



Ms Tania Homan
Director – Office of Best Practice Regulation
Queensland Competition Authority
Level 27, 145 Ann Street
Brisbane QLD 4000

3 March 2015

Dear Tania

Request for Information on the QCA's Draft Decisions

I refer to your email dated 3 March 2015 regarding the requests for information that Aurizon Network had been seeking from the Queensland Competition Authority (QCA) during the period from 13 February to 2 March.

You have requested Aurizon Network to provide requests for information in a manner that you can publish upon your website to allow all interested parties access to any response that you may provide. You have also indicated that you intend to publish those information requests from other stakeholders and any subsequent response.

Please find enclosed, two attachments with Requests for Information which we have previously sent to you:

1. Attachment A – Requests for Information on the QCA's Policy & Pricing Draft Decision dated 30 January 2015
2. Attachment B – Requests for Information on the QCA's Maximum Allowable Revenue Draft Decision dated 30 September 2014.

Aurizon Network does not consider any of the attached information as confidential, subsequently approving it for publication.

We look forward to your response as soon as practical to enable Aurizon Network to provide its response to the QCA's Policy & Pricing Draft Decision.

If you have any questions, please contact me directly on (07) 3019 5548 or cissy.ma@aurizon.com.au.

Yours sincerely,



Cissy Ma
Manager Regulation – Access Undertaking
Aurizon Network

**Attachment A – Requests for Information on the QCA’s Policy & Pricing Draft
Decision dated 30 January 2015**

No	Description	Detailed Request for information
1	QCA's role in dispute resolution	<ul style="list-style-type: none"> - In Clause 8.2.2 (a) any matter that arises may be disputed including (but not limited to) a list of example matters; - In Clause 8.8.1 (a) (v) the User Funding Agreement is agreed or its terms are determined through dispute resolution. - Clause 8.8.1 (a) (iv) states the User Funding Agreement must be in the form of SUFA unless otherwise agreed – with any amendments to those terms negotiated by the parties acting reasonably and in good faith. This is a version of AN's old clause 8.9.1 (b). - As a part of the QCA tidy up of removing specific references to dispute resolution the QCA has removed AN's old clause 8.9.2 which referred failure to agree completion of the SUFA schedules for dispute resolution (but not failure to agree changes to the SUFA documents). - In our drafting it was clear that changes to the template SUFA would only be by agreement and the completion of schedules would be subject to dispute resolution. <p>Please confirm that the QCA does not intend to subject “failing to agree changes to the template SUFA” to dispute resolution.</p>
2	QCA's role in dispute resolution	<p>In the dispute resolution provision the use of "including" means anything can be referred to the QCA. Under this provision, the QCA would have the ability to resolve disputes over (1) the base terms of template agreements, or (2) matters for which a contractual dispute resolution mechanism is available.</p> <p>Please clarify intention, as the draft QCA dispute resolution could provide a one sided arrangement.</p>
3	QCA's role in dispute resolution	<p>8.2.2 - no guidance to the QCA in the resolution of disputes under Part 8 of AU has been included.</p> <p>Please clarify parameters for QCA's decision making on dispute resolution</p>
4	Assignment of PCA	<p>Clause 8.5(e)(ii) includes an obligation to permit a Feasibility Funder to assign their Study Funding Agreement. This combined with changes to the SFA create a concern that this also is intended to allow an assignment of the Provisional Capacity Allocation. This would be a problem as we should always only provide the PCA to parties who meet the criteria, so assignment to any party would create a less efficient coal chain.</p> <p>Please confirm that it is NOT intended that the PCA also assign.</p>
5	Definition of "Confidential Information"	<p>The definition of "Confidential Information" is broad as it captures all confidential information, not just that obtained in AN's role of providing access.</p> <p>Please confirm that it is NOT intended that "Confidential Information" be defined this broad.</p>
6	Capacity understanding and definition	<p>Please confirm if the QCA is describing Supply Chain Capacity rather than Below Rail Capacity as the intent for Baseline Capacity?</p>
7	Contracted rights vs actual operation	<p>7A.4(b)(B):</p> <p>Please clarify if the interfaces referred to the contracted rights or the actual way the supply chain operates (e.g. contract is for even raiiling while DBCT operates as a cargo assembly). Is it intended that Network be made accountable for capacity losses that are outside of the contracted parameters and not within its control?</p>
8	Baseline capacity assessment	<p>7A.4(iv)(B):</p> <p>Please clarify what is meant by Possession Protocols and how are these relevant to baseline capacity assessment given the maintenance program has already been factored in?</p>

