



Submission to the Queensland Competition Authority

Draft Decision on Aurizon Network's 2014 Draft Access Undertaking

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1 Executive Summary

Aurizon Operations (Aurizon) welcomes the opportunity to respond to the Queensland Competition Authority's (QCA) draft decision on Aurizon Network's 2014 draft access undertaking (2014 DAU). The 2014 DAU replaced the 2013 draft access undertaking and reflected the outcomes from the constructive engagement between Aurizon Network and coal producers. Aurizon is supportive of arrangements which seek to reduce the range of matters which require arbitration by the QCA.

As a rail operator within the competitive rail haulage market, Aurizon is striving to transform its operations into a highly productive, flexible and innovative business. Aurizon has made gains in improving the reliability, efficiency and responsiveness of its rail services to better meet the needs and expectations of its customers. It is important to both Aurizon and the supply chain that the access undertaking continues to promote innovation and flexibility to continue these improvements.

Aurizon is supportive of many aspects of the draft decision which improve the clarity and effectiveness of the negotiation process and improve the flexibility in the management of capacity. The issues addressed in the submission are summarised as follows:

1. An access holder should have surety regarding its access agreement

The draft decision proposes changes to the way in which access rights are contracted which increase the uncertainty of the terms and conditions which will prevail over the life of that agreement. Most notably, this includes the conversion of the Train Operations Agreement (TOA) to the form of a Deed and the inclusion of variable terms which are amended by amendment to the access undertaking. There are both administrative and commercially practical reasons to retain the TOA in its current form. Importantly, access holders should have a reasonable degree of confidence as to the fixed terms of contract given the reliance on that contract in executing rail haulage agreements.

2. There is an urgent need for pricing reform for access to the overhead power system

The draft decision includes unsustainably high and non-competitive pricing for access to electric infrastructure in the Blackwater System. In part, these non-competitive rates are attributable to the unnecessary exclusion of volumes associated with electric services operating to the Wiggins Island Coal Export Terminal.

The access charges for the Blackwater AT5 are also higher than those which would be attained if the overhead power system was used to the fullest extent feasible from the current levels of total system throughput. Access Holders who currently utilise the Blackwater overhead power system are paying higher rates which reflect the decisions of other Access Holders to adopt a substitute unregulated service. The current approach to pricing services subject to direct competition is unsustainable and causes significant commercial harm to users of the service. As the rates are inflated, relative to what would be expected if the asset was being utilised to the maximum extent possible, this has an impact on rollingstock investment decisions and is therefore inconsistent with promoting efficient investment and utilisation of infrastructure.

There is an urgent need to address pricing reform of regulated services which are subject to competition in order to substantially reduce regulatory risks of investment in electric locomotives. As the life of an electric locomotive exceeds the average duration of a rail haulage contract, a rail operator has no confidence as to what the market share or overhead power system utilisation will be in the future to support that investment. Aurizon believes that in order for the AT5 rate to represent an efficient and non-distortionary price for investment and competition AT5 must be determined on the basis of the maximum utilisation rate with respect to the system forecast.

Failure to expediently pursue these reforms will have implications for rollingstock investment decisions with flow on implications to overhead power system utilisation and tariffs in the Central Queensland Coal Network (CQCEN).

3. The access undertaking should support rail operator productivity improvements

Aurizon is strongly supportive of an access undertaking which facilitates rail operators and other supply chain participants improving their productivity and operational efficiency. In this regard, supply chain participants would benefit from improved knowledge of capacity modelling to better understand how any operational changes they make would effect that efficiency. This would avoid the need for full disclosure of a rail operator's commercially sensitive operational information.

Importantly, the draft decision places significant financial disincentives to support rail operators pursuing productivity improvements by imposing penalties which substantially exceed the costs to the system of those change and does not reflect the benefits of decongesting the system. Aurizon considers improvement in the utilisation of capacity, and not just paths, should be incentivised.

4. Prices should be reasonably predictable and stable over time and not have unintended consequences

The draft decision includes a substantial shift away from the socialised pricing arrangements which have underpinned significant investment in rail infrastructure. While the QCA has limited this change to expansion pricing it has strongly indicated that this should be universally applied to all access holders. Aurizon considers that socialisation provides substantial benefits to all users of the network and that these benefits have not been considered in the decision regarding expansion prices and its potential further application.

