 10 Dispute Resolution and Amendment	Provisions did not exist.	Part 11, 11.1.3 Mediation	New provisions to allow a dispute to be referred to the Australian Commercial Dispute	Minimum timeframes needs to be specified for the ACDC to resolve. Believe allowing for either	Clause 11.1.3 (a) has been redrafted to state that parties can agree to refer

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Process			Centre (ACDC) if after 10 business days a dispute is not resolved after the receipt by each parties chief executive (or their nominee).	party to refer the dispute to the QCA during this stage has more merit.	Dispute to the ACDC if the resolution has not been reached by Chief Executives in 11.1.2.
Part 10, 10.1.3 Expert Determination	Provisions mirror the 2013 DAU.	Part 11, 11.1.4 Expert Determination	Same as 2010 AU provisions.	Minimum timeframes needs to outlined during the expert determination process (e.g., when expert appointed by the parties, when resolution is reached etc.). Otherwise, it would go on for an undefined timeframe.	This clause no partially addresses Asciano's concern where timeframes to appoint an expert are now within 10 business days.
Part 10, 10.1.4 Determination by the QCA	<p>Similar intent apart from the following:</p> <p>10.1.4 (f) outlines Aurizon Network's obligation to demonstrate their reduction or elimination of the other sources of revenue due to their choice of entering into an access agreement with a particular Access Holder as per 7.3.4 (d) – their selection of Access Seekers in a queue.</p> <p>Clause 10.1.4 (h) outlines that the QCA shall, in determining the dispute, ensure the Supply Chain</p>	Part 11, 11.1.5 Determination by the QCA	Provisions are similar apart from 10.1.4 (f) and 10.1.4 (h) previously in the 2010 AU.	This section must be reviewed to allow the QCA more determination powers.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	Operating Assumptions are consistent with the efficient use of, and investment in, the relevant coal supply chain as a whole if the dispute refers to 11.1.3 (c) (Supply Chain Operating Assumptions).				
PART 12: DEFINITIONS AND INTERPRETATION					
"Access Charge"	Simply defined as the price paid by an Access Holder for Access under an Access Agreement.	"Access Charge"	<p>Now states to include take or pay charges.</p> <p>Definition also states to exclude any amounts paid to Aurizon Network in accordance with Commercial Terms, studies funding agreement, user funding agreement or rail connection agreement.</p>	<p>Clarity is sort in respect of the exclusions to this definition to ensure there is no double recovery of revenue from Aurizon Network's perspective.</p> <p>For example, Under 9.1 (a) (vii), it states that "the Connecting Infrastructure is owned by Aurizon Network....." 9.1 (b) further implies that Connecting Infrastructure costs can be rolled in to the cost build up of Reference Tariffs where it states that "to the extent that Aurizon Network's costs of operating, maintaining and renewing the Connecting Infrastructure are included in the cost build up for Reference Tariffs or are otherwise included</p>	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				<p>in Access Charges for Train Services.....".</p> <p>The definition of "Access Charges" contradicts this where the definition excludes rail connection agreement (based on clause 9 (a) (viii), the rail connection agreement encompasses the private infrastructure and connecting infrastructure.)</p> <p>This could have a similar effect for commercial terms, studies funding agreement, user funding agreement and therefore needs to be clarified to ensure there is only one source of such revenue that Aurizon Network can recover from.</p>	
"Access Conditions"	<p>Conditions additional to those in the relevant Standard Access Agreement.</p> <p>Restricted to mitigate Aurizon Network's <u>exposure to financial risks</u> associated with providing access to an Access Seeker.</p>	"Commercial Terms"	Includes a varied or additional take or pay arrangement.	The term no longer restricted to simply mitigate Aurizon Network's financial risk associated with providing access to Access Seekers. There is concern that Aurizon Network now has an ability to vary take or pay	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				arrangements. This is not consistent with Aurizon Network's obligation to provide access on a non-discriminatory manner.	
"Access Holder" and "Access Seeker"	Access Holder was simply someone that holds Access Rights and Access Seeker was a person seeking new or additional Access Rights.	"Access Holder" and "Access Seeker"	Definition of Access Holder and Access Seeker <u>now excludes Train Operators.</u>	<p>This changes the intent of Part 4, Negotiation Framework. The ability for a train operator to seek access freely by submission of an access application must continue.</p> <p>The major concern is where clause 3.2 (a) (i) states "Aurizon Network will not engage in conduct for the purpose of preventing or hindering an Access Seeker's or Access Holder's Access." Though as the definition of "Access Holder" and "Access Seeker" excludes Train Operators it implies that Aurizon Network may have the ability to treat Train Operators more unfairly and not provide access. This must be assessed by the QCA to ensure all people seeking or holding access rights are treated equally and in</p>	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				a non discriminatory manner.	
"QR Network Cause"	Simply stated Aurizon Network possessions, Force Majeure events and anything that was rail infrastructure related.	"Aurizon Network Cause"	The definition has changed significantly to specifically exclude: *anything attributable to an Access Holder, Railway Operator or their Customers. *Passenger Priority Obligations. *Unavailability to loading and unloading facilities. *Failure of a train to load/unload within the times specified in access agreement. *cancellation/unavailability of train service entering and existing private infrastructure.	The additional exclusions are generally out of a Train Operator's control, for example *Failure of a train to load/unload within the times specified in access agreement. *cancellation/unavailability of train service entering and existing private infrastructure. These should not be exclusions from this definition. They should be treated as a Force Majeure event which makes part of the definition of "Aurizon Network Cause". Otherwise there are take or pay implications.	Aurizon Network has not changed this to address Asciano's concerns.
"Below Rail Transit Time"	Definition included time taken to cross other trains.	"Below Rail Transit Time"	States it will be the meaning given in the Standard Access Agreement.	This meaning needs to be specified in the undertaking and applied consistently across all Access Holders.	Aurizon Network has not changed this to address Asciano's concerns.
"Below Rail Transit Time"	BRTT divided by Nominated SRT as outlined for Train	"Below Rail Transit Time"	For Train Service Entitlements: Actual	Defined this as an annual calculation. It shouldn't	Aurizon Network has not changed this to

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Percentage"	Service Entitlements.	Percentage"	BRTT divided by the Maximum SRT outlined in the Access Agreement for that given year.	be restricted by any period of time.	address Asciano's concerns.
N/a	Was not defined.	"Capacity Multiplier"	New definition. States prior to 1 July 2015 = 1, after 1 July 2015 = 1.59 for Constrained section of Blackwater and 1.63 for the Constrained Section of Goonyella.	As the Capacity Multiplier is applied on top of the AT2 rate (levied on a \$/train path), it does not make sense that reference is to 'constrained sections' of the network. This would only make sense if it is applied on a tariff component levied on distance. The Capacity Multiple should not be a 'one-size' fits all. It should reflect the operating performance of the train service.	The definition and application of the Capacity Multiplier in clause 6.2.2 (d) (ii) has been removed.
N/a	Was not defined.	"Constrained Section"	Blackwater – Edungalba to Tunnel Goonyella – Broadlea and Coppabella	There needs to be evidence or some analysis to prove these are constrained sections of the network. It is unclear what exact purpose it serves in the 2013 DAU.	Aurizon Network has not changed this to address Asciano's concerns.
SCHEDULE A: PRELIMINARY, ADDITIONAL AND CAPACITY INFORMATION					
Schedule D, Part		Schedule A,	This section now notes	Asciano believes that the	This clause has

