Queensland Competition Authority

INFORMATION UPDATE

23 March 2015

Aurizon Network 2014 Draft Access Undertaking (2014 DAU)

Aurizon Network has asked us a number of questions in relation to our Draft Decision on the 2014 DAU.

We welcome the opportunity to respond to Aurizon Network's requests for information, we are of the view that all interested parties should have access to any response we provide. Likewise, we will take a similar approach to information requests from other stakeholders.

Aurizon Network's request for information and our response is set out in the attached document.

No	*Description*	*AN Request for information*	*QCA Response*
1	QCA's role in dispute resolution	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. **Please confirm that the QCA does not intend to subject "failing to agree changes to the template SUFA" to dispute resolution.**	We have taken the approach that all matters should be subject to the dispute resolution as contemplated by clause 11.1.1. In particular, the opening words of clause 8.2.2(a) say that anything under Part 8 may be disputed. To avoid confusion, we would consider amending the references to 'completion of schedules to read 'agreeing the terms or completion of schedules'. This amendment would apply to clause 8.2.2(a)(ii) in respect of SFAs, 8.2.2(a)(iii) in respect of SUFAs and 8.2.2(b)(iv) in respect of time for dispute. We welcome stakeholder comments on this issue.
2	QCA's role in dispute resolution	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. **Please clarify intention, as the draft QCA dispute resolution could provide a one sided arrangement.**	Clause 11.1.1(a)(ii) clarifies the dispute must be in respect of the operation of the Undertaking or anything required to be done by Aurizon Network under the Undertaking. Taking the two concerns in turn. (1) there are processes in the Undertaking that deal with varying the terms of the Standard Agreements. Those processes involve the QCA. It would be unusual for a dispute to arise in respect of amendments to those Standard Agreements following the process set out (unless the dispute related to Aurizon Network's application of the amendments agreed through that process). If Aurizon Network's concern is that amendments that are departures from the terms of Standard Agreements should not be disputed, the QCA has confirmed in clause 11.1.1(b) that those matters may be disputed. (2) If a contractual dispute mechanism exists in relation to a matter, then it is likely that the dispute arises under that contract, rather than in respect to "the operation of the Undertaking" or "anything required to be done by Aurizon

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			Network under the Undertaking". If examples could be provided where there is concern that two dispute mechanisms could run in parallel or which might result in forum shopping, please bring these to the QCA's attention to allow the Authority to consider if further clarity is required. Finally, in response to the concern that "the draft QCA dispute resolution could provide a one sided arrangement where other parties could force us to vary and we could not", we note that any party to the dispute may refer the matter to us (this could include Aurizon Network triggering the dispute) and the outcome of any dispute will be determined by the positions put by the disputing parties. It should not be assumed that a dispute will automatically result in a decision for or against any particular party to the dispute.
3	QCA's role in dispute resolution	8.2.2 - no guidance to the QCA in the resolution of disputes under Part 8 of AU has been included. **Please clarify parameters for QCA's decision making on dispute resolution.**	Please refer to clause 8.2.2(c).
4	Assignment of PCA	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. **Please confirm that it is NOT intended that the PCA also assign.**	The Draft Decision was not specific about how these arrangements would work. We welcome stakeholder views on how best to deal with this issue.
5	Definition of "Confidential Information"	The definition of "Confidential Information" is broad as it captures all confidential information, not just that obtained in AN's role of providing access. **Please confirm that it is NOT intended that "Confidential Information" be defined this broad.**	We are not aware of other circumstances that Aurizon Network would be receiving confidential information. If Aurizon Network is receiving information in a capacity other than in respect of its role of supplying Below Rail Services (including those matters set out in clause 3.5(d)), please advise so we may consider the matter further.

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6	Capacity understanding and definition	**Please confirm if the QCA is describing Supply Chain Capacity rather than Below Rail Capacity as the intent for Baseline Capacity?**	See clause 7A.4.1(b) and 7A.4.2(b) which set out the factors that need to be considered and the consultation that is required. These include consideration of Supply Chain issues. The Below Rail Capacity will be informed, in part, by how the Supply Chain works and may affect Aurizon Network's views on the level of robustness and redundancy needed for a system in determining its Baseline Capacity. Baseline Capacity is in respect of the Below Rail Capacity once all relevant considerations have been taken into account. For example the Baseline Capacity should identify the number of TSEs in each coal system (defined as system paths in the Capricornia System Rules) that are aligned to a mine loading slot, a port unloading slot and take account of the dwells required to perform a train service on the path (eg train crewing).
7	Contracted rights vs actual operation	7A.4(b)(B): **Please clarify if the interfaces referred to the contracted rights or the actual way the supply chain operates (e.g. contract is for even railing 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?**	If you are referring to Clause7A.4.1(b)(B), the interfaces with other facilities forming part or all the relevant supply chain should be consistent with Aurizon Network's System Operating Parameters and System Rules (where applicable).
8	Baseline capacity assessment	7A.4(iv)(B): **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?**	Please refer to definition of Possession Protocols in Part 12. This concept was included by Aurizon Network in its 2014 DAU. We would welcome further information from Aurizon Network about what it intended to be included in Possession Protocols. Without further information from Aurizon Network, we assumed the Possession Protocols would deal with planning processes underpinning establishing Planned Possessions, the possession lockdown process in the Critical Asset Calender (CAC) and then the process for making changes to the CAC once it has been locked in. We would also welcome further information from Aurizon Network about how Urgent and Emergency Possessions and the maintenance plan are dealt with in the Possession Protocols.