No	Description	Detailed Request for information
9	Expert review	7A.4(d)(iii) Please clarify if the expert will be limited to reviewing the application of the described methodology and values in the SOP or can they challenge these including the operating platform of the software Network current uses?
10	Expert review	7A.5(d): Could the QCA please explain where the SOP is directly linked to the values and operating methodologies prescribed in the Access Agreement (Contract), how it can require amendment to the SOP?
11	Baseline capacity review	The QCA notes that Aurizon Network (AN) "must submit its track possession plans and protocols and TSE calculation methodology to the QCA for approval" Please clarify what the QCA considers will be included in the track possession plans and protocols.
12	Dispute resolution process in AU vs Access Agreement	Part 11, If there is a dispute in relation to the reduction, relinquishment or transfer provisions in Part 7 of the Undertaking, the dispute is to be dealt with under Part 11 (as these provisions sit in the Undertaking). As these provisions are incorporated in the Access Agreement by reference and the Access Agreement has its own dispute resolution provisions, if there is a conflict between the Undertaking and Access Agreement provisions, it's not clear which dispute resolution process prevails. Please clarify the QCA's intention in relation to this.
13	Supply of electricity	Part 11 specifically includes the right to dispute certain matters relating to the supply and sale of electricity (in clause 2.7(c)). This results in the treatment of the sale and supply of electricity as a regulated service, contradictory to clause 2.7(a) of the Undertaking which provides that the sale or supply of electricity is not part of Access and not subject to the Undertaking. Please clarify the QCA's intention in relation to this.
14	Supply of electricity	Clause 11.1.1(g), as the QCA has reverted to the UT3 definition of Dispute being "any dispute or question arising", this potentially means that any questions formally raised by a party on AN's obligations under the Undertaking must be provided to the QCA, when some of these questions could be resolved between the parties without the need for QCA involvement. Please clarify the QCA's intention in relation to this.
15	Traffic management decision making matrix	Schedule G clause 9 Rule 5 Please clarify "Passenger Priority Obligation" re: what is the basis or reference for this inclusion?
16	MTP as a timetable	The QCA has amended Schedule G to say the MTP will be in a timetable format. Please clarify what the QCA would consider should be contained within a timetable.
17	Discrimination	DD16.1, prohibition of AN establishing access charges that discriminate in favour of any Related Operator Please clarify intent: is this kind of discriminatory treatment acceptable if the 'discriminated' party does not conform to the Reference Train, and may consume additional capacity or create cost / risk or disadvantages other party?
18	Discrimination	DD16.2/16.14 Please clarify intent: are customers protected via SAA or existing non-discrimination provisions? Is this supposed to also apply to Capacity Multiplier? Are there materiality thresholds for Access Conditions requirements (e.g. A 'non-standard' term could be as innocuous as providing more regular reporting)?
19	Incremental costs	DD16.5 Please clarify intent: Is the QCA seeking a return to cluster pricing? If so, this may increase regulatory complexity of pricing arrangements.

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20	Incremental costs	DD16.7, 16.8 Please clarify intent: is it aggregate Access Charges that must be the same on a \$ per NT basis? i.e. can you have differential AT5 charges (and no AT5 CCC)? - Are electric access charges set with reference to 'total volumes' contracted or proportion of electric volumes? - How does the QCA propose to account for Revenue Cap, Reference Tariff Adjustments (review events etc)?
21	Reject Capacity Multiplier	DD17.2, 17.3.3 Please clarify intent. Multiplier sits in Access Agreements and is linked to individual Train Configurations.
22	AT1 escalation	MCI provides for annual escalation within the range of 2.5-3.5%. Please clarify - is the intent that AT1 escalation will be adjusted annually to mirror movements in actual MCI?
23	AN's ability to reduce MTS	Clause 8 (AN August 14 Submission) - removal of the ability for AN to reduce an Access Holders Nominated Monthly Train Services if the Maximum Payload is consistently exceeded over a period of 1 year. Please clarify why the QCA has deleted this provision given it was a concept broadly accepted by Industry.
24	End User Initiated increase	Clause 9 (AN August 14 Submission) - removed the ability for an End User Initiated increase to Maximum Payload and resulting reduction in Nominated Monthly Train Services. Please clarify why the QCA has deleted this provision given this was requested by industry and agreed to by AN.
25	Nominated MTS	Clause 10 (AN August 14 Submission) - removed the ability to reduce the Nominated Monthly Train Services if Nominal Payload is increased. Please clarify why the QCA has deleted this provision given it was a concept broadly accepted by Industry subject to drafting changes.
26	Access Holder to notify AN of damage to Network	Clause 17.3 (AN August 14 Submission) - removed the requirements for Access Holder to notify Network of any damage / disrepair or failure on the Nominated Network. Please clarify why the QCA has removed this provision given this is a provision currently in UT3 and which industry did not raise significant concerns with.
27	Access Holder not to cause obstruction	Clause 17.3 (AN August 14 Submission) - removed the requirements for Access Holder not to cause any Obstruction and notify AN immediately of such Obstruction. Please clarify why the QCA has removed this provision given this is a provision currently in UT3 and which industry did not raise significant concerns with.
28	Investigation clauses	Clause 17.4 (AN August 14 Submission) - removed the investigation clauses Please clarify why the QCA has deleted these clauses as it is important to have defined investigation processes agreed between Access Holders and AN.
29	Breach by Infrastructure Lessor	Clause 18.4 (AN August 14 Submission) - deleted exclusion where the failure to provide access is due to the breach of the Infrastructure Lease by the Infrastructure Lessor or negligence act or omission. Please clarify intention as the DD states that AN should not be liable for matters outside of its control.
30	Allowable Threshold	Clause 18.4 (AN August 14 Submission) - reduced the Allowable Threshold from 10% to 5% of the total number of Train Services scheduled in the Daily Train Plan for a month. Please clarify why the QCA has reduced the threshold.
31	Breach by Infrastructure Lessor	Clause 18.5 (AN August 14 Submission) - deleted exclusion where the delay to Train Movements is due to the breach of the Infrastructure Lease by the Infrastructure Lessor or negligence act or omission. Please clarify why the QCA has deleted this clause.