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
A Preliminary Information		Section 1 Preliminary Information	<p>that the Goonyella to Abbot Point System will not be reported separately.</p> <p>It also states that the preliminary information will be made available on their website. As per outlined in Part 4, 4.1 (b).</p>	<p>GAPE system should be reported on separately on the basis that users are subject to a separate set of tariffs. Such reporting will ensure that there are no cross-subsidies between systems.</p> <p>If information is only available on the Aurizon Network website then there needs to be obligations on Aurizon Network to ensure they keep information accurate and up to date.</p>	<p>been redrafted to remove separate references to GAPE system reporting.</p> <p>New terms "Mainline Paths" and "Track Segments" have been introduced. These have not been specifically defined as the maps/drawings have not been provided.</p>
SCHEDULE B: ACCESS APPLICATION INFORMATION REQUIREMENTS					
Schedule C Summary of Information Requirements as Part of Access Application		Schedule B Access Application Information Requirements	<p>Information required is now more prescriptive.</p> <p>Under Section 4.1 (Train Service Description) Aurizon network now require an Access Seeker to provide:</p> <p>(i) Maximum dwell times, time at loading/unloading facilities and time at depot.</p>	<p>Asciano believes that many of the additional information requirements sought are premature for the access application stage of the process.</p> <p>Similar to the issues raised above in relation to clause 4.11 (c), there should be no requirement for an Access Seeker to prove they have supply chain rights, haulage agreement arrangements,</p>	<p>No change.</p> <p>Section 3 (a) and (b) now require an Access Seeker to provide evidence of having (or being likely to have) a Customer/Access Holder or Seeker. This further restricts an access seeker seeking access.</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			<p>(ii) Non standard operating modes or methods.</p> <p>(iii) Proposed stowage requirements.</p> <p>Under Section 4.3 (Rolling stock Details) they have included 'locomotive traction type'.</p>	<p>facilities and that their mine will support the Access Rights sought at this stage.</p> <p>Section 3 Form of Access Agreement also should be removed as the form of Access Agreement will be chosen during the negotiation stage of the Access Agreement, not when an Access Application is submitted.</p> <p>It would be problematic for an Access Seeker to know with certainty what is considered as non-standard, what stowage requirements are needed and the choice of traction so early in the stage of a project.</p> <p>The additional information sought gives Aurizon Network more ability to reject access applications (as per clause 4.11) and this is a major concern as this may hinder or prevent the provision of access.</p>	

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
SCHEDULE C: OPERATING PLAN REQUIREMENTS					
Schedule I Operating Plan		Schedule C Operating Plan Requirements	<p>Aurizon Network has included the following matters as part of the Operating Plan:</p> <ul style="list-style-type: none"> • description of activities that may negatively impact mainline running. • tonnage profile. • anticipated project life. • stowage locations. • Train Service Entitlement levels. • max number of one way train services per year (contract). • total number of consists • minimum number of consists available to ensure 100% utilisation of Train Service Entitlement. 	<p>Asciano believes that anything in relation to Train Service Entitlements should not form part of the Operating Plan as these are contained in Access Agreements. An Operating Plan should simply address operational matters</p> <p>The requirement to specifically describe activities that may negatively impact main line running is not required. If Aurizon Network provides Access Rights on the basis of the operating mode under an Operating Plan there should not be any impact.</p>	Aurizon Network has not changed this to address Asciano's concerns.
SCHEDULE D: ULTIMATE HOLDING COMPANY DEED					
Part 2, 2.5.1 Ultimate Holding	Refer to above Part 2, 2.5.1, Ultimate Holding Company	Schedule D Ultimate Holding	Aurizon Holdings to Execute Deed in Support	Refer to comments above under Part 3, 3.3.	No change. Aurizon Network

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Company Support Deed	Support Deed.	Company Deed	of this Part 3.	Asciano believes that the deed in its current form in the 2013 DAU adds little value as its provisions are too broad.	has diluted the UHC Deed further by removing the section 3.2, Management Separation, where it requires Aurizon Network's executive officer to be maintained at the same or greater level of seniority when compared to the Related Operator.
SCHEDULE E: REGULATORY ASSET BASE					
Schedule A, Part 1 Maintenance of RAB	Clause 1.1 stated that Aurizon Network will maintain a RAB.	Schedule E, Part 1.1 Roll Forward Principles	This clause outlines how RAB will be roll forward year on year.	There needs to be a requirement for Aurizon Network to maintain a RAB register. This RAB register needs to contain opening values, depreciation, escalation, disposals, new capital from effective use date, closing value. The QCA should also review the RAB register to ensure accuracy and prudence.	Aurizon Network has not changed this to address Asciano's concerns.
Schedule A, 1.4 (b) Maintenance of RAB	This provision allowed the QCA to reduce the value of assets based on: <ul style="list-style-type: none"> 1. Where demand has deteriorated to such 	Schedule E, Part 1.2 (c) Adjusting the Value of Assets in the RAB	This provision now states that the QCA will not require the value of the assets in the RAB to be reduced unless the QCA	The 2010 AU provisions need to be reinstated to ensure users are not paying for assets which are not used.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
	<p>an extent that regulated prices on an un-optimised asset would result in a further decline.</p> <ol style="list-style-type: none"> 2. It becomes clear that there is a possibility of actual bypass. 3. Rail infrastructure has deteriorated by more than would have been the case had good maintenance practices had been pursued. 		made a decision for original acceptance in the RAB based on false or misleading information from Aurizon Network.		
Schedule A, Part 1 Maintenance of RAB	Provision did not exist.	Schedule E, Part 1.2 (e) Adjusting the Value of Assets in the RAB	This clause states that "if the QCA has not notified Aurizon Network of whether it accepts any asset value increase.....within 40 Business Days.....then the QCA is taken to have made a determination to accept Aurizon Network's request."	Asciano believes that the QCA should not be bound in this manner.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Schedule A, 2.2 Acceptance of Capital Expenditure into the RAB by the QCA	Stated that the QCA will accept all prudent capital expenditure in the RAB based on scope, standard of works and cost.	Schedule E, Part 2.1 Overview – Acceptance of Capital Expenditure into the RAB by the QCA	<p>Clause 2.1 (c) allows Aurizon Network freedom to chose whether they seek approval from QCA or by vote from interested Participants.</p> <p>Clause 2.1 (d) clearly states that the following may only be decided by the QCA:</p> <ul style="list-style-type: none"> • prudence of cost. • acceptance of Asset Management Plan. 	<p>Aurizon Network has the freedom of deciding the method of capital acceptance.</p> <p>Given that the prudence of cost and the Asset Management Plan impact on users some consideration should be given as to whether users can vote on these issues.</p>	The insertion of a new clause 2.2(c) (iv) states that the QCA cannot consult or seek submissions in respect of the scope of a capital expenditure project where it has been accepted as prudent by Interested Participants by a vote in accordance with clause 8.13. This is concerning as the QCA should always have the right to seek consultation or submissions.
Schedule A, 3.1.1(c) Regulatory Pre-Approval of Capital Expenditure	This clause allows for input from Customer Groups.	Schedule E, Part 2.3 (a) Assessing Prudence of Capital Expenditure	This clause states that in assessing whether capital expenditure is prudent the QCA must use only information available to Aurizon Network at the time of making the investment decision and if necessary advice from independent advisors.	<p>The QCA should also be allowed to make their assessment based on submissions from Interested Participants in the voting process.</p> <p>The QCA should not be held to only making a decision based on the information available to Aurizon Network at a certain time.</p>	No change. This clause now also includes information available in relation to User Funding Agreements (but again, only information available at the time of making the decision).
Schedule A	Provisions did not exist.	Schedule E, Part	This new section states	Aurizon Network should	Aurizon Network has