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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?**	Accurate clause reference required. Your attention is drawn to clause 7A.4.1(c)(ii)-(iv). Our proposed assessment of the Baseline Capacity Assessment Report requires an assessment of Aurizon Network's assumptions affecting Capacity and relied on for the Baseline Capacity Assessment. Clause 7A.4.1(b) identifies all the assumptions Aurizon Network has relied on for the Baseline Capacity Assessment. Accordingly, we may appoint an expert(s) to assist in its consideration of the matters referred to in 7.4.1(c).
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?**	As the System Operating Parameters being considered are for individual Coal Systems (and not for individual contracts), we would expect that those parts of the SOPs that are not part of a contract, can be amended. We consider that any SOPs developed by Aurizon Network would take account of the terms of Access Agreements relating to the Train Services operating in each coal system.
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.**	Please see clause 7A.4.1(b) and clause 7A.4.2(b) for an explanation of what is expected. If there are concerns about the operation of this agreement, please make them clear in your submission.
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.**	We consider disputes will be resolved under the terms of the AA (as provided for in our drafting see clause 2.5(f) and cl. 11.1.1(c) of the undertaking). We would consider including an avoidance of doubt clause in the undertaking to make this clearer.
13	Supply of electricity	Part 11 specifically includes the right to dispute certain matters relating to	Clause 2.7(a) places obligations on Aurizon Network to sell or supply electric energy to access holders / seekers, to the extent it does so to a related

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		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.**	operator. While accepting that the sale or supply of electric energy is not part of access, we consider it appropriate that the obligations in clause 2.7(a) be subject to dispute resolution. We note this is consistent with the position in UT3.
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.**	Please see the Draft Decision at page 131. In particular, we indicated 'We consider the increased transparency will encourage timely resolution of disputes, and provide us with insights into the operation of the undertaking.'
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?**	We were guided by AN's drafting as set out in page 331 of the 2014 DAU.
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.**	We would welcome stakeholder comments on what should be contained in 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?**	Please see the Draft Decision at page 355 and 356. Specifically 'we consider that it will better clarify Aurizon Network's obligations in relation to access pricing if an express prohibition on unfair price discrimination is also included in Part 6 of the 2014 DAU. Aurizon Network should be prohibited from leveraging its unique position as the sole operator of the CQCN to provide its related parties (including any related operator) a commercial advantage over their respective competitors.' It follows that if an operator is consuming additional capacity or creating cost / risk or disadvantages when compared to operating assumptions that

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			apply to the regulated access charge, the penalty will be applied equally to any operator that operates in that fashion, as provided for under proposed cl. 6.2.3(a). If a dispute were raised in respect of that penalty, it could be assumed that Aurizon Network would need to establish that the penalty reflects the increased cost, risk or disadvantage and is applied equally to all operators with the same operating behaviours.
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)?**	Our intention is to remove the Most Favoured Nation clause from the SAA and retain the Aggrieved Access Holder clause in the undertaking, as we consider it important to treat breaches of the price differentiation principle consistently and uniformly across all access seekers and access holders Until we understand what the non-standard amendments are and the impact of those amendments, it cannot comment on materiality thresholds or whether any threshold is appropriate. We welcome stakeholder comments on this issue.
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.**	The cluster pricing under UT1 and UT2 was based on costs and location, while our proposed approach is mostly cost-based (on a system level). The establishment of an expansion tariff is to ensure that expanding users pay an access charge that covers the incremental costs associated with their access. Our proposal also provides for socialisation between two expansion tariffs, which can reduce the regulatory complexity over time (cl. 6.4.3(i)).
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)?**	When doing the comparison, either between a system reference tariff and an expansion tariff, or between two expansion tariffs, the electric costs should be included. If the expansion tariff (that includes incremental electric costs) is lower than the system reference tariff on a NT basis, then potentially the AT5 in the expansion tariff will include a CCC component. An electric access charge will be determined based on the total contracted volume, with the AT5 component based on the proportion of electric volume. An expansion tariff will have its own separate revenue cap, but other provisions still apply (e.g. review event, etc).

