

asciano

Submission to the Queensland Competition Authority
Draft Decision on the Pricing and Policy Component of
the Aurizon Network 2014 Draft Access Undertaking

April 2015



Contents

Contents	3
1. Executive Summary and Background	4
2. Framework of this Asciano Submission.....	5
3. Asciano's Position on the Draft Decision and Broader Regulatory Issues	6
4. Asciano's Detailed Comment on the Draft Decision	11
Comments on Draft Decision – Access Undertaking	11
Comments on Draft Decision - Access Agreement and Train Operations Deed.....	26
5. Conclusion	28
Attachment 1- List of Recent Asciano Submissions to QCA Regulatory Processes Related to Aurizon Network	29
Attachment 2 – Asciano's Comments Draft Decision Access Agreement and Train Operations Deed.....	30

1. Executive Summary and Background

Asciano welcomes the opportunity to make this submission to the Queensland Competition Authority (QCA) in response to the QCA's January 2015 Draft Decision (the Draft Decision) on the pricing and policy components of Aurizon Network's August 2014 Draft Access Undertaking (2014 DAU). The 2014 DAU replaced Aurizon Network's initial Draft Access Undertaking proposal submitted in April 2013 (2013 DAU).

The QCA has previously released a Draft Decision on the maximum allowable revenue components of the 2014 DAU in September 2014. Asciano made a separate submission to this Draft Decision in December 2014. Asciano understands that the QCA will take both the December 2014 Asciano submission and this April 2015 Asciano submission into account when considering its Final Decision on the 2014 DAU.

Overall Asciano strongly supports the positions and recommendations of the QCA's Draft Decision. In particular Asciano supports the Draft Decision's:

- rejection of the Aurizon Network 2014 DAU shift towards lighter access regulation and the Draft Decision's reinstatement and strengthening of safeguards in the access undertaking against the potential for discriminatory behaviour and inappropriate use of market power;
- support for increasing Aurizon Network transparency and the availability of information; and
- support for more transparent and objective approaches to Aurizon Network capacity management and capacity allocation.

Asciano's primary concern with the Draft Decision is the lack of a mandated incentive mechanism. Asciano believes that the efficiency of the Central Queensland coal network could be improved by the mandated introduction of an incentive mechanism, rather than the discretionary introduction of an incentive mechanism allowed for in the Draft Decision. Asciano is seeking that the issue of the incentive mechanism be addressed in the Final Decision. In addition, in this submission Asciano also raises several issues of detail with specific sections of the Draft Decision. Asciano is seeking that these issues be addressed in the Final Decision.

Overall Asciano strongly supports the approach of QCA Draft Decision and the recommended changes to the 2014 DAU in the QCA Draft Decision.

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

2. Framework of this Asciano Submission

This Asciano submission is set out as follows:

- Introductory chapters 1 and 2;
- Chapter 3 outlines Asciano's broad position on the Draft Decision;
- Chapter 4 outlines Asciano's specific position on various sections of the Draft Decision and outlines specific issues and concerns that arise from the Draft Decision and the proposed access undertaking, access agreement and train operator agreement;
- Chapter 5 outlines Asciano's broad conclusion that Asciano strongly supports the Draft Decision; and
- two attachments:
 - Attachment 1 - information on recent Asciano submissions to QCA consultation processes;
 - Attachment 2 - tabulated comment on the QCA Draft Decision access agreement and train operations deed.

3. Asciano's Position on the Draft Decision and Broader Regulatory Issues

Asciano's Position on the Draft Decision

Asciano strongly supports the Draft Decision's position to not accept the Aurizon Network 2014 DAU and strongly supports the approach and recommendations of the Draft Decision. The Draft Decision's recommendations provide improved safeguards for access holders and access seekers against any potential situations where Aurizon Network may seek to use their market power and control over rail infrastructure access to unduly benefit either themselves or a related party.

Asciano believes that in the absence of compelling new information being provided by respondents to this current regulatory process then the recommendations contained in the Draft Decision on the MAR and the Draft Decision on pricing and policy should be generally reflected in the QCA's Final Decision on the Aurizon Network 2014 DAU.

Asciano strongly supports the Draft Decision's rejection of the Aurizon Network 2014 DAU's moves towards a lighter rail access regulatory framework. In particular Asciano strongly supports:

- the Draft Decision's rejection of the 2014 DAU's proposed ring fencing regime. Asciano strongly supports the Draft Decision approach which builds on the provisions of the 2010 Access Undertaking by requiring a range of additional measures including:
 - stronger obligations on the Aurizon group to comply with the access undertaking (via the ultimate holding company deed); and
 - a stronger regulatory audit regime than the regime proposed in the 2014 DAU;
- the Draft Decision's increasing requirements for the functional separation of Aurizon Network. Asciano strongly supports the position that Aurizon Network's primary function is to supply the declared service and that Aurizon Network should be precluded from undertaking certain functions, including above rail services, the operating or marketing of train services, and port services;
- the Draft Decision's increased emphasis on the need for non-discriminatory behaviour by Aurizon Network;
- the Draft Decision's increased emphasis on Aurizon Network transparency and information provision, including information related to operations, performance, costs and maintenance and renewals;
- the Draft Decision's approach to capacity. The Draft Decision finds that the 2014 DAU has insufficient transparency in relation to the levels of Aurizon Network's capacity and the manner in which this capacity is allocated. The Draft Decision seeks to address these issues by requiring:

- increased information provision in relation to capacity assessment, supply chain co-ordination, network development and train plans;
 - QCA approval for various capacity and operational issues including system rules, baseline capacity system operating parameters, strategic train plans and plans for addressing capacity deficits; and
 - the reinstatement of an objective capacity allocation mechanism as used in the 2010 Access Undertaking; and
- the Draft Decision's removal of the diesel multiplier as a part of the access pricing framework; and
 - the Draft Decision's broadening of the dispute resolution process to ensure that the process applies to all access undertaking obligations, that the process is available to all parties and that the process can be progressed by the QCA when parties cannot agree on how to progress a dispute.

Asciano supports in principle the Draft Decision's approach to pricing. In particular Asciano supports the Draft Decision's position that the current six part reference tariff structure and take or pay arrangements are unnecessarily complex. The Draft Decision proposes to address the tariff structure via a review of tariff structure and take or pay as part of the next access undertaking process. Due to this future tariff structure review the Draft Decision has rejected Aurizon Network's proposed changes to tariff structure and take or pay approaches. Asciano supports this Draft Decision position.

Asciano supports in principle the Draft Decision's approach to simplifying the access contracting model by:

- reducing the number of access contracts in the contracting suite to two agreements;
- requiring that matters best addressed in the access undertaking are retained in the access undertaking rather than be moved to the access agreements; and
- requiring that access undertaking provisions be incorporated into these contracts by reference (allowing contracts to be automatically updated over time) as the access undertaking changes.

Asciano's detailed comments on the drafting of the access agreement and train operations deed are included in section 4 and Attachment 2 of this submission.

Asciano Concerns Raised by the 2014 DAU Process and the Draft Decision

Asciano has several broad concerns related to the access regime, the 2014 DAU regulatory process and the Draft Decision.

Asciano's concerns with the 2014 DAU regulatory process largely relate to the incorporation of various parallel regulatory processes and the time frames and work program associated with the 2015 access undertaking. These concerns include:

- the incorporation of issues unresolved from the 2010 Access Undertaking into the approved 2015 access undertaking. Issues such as the Standard User Funding Agreement (SUFA) and the incentive mechanism which were raised under the 2010 Access Undertaking but are not yet resolved¹ should be addressed. Asciano believes that in coming months the QCA should outline how these unresolved issues, once resolved, will be incorporated into the approved 2015 access undertaking.
- incorporation of separate and additional issues raised by Aurizon Network during the current regulatory process including:
 - an Aurizon Network proposal relating to a short term transfer mechanism, where this mechanism is intended to be incorporated into the approved 2015 access undertaking. Asciano responded to this proposal indicating that it does not support the proposal in its current form²; and
 - an Aurizon Network proposal relating to access pricing for the Wiggins Island Rail Project. Asciano responded to this proposal indicating that it does not support the proposal in its current form as it sought to require parties who do not use Wiggins Island rail infrastructure to partially bear the costs of this infrastructure³;

Asciano believes that in coming months the QCA should outline how these issues will be incorporated into the approved 2015 access undertaking.

- the length of UT4 time frames. Under current drafting an approved 2015 access undertaking will apply from 1 December 2015⁴ (or possibly earlier) and expire in mid 2017, thus an approved 2015 access undertaking will be in place for less than two years. 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. This almost constant cycle of regulatory consultation provides limited regulatory certainty for the central Queensland coal supply chain and adds to costs to all participants in the coal supply chain. Asciano broadly supports proposals to allow an approved 2015 access undertaking to continue beyond the current planned expiry date; and

¹ The Incentive Mechanism process has been discontinued following Aurizon Network's withdrawal of its incentive mechanism proposal on 20 March 2015 following the release of the Draft Decision.