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Maintenance of RAB		2.4 Asset Management Plan	that Aurizon Network 'may' prepare a proposed Asset Management Plan describing the standards that Aurizon Network will apply in determining whether to incur capital expenditure by replacing assets within the RAB rather than maintaining those assets and submit it to the QCA for acceptance.	be obligated to submit this to the QCA for their approval and users should be able to submit comments for the QCA's consideration prior to their approval. This is particularly the case if Schedule E, 3.2 (a) (i) allows for its automatic inclusion in the RAB.	not changed this to address Asciano's concerns.
Schedule A, Part 5 Condition Based Assessment	<p>Outlines Aurizon Network's obligation to procure, at the cost of them, a condition based assessment of the Rail Infrastructure in CQ coal region at the start of the undertaking and again just prior to the end of the undertaking.</p> <p>5(b) allows the QCA to reduce the RAB to reflect the level of deterioration presented in the assessment results if it is proven that good practices were not carried out by Aurizon Network.</p>	Schedule E Regulatory Asset Base	Provisions have been removed.	This should be re-included to keep Aurizon Network honest and accountable for the management of assets and to ensure the RAB is a true reflection of the assets worth based on Aurizon Network's management of those assets. Otherwise, the state of the network would become unknown over time. No different to asset stock takes.	This clause has been redrafted in clause 10.4 where it obligates Aurizon Network to conduct a Condition Based Assessment no later than 6 months prior to the Termination Date of the Undertaking.
SCHEDULE F: REFERENCE TARIFFS					

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Schedule F, Part A, 1.4 Conditions of Access	Train Service Entitlement was simply referred to as 'TSE specified as described in Part B or Part C.	Schedule F, 1.3 (e) General Characteristics of Reference Train Services	Now includes Train Services Entitlements based on: <ol style="list-style-type: none"> 1. Trains being made available 24 hours per day and 360 day of the year, and 2. Operate evenly throughout each monthly and weekly period consistent with the monthly distribution published by Aurizon Network by 30 May prior to the relevant year. 	<p>This seems to be inconsistent with past methodologies adopted by Aurizon Network. This will have implications to Access Holders that currently hold access rights from previously undertakings.</p> <p>The 360 days also assumes Aurizon Network will provide almost 100% capacity availability over a course of a year. Though, in practice, there are possession periods for maintenance shutdowns etc. where Aurizon Network does not provide capacity. Consideration needs to be given to this.</p>	<p>No change. This clause has been redrafted to replace 'evenly throughout each monthly and weekly period' to "in accordance with the distribution set out in the MTP". The MTP in Schedule G refers to Train Service Entitlements which are generally evenly distributed anyway.</p> <p>This clause now includes clause 2.2 (e) stating that if an Operator operates Train Services with the same origin-destination and with Access Charges set based on a different Reference Tariff, then they will be charged firstly on the basis of Access Charges set based on the highest Reference Tariff on a \$/Net Tonne basis up to the applicable</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					TSE, and then the next highest, etc. This method is to apply to Schedule F including for Take or Pay purposes. Asciano has commented on this in the body of this submission.
Schedule F, Part B, 4.2 Cross System Train Services	Similar intent but: AT3: total gtkx x the higher AT3 rate. AT4: total nt x the higher AT 4 rate. AT5 and EC: will be the AT5 and EC for each relevant system.	Schedule F, 2.3 Calculation for a Cross System Train Services	Slight differences to the applicability of the tariff components. AT3: will be the AT3 input for each relevant system. AT4: will be the AT4 input for the Destination system. AT5 and EC: will be the AT5 and EC for the Destination System.	What the cross system charges do not deal with is where a service crosses 3 or more systems. This method also does not ensure that the cross system train service is not cross subsidising existing services. It also does not account for the proportion of distance the cross system train service travels on a particular system. For example, a service may only operate 10% of the service on the destination system however would be charged AT4 and AT5 of the destination system.	This clause has been redrafted to apply certain tariffs to cross system traffic. Asciano has commented on this in the body of this submission.
Schedule F, Part	Similar intent. Capping was	Schedule F, 2.4	2.4 (a) now specifically	This section needs to be	No change.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
B, 2.2 Take or Pay	not as specific.	Calculation for Take or Pay	<p>states that the Reference Tariff also includes a take or pay charge.</p> <p>Under "<u>Mine Capping</u>", 2.4(i), they have now introduced take or pay from one agreement (where they have exceeded railings) to another agreement (where they have under utilised railings) as long as it is for the "same origin to destination".</p> <p>Under "Operator Capping", 2.4 (k), they have introduced take or pay offsets in relation to a group of Train Service Entitlements. This is as long Aurizon Network is notified by the Eligible Operator prior to May each year.</p>	<p>clarified. Especially if it allows for different origin-destination groupings.</p> <p>The Take or Pay arrangements need to be broadened to support flexibility of access rights.</p> <p>(Refer to Asciano's submission).</p>	<p>Clause 2.4 (d) (i) states that for Take or Pay purposes Train Services are excluded for UT1 contracts. As Reference Tariffs work off a 'socialised' system, this provides UT1 access holders with an advantage when it comes to Take or Pay liability. This will likely cause more Take or Pay to be socialised to UT2, UT3 and UT4 access agreements.</p>
Schedule F, Part B, 3 Requirement for Annual Review of Reference Tariffs	In general, similar intent. No Short Run Variable Maintenance Cost adjustments provisions.	Schedule F, 4.1 Requirement for Annual Review of Reference Tariffs	The provision now specifies that Short Run Variable Maintenance Cost will be adjusted to reflect the variance between the Approved System Forecast and revised System Forecast.	This needs to be clarified whether it can be a negative and positive adjustment to the SAR. The adjustment rate per 000gtps for each year also needs to be reflective of the system	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				rather than just applied across the board. It should be no higher than the AT1 rate for each system in theory. The definition of Short Run Variable Maintenance Cost needs to be defined also.	
Schedule F, Part B, 3.2 Calculation of Revenue Adjustment Amounts	Similar intent.	Schedule F, 4.3 Calculation of Revenue Adjustment Amounts	Outlines Aurizon Network's obligation to calculate revenue adjustment amounts and increments.	This assessment needs to include Aurizon Network's collection of any ancillary revenue in the CQ region which relates to/supports provision of access. This includes any ancillary charges they collected (e.g.; storage, repositioning, licence arrangements) as a result of them providing any commercial arrangements by using anything already included in the RAB. This is to ensure there is no double recovery by Aurizon Network.	Aurizon Network has not changed this to address Asciano's concerns.
Schedule F, Part B, 3.3 Calculation of Increment	Similar intent.	Schedule F, 4.4 (a) Calculation of Increment	Introduction of new 110% test where in any given month in the relevant year the number of coal carrying train services exceeds 110% of Access	Need to justify why 110% and whether the revenue adjustment under 4.3 (a) (iii) is only done for those individual months that triggered only.	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			<p>Rights.</p> <p>Note, 4.6 (Amendments to Calculation and Application of Increment) section has been inserted where it allows Aurizon Network to submit amendments to the calculation of the Increment under clause 4.4 (Calculation of Increment).</p>		
Schedule F, Part B, 5 Blackwater System	Similar intent.	Schedule F, 7 Blackwater System	<p>7.1 (iii) states that a reference train <u>uses electric traction</u> now (apart from Rolleston and Minerva).</p> <p>7.1 (iv) also states that separation time is 20 minutes over the constrained area.</p>	<p>The reference train should not be defined as a certain traction type. This is a major competition issue and should be removed. An Operator should have freedom to choose the traction type.</p> <p>Question the purpose the reference payload. Clarity sought.</p>	This clause has been redrafted to state 'uses diesel or electric'.
Schedule F, Part B, 5 Blackwater System	Similar intent.	Schedule F, 7.2 (d) Blackwater System	7.2 (d) also now specify the nt payload of the revenue train being: 8,211 tonnes for Blackwater.	The reference train should not be defined as a certain traction type. This is a major competition issue and should be removed. An Operator should have freedom to choose the	Aurizon Network has not changed this to address Asciano's concerns.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				traction type.	
Schedule F, Part B, 6 Goonyella System	Similar intent.	Schedule F, 8 Goonyella System	8.1 (iii) states that a reference train <u>uses electric traction</u> . 8.1 (iv) also states that separation time is 20 minutes over the constrained area. 8.2(c) also now specify the nt payload of the revenue train being: 10,055 tonnes for GY	8.2 (b) now outlines that Hail Creek, IP, Carborough Downs, Millennium, SWC and Moorvale is subject to separate AT3, AT4 and AT5 components. This needs to be explained. Question the purpose the reference payload. Clarity sought.	This clause has been redrafted to state 'uses diesel or electric Note that Hail Creek's loading time has been reduced substantially from 4.1 to 2.6 hours. The reduction needs clarification. The variances to AT3- AT5 components for these particular hauls seems to be related to separate commercial arrangement outside of the Undertaking so Asciano questions the requirement for their inclusion in the Undertaking..
Schedule F, Part B, 7 Moura System	Similar intent.	Schedule F, 9 Moura System	9.2 (b) also now specify the nt payload of the revenue train being: 6,269 tonnes for M	Question the purpose the reference payload. Clarity sought.	Aurizon Network has not changed this to address Asciano's concerns.
Schedule F, Part B, 8	Similar intent.	Schedule F, 10 Newlands	10.1 (c) has an adjustment to the BRTT	10.2 (b) now outlines that Sonoma is subject to	Aurizon Network has not changed this to

