

Asciano Submission to the
Queensland Competition Authority
in relation to the Queensland
Competition Authority's Draft
Decision on the Aurizon Network
2013 Standard User Funding
Agreement Draft Amending
Undertaking

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1 INTRODUCTION AND BACKGROUND

Asciano welcomes the opportunity to make a submission to the Queensland Competition Authority (QCA) on the QCA's Draft Decision on the Aurizon Network Standard User Funding Agreement (SUFA) Draft Amending Access Undertaking DAAU. The SUFA DAAU is intended to facilitate the funding of extensions and expansions to Aurizon Network rail infrastructure by Aurizon Network customers and other parties. Asciano's subsidiary, Pacific National, operates trains on the Aurizon Network infrastructure and is likely to be a future operator on any user funded rail infrastructure in Queensland.

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

2 SUFA DAAU REGULATORY PROCESS

Asciano understands that the QCA is evaluating the SUFA DAAU as an amendment to the Aurizon Network 2010 Access Undertaking, and as such any comments or submissions on the SUFA DAAU made under either the Aurizon Network 2013 Draft Access Undertaking regulatory process or the Aurizon Network 2014 Draft Access Undertaking regulatory process are not being considered by the QCA in this current regulatory process.

Asciano has made several general comments on the SUFA DAAU in its submissions to the Aurizon Network 2013 Draft Access Undertaking regulatory process and the Aurizon Network 2014 Draft Access Undertaking regulatory process. These comments largely focus on Asciano's position that the outcome of the current SUFA DAAU should be either incorporated into the next Aurizon Network Access Undertaking or, at the least, be consistent with the next Aurizon Network Access Undertaking, and to this end the user funding documents approved as part of the Aurizon Network 2014 Draft Access Undertaking should reflect the final position of the SUFA documents in the SUFA DAAU.

Asciano supports the interim position of the QCA as outlined on page 38 of the QCA Draft Decision. In particular, Asciano considers that the SUFA documentation can be included in the new Aurizon Network Access Undertaking when both are approved.

3 ASCIANO COMMENT ON THE QCA'S DRAFT DECISION ON THE SUFA DAAU

Asciano supports the QCA's Draft Decision to refuse the approval of the SUFA DAAU in its current form.

Previous Asciano submissions to both the current SUFA DAAU and to previous regulatory processes relating to SUFA have raised numerous issues including:

- the relationship between the SUFA framework and documentation and Aurizon's role as both the network owner and operator and an above rail operator, and in particular how broader ring fencing and confidentiality provisions may need to be amended or applied to address the issue of Aurizon's vertical integration in relation to SUFA;
- the identity of the parties who can participate in funding a SUFA arrangement, with Asciano believing that any party should be free to participate;
- the management of situations where SUFA extensions and expansions reduce existing capacity;
- the process for incorporating of SUFA extensions and expansions into the Aurizon Network regulatory asset base; and
- the need for alignment between the preference units and the unit holder's access entitlement.

This section comments on the QCA's Draft Decision on the SUFA DAAU in the context of the concerns above.

3.1 SUFA and Aurizon's Vertical Integration

In previous consultations on SUFA Asciano has raised concerns about the vertically integrated structure of Aurizon and how the SUFA proposals may provide a potential means for Aurizon's Network business and above rail business to work around regulatory controls such as ring fencing and cost allocation procedures (including the allocation of maintenance costs and resources between SUFA and non-SUFA assets). In particular Asciano sought that any SUFA extensions and expansions should be subject to the same ring fencing, non-discrimination, confidentiality and cost allocation provisions and controls that apply to the regulated Aurizon Network.

The QCA Draft Decision (page 69) discusses this concern noting that they are interested in areas of potential discrimination that could arise which are specific to a SUFA transaction, rather than issues that can arise regardless of whether an expansion is undertaken via a SUFA, and that given this they do not consider these concerns to be specific to a SUFA transaction. Consequently the QCA considers these issues are best addressed under the more general provisions of the Access Undertaking's ring-fencing regime. Similarly, in the specific case of potentially different standards for asset maintenance between SUFA and non-SUFA assets the QCA Draft Decision (page 69) argues that this issue should be addressed under the more general provisions of the Access Undertaking.

Asciano believes that if the QCA is to adopt this position above then it should confirm that the Access Undertaking is the appropriate vehicle for such an approach, recognising that it may be possible that SUFA extensions and expansions may not be covered by the Access Undertaking in all instances. In particular, the QCA should:

- confirm that the ring fencing provisions and confidentiality provisions of the Access Undertaking will apply to all SUFA extensions and expansions;
- confirm that other regulatory documents and processes, such as the Aurizon cost allocation manual, will apply to all SUFA extensions and expansions. In particular the QCA should ensure that cost allocations relating to costs shared between SUFA assets and Aurizon Network assets are undertaken on a transparent and equitable basis;
- confirm that the QCA has the power and ability to audit all SUFA extensions and expansions (including the audit of agreements and payments related to the SUFA process) in order to ensure that no decisions or payments are made which are discriminatory or which breach ring fencing rules;
- confirm that the QCA has the power to remedy any identified breaches and enforce penalties; and
- ensure that, as discussed in the QCA Draft Decision (page 69), a set of objective criteria are used to prioritise extension and expansion projects and that this prioritisation be used by industry participants.