² Asciano Submission to the Queensland Competition Authority in Relation to an Aurizon Network Discussion Paper on a Potential Short term Transfer Mechanism January 2015

³ Asciano Submission to the Queensland Competition Authority in Relation to an Aurizon Network proposed Tariff for Train services to Wiggins Island Coal Export Terminal February 2015

⁴ The Draft Amended Access Undertaking proposed by Aurizon Network on 20 March 2015 proposes that the current 2010 Access Undertaking be extended until the earlier of 30 November 2015 or the date on which the undertaking is withdrawn in accordance with the QCA Act.

- the Draft Decision outlines several areas of regulatory consultation, notably the baseline capacity process, which will be undertaken following the finalisation of the 2014 DAU. Given the potential for a short 2015 access undertaking duration Asciano believes that these regulatory consultation processes must be tightly managed to ensure time frames are met. Asciano believes that an understanding of baseline capacity is fundamental to the operation of the network. Consequently Asciano seeks that the QCA acts to ensure that the baseline capacity review time frames are met by all participants.

Asciano is seeking that the issues outlined above be addressed by the QCA in the Final Decision or in complementary regulatory processes as appropriate.

Asciano's primary concern with the Draft Decision is the ongoing lack of an effective Aurizon Network KPI regime and the lack of an effective Aurizon Network incentive mechanism. Asciano raised these concerns as key issues in its October 2013 submission⁵ and restated its position on these issues in its October 2014 submission⁶.

Asciano believes that a genuinely efficient central Queensland coal supply chain will only be achieved with a mandated incentive mechanism which ensures that Aurizon Network has strong incentives to operate efficiently. Such a regime should include an Aurizon Network revenue component which is at risk. Asciano recognises that this issue is unlikely to be addressed in the Final Decision, however Asciano believes that the baseline capacity review may be an appropriate forum to further progress discussions on efficient operations and utilisation of capacity and how these can be encouraged by an effective KPI and incentive mechanism regime.

Asciano also has several ongoing concerns with the access regime including:

- the nature of the access regime whereby the access agreements over-ride the Access Undertaking so there is still potential for Aurizon Network to contract away from the undertaking in order to benefit its related party operator. Asciano recognises that there are safeguards in place to minimise the potential for Aurizon Network to benefit its related party operator but the ability of Aurizon Network to contract away from the undertaking with its related party operator remains a concern; and
- the impact UT1 access agreements. These agreements have different take or pay obligations than other access agreements and this in turn may result in these take or pay obligations being socialised across access holders with later access agreements. Asciano recognises that this result arises due to changes in access agreements over time but believes that at some point in

⁵ Asciano Submission to the Queensland Competition Authority in Relation to the 2013 Aurizon Network Draft Access Undertaking October 2013 pages 33 to 39

⁶ Asciano Submission to the Queensland Competition Authority in Relation to the Resubmitted 2014 Aurizon Network Draft Access Undertaking October 2014 page 15

the future this difference in take or pay treatment for access agreements from different periods will need to be addressed.

Other Recent Asciano Submission to the QCA

In addition to this submission Asciano has also recently provided comment to the QCA on:

- an Aurizon Network proposal relating to a short term transfer mechanism, where this mechanism is intended to be incorporated into the approved 2015 access undertaking;
- an Aurizon Network proposal relating to access pricing for the Wiggins Island Rail Project. This was intended to be incorporated into the 2010 Access Undertaking but given the timing of current regulatory processes Asciano expects that it will be incorporated into the approved 2015 access undertaking in some form; and
- the QCA Draft Decision on the Aurizon Network 2012 Draft Amending Access Undertaking on SUFA. This is intended to be incorporated into the 2010 Access Undertaking but given the timing of current regulatory processes it may be incorporated into the approved 2015 access undertaking in some form.

Details of recent Asciano submissions related to the rail access regime which applies to Aurizon Network are contained in Attachment 1 of this submission. Asciano is seeking that the QCA take these submissions into account (to the extent that they are relevant) when considering its Final Decision.

Summary

Overall Asciano strongly supports the positions and conclusions of the Draft Decision. The recommendations of the Draft Decision will:

- limit the potential of Aurizon Network to engage in discriminatory behaviour and inappropriate use of market power; and
- increase transparency and availability of information.

Asciano believes that the efficiency of the Central Queensland coal network could be further improved by the introduction of a KPI regime and mandated incentive mechanism.

4. Asciano's Detailed Comment on the Draft Decision

Asciano strongly supports the Draft Decision but has several comments, concerns and requests for clarification relating to the Draft Decision as outlined in this section of the submission.

The structure of this section of the submission is based on the structure of the 2014 DAU as marked up by the QCA and appended to the Draft Decision.

Comments on Draft Decision – Access Undertaking

Comment on Access Undertaking Part 2: Intent and Scope

Asciano strongly supports the Draft Decision's recommended changes to Part 2 of the 2014 DAU. These changes are needed to provide sufficient protection for third parties seeking or holding access on the Aurizon Network. Comments on specific sections are outlined below.

2.2 – Objective - Asciano strongly supports the Draft Decision's recommended changes in section 2.2. In particular Asciano very strongly supports the changes in section 2.2 (g), (h) and (i) which protect third party access seekers and access holders by:

- placing obligations on Aurizon Network to not provide more favourable terms to a related operator, related competitor or a third party which has commercial arrangements with a related competitor;
- requiring Aurizon Network to conduct all transactions with related parties on an arms-length and consistent basis; and
- requiring that Aurizon Network must not engage in any activity or conduct that will result in cost shifting, cross-subsidies, price or margin squeezing or, a substantial lessening of competition or a situation that is otherwise anti-competitive.

2.4 – Non –Discriminatory Treatment - Asciano strongly supports the Draft Decision's recommended changes that ensure that access seekers and access holders are not unfairly differentiated in the negotiation and provision of access

2.6 – Ultimate Holding Company Deed - Asciano strongly supports the recommended changes which, via the Ultimate Holding Company Deed, place increased obligations on Aurizon Holdings to comply with the ring fencing provisions of Part 3 of the access undertaking.

Asciano is seeking clarification as to the access undertaking to which the Ultimate Holding Company Deed applies. Asciano understands that the Ultimate Holding Company Deed would only apply to the access undertaking which is the subject of this current Draft Decision and any replacement or amendment of that undertaking. Asciano believes that the obligations on Aurizon Holdings contained in the Ultimate Holding Company Deed should also apply to previous access undertakings. This will ensure all access seekers and access holders are protected.

2.8 – Incentive Mechanism - Asciano notes that the Draft Decision has recommended changes in section 2.8 that will allow Aurizon Network to develop an incentive mechanism during the term of the access undertaking if they choose to do so. Asciano believes that a genuinely efficient central Queensland coal supply chain will only be achieved with an incentive mechanism which ensures that Aurizon Network has strong incentives to operate efficiently. Given this Asciano is seeking that the Final Decision requires Aurizon Network to develop an incentive mechanism (rather than give Aurizon Network discretion to develop an incentive mechanism).

The Draft Decision provisions relating to the incentive mechanism are broadly similar to the incentive mechanism provisions set out in section 2.6 of the 2010 Access Undertaking. These provisions have resulted in an incomplete and withdrawn attempt to develop an incentive mechanism.

Asciano believes that the current draft of the access undertaking attached to the Draft Decision lacks sufficient performance related incentives to drive efficient Aurizon Network behaviours and that the Final Decision should require Aurizon Network to develop an effective incentive mechanism rather than give them the discretion to do so.

Asciano has previously outlined the characteristics of an acceptable KPI regime and incentive mechanism in submissions in this regulatory process⁷. These characteristics are broadly consistent with the incentive mechanism criteria set out in section 2.8 (b). Given this Asciano would broadly support an incentive mechanism that genuinely met the criteria set out in section 2.8 (b); however Asciano believes that such an incentive mechanism should be mandated rather than discretionary.

Comment on Access Undertaking Part 3: Ring Fencing

Asciano strongly supports the Draft Decision's recommended changes to Part 3 of the 2014 DAU. These changes are needed to provide sufficient protection for third parties seeking or holding access on the Aurizon Network. Asciano strongly support's the Draft Decision's return to the ring fencing principles contained in the 2010 Access Undertaking as a basis for the ring fencing principles contained in the Draft Decision. Comments on specific sections are outlined below.

3.7 – Staffing of Aurizon Network - Asciano broadly supports the Draft Decision's recommended changes in relation to controls on Aurizon Network staffing and secondments and transfers of staff between Aurizon Network and another Aurizon entity. Asciano notes that section 3.7 (e) requires Aurizon Network to advise the QCA of all employee transfers and secondments from Aurizon Network to other parts of the Aurizon Group. Asciano believes that while this process is a useful first step there appears to be no explicit ability for the QCA to prevent such a transfer if it believes the transfer breaches the access undertaking. Asciano believes that the QCA should have an

⁷ See for example the Asciano Submission to the Queensland Competition Authority in Relation to the 2013 Aurizon Network Draft Access Undertaking October 2013 pages 33 to 39

explicit power to prevent such a transfer or secondment. This will provide increased confidence that any potential conflicts in relation to the handling of confidential information are minimised.

3.15 – High Risk Aurizon Personnel – In section 3.15, the Draft Decision recommends the establishment of an Aurizon group high risk personnel register and proposes that the register include staff who have access to confidential information and are in a position to either use that confidential information for purposes other than the supply of below rail services or to influence or control the decisions of any Aurizon Group company that is not Aurizon Network. The high risk personnel register explicitly includes the Aurizon Network executive officer, chief financial officer and directors.