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
Newlands System		System	<p>factor % (increased from 23% to 60%).</p> <p>10.1 (d) have an adjustment to the Sonoma load time (increased from 1.5 to 2.4).</p> <p>10.2 (c) also now specify the nt payload of the revenue train being: 6,871 tonnes for N</p>	<p>separate AT3, and AT4 components. This needs to be explained.</p> <p>Question the purpose the reference payload. Clarity sought.</p>	address Asciano's concerns.
Schedule F Reference Tariff Schedules	Did not exist as the GAPE system was yet to be introduced.	Schedule F, 11 Goonyella to Abbot Point System	11..2 (b) also now specify the nt payload of the revenue train being: 6,871 tonnes for GAPE	<p>Middlemount is missing as a loading facility in 11.1 (d). This maybe due to access being provided from the Middlemount junction?</p> <p>Question the purpose the reference payload. Clarity sought.</p>	This has been corrected to include Middlemount and Caval Ridge.
SCHEDULE G: PRINCIPLES FOR PRICING OF ELECTRIC TRACTION SERVICES IN THE BLACKWATER SYSTEM					
N/a	Entire section did not exist.	Schedule G Principles for Pricing of Electric Traction Services in the Blackwater System	This schedule sets out the principles which will govern the arrangements for pricing of electric traction services in the Blackwater system, and recovery by Aurizon Network of electric system costs.	This section should be removed. (Refer to Asciano's over arching response on this matter.)	This section has been entirely removed.

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
			2 (c) states that all Access Holders utilising the Blackwater system should contribute to Aurizon Network's recovery of the Blackwater electric System costs.		
SCHEDULE H: NETWORK MANAGEMENT PRINCIPLES					
Schedule G, Appendix 3 Traffic Management Decision Making Matrix	Matrix is consistent with the 2013 DAU.	Schedule G, 7.4 Application of Traffic Management Decision Making Matrix	<p>Clause 7.4 (b) and (c) are new provisions.</p> <p>Clause 7.4 (b) outlines that where the operation of train services differ from the DTP, Train Controllers will apply the traffic management decision making matrix.</p> <p>Clause 7.4 (c) allows Aurizon Network to depart from the matrix in the period following a Network Incident, or a Force Majeure event.</p>	7.4 (c) now gives Aurizon Network a ability to depart from the application of the traffic management decision making matrix following a network incident or Force Majeure event. This should only be reserved during circumstances where Aurizon Network has absolutely no choice in relation to restoring the network to normal operations (i.e.; should be on an exception basis). Re-starting of train services and services that can operate normally during this period should still be subject to the traffic management decision making matrix.	<p>No change.</p> <p>Additional provisions have been inserted in clause 7.4 (b) that limits Aurizon Network's liability further if Aurizon Network makes or refuses to make a variation to the DTP following a request or notice.</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
				7.4 (c) needs to also be assessed to include a maximum time period that this departure from the decision matrix can apply following a network incident or Force Majeure even. Otherwise, it is assumed it can go on indefinitely.	
Schedule G, Appendix 2 Contested Train Path Decision – Making Process	Similar intent.	Schedule G, 8.2 TSE Reconciliation Report	<p>Now outlines that Aurizon Network must provide a report to each Access Holder at the end of each weekly cycle.</p> <p>Under 8.2 (c) (iii) the principles are still the same as the 2010 AU, though they have introduced a new term ‘Additional Path based on Pooled Entitlements’</p>	Pooled Entitlements and their application need to be clarified.	<p>No change.</p> <p>In clause 8.2 (c) (iii) Aurizon Network have inserted the words “if it uses the Mainline Path that would have been used by the First Entitlement” in relation to an Access Holder’s ability to under order and over order on TSEs. Asciano does not agree with this as it creates more inflexibility when it comes to an Access Holder’s ability to utilise their access rights. The words “if it uses the Mainline Path</p>