Asciano believes that to the extent that SUFA related processes and assets are not covered by the Access Undertaking then the QCA's powers under the Access

Undertaking should be increased to allow an audit of these SUFA related processes and assets with appropriate powers to remedy any breaches.

The QCA Draft decision (Page 65) notes:

To have a workable, bankable and credible SUFA arrangement, all parties need to be satisfied that the SUFA arrangements do not give rise to a circumstance whereby Aurizon Network is able to discriminate.

Asciano strongly believes that in order for the SUFA to be credible and workable the QCA must ensure that there is no potential for actual or perceived Aurizon Network discrimination through the audit of all SUFA related processes and assets with appropriate powers to remedy any breaches.

3.2 SUFA and Parties Funding a SUFA Arrangement

In previous consultations on SUFA Asciano has argued that parties other than miners and end users should be able to participate in funding a SUFA arrangement.

Asciano notes that the QCA Draft Decision (page 69) supports this position. Asciano continues to support this position and welcomes the QCA position.

3.3 SUFA and Reductions in Existing Capacity

In previous consultations on SUFA Asciano has raised concerns about the potential for SUFA extensions and expansions to impact users who are not a party to the SUFA arrangement, and in particular Asciano has had concerns that SUFA extensions and expansions may impact on existing capacity.

The QCA Draft Decision (page 45) is proposing that a baseline capacity test be undertaken to assess whether a SUFA extension or expansion will impact on existing contractual obligations (including existing contracted capacity), and a failure of such a test could delay pre-approval until mitigating actions are proposed and in the event that the SUFA extension or expansion does not create sufficient capacity it is the extension users not the existing users whose capacity will be curtailed.

Asciano believes that the baseline capacity test should be made available to interested parties and the findings of the test should be open to comment from interested parties.

Asciano supports such an approach as a necessary step to ensure transparency and user confidence.

3.4 SUFA and Incorporation into the Regulatory Asset Base

Asciano has previously raised concerns as to whether SUFA assets will be subject to a prudency test prior to their inclusion into the regulatory asset base.

The QCA Draft Decision (page 44) notes that only the QCA can decide whether capital expenditure is included in the regulatory asset base. From this QCA position Asciano assumes that the SUFA assets would be subject to the general QCA and Access Undertaking prudency tests prior to being incorporated into the asset base.

Asciano generally supports this approach but is strongly opposed to any approach which will result in the socialisation of SUFA costs among existing users.

3.5 SUFA and the Alignment of Preference Units and Access Entitlements

Asciano had previously put forward a position that preference units and access rights should be aligned (i.e. stapled). Following further consideration of the issue Asciano recognise that removing the stapling of preference units and access rights is more likely to result in bankable arrangements and result in more efficient outcomes. No one party should have either a right of first refusal or last refusal for any preference units being traded.

3.6 SUFA and the Tariff Test

The QCA (pages 45-46) are proposing a tariff test to assess whether the SUFA infrastructure should be socialised with existing infrastructure. Asciano opposes such an approach.

Asciano has consistently argues in various regulatory consultation processes¹ that users should only pay for assets that they use and they should not have to bear the costs of assets which they do not use. Consequently Asciano would strongly oppose any move towards socialising the costs of SUFA extensions and expansions across existing users.

¹ For example the QCA regulatory consultations on pricing relating to electric infrastructure and the QCA regulatory consultations on Wiggins Island rail pricing.

4 CONCLUSION

Asciano supports the QCA's Draft Decision to refuse the approval of the SUFA DAAU in its current form.

Asciano's main remaining concern with SUFA is with the vertically integrated structure of Aurizon and how the SUFA proposals may provide a potential means for Aurizon's Network business and above rail business to work around regulatory controls such as ring fencing and cost allocation procedures.

The QCA considers that these issues are best addressed under the more general provisions of the Access Undertaking's ring-fencing regime. Asciano's concern is that not all SUFA extensions and expansions may be covered by the Access Undertaking in all instances. Given this concern Asciano is seeking that QCA ensure that it has the necessary powers to audit all SUFA related processes and assets, with appropriate powers to remedy any breaches.

Asciano is also concerned with the proposed tariff test to assess whether the SUFA infrastructure should be socialised with existing infrastructure. Asciano believes that users should only pay for assets that they use and they should not have to bear the costs of assets which they do not use. Consequently Asciano opposes any move towards socialising the costs of SUFA extensions and expansions across existing users.