The Draft Decision has explicitly sought stakeholders' views as to whether other persons should be listed as high risk Aurizon personnel. Asciano believes this list should be expanded to include Aurizon Network personnel who manage the provision of below rail services to third parties on a day to day basis. Specifically this would include personnel in Aurizon Network's commercial development area and network operations area.

Asciano believes that there should be a linkage between the high risk personnel register and the limitations on the transfer and secondment of any staff as outlined in section 3.7. In particular the transfer and secondment of staff on the high risk personnel register between Aurizon Network and another Aurizon entity should not be allowed without a reasonably lengthy quarantine period.

3.21 – Transfer of Rail Infrastructure from Aurizon Party - Asciano supports the Draft Decision's recommended changes in section 3.21 relating to the transfer of rail infrastructure from an Aurizon party (these clauses were previously included in the 2010 Access Undertaking). The section allows an access seeker to request that Aurizon Network obtain ownership of relevant rail transport infrastructure that is owned by an Aurizon party if the access seeker is reasonably of the opinion that it is required to perform below rail services. Asciano believes that this section should be broadened (or clarified) to also allow access holders to make such a request.

Comment on Access Undertaking Part 4: Negotiation Framework

Asciano strongly supports the Draft Decision's recommended changes to Part 4 of the 2014 DAU. Asciano believes that these changes result in a more transparent, certain and equitable negotiation framework. Comments on specific sections are outlined below.

4.3 and 4.5 – Access Application –Section 4.3 (c) (ii) (A) (initial access application) and section 4.5 (f) (ii) (revised access application) allow Aurizon Network to request an access seeker to provide evidence or information regarding their ability to utilise the requested access rights on the basis of the factors listed in clause 4.12 (c). Asciano raised concerns with this issue in previous

submissions⁸ and Asciano remains of the view that this level of detail and information is not required to develop an initial response to an access application. This section has the potential to delay the access request process, and may allow Aurizon Network to deem the access application to be withdrawn if the evidence or information requested by Aurizon Network is not received from the access seeker as outlined in clause 4.3 (e).

4.4 – Acknowledgement of Access Application – Asciano supports the Draft Decision's recommended changes which clarify the process for access applications which require an expansion as outlined in sections 4.4 (c) and (d). In the Draft Decision's recommended changes the access rights under this scenario will be separated into two access applications being those for access rights that can be provided without an expansion and those for access rights that cannot be provided without an expansion as outlined in section 4.4 (c) (ii). Asciano seeks clarification as to whether the separated access application containing the access rights that cannot be provided without an expansion would automatically join the queue as specified in 4.4 (b) (ii).

4.6 – Indicative Access Proposal - Asciano believes that the expiration timeframe of an Indicative Access Proposal should be 90 days rather than the 60 days as specified in clause 4.6 (e). This 90 day term is consistent with the 2010 Access Undertaking 4.3 (c) (vii).

4.9 – Requirements for Customers, Customer Access Seekers and Train Operators - Where the transfer of an access application occurs in accordance with clause 4.9.1 (d) (iii) or (iv), Asciano believes that there needs to be sufficient controls to ensure that one train operator's access application is not provided to a replacement nominated train operator during the access application process. Asciano believes the intent of clause 4.9.1 (f) (i) is to ensure that this does not occur but believes that there should be a stronger provision that places an obligation on Aurizon Network to prevent this from occurring.

4.10 – Negotiation Process - Under section 4.10.1(e) to the extent that all or part of the access rights sought by the access seeker cannot be provided due to there being insufficient remaining available capacity or infrastructure cannot be sufficiently altered then the negotiation period in respect of these access rights will have ceased. Asciano believes that this cessation should only occur if the rail infrastructure absolutely cannot be enhanced to create additional capacity to satisfy the access rights sought. Otherwise, the access rights that cannot be provided should be placed in the queue until available capacity can potentially be created in the future.

The 2010 Access Undertaking contained provisions that obligated Aurizon Network to investigate and design any necessary infrastructure enhancements to accommodate the access sought by an

⁸ See for example the Asciano Submission to the Queensland Competition Authority in Relation to the 2013 Aurizon Network Draft Access Undertaking October 2013 pages 66 to 67

access seeker⁹. Asciano believes a similar clause should be reinstated in the approved 2015 access undertaking.

Comment on Access Undertaking Part 5: Access Agreements

Asciano agrees in principle the Draft Decision's proposal to consolidate the access agreements into two agreements, namely the Standard Access Agreement (SAA) and a Standard Train Operations Deed (STOD). Further Asciano detailed comments on the drafting of the SAA and STOD are included in Attachment 2 of this submission.

Asciano strongly supports the Draft Decision's recommended changes which ensure that matters best addressed in the undertaking are retained in the undertaking, rather than in the SAA and STOD. In particular, Asciano strongly supports retaining provisions relating to capacity allocation and capacity management in the access undertaking.

Comments on specific sections are outlined below.

5.2 - Access Charges under Access Agreements and SAA – In previous submissions¹⁰ Asciano raised concerns regarding the introduction of the term "Train Service Type" in the access agreement. Clause 5.2 (a) and the SAA continue to use this term. The SAA relates the agreement to "Train Service Types" rather than access rights and train services as was the case in the 2010 Access Undertaking. It is not clear why this change is required. The introduction of "Train Service Type" in the SAA is restrictive and diminishes the flexible use of access rights by an access holder.

5.4 – Review of SAA or STOD - Asciano notes the Draft Decision has included provisions in section 5.4 (a) that allows for reviews of the SAA and STOD to be initiated by the QCA or Aurizon Network. Asciano believes that these review provisions should also allow access holders and access seekers to initiate a review of the SAA and STOD.

Comment on Access Undertaking Part 6: Pricing Principles

Asciano strongly supports the Draft Decision's recommended changes to Part 6 of the 2014 DAU. In particular Asciano strongly supports the Draft Decision's reinstatement of provisions that prevent Aurizon Network from setting access charges that discriminate in favour of their related operator, their related competitor or any third party that has commercial arrangements with a related competitor.

Comments on specific sections are outlined below.

⁹ Section 4.5.2 e) of the 2010 Access Undertaking

¹⁰ See for example the Asciano Submission to the Queensland Competition Authority in Relation to the 2013 Aurizon Network Draft Access Undertaking October 2013 pages 86 to 96

6.2 – Price Differentiation - Asciano notes that section 6.2.3 (a) allows Aurizon Network (following QCA approval) to vary access charges with access seekers to recognise a material increase in cost associated with the provision of access to a train service that has substantially different characteristics to the reference train service. Asciano believes any claims for additional revenue by Aurizon Network under this section must be based on objective evidence put to the QCA and the access seeker should have the right to make submissions to the QCA on the issue if Aurizon Network and the access seeker are not in agreement on this issue.

The Draft Decision has introduced section 6.2.5 which allows an existing access holder to demonstrate to the QCA that they believe Aurizon Network has subsequently entered into an access agreement with another access holder for a like train service and this subsequent access agreement contains an access charge in contravention of Part 6 then the existing access holder can receive the same access charge or a charge which otherwise neutralises the impact of the access charge.

Asciano supports section 6.2.5 in principle but is concerned that these provisions can only be applied if an occurrence is known by the existing access holder and they have reasonable evidence to support a submission to the QCA. As access agreements are confidential to the parties that hold it, the likelihood of another access holder having evidence that Aurizon Network has offered another access holder a more favourable access charge would be low. Asciano is seeking that the QCA consider in the Final Decision how this can be addressed. Asciano believes that this is an issue that could explicitly be addressed in the regulatory compliance audit.

6.3 - Access Charges for New or Additional Coal Carrying Train Services that do not require an Expansion - Asciano seeks clarification in relation to section 6.3.1 (c), where if the “Minimum Revenue Contribution” is the same or less than the existing reference tariff for a train service, the Minimum Revenue Contribution is calculated as the AT1 input for the relevant reference tariff plus other incremental costs of providing access excluding mine-specific spur line costs.

On the basis that section 6.3 deals with access charges for train services that do not require an expansion, Asciano is not clear what other incremental costs would be incurred. The definitions in the access undertaking imply that any incremental costs should be treated as expansion costs and hence provisions outlined in section 6.4 of the 2014 DAU should be applied. Asciano is seeking clarity on what other incremental costs are expected to be incurred under the scenario in section 6.3.

6.4 - Access Charges for Coal Carrying Train Services that Require an Expansion - Section 6.4.3 (b) states that every expansion tariff must have a separate relevant Allowable Revenue and GTK forecast based on 100% contracted volumes.

This implies that the expansion tariffs will be based on 100% of contracted volumes rather than a GTK forecast similar to that applied to existing reference tariffs as annually approved by the QCA. The application of 100% contracted volumes is not an issue if the contracted volumes are expected to be achieved, however if the contracted volumes are not expected to be achieved, applying 100% of the contracted volumes on expansion tariffs would increase an access holder's take or pay exposure. Asciano seeks clarification as to why the forecast volumes applied to existing tariffs and expansion tariffs are different.