2010 AU Clause Reference	2010 AU Clause Outline	2013 DAU Clause Reference	2013 DAU Clause Outline	2013 DAU Asciano Comment	2014 DAU Comparison
					that would have been used by the First Entitlement" would create more inflexibility for an access holder to utilise their rights and must be removed.
Schedule G, Appendix 2 Contested Train Path Decision – Making	Did not specifically outline these provisions.	Schedule G, 8.3 Contested Train Path Principles	<p>8.3 (iii) contains provisions where an Access Holders' request for a contested train path will have their Train Service Entitlements adjusted for Aurizon Network cause.</p> <p>8.3 (iv) introduces a rule in relation to an Access Holder's pool of mainline paths being Train Service Entitlements between:</p> <ul style="list-style-type: none"> a) Coppabella and Jilalan b) Burngrove and Parana c) Collinsville and Pring d) Byelle Junction and boundary Hill Junction 	<p>8.3 (v) is too broad a rule where it is not subject to an Access Holder's Train Service Entitlements but rather their services having the least impact (e.g.; request where new origin is on the same branch, would take precedent over another request where the new origin is on a different branch). Do not agree with this entirely and should be placed much lower in the order of precedence.</p> <p>Again, Pooled Entitlements and its application need to be clarified. And way is it confined to mainline paths.</p>	<p>While clause 8.3 (v) has been removed, clause 8.3 (iv) has been replaced with an Access Holder's request needing to be within the scope of their pool of Mainline Paths.</p> <p>Mainline Paths have not been specifically defined in Schedule A and this creates more inflexibility for an Access Holder to utilise their access rights.</p>



Attachment 3 – Asciano's Comments on the 2014 DAU Operator Access Agreement – Coal and Train Operator's Agreement

The comments in this attachment focus on the revised wording in Aurizon Network's 2014 DAU Operator Access Agreement – Coal and the DAU Train Operators Agreement.

The Asciano October 2013 submission contained numerous comments on the access agreements notably the Train Operator's Agreement. Attachment 3 of the Asciano October 2013 submission contained a detailed series of comments on the Train Operator's Agreement. Of the twenty two issues raised in Attachment 3 of the Asciano October 2013 submission Asciano believes that:

- Two issues have been redrafted to address Asciano's concerns (2013 DAU TOA clause 8.4 and 2013 DAU TOA clause 16.2 b) and d vii);
- Three issues have been partially redrafted to address Asciano's concerns (2013 DAU TOA clause 10.1 b) and c) vi) and 2013 DAU TOA clause 11.1 and 2013 DAU TOA clause 18.2 b));
- The remaining issues raised have not been redrafted to address Asciano's concerns.

Given this Asciano is seeking that the comments in Attachment 3 of the Asciano October 2013 submission be considered by the QCA when considering the access agreements attached to the 2014 DAU.

The comments in the tables of this Attachment 3 are largely additional to the comments in Attachment 3 of the Asciano October 2013 submission.

This Attachment 3 includes 2 tables, namely:

- Table 1: Asciano's Comment on the Aurizon Network's 2014 DAU Operator Access Agreement – Coal; and
- Table 2 Asciano's Comment on the Aurizon Network's 2014 DAU Train Operator's Agreement.



Attachment 3 – Asciano Response to the QCA on Aurizon Network's 2014 DAU**Asciano Comments on Aurizon Network's 2014 DAU Operator Access Agreement – Coal and Aurizon Network's 2014 DAU Train Operator's Agreement****Table 1: Asciano's Comment on the Aurizon Network's 2014 DAU Operator Access Agreement – Coal**

Clause Reference	Outline of Clause	Asciano Comment
1 – Definitions	Definition of Investigation Procedures now includes those procedures which are, "as far as practicable, applied consistently" for all Railway Operators.	Asciano strongly believes that these procedures should be applied consistently to all Railway Operators.
1 – Definitions	Definition of Loading Facility now refers to the facility located at the "ultimate origin".	Asciano notes that the ultimate origin is not defined and it is not clear why this should be distinguished from the 'Origin'. Asciano believes that this should be clarified or "Origin" should be used.
1 – Definitions	Definition of Required Information refers to information required in relation to Operator's Staff engaged in Rail Safety Work.	Asciano believes that this definition should permit for redaction of personal data where possible for privacy reasons (for example to use employee ID number rather than full name).

Clause Reference	Outline of Clause	Asciano Comment
1 – Definitions	Additional wording in the definition of Supply Chain Rights now includes wording related to sufficient rights to access the Loading Facility.	<p>Asciano seeks that the QCA refer to comments in Asciano's previous submission regarding Supply Chain Rights.</p> <p>Asciano strongly opposed supply chain rights in its October 2013 submission on the 2013 TOA, as the requirement to demonstrate these rights may be problematic and more generally, the requirements relating to supply chain rights, which could be subjective and may be used to discriminate between operators.</p> <p>The broadening of Supply Chain Rights under this definition increases Asciano's concern with the issue of Supply Chain Rights.</p>
1 – Definitions	Definition of Unloading Facility now refers to the facility located at the "ultimate destination".	Asciano notes that the ultimate destination is not defined and it is not clear why this should be distinguished from the 'Destination'. Asciano believes that this should be clarified or "Destination" should be used.
1.5 – Material published on Website	Under this clause material published on Aurizon Network's website includes material obtained via secured, password-protected online access.	Asciano believes that this should be restricted to material where the Operator has access to the website (i.e. the Operator has a password, etc.) and the Operator is notified that the information is posted on the website.
2.2 – Right to renewal	Rights of renewal will be as set out in the Access Undertaking.	Asciano has commented on the right to renewal in section 5.6 of the Asciano submission. This comment focuses on the lack of clarity around the concepts of mainline paths and track segments.
3.2 – Nature and Scope of Access Rights	Under this clause the parties acknowledge and agree that Aurizon Network is required to provide the Operator with certain benefits, rights and services in accordance with clause 3.4(b) of the 2014 DAU.	<p>Asciano has commented on clause 3.4 b) of the 2014 DAU in section 5.2 of the Asciano submission.</p> <p>These benefits, rights and services should be offered on the same terms to all Operators.</p>
3.3 – Operator of Ad Hoc Train Service	Under this clause Aurizon Network will not be required to schedule, or endeavour to schedule, an	Asciano believes that as a minimum, there should be an obligation on Aurizon Network to use reasonable