Any future pricing reforms must be subject to robust impact and cost benefit analysis. Importantly, Aurizon considers the fixed pricing regime proposed for expansion users should not be extended to existing users of the services which have entered into complimentary commercial arrangements on the reasonable expectation for the continuation and stability of the current pricing framework.

5. Ringfencing needs to be proportional the problem it is seeking to address

The draft decision proposes a substantial expansion of the governance arrangements which have the potential to increase the regulatory risks to the service provider in its dealings with a related operator. In order to ensure the increased risks do not promote preferential dealing with the third party operators those risks should be limited to decisions or conduct which would be contrary to the objectives of the *Queensland Competition Authority Act 1997* (the QCA Act).

2 Negotiation and Terms of Access; Promoting productivity investment and innovation

The access undertaking should be a principles based document which seeks to identify, prevent and remedy conduct that unfairly differentiates to the detriment of effective and workable competition. It should not be an instrument which curtails commercial flexibility, innovation and the scope of competition in downstream markets. The standardisation of terms of access serves to reduce the ability of rail operators to effectively compete through multi-product service offerings and service differentiation to better align to how different customers value those differentiating factors.

Aurizon considers the draft decision is overly prescriptive and restrictive both in terms of how a negotiation is conducted and the scope of matters which can be subject to negotiation.

However, the QCA's proposed amendments to Part 4 of the DAU2014 are broadly supported by Aurizon. The proposed changes are representative of the interests of all stakeholders, including Aurizon. The potential flexibility that could be achieved through the proposed changes are manifested by better lead times for Access Applications and through the ability to provide supporting evidence to Aurizon Network by clearer definition of what constitutes a material change to the Access Application and what circumstances may give rise to the cessation of an Access Negotiation.

This improved flexibility and balance to the negotiation framework contributes to the ability of Operators to negotiate Access Rights, or at a minimum to negotiate the service design, on behalf of another party, to ensure the optimum operational solution for the Access Seeker.

Aurizon considers that the draft decision includes variations which are unlikely to be in the interests of access seekers. These include:

- The proposed contractual framework being limited to one form of access;
- The conversion of the Train Operations Agreement to a Train Operations Deed;
- The exclusion of the principle of operator capping; and
- The inclusion of terms of access within the access undertaking.
- In this regard, Aurizon notes that Force Majeure has been removed from the definition of 'Aurizon Network Cause' and seeks QCA clarification that any FM related reduction in obligation is captured under the definition of 'Operational Constraint'.

2.1 The access undertaking only allow for one form of access

The submission of Aurizon Holdings to the QCA in October 2014, in response to the Notice to Stakeholders regarding the 2014DAU, indicated a preference to retain the Standard Access Operator Agreement on the basis that:

- There is a substantial market demand from coal customers for operators to hold access rights under the standard operator agreement;
- A simple clear and easily understood contracting structure between above and below rail is critical to realising improvement in the supply chain; and
- The standard access operator agreement forms the practical template for the contracting of non-coal access rights.

The draft decision approaches these points by proposing a one size fits all contracting structure which must be applied but able to be varied. This occurs due to the unnecessary restrictions in section 5.1 of the undertaking which requires:

- (c) *The terms of an Access Agreement must be:*
 - (i) *for coal-carrying services, the Standard Access Agreement; and*
 - (ii) *for non-coal carrying services, an Access Agreement consistent with the Standard Access Agreement amended to reflect the fact that the Access is for non-coal carrying services.*
- (d) *Despite clause 5.1(c), the Access Seeker may agree with Aurizon Network during the Negotiation Process to vary the terms of the Standard Access Agreement, in which case any amendments proposed to those terms must be negotiated by both Aurizon Network and the Access Seeker acting reasonably and in good faith.*

The implication of this provision is that all access agreements must take the form of an Access Holder Access Agreement and a Train Operations Deed. While Aurizon understands the QCA's intentions to reduce the number of standard access agreements it must approve, this should not prevent an Access Seeker being able to negotiate a form of contract which better addresses their commercial needs.

The form of Standard Access Agreement does not provide the flexibility, suitability and workability of the single operator agreement for a range of circumstances including, but not limited to:

- The ability of an operator to bundle access rights within a single access agreement across multiple customers without requiring the written consent of each of those customers every time the operator seeks to vary that agreement;
- The ability for operators to provide value added services relating to access management;
- The ability of operators to manage access rights of all producers in a consistent and balanced manner;
- The ability for operators to contract with the access provider using a simplified single contractual document; and
- The ability for the operator to contract for services where the train consist comprises products from multiple customers.