Section 6.4.3 (e) outlines the method by which Aurizon Network may socialise new expansion costs into existing expansion tariffs. The general principle is that if a tariff decrease occurs when the highest expansion tariff and the expansion costs of the new expansion were socialised, the highest expansion tariff will be socialised with the expansion costs of the new expansion. This assessment is repeated for the next highest expansion tariff and so on until there is no further tariff decrease.

Asciano supports the approach in section 6.4.3 (e) over Aurizon Network's approach, although, Asciano is concerned that this method may result in existing access holders being subject to existing expansion tariffs to pay for new expansion costs that they may not benefit from. Asciano believes any socialisation of expansion costs to existing access holders needs to be substantiated prior to it being socialised. There needs to be an objective assessment as to whether existing access holders will benefit from the new expansion works and if they do benefit then a fair allocation of these expansion costs should be determined prior to the socialisation.

6.7 – Pricing Objectives - Section 6.7 allows Aurizon Network to establish different access charges for non-coal carrying train services. Where capacity is insufficient to satisfy the access needs of all current and likely access seekers Aurizon Network can seek the Maximum Access Charge from access seekers.

Asciano remains concerned that non-coal carrying train services could be disadvantaged as these services could potentially be subject to access charges set at the discretion of Aurizon Network. It is also highly likely that an access seeker with non-coal carrying train service will not be able to meet the Maximum Access Charge when compared to a coal carrying service. Asciano believes that higher prices (such as the Maximum Access Charge) would result in substantial reductions in non-coal carrying train services. Asciano believes that non-coal services access pricing should cover their marginal cost and make some contribution to fixed cost, thus reducing the fixed cost to be carried by the coal services.

Given that non-coal services using the Aurizon Network have origins and destinations on the adjoining Queensland Rail network Asciano believes that it is appropriate that any Aurizon Network non-coal access tariff broadly reflects the access tariffs these services are paying on the adjoining

network if these charges reflect at least the marginal cost of non-coal carrying train services operation on the Aurizon Network.

Comment on Access Undertaking Part 7: Available Capacity Allocation and Management

Asciano strongly supports the Draft Decision's recommended changes to Part 7 of the 2014 DAU. In particular Asciano strongly supports the Draft Decision's position to reinstate the 2010 Access Undertaking provisions relating to the queuing mechanisms, priority treatment for renewal access applications, relinquishment provisions and resumption provisions. To ensure transparency and non-discriminatory treatment amongst all access seekers these matters are best dealt with in the access undertaking, rather than access agreements.

Comments on specific sections are outlined below.

7.4 – Dealing with Access Rights - The Draft Decision in section 7.4.2(h) (ii) has reinstated the provisions that state where a transfer fee is zero if the transfer period is less than two years. Asciano notes that the Draft Decision has amended this provision to take account of all other previous transfers for train services with the same origin and destination. That is, the transfer period for the nominated access rights would be aggregated with the sum of the periods of all previous transfers of access rights with the same origin and destination. Asciano seeks clarification as to whether these apply across access agreements held by the same and different access holders and access undertaking generations. In addition the rationale behind this aggregate approach needs to be clarified by the QCA.

Asciano believes that issues relating to transfers may be further clarified and simplified via the regulatory process. As noted in Asciano's submission in response to Aurizon Network's proposed short term transfer mechanism Asciano believes that there are existing mechanisms in the 2010 Access Undertaking that can be enhanced to facilitate short term transfers.

Comment on Access Undertaking Part 7A: Baseline Capacity

Asciano strongly supports the Draft Decision's approach to the establishment of a baseline capacity process as outlined in Part 7A. As outlined in section 3 above Asciano believes that an understanding of baseline capacity is fundamental to the operation of the network. Asciano seeks that the QCA acts to ensure that the baseline capacity review time frames are met by all participants.

In particular Asciano supports the Draft Decision's recommended changes in:

- section 7A.4.1 which ensures that Aurizon Network has the ability to delivery the capacity that it has sold; and
- section 7A 4.3 which places obligations on Aurizon Network to provide a capacity deficit guarantee to access holders, thus protecting access seekers and access holders from the risk

of a capacity deficit. Any capacity deficit should be a risk for Aurizon Network to manage given they are in the best position to control network capacity allocation, capacity planning and capacity usage.

Comments on specific sections are outlined below.

7A.3 - Supply Chain Co-ordination – In the Aurizon Network proposed access undertaking Aurizon Network sought to establish itself as a supply chain co-ordinator.

Asciano strongly supports the Draft Decision's approach that Aurizon Network participates in supply chain groups as a participant rather than a co-ordinator. Asciano believes it is inappropriate for Aurizon Network to be the co-ordinator of any supply chain group. This will minimise any potential operational or scheduling behaviour that may favour certain access holders or access seekers.

7A.4 – Capacity Assessments – Under section 7A.4.1 Aurizon Network must determine the baseline capacity for each coal system within six months of the approval date of the access undertaking. Asciano believes it is important that the baseline capacity represents the capacity that Aurizon Network has promised to deliver (i.e. Train Service Entitlements which are capacity entitlements already sold to users). Such a capacity baseline would confirm Aurizon Network's ability to deliver the capacity they have already sold and set a baseline on which additional capacity can be added via planned expansions.

The baseline capacity should not include factors that an access holder has no control over such as maintenance possessions, speed restrictions and day of operation losses. As access holders are contracted purely on the basis of their annual tonnage requirements, nominal train payload and even-railings across 360 days of the year the baseline capacity should reflect this arrangement. Asciano believes that in the baseline capacity review outlined in section 7A.4.1 the QCA should take the factors above into account when assessing Aurizon Network's baseline capacity to ensure that access holders are guaranteed that their capacity is available.

Comment on Access Undertaking Part 8: Network Development and Expansions

Asciano supports the Draft Decision's recommended changes to Part 8 of the 2014 DAU. Asciano recognises that the Final Decision's position network development and expansion may be impacted by ongoing consultation on the SUFA process.

In particular Asciano supports:

- the Draft Decision's introduction of a formal expansion stage and gate process, from concept through to delivery of an expansion, which provides more transparency to stakeholders and increased accountability for Aurizon Network;

- the Draft Decision not accepting Aurizon Network's proposal to request information from access seekers including the status of coal reserves, mining tenure and key approvals. Such information is commercially sensitive and not required to develop a demand assessment for a concept level study;
- the Draft Decision not accepting Aurizon Network's proposal of commercial terms and the reinstatement of the need for access conditions that require approval by the QCA;
- the Draft Decision's inclusion of access seekers, train operators and others in the expansion process; and
- the Draft Decision's requirement for Aurizon Network to apply the suite of approved SUFA agreements in the access undertaking.

Asciano remains of the view that the lack of a funding obligation on Aurizon Network disadvantages smaller access seekers (as these smaller access seekers require smaller access rights which may not meet initial demand requirements for an expansion project to commence). Thus projects for smaller access seekers are likely to be delayed until other access seekers seek additional access rights meeting the demand requirements for an expansion, and triggering the ability to fund the expansion project. Asciano believes that this issue should be addressed but recognises that addressing the issue by imposing funding obligations on Aurizon Network is problematic as this requires amendment to the QCA Act.

8.9.4 – Funding a Shortfall Expansion – Section 8.9.4 (b) of the Draft Decision states that nothing in clause 8.9 obliges Aurizon Network to do or not to do anything that would cause or contribute to Aurizon Network failing to comply with the access undertaking, any legal obligation or any agreement. The Draft Decision seeks stakeholder advice as to whether the section 8.9.4 (b) can be deleted. Asciano has no major concerns with this section 8.9.4 (b) being deleted.

Comment on Access Undertaking Part 9: Connecting Private Infrastructure

Asciano supports the Draft Decision's recommended changes to Part 9 of the 2014 DAU. The recommended changes provide private infrastructure owners seeking a connection greater transparency and certainty surrounding the process for connecting private infrastructure. Comments on specific sections are outlined below.

9.1 – Connecting Infrastructure – The Draft Decision section 9.1 (b) requires Aurizon Network to assess the connection proposal within two months. The term "two months" is highlighted in the drafting, potentially indicating some uncertainty with the time frame. Asciano believes that two months is a reasonable time frame within which to assess a connection proposal.

The Draft Decision section 9.1 (b) requires Aurizon Network to assess a connection proposal by various criteria including:

- the technical specifications required by Aurizon Network for a connection; and

- standards appropriate to the nature of the traffic and current service standards of the adjoining rail infrastructure.

Asciano recognises that Aurizon Network has an obligation to act reasonably in this process, but Asciano remains concerned that these factors may be subjectively determined by Aurizon Network. Asciano believes that if a connection proposal does not meet these criteria as determined by Aurizon Network then the connection proponent should have the right to work with Aurizon Network to address these concerns prior to a re-assessment of the connection proposal.

The Draft Decision section 9.1 (d) requires Aurizon Network to notify the private infrastructure owner and the QCA of their decision as to whether they can proceed with the connection proposal and the timeframes related to the connection proposal. Asciano is concerned that this section should clarify the steps which need to be undertaken in an instance where the timeframes provided by Aurizon Network are considered unreasonable.