Clause Reference	Outline of Clause	Asciano Comment
	Ad Hoc Train Service.	endeavours to schedule an Ad Hoc Train Service. This is in the interest of maximising efficient use of the network for the benefit of the whole supply chain.
7.5 – Supply Chain Rights	Under this clause the Operator must demonstrate to the reasonable satisfaction of Aurizon Network that it holds, or has the benefit of, or is reasonably likely to hold or have the benefit of Supply Chain Rights.	Asciano seeks that the QCA refer to comments in Asciano's previous submission regarding Supply Chain Rights in the 2013 TOA. Asciano strongly opposed supply chain rights in its October 2013 submission as the requirement to demonstrate these rights may be problematic and more generally, the requirements relating to supply chain rights, which could be subjective and may be used to discriminate between operators.
7.6 – Use of Regenerative Brakes	Under this clause the Operator must not use Regenerative Brakes on any rolling stock without Aurizon Network's prior written consent.	Asciano currently uses regenerative brakes. Asciano believes that Aurizon should not unreasonably withhold its consent and if regenerative brakes are approved for one operator then they should be approved for all operators (that is there should not be discrimination between operators).
8.2 – Proposed Resumption Notice	Under this clause Aurizon Network must not give a Proposed Resumption Notice more than 40 Business Days after the end of the applicable 4 consecutive Quarters.	Asciano suggests that additional drafting as used in clause 8.4(b) (i) be used in this clause (i.e. that any Proposed Resumption Notice given after the end of that period will be of no effect).
8.5 – Dispute	Under this clause the Operator has 10 Business Days to dispute a Resumption Notice.	Asciano has some concerns that 10 Business Days may not necessarily be sufficient to comply with this clause. (i.e. in some circumstances preparing and issuing the dispute notice could require more time).
11.1 – End User initiated Increase to Maximum Payload	This clause details a process for the Operator to request Aurizon Network to consider increasing the Maximum Payload of a Train Service Type. Aurizon Network is to provide a Response Notice which includes, amongst other things, the Relinquishment Fee that would be payable in respect of the Surplus Access Rights which would no longer be required by the Operator.	Asciano queries if this provides incentives for efficient behaviour. If an Operator can increase train load and reduce train numbers then this should be seen as increasing efficiency, however by requiring a relinquishment fee Aurizon network is providing a disincentive for such efficiency).
12.1 – Reduction of	Under this clause Aurizon Network must not give a	Asciano believes that following this consultation there

Clause Reference	Outline of Clause	Asciano Comment
Nominated Monthly Train Services if Nominal Payload increases	Notice of Intention to increase the Nominal Payload for a Train Service Type unless it has consulted with all relevant Access Holders.	should be additional obligations on Aurizon Network to take into account all comments received during the consultation period, and provide reasons if the comments are not adopted.
12.5 – Estimate of Net Financial Effect	Under this clause the Operator is required to give a warranty that the estimate it provides under this clause is accurate to the basis of the information reasonably available to it and sufficiently detailed to enable Aurizon Network to reasonably assess it.	This clause is seeking that Operators provide a warranty as to future matters, which may be outside the control of the Operators. This clause should be limited to a reasonable endeavours obligation.
12.8 – Further estimate of Net Financial Effect	As per the comment on 12.5 above.	As per the comment on 12.5 above
12.8 – Further estimate of Net Financial Effect	Under this clause the Operator is to provide Aurizon Network a notice specifying the reasonable details of the Operator's reasonable estimate of the Net Financial Effect (excluding any Foreseeable Costs and Detriments).	This drafting then requires the Operator to provide the details of any Foreseeable Costs and Detriments under clause 12.8 (a) (iii). This is inconsistent with clause 12.8(b) which states that they must not be included. The intent and drafting of these clauses should be clarified.
13.1 – Notice of Intention to Relinquish	This clause specifies the requirements for a Notice of Intention to Relinquish which may be given by an Operator. It includes a requirement to specify the Access Rights by reference to each Train Service Type which the Operator intends to relinquish.	Asciano refers to its October 2013 submission on Train Service Types where Asciano opposed the concept of Train service Types as they diminished the flexibility of both access rights and above rail operations. This clause should be redrafted to allow flexibility in Access Rights which would be of benefit to the supply chain.
13.3 – Determination of the Relinquishment Fee	This clause outlines the calculation of the relinquishment fee.	Asciano notes that this clause assumes that train services were not operated for reasons other than Aurizon network cause. Asciano believes that Aurizon Network cause should be taken into account in the calculation. This could be done by using services not operated due to Aurizon network cause over the already completed term of the agreement.
14.6 – Obligation to act diligently	Under this clause Aurizon Network must act in a diligent and timely manner in dealing with a proposed Transfer under clause 14.	Asciano believes that this obligation should be extended to all of Aurizon Network's actions under the agreement.
17.3 – No compensation or liability	This clause is a limitation of Aurizon Network's liability for losses suffered in connection with clause	It is not clear why Aurizon Network should be entitled to such a broad release and limit of liability. Any such clause

Clause Reference	Outline of Clause	Asciano Comment
18.5 – Removal at the end of Authorised Parking	7.3, 7.4, 8, 9, 10, 11, 12, 13, 14, 15 and 38.5 This clause requires trains to be removed from the network within 12 hours following the expiry of any authorised parking. Under this clause Aurizon Network can act to remove rolling stock and recover the costs of doing so from the Operator (following reasonable efforts to first consult with the Operator).	should be more even-handed. Asciano believes that the requirement of 12 hours is too restrictive. A time frame of 24 hours is a reasonable time. The indemnity in this clause (18.5 (b)) is far too broad and should at the very least have a carve-out for Aurizon Network's negligence, but ideally should be more even handed on both parties. This indemnity is important as if Aurizon Network remove Operator rolling stock they should use due care and they should be liable for any damage to rolling stock resulting from Aurizon Network negligence.
19.4 – Certain matters to apply consistently to all Railway Operators	This clause requires Aurizon Network to ensure that as far as practicable, the Network Management Principles and various procedures and standards are applied consistently. This has been limited to be applied consistently to all Railway Operators operating train services to destinations located in the same Coal System	It is not clear why the additional wording, "to destinations located" has been added. Asciano disagrees with this amendment.
20.2 – Approval of Amendments of Operating Plan	Clause 20.2 g) gives Aurizon Network 20 Business days to approve an amendment to an Operating Plan.	Asciano believes that 20 business days to approve or reject amendments to an Operating Plan seems excessive and would impact operations. (Asciano understands that 20 Business Days may be needed for approving an initial Operating Plan).
22.7 Decision By Aurizon Network	This clause relates to Aurizon Network considering whether a Certificate of Compliance covers the Operator's operations	Asciano believes that 20 Business Days seems excessive to either approve or reject a Certificate of Compliance.
23.1 – Amendments to System Wide Requirements	Under this clause Aurizon Network may, acting reasonably, amend a System Wide Requirement but must consult with the Operator prior to its implementation	Asciano believes that following this consultation there should be additional obligations on Aurizon Network to take into account all comments received during the consultation period, and provide reasons if the comments are not adopted.
27.6 – Management of incident response	Under this clause if an incident occurs and Aurizon Network believes that it is able to affect a Recovery	Asciano believes that the QCA should scrutinise this clause as there may be reasons why the Operator has not effected