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			We welcome stakeholder comments on our drafting.
21	Reject Capacity	Multiplier DD17.2, 17.3.3 **Please clarify intent. Multiplier sits in Access Agreements and is linked to individual Train Configurations.**	Please see our reasoning set out in section 17.3.3 of our draft decision. We need to see evidence that there is a differential before approving a multiplier. We welcome stakeholder comments on this proposed approach.
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?**	As outlined in the Draft Decision, the AT1 will be escalated using the approved MCI from our MAR Draft Decision. The key change in our Draft Decision for pricing was to escalate by the forecast MCI rather that the forecast CPI proposed by Aurizon Network. We welcome stakeholder comments on this proposed approach.
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.**	We assume this refers to cl. 8 of AN's 2014 DAU EUAA. Please see page 173 of the Draft Decision for our reasoning about why this provision (and the concept more broadly) was not accepted.
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.**	We assume this refers to cl. 9 of AN's 2014 DAU EUAA. We considered this provision unnecessary given our position in Item 23 above. However, we are willing to consider further whether there is merit in retaining this provision to enable an End User (access holder) to initiate an increase in Maximum Payload with a corresponding reduction in Nominated Monthly Train Services.
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.**	We assume this refers to cl. 10 of AN's 2014 DAU EUAA. See Item 23.
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	We assume this refers to cl 17.3 of AN's 2014 DAU EUAA. This clause was removed from the AA to better separate rights and responsibilities for access rights from those related to operational matters. We note cl 18.2(c)

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		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.**	of the TOD contains the same requirement in relation to the Operator. However, we are willing to consider this further, if explanation is provided that there is a need to retain this clause in the AA as well.
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.**	This clause was removed from the AA to better separate rights and responsibilities for access rights from those related to operational matters. We note cl 19.3 of the TOD contains the same requirement in relation to the Operator. However, we are willing to consider this further, if explanation is provided that there is a need to retain this clause in the AA as well.
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.**	This clause was removed from the AA to better separate rights and responsibilities for access rights from those related to operational matters. We note cl 19.5 of the TOD contains the same requirement in relation to the Operator. However, we are willing to consider this further, if explanation is provided that there is a need to retain this clause in the AA as well.
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.**	We assume this refers to cl 21.4 of AN's 2014 DAU EUAA. We consider this matter to be covered under force majeure. If there are concerns please provide comments in your submission.
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.**	As discussed on p. 173-174, this was one of a number of changes we made to appropriately balance the interests of parties to the contract. We welcome stakeholder comments on our proposed approach.
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.	We assume this refers to cl 21.5 of AN's 2014 DAU EUAA. See Item 29

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		Please clarify why the QCA has deleted this clause.	
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).**	We took a balanced approach, noting that the existing SAAs have contained a security amount of 3 months for some time. We accept it may be time to review, however, we considered 12 months as proposed by AN was excessive and that raising it to 6 months would be a more reasonable increase. We welcome stakeholder comments on our proposed approach.
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.**	See clause 7.2.1(a)(i) which addresses Supply Chain Rights and ability 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.**	Please see clause 7.4(c) of the 2010 Access Undertaking regarding Queensland Transport (now DTMR). Please see page 223 (and Draft Decision 11.2) of the Draft Decision.
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.**	Could Aurizon Network please confirm it is its intention to contract to a third party access rights that may be renewed before that renewal is received? The example provided does not accord with our understanding that Renewing Access Seekers have priority, as set out in clause 7.3(a) and (b) of the 2014 DAU. Clause 7.3(c) is for clarification purposes only and should not change clauses 7.3(a) and (b).
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.**	We note Aurizon Network's concern. We welcome stakeholder comments on our proposed drafting.

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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.**	We are not aware of past undertaking arrangements where Aurizon Network was permitted to impose new terms in respect of existing access rights. We note, for example, clause 2.4(b) of the 2010 Undertaking which seems to imply the opposite. We also note that parties are entitled to certainty in respect of the terms of their access rights, given the right to renew that is afforded under previous undertakings. See also our answer to question 36 above. We welcome stakeholder comments on our proposed approach.
38	Preserved paths	Clasue 7.5.2(i) has been amended to remove provisions to exclude preserved paths from the **As AN may have a legislative obligation to provide access for preserved paths, please advise what the intention of the drafting amendment is queue.**	Please see definition of Available Capacity.
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.**	We note the concerns that the drafting in our proposed clause 2.5(e) may have unintended consequences, relating to the use of standard access agreement instead of the previously used access agreement or train operations agreement. We will consider this drafting further in our Final Decision. We welcome stakeholder comments on our proposed drafting.
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**	Please see paragaphs (a), (b) and (f) of the definition which appears to cover the items mentioned. We will consider this further, if Aurizon Network does not consider these items are adequately addressed and it can explain why it would be reasonable to include these items as consequential loss. We welcome stakeholder comments on our proposed approach.
41	Access Interface Deed (Clause 4.4 of AA and	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	Please see clause 4.4(a) which is triggered only if the Access Holder wants to exercise its rights under clause 4.3(b). We note Aurizon Network's