Comment on Access Undertaking Part 10: Reporting

Asciano supports the Draft Decision's recommended changes to Part 10 of the 2014 DAU. The recommended changes provide increased transparency to stakeholders. Comments on specific sections are outlined below.

10.3 – Information requested by the QCA – The Draft Decision in section 10.3.1 (b) requires Aurizon Network to provide the QCA with any finalised non-standard agreement, along with an explanation of the substantial differences between the non-standard agreement and the standard access agreement. Asciano believes that this section should address the issue of what consequences will result if following provision of this non-standard agreement Aurizon Network is in breach of the obligations in clause 2.2 (g). For example, will the parties to the non-standard access agreement be obliged to re-negotiate terms and conditions of the non-standard access agreement so that it resembles the standard access agreement or will Aurizon Network be required to offer the same non-standard terms and conditions to other parties.

Comment on Access Undertaking Part 11: Dispute Resolution and Decision Making

Asciano supports the Draft Decision's recommended changes to Part 11 of the 2014 DAU. In particular Asciano supports the Draft Decision's broadening of the dispute resolution process to ensure that the process applies to all access undertaking obligations, that the process is available to all parties and that the process can be progressed by the QCA when parties cannot agree on how to progress a dispute. Comments on specific sections are outlined below.

11.1 – Dispute Resolution – The Draft Decision section 11.1.1 requires that a dispute which relates to an access agreement must be resolved in accordance with that access agreement, not the access undertaking. Asciano believes that this is potentially too limiting and if the dispute relates to an access agreement in the form of the SAA and / or the STOD then it should have the option to

be addressed as a dispute under the access undertaking given that the SAA and STOD are instruments under the access undertaking.

Asciano supports the position in section 11.1.3; however Asciano considers that the 4 month period referred to in section 11.1.3 (d) (ii) may be excessive. Asciano considers that if the mediation process has failed before this four month period has been reached then a party should be able to progress to the next stage.

Comment on Access Undertaking Part 12: Definitions and Interpretation

Asciano supports the Draft Decision's recommended changes to Part 12 of the 2014 DAU.

In particular Asciano agrees with the Draft Decision's recommended changes:

- to the terms Access Holder and Access Seeker so that these terms do not specifically exclude a Train Operator;
- to reinstate clear definitions of Below Rail Transit Time; and
- to remove the term Commercial Terms and replace this concept with the concept of Access Conditions similar to that of the 2010 Access Undertaking.

Aurizon Network Cause - Asciano's major concern with Part 12 of the Draft Decision access undertaking is that it has removed force majeure events affecting Aurizon Network from the definition of Aurizon Network Cause. Asciano believes this change to the definition of Aurizon Network Cause has a consequential impact on an access holder's take or pay liability. Under Schedule F section 3.3 of the access undertaking an access holders' take or pay liability is adjusted downwards for any train services, net tonnes or net tonne kilometres not operated due to Aurizon Network Cause. With the removal of force majeure events from Aurizon Network Cause it would lead to access holders being subject to a take or pay liability for services not operated due to force majeure events. This approach is inconsistent with the current adjustment method outlined in both the 2008 and 2010 Access Undertakings. Asciano believes that as force majeure events are classified as events beyond the reasonable control of the affected party it would be unfair to have an access holder subject to take or pay for services they could not operate due to an unforeseen or unavoidable event. Asciano strongly believes access holders should not be subject to take or pay for services not operated due to force majeure events. Asciano seeks that force majeure events be reinstated into the definition of Aurizon Network Cause.

Urgent Possession – The Draft Decision seeks stakeholder advice as to whether the term Urgent Possession or Unplanned Possession is preferred. Asciano supports the use of Unplanned Possession.

Comment on Access Undertaking Schedules

Asciano generally supports the Draft Decision's recommended changes to the schedules of the 2014 DAU but seeks that comments that were put forward in the Asciano submissions of October 2013 and October 2014 be taken into account in the Final Decision.

Comments on specific schedules are outlined below.

Schedule A – Preliminary Additional and Capacity Information – As outlined in its October 2014 submission Asciano remains concerned about the non-provision of maps and diagrams relating to Schedule A section 1 h) relating to track segments and mainline paths and the exact intent of the concept of track segments and the concept of mainline paths.

Schedule B – Access Application Information Requirements – As outlined in its October 2013 and October 2014 submissions Asciano remains concerned that the additional information required by Aurizon Network is excessive and unnecessary.

Schedule C – Operating and other Plan Requirements - As outlined in its October 2014 submissions Asciano remains concerned that profiling and veneering are required in a train operators plan as these functions are typically controlled by miners at the mine load out.

Schedule D - Ultimate Holding Company Support Deed - Asciano supports the Draft Decision's recommended changes to Schedule D (Ultimate Holding Company Support Deed) which strengthen Aurizon Holding's obligations to ensure Aurizon Holdings do not take any action that would cause Aurizon Network to be in breach of its obligations in the Access Undertaking and any replacement or amendment of the undertaking

Schedule E – Regulatory Asset Base - Asciano supports the Draft Decision's recommended changes to Schedule E (Regulatory Asset Base) which broadly address most of Asciano's concerns as outlined in previous submissions.

Schedule F – Reference Tariff – Asciano broadly supports the Draft Decision's recommended changes to Schedule F (Reference Tariff). In particular, Asciano welcomes the Draft Decision's positions to

- remove the capacity diesel multiplier. Asciano believes that the methodology and timing of any tariff adjustments made for the removal of the capacity diesel multiplier should be consistent with the methodology and timing of broader tariff adjustments arising from the Final Decision; and
- reject Aurizon Network's proposed rebalancing of its tariff arrangements. (As noted above Asciano supports the Draft Decision proposal to review Aurizon Network's pricing structure as part of the next access undertaking process).

Asciano is seeking clarification as to the derivation of the Nominal Payload as specified in Schedule F, 7.2 (e), 8.2 (d), 9.2 (c), 10.2 (c), 11.2 (c), and 12.2 (b). The Nominal Payload is a major input into the calculation of access tariffs, and given Aurizon Network is related to an above rail operator Asciano believes that the derivation of above rail inputs into the access pricing calculation should be transparent.

Schedule G Network Management Principles – Asciano broadly supports the Draft Decision's position to reject the proposed Schedule G. The Draft Decision's recommended changes seek to provide increased transparency and increased availability of capacity. Asciano believes the introduction of a more defined Strategic Train Plan, which Aurizon Network is now obligated to provide to the QCA, access holders and access seekers is a positive step towards ensuring Aurizon Network has the ability to meet its obligations in relation to the provision of train service entitlements.

The Draft Decision Schedule G section 3.1(f) (ii) places obligations on Aurizon Network to provide the Master Train Plan for each coal system as a complete and transparent document on its website on a monthly basis. Asciano supports this public posting of the information, but believes that the process should be monitored in its initial stages to ensure that the process does not breach any confidentiality requirements or unfairly impact any access holder or access seeker.

Asciano believes the obligation to publicly post the Master Train Plan should also be extended to branch lines as this will further identify any potential capacity deficiency in the supply chain.

If the obligation to publicly post the Master Train Plan is extended to branch lines this will assist access holders in planning and decision-making ahead of the finalisation of the Intermediate Train Plan. (The Intermediate Train Plan is generally finalised on the Thursday prior to the commencement of the next weekly period (i.e. the next Monday) which provides little time for access holders to make alternative plans around disruptions).

Asciano notes that in Schedule G section 7.4 c) iv) the term "twenty four hours" is highlighted in the drafting, potentially indicating some uncertainty with the time frame. Asciano believes that twenty four hours is a reasonable maximum time frame from which to depart from the traffic management decision making matrix in the circumstances outlined.

Schedule I – Confidentiality Agreement - Asciano has the following concerns with the confidentiality agreement:

- an exception to the confidentiality provision applies in section 4 (b) (vi) where disclosure is necessary for the effective response to an emergency or natural disaster or for clearing an incident or emergency that is preventing the operation of train services. This is a very unusual exception for a confidentiality agreement. Asciano is not certain of the reason why the information would ever need to be disclosed in such circumstances and seeks that further clarification be provided, or alternatively that the exception be deleted;
- Asciano considers that the counterparty's requirement to consult with Aurizon Network pursuant to section 4 (d) should be a mutual obligation;
- Asciano considers that section 4 (f) has the potential to operate unfairly to an access seeker. This clause should be restricted so that it only applies where the information is genuinely required in order to respond to an Access Application or negotiate an Access Agreement. It

should also permit the matter to be referred to the QCA if the parties are not able to agree. Asciano considers that section 4 (f) (ii) also goes too far in favour of Aurizon Network, and that if consent is not provided in the 20 Business Day period, then consent should be deemed to be rejected;

- Asciano has several concerns with section 8 (c). Firstly, it will be very difficult for a counterparty to establish that a Related Operator is in possession of its confidential information. Secondly, Asciano seeks clarification as to how the amount of \$10,000 has been calculated as a genuine pre-estimate of the loss that the counterparty would suffer as a result. Asciano considers that it is very unusual to include a liquidated damages provision in a confidentiality agreement and seeks further clarification as to the justification for this inclusion; and
- Asciano notes that the confidentiality agreement will terminate on execution of an agreement containing the terms of the transaction (such as an access agreement). Asciano therefore believes that the definition of 'Confidential Information' set out in the SAA and the STOD should expressly refer to information provided by a party in connection with the access application or negotiation of the relevant agreement.