Clause Reference	Outline of Clause	Asciano Comment
	more quickly than the Operator, and then provided it has consulted with the Operator it may affect the Recovery.	<p>the recovery (e.g. if the site is being investigated or there are safety concerns to be worked through before processing the recovery).</p> <p>This is particularly important given the new cause 27.6(h) (ii) which includes an indemnity for the benefit of Aurizon. This indemnity should at the very least have a carve-out for Aurizon Network's negligence.</p> <p>In particular, this would not be appropriate if an Aurizon act or omission was the reason for the incident in the first place.</p> <p>In addition following consultation, Aurizon Network should have a clear instruction from the Operator before it removes the Operator's rolling stock. There may be potential for the rolling stock to be damaged in any Recovery process, and given this Aurizon Network should only act if there is a clear instruction to do so.</p>
29.1 – Safety of Operator's Staff	Under this clause the Operator is fully responsible and liable for the health and safety of the Operator's Staff.	<p>Asciano queries whether this is an appropriate clause, as Aurizon Network's actions have an impact on the safety of the Operator's Staff. This duty is shared and should be managed by all parties.</p> <p>Asciano understands that Aurizon Network cannot transfer any of its duties owed under the Work Health and Safety Act 2011 to another person.</p>
30.8 – Interface Representative	This clause relates to the nomination of interface representatives by the Operator and Aurizon network and the roles of these representatives.	<p>This clause is unclear as to the purpose of the Interface Representative, one-sided in Aurizon Network's favour and creates and unnecessary administrative burden.</p> <p>Interface and environmental issues may vary considerably across the management of an access agreement and one specific individual may not be the best person to manage all of these issues.</p>

Clause Reference	Outline of Clause	Asciano Comment
		<p>Aurizon Network is required to “approve” an Operator’s nominated representative, based on limited information such as name, title, length of experience and qualifications. There is no reciprocal right for the Operator.</p> <p>Aurizon Network can at any time, can advise the Operator that its nominated representative is no longer satisfactory (with no requirement to provide justification of this position) and instruct the Operator to nominate another representative (again approved or rejected at Aurizon Network’s discretion). The Operator has no reciprocal rights to approve Aurizon Network’s representative.</p> <p>Meetings between Interface Representative are only as specified by Aurizon Network (again the Operator has no reciprocal rights).</p>
30.15 – Noise management during Train Services	Under this clause the operator must contribute to the reasonable costs incurred by Aurizon Network undertaking reasonable noise abatement measures.	<p>Asciano believes that the level of costs to be incurred by noise abatement works and the apportionment of noise abatement costs should not be at Aurizon Network’s sole discretion.</p> <p>The level of the costs and the manner in which the costs are charged to Operators should be able to be scrutinised by the QCA.</p>
31.3 – Right of inspection of Trains and Rolling stock by Aurizon Network	This clause sets out the powers of Aurizon Network to inspect the Operator’s rolling stock.	Asciano believes that reasonable notice should be provided by Aurizon Network as far as reasonably practicable.

Table 2 Asciano's Comment on the Aurizon Network's 2014 DAU Train Operator's Agreement

Clause Reference	Outline of Clause	Asciano Comment
1 – Definitions	Definition of Investigation Procedures now includes those procedures which are, “as far as practicable, applied consistently” for all Railway Operators.	Asciano strongly believes that these procedures should be applied consistently to all Railway Operators.
1 – Definitions	Definition of Loading Facility now refers to the facility located at the “ultimate origin”.	Asciano notes that the ultimate origin is not defined and it is not clear why this should be distinguished from the ‘Origin’. Asciano believes that this should be clarified or “Origin” should be used.
1 – Definitions	Definition of Required Information refers to information required in relation to Operator's Staff engaged in Rail Safety Work.	Asciano believes that this definition should permit for redaction of personal data where possible for privacy reasons (for example to use employee ID number rather than full name).
1 – Definitions	Additional wording in the definition of Supply Chain Rights now includes wording related to sufficient rights to access the Loading Facility.	<p>Asciano seeks that the QCA refer to comments in Asciano's previous submission regarding Supply Chain Rights.</p> <p>Asciano strongly opposed wording regarding supply chain rights in its October 2013 submission as the requirement to demonstrate these rights may be problematic and more generally, the requirements relating to supply chain rights, which could be subjective and may be used to discriminate between operators.</p> <p>The broadening of Supply Chain Rights under this definition increases Asciano's concern with the issue of</p>

Clause Reference	Outline of Clause	Asciano Comment
		Supply Chain Rights.
1 – Definitions	Definition of Unloading Facility now refers to the facility located at the “ultimate destination”.	Asciano notes that the ultimate destination is not defined and it is not clear why this should be distinguished from the ‘Destination’. Asciano believes that this should be clarified or “Destination” should be used.
1.5 – Material published on Website	Under this clause material published on Aurizon Network’s website includes material obtained via secured, password-protected online access.	Asciano believes that this should be restricted to material where the Operator has access to the website (i.e. the Operator has a password, etc.) and the Operator is notified that the information is posted on the website.
3.3 – Operator of Ad Hoc Train Service	Under this clause Aurizon Network will not be required to schedule, or endeavour to schedule, an Ad Hoc Train Service.	Asciano believes that as a minimum, there should be an obligation on Aurizon Network to use reasonable endeavours to schedule an Ad Hoc Train Service. This is in the interest of maximising efficient use of the network for the benefit of the whole supply chain.
10.2 – Commencement of Train Services	Under this clause the Operator is not permitted to operate Train Services unless it has provided certain information to Aurizon Network. If the Operator has not provided this information by the Commitment Date, Aurizon Network may provide notice to the Operator, requiring compliance. If the Operator does not comply within 20 Business Days, Aurizon Network may reduce all of the Operational Rights and terminate the Agreement.	Asciano believes that the provision of information should be limited to those Operational Rights for the affected Train Services, rather than a general right to reduce all Operational Rights under the Agreement (similar to the position in clause 10.3(c) (iv)).
10.4 – Supply Chain	Under this clause the Operator must demonstrate to	Asciano seeks that the QCA refer to comments in

Clause Reference	Outline of Clause	Asciano Comment
Rights	the reasonable satisfaction of Aurizon Network that it holds, or has the benefit of, or is reasonably likely to hold or have the benefit of Supply Chain Rights.	Asciano's previous submission regarding Supply Chain Rights. Asciano strongly opposed supply chain rights in its October 2013 submission as the requirement to demonstrate these rights may be problematic and more generally, the requirements relating to supply chain rights, which could be subjective and may be used to discriminate between operators.
10.5 – Use of Regenerative Brakes	Under this clause the Operator must not use Regenerative Brakes on any rolling stock without Aurizon Network's prior written consent.	Asciano currently uses regenerative brakes. Asciano believes that Aurizon should not unreasonably withhold its consent and if regenerative brakes are approved for one operator then they should be approved for all operators (that is there should not be discrimination between operators).
12.2 – Estimate of Net Financial Effect	Under this clause the Operator is required to give a warranty that the estimate it provides under this clause is accurate to the basis of the information reasonably available to it and sufficiently detailed to enable Aurizon Network to reasonably assess it.	This clause is seeking that Operators provide a warranty as to future matters, which may be outside the control of the Operators. This clause should be limited to a reasonable endeavours obligation.
12.4 – Further estimate of Net Financial Effect	As per the comment at 12.2 above.	As per the comment at 12.2 above.
12.4 – Further estimate of Net Financial Effect	Under this clause the operator is to provide Aurizon Network a notice specifying the reasonable details of the Operator's reasonable estimate of the Net Financial Effect (excluding any Foreseeable Costs and Detriments).	This drafting then requires the Operator to provide the details of any Foreseeable Costs and Detriments under clause 12.4 (a) (iii). This is inconsistent with clause 12.4(b) which states that they must not be included. The intent and drafting of these clauses should be clarified.
13.5 – Removal at the end	This clause requires trains to be removed from the	Asciano believes that the requirement of 12 hours is too