While it is Aurizon's preference that the QCA accept the service provider's voluntary offer to maintain multiple forms of standard access agreements, the final decision should not restrict an Access Seeker from seeking to negotiate an access agreement which allows a rail operator to be an access holder, consistent with the current established practice¹.

Recommendation

The access undertaking should not restrict an access seeker from negotiating an access agreement which is not in the same form as the Standard Access Agreement.

The access undertaking should include the service provider's voluntary commitment to maintain the two forms of Standard Access Agreement.

¹ Queensland Competition Authority (2013) Letter to QR Network, re. Final Approval of Alternate Standard Access Agreements, 1 August.

2.2 A train operations deed is unsuitable for the negotiation of an access agreement.

The QCA has proposed that the Train Operations Agreement be changed to be in the form of a Deed (TOD). It is not apparent from the draft decision why this is the case, other than there is view that with the removal of the option of access charges being paid by the Operator under the alternative form of access regime, no consideration would be payable by an Operator to Aurizon Network even though the TOD provides for the potential payment of Ancillary Charges to Aurizon Network. This also potentially precludes, or does not consider, that not all access charges would be payable directly by the end user.

It is also not apparent from the draft decision that stakeholders have sought to have the TOA changed to a TOD. Nor has it been demonstrated that the current alternative form of access regime, with the TOA, is not a workable and effective instrument. The additional governance requirements that come with the execution of a Deed, specifically execution pursuant to section 127 of the *Corporations Act 2001 (Cth)*, ignores that time critical changes to agreements, which will be required from time to time, for minor operational variations, can potentially expose customers and Operators to additional risks. Execution of contracts and agreements requiring compliance with section 127 of the *Corporations Act 2001 (Cth)* should be determined by Operators in accordance with internal governance procedures, rather than being mandated by the QCA.

Recommendations

The access undertaking should not preclude the payment of access or ancillary charges between the rail operator and the access provider.

To retain the efficiency and simplification of the contracting access, the Train Operations Deed should remain as a Train Operations Agreement.

2.3 The principle of operator capping should be permissible

The 2014 DAU included the ability for a rail operator to be able to reduce its take or pay liability within a pool of customers. The framework represented a number of favourable aspects to a rail operator and customers, including the promotion of efficiency incentives by allowing the operator to capture the benefit of own over-railing and ad hoc services before the benefits were transferred to the system.

However, Aurizon does acknowledge that fragmentation of access rights across multiple access agreements introduced a layer of complexity which substantially diminished the efficacy of the arrangements.

The QCA also considered that operator capping would not promote competition in the rail haulage market as it created a barrier to entry. The draft decision provided no competition impact assessment, cost benefit analysis or industry modelling to show that those barriers to entry existed or whether they were sufficiently material to warrant rejection of the proposal.

Aurizon does not support the conclusion that operator capping represents a barrier to entry. The benefits of capping are linearly proportional to the scale of operator's entitlements. Provided the operator has at least two origin to destination combinations then operator capping provides the same benefit. There is currently no rail operator in the CQCN with only one origin to destination combination. It also fails to recognise that an operator with one origin to destination combination could buy access rights via a short term transfer and replicate the same benefit. Therefore, operator capping would not lessen competition in the rail haulage market.

In order to substantially reduce the complexity of operator capping it should be limited to a single access agreement. Aurizon considers that any below rail revenue it generates within a rail operator access agreement that exceeds the expected revenue associated with a train service entitlement should be used to reduce take or pay liability within that agreement in whatever manner the rail operator has agreed with the customers of that agreement. This simply avoids the administrative complexity of short term transfers, particularly where those incentives are low.

Recommendation

A rail operator should be permitted under a rail operator access agreement to offset excess below rail access charges for train service entitlement against take or pay liability for one or more train service entitlements within that same rail operator access agreement.

2.4 The access undertaking represents an excessive level of regulatory risk in the contracting of access rights

The draft decision acknowledges that ‘certainty and security over access rights is a key element of effective access arrangements’ and their key focus is ‘whether the terms and conditions of the standard access agreement will provide sufficient certainty to access holders about their access rights and the ways in which those rights may be affected over time’².