Schedule J – Coal Loss Mitigation Provisions – Asciano notes that the Draft Decision has recommended that Coal Loss Mitigation Provisions be included as a schedule (Schedule J) to the 2014 DAU (as opposed to Aurizon Network's proposal to include it as part of the connection agreement). Coal Loss Mitigation Provisions place responsibilities and obligations on private infrastructure owners to take various measures when handling and loading of coal in order to prevent coal loss. Asciano believes that there are scenarios where the private infrastructure owner does not have direct control and responsibility of the loading of the trains (e.g. the load out is managed by a third party). This will necessitate additional contractual obligations between the private infrastructure owner and the load out operator to ensure risks are carried by the party which has control over coal lost mitigation measures.

In addition these Coal Loss Mitigation Provisions place additional administrative requirements on private infrastructure owners, including additional reporting requirements to Aurizon Network and more scientific monitoring and testing of coal properties and coal dust impacts that can be costly and time consuming for private infrastructure owners.

This added contracting complexity and the additional costs should be considered in the Final Decision.

Comments on Draft Decision - Access Agreement and Train Operations Deed

Asciano is supportive of the Draft Decision's approach to move to a simpler set of access agreements, as these agreements promote:

- a more efficient and effective agreement regime (including more efficient administration and negotiation of the agreements);
- the potential for above-rail competition by facilitating the ability of access holders to use one or more train operators for haulage and to vary these allocations when they choose; and
- a more flexible use of access rights.

All of these factors will contribute to a more efficient use of the network and a more efficient coal supply chain.

Asciano is particular supportive of the Draft Decision's approach and decision on the following matters:

- the simplified suite of agreements proposed by the Draft Decision covers all contracting scenarios currently available under the 2010 Access Undertaking;
- the simplified suite of agreements proposed by the Draft Decision continues to provide for both end users and train operators being able to hold access rights;
- the wording in the suite of agreements seeks to reinstate matters previously moved into the agreements back into the access undertaking. These matters include provisions relating to train operations and capacity management, which Asciano believes should be outlined in the undertaking and applied consistently across all access holders to minimise potential for discriminatory behaviour;
- the approach in the suite of agreements which ensures terms and provisions relating to matters such as transfers, relinquishments, reduction factors, access charges etc. are automatically incorporated into existing access agreements as they change in the access undertaking; and
- the wording in the suite of agreements which has now removed Aurizon Network's right to reduce the nominated monthly train services if the maximum payload is exceeded as this does not provide incentives for efficient behaviour (this right was previously contained in sections 8, 9 and 10 of the End User Access Agreement proposed by Aurizon Network). If an operator has the ability to increase train load and reduce train numbers then this should be seen as increasing efficiency. The operator should not be penalised for being efficient and have monthly train services reduced and be potentially subject to relinquishments fees.

While Asciano supports the Draft Decision's position on the suite of contracts, there are concerns which were previously raised by Asciano in its October 2013 and October 2014 submissions in relation to access contracting which have not been fully addressed. In particular these concerns

relate to the concepts of supply chain rights and train service types. The Asciano October 2013 submission contained numerous comments on these matters. Given these issues have not been redrafted or addressed in the Draft Decision Asciano is seeking that the comments relating to these matters be addressed in the Final Decision.

In addition to addressing the issues of supply chain rights and train service types Asciano is also seeking that the QCA consider the issues outlined in Attachment 2 of this submission in its Final Decision. Attachment 2 of this submission addresses issues of detail in the drafting of the SAA and the STOD.

5. Conclusion

Asciano welcomes the opportunity to make this submission to the QCA in response to the QCA's January 2015 Draft Decision on the pricing and policy components of the 2014 DAU.

Overall Asciano strongly supports the broad approach and recommendations of the Draft Decision. Asciano believes that in the absence of compelling new information being provided by respondents to this regulatory process the recommendations contained in the Draft Decision should be reflected in the QCA's Final Decision on the Aurizon Network 2014 DAU.

In particular Asciano supports the Draft Decision's:

- rejection of the 2014 DAU's moves towards lighter regulation and the reinstatement and strengthening of safeguards against the potential for discriminatory behaviour and inappropriate use of market power;
- approach to increased transparency and availability of information; and
- approach to capacity management and capacity allocation, including the requirement that a baseline capacity review be undertaken.

In this submission Asciano raises several detailed issues with specific sections of the Draft decision and is seeking that these be addressed in the Final Decision. In particular Asciano believes that the efficiency of the Central Queensland coal network could be further improved by the mandated introduction of an incentive mechanism.

Overall Asciano strongly supports the QCA Draft Decision.

Attachment 1- List of Recent Asciano Submissions to QCA Regulatory Processes Related to Aurizon Network

Since October 2014 Asciano has made several submissions to QCA consultation processes relating to Aurizon Network and both the 2010 Access Undertaking and the current 2014 DAU regulatory process. 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 final determination on the 2014 DAU. These submissions are outlined below:

- 7 November 2014 – Asciano Response to Aurizon Network Submission on 2013-14 Revenue Adjustment Amount and Increments
- 12 December 2014 – Asciano Submission to the QCA in relation to the QCA's Draft Decision on the MAR Component of the Aurizon Network 2014 DAU
- 30 January 2015 -- Asciano Submission to the QCA in relation to the QCA's Draft Decision on the Aurizon network 2013 SUFA DAAU
- 30 January 2015 -- Asciano Submission to the QCA in relation to an Aurizon Network Discussion paper on a Potential Short Term Transfer Mechanism
- 6 February 2015 – Asciano Submission to the QCA in relation to an Aurizon Network Proposed Tariff for Train Services to Wiggins Island Coal Export Terminal
- 20 March 2015 – Asciano Response to QCA Draft Decision on Aurizon Network Submission on 2013-14 Revenue Adjustment Amount and Increments
- 17 April 2015 - Asciano Submission to the QCA in relation to an Aurizon Network DAAU to Extend the Term of the 2010 Access Undertaking

Note that Asciano's previous submission's to the QCA on the 2013 DAU and the 2014 DAU provided extensive listings of Asciano submissions to the QCA since 2010. To the extent that these Asciano submissions remain relevant to the QCA's deliberations in relation to its Final Decision on the 2014 DAU they should also be taken into account by the QCA.

Attachment 2 – Asciano's Comments Draft Decision Access Agreement and Train Operations Deed

The tables in Attachment 2 below outline Asciano's comments on the SAA and the STOD. The SAA and STOD used are the SAA and STOD which were attached to the Draft Decision.

Note that some of the issues raised in the comments on the SAA also apply to the STOD. Asciano is seeking that where relevant the QCA treat Asciano's comments on the SAA as also applying to the STOD.



Table 1: Asciano's Comment on the "Access Agreement – Coal" which is appended to the Draft Decision

Clause Reference	Outline of Clause	Asciano Comment
1.1 Definitions	Access Charge Rates – being the rates set out in Schedule 4	This definition appears to overlap with definition of Access Charges and also the application of the Access Charge Provisions. Asciano considers that this definition may need to be reconsidered once Schedule 4 is finalised.
1.1 Definitions	Access Undertaking – as in force at the time of entering into this Agreement (changed from “as approved from time to time”)	<p>Asciano notes that the Access Agreement now allows for the agreement to be updated to reflect changes in the Access Undertaking (see for example section 3 of the Access Agreement).</p> <p>Asciano sees some potential confusion in having the Access Undertaking being defined as the undertaking in force at the time of the agreement being entered and yet the agreement having explicit clauses that contemplate the undertaking being amended and these amendments being reflected in the agreement.</p> <p>This should be clarified.</p>
1.1 Definitions	Adjustment Charge	<p>Asciano notes that the term Adjustment Charge is not used in the proposed Access Agreement (other than in Definitions which refers it back to “as defined in the Access Undertaking approved by QCA from time to time”).</p> <p>Asciano recognises that the term Adjustment Charge may be used in the Access Agreement following a change in the access undertaking which is reflected in the agreement, but in this case the definition could also be included at this time.</p> <p>Asciano believes the term should be deleted if it is not</p>

Clause Reference	Outline of Clause	Asciano Comment
		used.
1.1 Definitions	Change in Access Undertaking – paragraph (b) of this definition includes any change in interpretation or application of the undertaking due to a decision of a court or other authority	<p>Asciano queries whether a change in interpretation or application is actually a change in the access undertaking and therefore proposes that paragraph (b) of this definition be deleted.</p> <p>A Change in Access Undertaking is deemed to be a Material Change (which also includes a Change in Law or a Change in Tax) which permits Aurizon Network to attempt to vary the agreement.</p> <p>Paragraph (b) of this definition has the potential to be applied unfairly, and may have unintended consequences for the access holder and access provider.</p>
1.1 Definitions	Compliant Nomination Requirements – discusses the aggregate of Nominated Monthly Operational Rights in the Train Operations Deed and “in all other Train Operations Deeds”	Asciano considers this should be clarified to encompass only Train Operations Deeds that relate to the Access Agreement in question (rather than “all other Train Operations Deeds” which may include all other Train Operations Deed executed by that Operator in relation to all Access Agreement’s under which they have been nominated).
1.1 Definitions	Consequential Loss – includes under paragraph (b) any loss of whatever nature concerning supply of product from a mine to any third party or to make product available to transport.	Asciano is concerned with the breadth of this paragraph. Given that loss of profits, loss of production and loss of business opportunities are already included in this definition, Asciano considers that this paragraph (b) is not required.
1.1 Definitions	Daily Train Plan	Daily Train Plan is defined within the Access Agreement and is also defined in the Access Undertaking (Schedule G 5.1). While these definitions are broadly congruent Asciano is concerned that the having different definitions for the same term within the access framework may result