Clause Reference	Outline of Clause	Asciano Comment
of Authorised Parking	network within 12 hours following the expiry of any authorised parking. Under this clause Aurizon Network can act to remove rolling stock and recover the costs of doing so from the Operator (following reasonable efforts to first consult with the Operator).	<p>restrictive. A time frame of 24 hours is a reasonable time.</p> <p>The indemnity in this clause (13.5 (b)) is far too broad and should at the very least have a carve-out for Aurizon Network's negligence, but ideally should be more even handed on both parties.</p> <p>This indemnity is important as if Aurizon Network remove Operator rolling stock they should use due care and they should be liable for any damage to rolling stock resulting from Aurizon Network negligence.</p>
14.4 – Certain matters to apply consistently to all Railway Operators	This clause requires Aurizon Network to ensure that, as far as practicable, the Network Management Principles and various procedures and standards are applied consistently. This has been limited to be applied consistently to all Railway Operators operating train services to destinations located in the same Coal System.	It is not clear why the additional wording, "to destinations located" has been added. Asciano disagrees with this amendment.
18.1 – Amendments to System Wide Requirements	Under this clause Aurizon may, acting reasonably, amend a System Wide Requirement but must consult with the Operator prior to its implementation (for amendments required for the ongoing safe operation of the Network) or, except where the change is required pursuant to a Material Change, must obtain the Operator's consent or otherwise follow the provisions of clause 18.	<p>Aurizon Network should be required to consult with Operators for amendments arising from Material Changes.</p> <p>Aurizon Network should be required to take into account all comments received during the consultation period, and provide reasons if the comments are not adopted.</p> <p>Operators should be permitted to dispute any amendment to a System Wide Requirement, not just Discretionary System Amendments.</p>

Clause Reference	Outline of Clause	Asciano Comment
22.2 – Amendments to the Emergency Response Plan	This clause addresses amendments to the Emergency Response Plan.	There appears to be an error at clause 22.2(h) (ii) – “End User” should be replaced with “Operator”.
22.6 – Management of incident response	If an incident occurs and Aurizon Network believes that it is able to affect a Recovery more quickly than the Operator, then provided it has consulted with the Operator it may affect the Recovery.	<p>Asciano believes that the QCA should scrutinise this clause as there may be reasons why the Operator has not effected the recovery (e.g. if the site is being investigated or there are safety concerns to be worked through before processing the recovery).</p> <p>This is particularly important given the new cause 22.6(h) (ii) which includes an indemnity for the benefit of Aurizon. This indemnity should at the very least have a carve-out for Aurizon Network’s negligence.</p> <p>In particular, this would not be appropriate if an Aurizon act or omission was the reason for the incident in the first place.</p> <p>In addition following consultation, Aurizon Network should have a clear instruction from the Operator before it removes the Operator’s rolling stock. There may be potential for the rolling stock to be damaged in any Recovery process, and given this Aurizon Network should only act if there is a clear instruction to do so.</p>
22.9 – Environmental Reporting	This clause imposes obligations on the Operator to notify Aurizon Network in respect of Environmental Incidents.	Asciano believes that this should be limited to Environmental Incidents occurring on the Network.
24.1 – Safety of	Under this clause the Operator is fully responsible	It should be queried whether this is an appropriate clause,

Clause Reference	Outline of Clause	Asciano Comment
Operator's Staff	and liable for the health and safety of the Operator's Staff.	<p>as Aurizon Network's actions have an impact on the safety of the Operator's Staff. This duty is shared and should be managed by all parties.</p> <p>Asciano understands that Aurizon Network cannot transfer any of its duties owed under the Work Health and Safety Act 2011 to another person.</p>
25.5 – Variation to Access Charge Rates	<p>This clause allows Aurizon Network to vary access charges so that they are fully compensated for:</p> <ol style="list-style-type: none"> 1. increased cost of risk; or 2. increased utilisation of capacity, <p>when compared to a Reference Train Services, as a result of the agreement to, or determination of the Interface Risk Management Plan or amendments to the Interface Risk Management Plan.</p>	<p>Asciano believes that clauses relating to access charge variations should only be applied in agreements with access holders (such as an end user access agreement).</p>
25.8 – Interface Representative	<p>This clause relates to the nomination of interface representatives by the Operator and Aurizon network and the roles of these representatives.</p>	<p>This clause is unclear as to the purpose of the Interface Representative, one-sided in Aurizon network's favour and creates and unnecessary administrative burden.</p> <p>Interface and environmental issues may vary considerably across the management of an access agreement and one specific individual may not be the best person to manage all of these issues.</p> <p>Aurizon Network is required to "approve" an Operator's nominated representative, based on limited information such as name, title, length of experience and qualifications. There is no reciprocal right for the Operator.</p> <p>Aurizon Network can at any time, can advise the Operator</p>

Clause Reference	Outline of Clause	Asciano Comment
		<p>that its nominated representative is no longer satisfactory (with no requirement to provide justification of this position) and instruct the Operator to nominate another representative (again approved or rejected at Aurizon Network's discretion). The Operator has no reciprocal rights to approve Aurizon Network's representative.</p> <p>Meetings between Interface Representative are only as specified by Aurizon Network (again the Operator has no reciprocal rights).</p>
25.15 – Noise management during Train Services	Under this clause the Operator must contribute to the reasonable costs incurred by Aurizon Network undertaking reasonable noise abatement measures.	<p>Asciano believes that the level of costs to be incurred by noise abatement works and the apportionment of noise abatement costs should not be at Aurizon Network's sole discretion.</p> <p>The level of the costs and the manner in which the costs are charged to Operators should be able to be scrutinised by the QCA.</p>
25.16 – Community liaison and environmental complaint procedures	Under this clause the Operator must invite Aurizon Network to be represented at any community meetings organised by the Operator	Asciano believes that this requirement should be limited to any community meetings at which issues connected to the Nominated Network are expected to be discussed.
26.1 – Right of inspection by the Operator	Under this clause the Operator may, before the initial commencement of the Train Services for a Train Service Type, inspect the infrastructure comprising the Nominated Network at its cost and risk.	<p>Asciano queries the necessity for the time limit in this clause (i.e. inspection should be permitted at any time rather than only at a time before the commencement of the initial train service, subject to the requirements of clause 26.1(b)).</p> <p>In addition it is not clear whether the inspection under cause 26.2 is intended to be more restrictive than the</p>

Clause Reference	Outline of Clause	Asciano Comment
		inspection right under cl 26.1(a). The relationship between these rights of inspection in regard to track inspection should be clarified.



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