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32	Security amount	Schedule 1 of SAA: Security amount has been reduced from 12 months of Take or Pay to 6 months aggregate Take or Pay. Please clarify intention as the potential exposure that AN has to Access Holders is an annual one (Take-or-pay).
33	Demonstration of rail haulage agreement	Clause 7.2.1 (a)(ii) now excludes a Railway Operator from being required to demonstrate they are reasonably likely to secure the rail haulage agreement. Please clarify the intention of the change to this clause as it is important for AN to assess the ability for the Access Seeker to use the access rights.
34	Capacity Register	Clause 7.2.3 (a)(ii) includes the drafting "Aurizon Network must maintain a Committed Capacity Register that identifies DTMR in respect of its Committed Capacity". Please clarify the intention of this clause in respect of DTMR
35	Renewal of transferred access rights	Clause 7.3(a) & 7.3(b)(iv) now permits the renewal of access rights when held as a transfer, if these rights expire at the end of the term of the transfer. In some cases, such as prior to a capacity expansion, access rights may be contracted in the future, prior to a transfer of existing access rights. In this situation existing capacity to renew the transferred access rights may not exist. Please confirm whether the new provision 7.3(b)(ii) is intended to cover this situation.
36	Ability to reject a renewal of access rights	Clause 7.3(j) removes AN's ability to withdraw a renewal application in accordance with part 4. This may permit the renewal of access rights without demonstration of supply chain rights. Please confirm what the intention of removing these provisions are.
37	Renewal on the same terms	Clause 7.3(h) drafting changes appear to have reversed the original meaning of this clause so that renewing access rights must be contracted on the same terms except in certain circumstances outside of Network's control. This appears to be a substantial change from past undertakings, please confirm what the intention is.
38	Preserved paths	Clause 7.5.2(i) has been amended to remove provisions to exclude preserved paths from the queue. As AN may have a legislative obligation to provide access for preserved paths, please advise what the intention of the drafting amendment is.
39	Scope (page 14 of 2014DAU mark-up)	Clause 2.5(e) drafting has been amended to refer to a standard access agreement instead of the Access Agreement and Train Operations Agreement (as previously defined). As standard access agreements are always the subject of negotiation between the parties, this drafting means that access agreements between AN and access holders that are negotiated won't be caught by this clause and therefore the Undertaking could require AN to vary that access agreement or act in a way which is inconsistent with the relevant agreement. Please clarify as we assume this was not intended.
40	Definition of Consequential Loss in the AA and TOD	Please explain why the QCA has deleted the references to "loss of revenue", "wasted overheads" and "demurrage" as heads of Consequential Loss
41	Access Interface Deed (Clause 4.4 of AA and TOD)	The QCA has included a requirement for the Access Holder to enter into the Access Interface Deed (AID) in the AA. It is only where the Access Holder is an Operator that it should be required to procure its Customer to enter into an AID as AN needs to have a direct contractual relationship with the Customer in order to limit its liability to the End Customer. Please clarify the intention in relation to this as Access Holders who are also End Customers do not need to enter into an AID given that AN's liability to the customer is limited under the AA.