Clause Reference	Outline of Clause	Asciano Comment
		<p>in mis-alignment or mis-understanding. Asciano believes that the definitions should be aligned.</p>
1.1 Definitions	Sectional Running Times	<p>Asciano notes that the definition of Sectional Running Times includes the capitalised term “Planned Dwell Times” even though this term is not defined. This term was defined in an earlier draft.</p> <p>Asciano believes that this definition could be reinstated.</p>
1.1 Definitions	Through-Running Train Service Type	<p>Asciano notes that the term Through-Running Train Service Type is not used in the proposed Access Agreement (other than in Definitions).</p> <p>Asciano recognises that the term Through-Running Train Service Type may be used in the Access Agreement following a change in the access undertaking which is reflected in the agreement, but in this case the definition could also be included at this time.</p> <p>Asciano believes the term should be deleted if it is not used.</p>
1.4 Material published on website	This clause confirms that material published on the Website includes secure, password-protected information.	<p>This should only be the case to the extent that parties have passwords to access the material.</p>
3.2 Changes in Access Undertaking	This section provides for changes in the Access Undertaking to be notified to Access Holders and incorporated into the Access Agreement.	<p>This approach appears to conflict with the definition of the Access Undertaking as being the Access Undertaking approved at the date of entering the Access Undertaking.</p> <p>This clause provides for some Access Undertaking changes to be accepted (but not necessarily all Access Undertaking changes will be accepted). This may potentially result in inconsistencies if some clauses are</p>

Clause Reference	Outline of Clause	Asciano Comment
		<p>accepted but not others. This issue ultimately depends on the drafting of the Access Undertaking changes.</p> <p>This clause provides for some for parties to negotiate the acceptance of access undertaking changes. This may have the potential to lead to different outcomes for access holders; this in turn raises concerns in relation to the potential for discrimination. Asciano believes that the acceptance of any changed undertaking conditions should explicitly be non-discriminatory and to the extent that different clauses are negotiated the most favourable clauses should be available to all access seekers.</p> <p>Asciano sees some potential confusion in having the Access Undertaking being defined as the undertaking in force at the time of the agreement being entered and yet the agreement having explicit clauses that contemplate the undertaking being amended and these amendments being reflected in the agreement. This should be clarified.</p>
<p>4.3 Exercise of Access Rights and Operator nomination</p>	<p>4.3(b) (ii) (A) requires the Access Holder to submit with a notice to nominate an Operator, an executed Train Operations Deed.</p>	<p>Asciano queries the practicability of the timing in the clause 4.3. In particular, Asciano is concerned that the time frames in this clause will create significant lead times, given that Aurizon Network must be given at least 20 business days notice and that the Train Operations Deed would need to be executed in advance of Aurizon Network approving the nomination and that the above rail agreements would need to be executed before this Train Operations Deed.</p>
<p>4.4 Access Interface Deed</p>	<p>Requires Access Holder to execute an access interface deed (AID) with Aurizon Network</p>	<p>Asciano questions the need for a separate AID; in particular Asciano considers that any detail that may need to be captured in the AID could be addressed in this access agreement.</p>

Clause Reference	Outline of Clause	Asciano Comment
4.8 Operation of Ad Hoc Train Service	Allows Access Holder to nominate an Operator to run an ad hoc train service	<p>This clause requires the Operator to have an existing Train Operations Agreement. Asciano queries how this will operate in practice, in particular for haulage requirements that arise on short notice (for example spot hauls) where the access holder wishes to utilise a different operator.</p> <p>As currently worded this clause may limit the choice of operator, (or alternatively operator's may need to have Train Operations Deeds pre-agreed with all potential customers even if there are no access rights attached)</p> <p>Asciano seeks clarification on this process and whether the intent of the process is, for example, for operators to have Train Operations Deeds pre-agreed with all potential customers.</p> <p>In addition Asciano queries whether the reference to Train Operations Agreement should be a reference to the Train Operations Deed.</p>
4.8(a)(iv) Access Charges for Ad Hoc Train Services	Relates to Access Charges payable for an Ad Hoc Train from the time it is scheduled into the Daily Train plan	<p>Asciano notes that this clause appears to allow Access Charges to be charged for ad hoc trains which are scheduled in the Daily train Plan. Asciano believes that Access Charges should only be charged for an ad hoc train which actually operates.</p> <p>In addition Asciano considers that the word "schedules" in the first line of this paragraph should be amended to "scheduled".</p>
4.9(e) Supply Chain Rights	Allows Aurizon Network to request details of Supply Chain Rights held by Access Holder [x] number of times per year.	<p>Asciano also believes that such a request should not be on a mandatory or scheduled basis but should only be on an exception basis when Aurizon Network has reasonable concerns that Supply Chain Rights are either not held by the access holder during the term of their access</p>

Clause Reference	Outline of Clause	Asciano Comment
		agreement or are held by the access holder but are inadequate for the term of their access agreement.
5.1(b) Charges	Discusses treatment of ad hoc services when cancelled.	<p>While on the surface this clause appears to be related to take or pay liability for TSE services, when read in conjunction with current drafting of 4.8(a) (iv) it could imply that an ad hoc service will be subject to Access Charges if cancelled after being scheduled in the Daily Train Plan.</p> <p>Asciano would like to clarify the intention regarding this clause and whether ad hoc services included in the Daily Train Plan and subsequently cancelled will be subject to access charges and taken into account in take or pay calculations.</p>
6.2(a)(i)	Requirement to pay Security – where Access Holder defaults on payments due	This requirement to pay security due to a default on payment should not be required where payments were not made due to the payments being subject to a bona fide dispute.
6.6	Recourse to Security	Aurizon Network should be required to give 5 Business Days notice of its intention to call upon the security, to enable the access holder the opportunity to rectify the default.
6.8(a)	Section 6 generally puts specific timeframes on the Access Holder for providing security, however the with regards to the return of Security, the clause only requires Network to do so “promptly”.	A “prompt” timeframe is non-specific and open to interpretation. Asciano believes timeframe obligations regarding Security (both the provision and return of security) should be symmetrical.
9 and 10	The Relinquishment Provisions and Transfer Provisions under the Access Undertaking will apply “unless otherwise specified in this Agreement”	Asciano understands that the intent is for these clauses to be applied uniformly across all access agreements, consequently Asciano queries the need for the wording “unless otherwise specified in this Agreement” as this

Clause Reference	Outline of Clause	Asciano Comment
		<p>wording appears to contemplate the potential for these clauses to be applied differentially.</p> <p>Asciano seeks that this be clarified and if there is no reason to keep the wording Asciano seeks that the wording be deleted.</p>
11	<p>Under this clause (11.2) Aurizon Network is not to unreasonably delay negotiating and executing an access agreement where executing such an agreement would result in a lessening of the Relinquishment Fee or Transfer Fee.</p>	<p>Asciano considers that this requirement should be strengthened to require Aurizon Network to actively use reasonable endeavours to identify opportunities where negotiating and executing an access agreement would result in a lessening of the Relinquishment Fee or Transfer Fee.</p>
12.3	<p>No compensation or liability</p>	<p>Asciano queries the justification for this clause. Asciano believes that it could be removed.</p>
16	<p>Insurance by Access Holder</p>	<p>Asciano has the following concerns with these provisions:</p> <ul style="list-style-type: none"> • Clause 16.1 requires the insurance to be taken out with a corporation licensed to conduct insurance business in Australia or otherwise reasonably acceptable to Aurizon Network. This clause should be amended to confirm that Aurizon Network's consent is not required where the use of unauthorised insurers is permitted by the Insurance Act. • Clause 16.3 requires the access holder to provide evidence of the policies. As these policies can be commercial in confidence, Asciano considers that this should be restricted to the provision of a certificate of currency; • The reference to clause 16.5 to 'any contractor' is too broad and should be removed or further clarified; and

Clause Reference	Outline of Clause	Asciano Comment
		<ul style="list-style-type: none"> • The requirement in clause 16.5 (b) that any changes to the policy require Aurizon Network's written consent should be restricted to material changes; and • Asciano queries the relevance of clause 16.9 as the access holder is not required to effect any covers on infrastructure.
17	Indemnities	Asciano queries the need to refer to real property in clause 17.3. Asciano believes that it could be removed.
18	Limitations and Exclusions of Liability	<p>Asciano has the following concerns with these provisions:</p> <ul style="list-style-type: none"> • Asciano believes clause 18.4(a) should contain a time period in which the relevant train service is to be rescheduled • The term 'Train Services Agreement' is not defined • Asciano queries whether the two limbs of clause 18.4 (paragraphs (a) and (b)) and the limbs of clause 18.5 (paragraphs (a), (b) and (c)) should be separated by an 'or' rather than an 'and' • 18.4(e) (ii) – refers to the situation where the failure to make infrastructure available is "of a magnitude which is beyond the scope of that [agreed] performance and adjustment regime". Asciano considers that this wording is vague and subjective and should be further clarified. <p>Asciano considers that clause 18.7 unfairly shifts the risk position in this agreement on to the access holder. Asciano believes that that the entire clause should be deleted.</p>
19.3	Parties to assist loss adjuster	Clause 19.3(b) should be limited to expressly exclude legally privileged material.