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	TOD)	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.**	suggestion that the linkage between the AA and the TOD where the Access Holder is also the Operator may need strengthening. We welcome stakeholder comments on our proposed approach.
42	Resumption & Underutilisation Event (Clause 7 of the AA)	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. **Please explain the QCA's concern in relation to this as its effect is that AN's ability to effectively allocate capacity is limited.**	Please see our discussion regarding relinquishment and the effect on efficiency gains in our draft decision (at section 11.6). If a party does not use its access rights, it will be exposed to take or pay obligations. If a party assumes access rights, it has also assumed an obligation to pay take or pay. We consider that commercial realities will ensure underutilisation is properly managed by the access holder. We welcome stakeholder comments on our proposed approach.
43	Train Service Description (Clause 14.3 of AA)	**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.**	Please see clause 11.2(a)(iii) of the TOD which provides for Aurizon Network's right to vary the Train Description.
44	Force Majeure Notices and suspension of obligations (Clause 7.7(a)(ii) of the Undertaking)	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. **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.**	We welcome stakeholder comments on our proposed approach.
45	Force Majeure (Clause 7.7.1(c) Undertaking)	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. **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**	We welcome stakeholder comments on our proposed approach.

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		accordance with the Network Management Principles in Schedule G.	
46	Liability for removal of rollingstock from the network (Clause 10.5(b) of the TOD)	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. **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.**	Please see Draft Decision at pages 173 and 174 where we address changes made to the standard agreements to ensure a reasonable and commercially balanced allocation of rights, obligations and risks between the parties. We welcome stakeholder comments on our proposed approach.
47	Draft Decision 12.7(d)	**Please clarify what is required to comply with Draft Decision 12.7(d).**	Please see Draft Decision at pages 195 and 196 where we address changes made to the standard agreements to ensure a reasonable and commercially balanced allocation of rights, obligations and risks between the parties We welcome stakeholder comments on our proposed approach.
48	Draft Decision 12.8(ii)	**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.**	We would expect Aurizon Network to ensure that was able to either re-scope the capacity that would be required if a party terminated (and ensure cost savings are made) or be able to terminate consultancy and other advisor arrangements with minimal break fees. We have no view on where this should appear but note that the obligation could be included in the Study Funding Agreement if that was Aurizon Network's preferred option. We welcome stakeholder comments on our proposed approach.
49	Monthly Performance Report	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. **Please clarify the reason why safety needs GAPE reported separately when we currently do not report on GAPE for the safety metric.**	We consider that if there is to be transparency in reporting for each individual system, then reportable metrics such as safety should also be consistently reported against for each system. If stakeholders are confident that GAP metrics are captured somewhere else, and are not necessary or required. We welcome stakeholder comments on our proposed approach.
50	Disclosure of confidential information	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,	Please see page 67 of our draft decision where we say "we are of the view that exemptions from the disclosure process should be narrowly defined". In line with this reasoning, clause 3.12(d) reflect commercial practice that a person providing confidential information to Aurizon Network would expect

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		then confidentiality deeds, recording within the register and consultation with access holder is required prior to disclosure. **Can you please clarify if this is intended and if it is then reasons behind the exclusion?**	to be followed. It is unusual in commercial agreements to see a right to pass confidential information to environmental, engineering or other consultants without restriction.
51	NAPE allocation of GAPE Project Capex	DD 17.5 (a) states that NAPE costs are to be removed from the Newlands System. **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.**	Since Aurizon Network did not propose any amendment to the Newlands system reference tariff as part of the GAPE DAAU approval process, we did not assess and approve the allocation of GAPE costs to the Newlands systems as part of this DAAU approval process. This was assessed as part of the 2014 DAU Draft Decision, since the Newlands system reference tariff over the UT4 period included this allocation. As outlined in 2014 DAU Draft Decision released in January 2015, GAPE project costs associated with NAPE users have been allocated to the NAPE system.
52	Expansion Pricing	Expansion Pricing Framework **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?**	As outlined in the Draft Decision, given that the QCA is not proposing to move existing users to a 'fixed cost' regime as part of this Draft Decision, this precludes the socialisation of an expansion with the system reference tariff. If in the future a 'fixed cost' regime is applied generally to all users, the QCA will consider the socialisation with expansions with the system reference tariff.

No	*Description*	*Detailed Request for information*	*QCA Response*	*Attachment*
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.**	We will provide the calculations to relevant stakeholders, on request.	MAR1 - Return on Assets Table
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.**	We will provide the calculations to relevant stakeholders, on request.	MAR2 - MCI Model