No	Description	Detailed Request for information
42	Resumption & Underutilisation Event (Clause 7 of the AA)	<p>The concept of Underutilisation Event in the Resumption provisions which allowed AN to resume access rights where an event or circumstance would likely have a sustained or permanent and material adverse impact on the Access Holder's ability to utilise the access rights, has been removed.</p> <p>Please explain the QCA's concern in relation to this as its effect is that AN's ability to effectively allocate capacity is limited.</p>
43	Train Service Description (Clause 14.3 of AA)	<p>Please clarify why provisions allowing AN to vary the Train Service Description where the Operator has not been able to demonstrate it can comply with the Train Service Description have been deleted.</p>
44	Force Majeure Notices and suspension of obligations (Clause 7.7(a)(ii) of the Undertaking)	<p>A requirement that AN provide a FM notice within 48 hours of the event or circumstances and that suspension of AN's obligations only commences when the notice is received has been included.</p> <p>Please clarify why this has been included as in practice it may not be possible to issue an FM Notice for some time due to the requirement that investigations are carried out to determine root cause of the incident. In addition this may not be practical on weekends.</p>
45	Force Majeure (Clause 7.7.1(c) Undertaking)	<p>A new requirement has been included that the obligation to provide Access Rights is suspended proportionally between affected Access Holders based on the Committed Capacity and the change in Existing Capacity.</p> <p>Please clarify the intention of this drafting as currently where there is a reduction in capacity due to FM affecting multiple Access Holders the allocation of remaining capacity between those Access Holders will be in accordance with the Network Management Principles in Schedule G.</p>
46	Liability for removal of rollingstock from the network (Clause 10.5(b) of the TOD)	<p>The release of liability and indemnity in favour of AN where AN has exercised its rights to remove rollingstock which has been parked on the infrastructure beyond the permitted period has been removed.</p> <p>Please clarify intention as, for the efficient use and operation of the supply chain, AN should have the ability to remove rollingstock without incurring liability for doing so, particularly where prior to exercising this right, the Operator is provided opportunities to do so themselves.</p>
47	Draft Decision 12.7(d)	<p>Please clarify what is required to comply with Draft Decision 12.7(d).</p>
48	Draft Decision 12.8(ii)	<p>Please clarify what is meant by Draft Decision 12.8(ii) and what should be included in the undertaking or Study Funding Agreement to effect this.</p>
49	Monthly Performance Report	<p>Monthly performance report- the draft undertaking requires us to report on Newlands, Goonyella, Blackwater and Moura as individual coal systems, however for the safety metric GAPE is to be reported separately.</p> <p>Please clarify the reason why safety needs GAPE reported separately when we currently do not report on GAPE for the safety metric.</p>
50	Disclosure of confidential information	<p>Clause 3.12(d) removed the ability for AN to have either environmental, engineering or other consultants have access to Confidential information. However the draft decision does not outline any reasoning behind this exclusion apart from a blanket approach that says if they are not listed, then confidentiality deeds, recording within the register and consultation with access holder is required prior to disclosure.</p> <p>Can you please clarify if this is intended and if it is then reasons behind the exclusion?</p>
51	NAPE allocation of GAPE Project Capex	<p>DD 17.5 (a) states that NAPE costs are to be removed from the Newlands System.</p> <p>Please clarify whether the costs referred to in this draft decision include the allocation of GAPE Project costs to the 'Newlands UT3 Capital Indicator' as outlined in the GAPE DAAU, and approved by the QCA in its final decision on the GAPE DAAU and the 2011/12 RAB Roll-forward.</p>
52	Expansion Pricing	<p>Expansion Pricing Framework</p> <p>Does the QCA intend to quarantine Expansions from the 'existing' system? And if so, for how long? Is socialisation between the 'existing' system and the Expansion acceptable, where it is reasonable to do so?</p>

**Attachment B – Requests for Information on the QCA’s Maximum Allowable Revenue
Draft Decision dated 30 September 2014**

No	Description	Detailed Request for information
1	Return on assets adjustment	AN's response to the MAR DD 5.3 stated: "Accept return on assets adjustment, subject to Aurizon Network's verification of the QCA's calculations..." Please provide the calculations so that AN can verify them.
2	MCI calculations	AN's response to the MAR DD 5.4 stated: "Accept, subject to Aurizon Network's verification of the QCA's application of the MCI and alignment of the forecast and actual MCIs." Please provide the calculations so that AN can verify them.