Clause Reference	Outline of Clause	Asciano Comment
20.1	Adjustment for a Material Change	<p>Clause 20.1(a) states that Aurizon Network <i>may</i> notify the Access Holder of a change in the Net Financial Position as a result of a Material Change and then outline process for removing the Net Financial Effect suffered by Aurizon Network.</p> <p>Given the wording “may”, Aurizon Network is under no obligation to advise the access holder of a Net Financial Effect which actually benefits the Access Holder (and results in a reduction in amounts payable under the access agreement). Asciano considers that Aurizon Network should have a positive requirement (i.e. “must”) to report a Net Financial Effect which has a beneficial impact on the access holder.</p>
23	Suspension	<p>This clause potentially allows Aurizon Network to suspend services with no notice of such suspension. While Schedule 6 outlines the Suspension Events, and therefore the Access Holder should be aware of the potential for suspension, unless the suspension relates to a safety issue Asciano would expect at least 2 business days notice of impending suspension. Asciano requests that this time frame be included in the Access Agreement.</p>
30.2(e)	Provision of Notice by email (if agreed by Aurizon Network)	<p>As this access agreement would be executed by Aurizon Network, then it is implied that Aurizon Network has agreed to the terms. It is therefore not clear why this particular form of notice provision needs to be subject to further approval by Aurizon Network.</p>
32	Most favoured nation status	<p>This clause provides the opportunity to raise issues with potential pricing differentiation. Where it is founded that Aurizon Network has provided access charges to another</p>

Clause Reference	Outline of Clause	Asciano Comment
		customer at a rate outside of the pricing differentiation limits outlined in the UT, they are obliged to rectify but the clause provides no avenue for recompense payable to the disadvantaged Access Holder. Asciano requests that this be rectified.
Schedule 2	1.4 Special Operating restrictions and 1.6 Permitted train movement son the Nominated Network	These issues have traditionally been incorporated within the relevant Operating Plan, which allows for ease of updating and review. Asciano believes that they should be shifted from the Access agreement to these operating documents.
Schedule 7 – AID	Inclusion of Access Interface Deed	As per above comment at clause 4.4, Asciano queries the need for this document.

Table 2: Asciano's Comment on the "Train Operations Deed – Coal" which is appended to the Draft Decision

Note that some of the issues raised in the comments on the SAA also apply to the STOD. Asciano is seeking that where relevant the QCA treat Asciano's comments on the SAA as also applying to the STOD.

Clause Reference	Outline of Clause	Asciano Comment
4.2(b) (ii)	Nature & Scope of Operational Rights – This clause creates a requirement that the Operator must only use the Nominated Network for carrying out provisioning, inspection, shunting, storage etc. unless otherwise expressly permitted.	<p>Asciano believes that the intent of this clause is that the operator cannot only use the Nominated Network for carrying out provisioning, inspection, shunting, storage etc. unless otherwise expressly permitted.</p> <p>This should be confirmed and the wording should be changed.</p>
9	Operation of Train Services – The Operator must only operator Train Services if it knows, or should have known, that the Access Holder holds or has the benefit of Supply Chain Rights for those Train Services	<p>It is not clear why this requirement is imposed on the Train Operator.</p> <p>The demonstration of Supply Chain Rights should reside with the access holder within the SAA. As per the comment in Table 1 above in relation to clause 4.9 (e) Asciano also believes that such a request should not be mandatory but should only be on an exception basis when Aurizon Network has reasonable concerns that Supply Chain Rights are not held by the access holder during the term of their access agreement.</p>
10.1 and 10.2	Exercise of Train Control	<p>Asciano considers that the obligations of Aurizon Network with respect to the train control function should be strengthened to reflect the importance of the responsibilities that Aurizon Network has.</p> <p>For example, under the standard operator sub-agreement that ARTC has adopted in the Hunter Valley, New South</p>

Clause Reference	Outline of Clause	Asciano Comment
		<p>Wales, ARTC has the following additional obligations to:</p> <ul style="list-style-type: none"> • safely and efficiently operate the Network so that any permitted use of the Network by the Operator is facilitated promptly and effectively and in accordance with [the agreement]; • have Associated Facilities [including track structures, supports, signalling systems, etc.] in place to enable the Operator to utilise the Train Paths on the terms of [the agreement]; • receive, record and collate information from the Operator and other users of the Network for the purposes of, and to more effectively exercise, the [train control function and to comply with the applicable network management principles]; • maintain and operate the Network Control Centre and a communication system for the purpose of communication with the Operator and other users of the Network, and to facilitate the Operator's access to that communication system; • use its best endeavours to provide the Operator with details, as soon as reasonably practicable of all operating incidents (including an Incident) which has affected or could potentially affect the ability of any Train to retain its Path Usage, or else affect its security or safety or the security and safety of the freight or passengers. <p>Asciano believes that similar obligations should be placed on Aurizon Network.</p>
16.1 and 16.2	Weighbridges and Overload Detectors – provides that Operational Constraints may be imposed against an Operator if load exceeds Maximum Allowable Gross Tonnage and Maximum Desirable Gross Tonnage, which	Standard 71 has previously been the source of the definition for allowable weight limits and the application of relevant operational constraints. Standard 71 applies consistently across all Rail Operators.

Clause Reference	Outline of Clause	Asciano Comment
	<p>are defined as that weight noted in an “Authority to Travel” or “Train Route Acceptance”.</p> <p>Note the terms “Authority to Travel” or “Train Route Acceptance” are also mentioned in Clause 22.2 in relation to overloading.</p>	<p>An “Authority to Travel” or “Train Route Acceptance” is specific to an individual Operator, meaning that different Maximum Allowable and Desirable Gross Tonnages may potentially be applied to different operators.</p> <p>Asciano believes that Maximum Allowable and Desirable Gross Tonnages should be applied consistently and transparently to all Operators. Thus in order to avoid the potential for discrimination these tonnages should be linked to a standard that applies to all Operators rather than an “Authority to Travel” or “Train Route Acceptance”.</p>
16.3 and 16.4	Record Keeping and Verification	<p>These clauses put obligations on parties which may not necessarily be a Party to the Deed (i.e. the party responsible for the weighbridge or overload detector, which is not necessarily either the Rail Operator or Aurizon Network) and which conceivably may not have a contractual relationship with the Parties to the Deed.</p> <p>Asciano believes that these sections should be reviewed with a view to considering whether they should be in a separate agreement with the party responsible for the weighbridge or overload detector.</p>
17.1	Performance Levels (applicable to the Rail Operator) are to be set out in the Access Agreement	Asciano queries if this is an error, given that the process for setting Performance Levels is set out in Schedule 6 of the STOD.
18.2	Aurizon Network is required to carry out Maintenance Work such that the Infrastructure is consistent with the Rolling stock Interface Standards and that the Operator can operate Train Services in accordance with their Scheduled Times.	Similar to the comments on clause 10 above, Asciano considers that the obligations of Aurizon Network with respect to maintenance activities should be strengthened to reflect the importance of the responsibilities that Aurizon Network has. The current focus is on scheduled times and interface standards, rather than the safe use of the

Clause Reference	Outline of Clause	Asciano Comment
		network.
19.4	Management of Incident Response – if an incident occurs, the Operator must make arrangements to effect the Recovery and Retrieval within three hours after the Incident occurred.	This should be clarified that the incident site should not be disturbed unless both Aurizon Network and the Operator have had the opportunity to complete appropriate investigations of the incident site.
20.2(c)	Requirement to advise Aurizon Network of position titles and names of all staff engaged to Rail Safety Work	Asciano queries whether this is a practical measure. For privacy reasons, rather than providing names, employee identification numbers should be provided.
Schedule 2	Train Descriptions	<p>The STOD drafting note indicates that the QCA is considering deleting this schedule from the STOD as the schedule in the Access Agreement can be relied upon.</p> <p>Asciano does not oppose such a move given the schedule is essentially identical to the schedule in the Access Agreement.</p>
Schedule 6, clause 2.1	Aurizon Network Below Rail Transit Time thresholds are set as an annual average	Asciano believes that Below Rail Transit Time should be measured and averaged over a shorter time period. Annual averaging does not provide the operator or access holder with the ability to review regular performance levels.
Schedule 7 Clause 3	Environmental Management Standards	<p>The STOD drafting note indicates that the QCA is considering moving the environmental management standards from the STOD to a schedule of the access undertaking.</p> <p>Asciano supports such a move. All operators should be subject to the same environmental management standards. Placing these standards in the access undertaking should help guarantee this outcome.</p>



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