The QCA’s proposal to remove key definitions and elements from access agreements and insert them in the access undertaking fails to recognise this focus and effectiveness given that those critical elements of will be subject to and amended by future regulatory change and uncertainty.

Access Agreements and corresponding rail haulage agreements are often entered into for extended periods of time, with some reliance and confidence that the terms of those agreements will not be subject to potentially significant change, establishing certainty of the rights that are contracted.

Aurizon Network has an obligation to provide executed Access Agreements to the QCA on an annual basis (redacted to the extent of protecting commercial-in-confidence information). To the extent that these are provided and published, this should sufficiently incentivise Aurizon Network to ensure consistency between those Access Agreements.

The QCA’s main concern appears to be the need to avoid complexity associated with intergenerational disparity across agreements over time. That is, there is a trade-off between providing commercial and contractual certainty to an access seeker that is generally expected in the normal course of negotiation and aligns to commercial norms and avoiding complexity as to how the undertaking deals with differences in commercial terms over time.

The ability to potentially vary key commercial terms of an access agreement ex-post through changes in the access undertaking substantially and unnecessarily increases regulatory risk. The QCA Act requires that an access seeker and the access provider are able to negotiate in good faith the terms and conditions of an access agreement. Access is then provided pursuant to those terms and conditions. The primacy of those commercial terms is reflected in section 168 of the QCA Act:

A term of an access agreement relating to a declared service is not invalid merely because it excludes, changes or restricts the application or operation of, or is otherwise inconsistent with, a provision of an approved access undertaking for the service.

² QCA (2015) DD UT, p. 172

This statutory framework recognises that once an access agreement is entered into, it should not be able to be amended by changes to an access undertaking. For these reasons, Aurizon does not support the inclusion of terms and conditions in an access undertaking. Any implications for the regulatory framework (such as revenue caps) for differences in terms and conditions for access agreements, negotiated under the relevant undertaking at that time, should be appropriately addressed through provisions in the undertaking to reflect those differences.

The proposal to require ex-post amendments to an access undertaking also unreasonably restricts the ability of an access undertaking to adopt commercial terms for new access rights which are better aligned to the objectives of the QCA Act. For example, if a variation in those commercial terms had material adverse financial effects on an existing access holder then this potentially places additional limits on the regulatory discretion to the terms of an access undertaking that apply to new access rights. In approving an access undertaking, the QCA must have regard to each of the matters in section.138 of the QCA Act which includes:

the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the service are adversely affected

Therefore, any changes to an access undertaking which amends the terms of access for existing access holders requires the QCA to consider the right of those users and how they would be adversely affected. This broadens the range of issues that must be considered in approving those changes. However, achieving consistency in terms of access among all users of the declared service should not be made in the absence of agreement by the Access Holder to provide appropriate certainty to that party.

Recommendations

The access undertaking should not include provisions which allow for the terms and conditions of an access agreement to be varied with changes to an access undertaking.

3 Pricing for AT5 needs to promote efficient utilisation and investment in rail infrastructure

The level of prices for access to the overhead power system infrastructure (AT5) in Blackwater has been a matter of continued debate since Aurizon Network submitted a draft amending access undertaking on electric traction prices in December 2011. During the period since this original submission the issue of an efficient price remains an unresolved matter of interest.

The draft decision does not allay any concerns as to the appropriate AT5 rate for Blackwater and there remains an unacceptably high level of regulatory risk as to how the price of a contestable service will be priced in the future.

The following table summarises the Blackwater AT5 rates included in appendix E of the draft decision.

AT5 Rates \$/000 egtk	2014-15	2015-16	2016-17
Blackwater System	4.37	3.87	3.19
Rolleston	6.22	3.87	3.19

It is Aurizon's understanding from the draft decision that:

- the tariffs are calculated without reference to electric train volumes to Wiggins Island Coal Export Terminal (WICET); and
- the incremental revenue for Rolleston in 2014-15 reflects a full year of return on and of capital even though electric services only commenced mid-year.

Aurizon contends that the proposed Blackwater AT5 rates:

- do not constitute efficient prices and are based on incorrect volume estimates;
- do not reflect the substitutability of electric and diesel services; and
- will not promote efficient investment decisions by rail operators in rollingstock.

3.1 WIRP volumes should be included in the development of the Blackwater AT5

The draft decision does not make a determination with respect to the appropriate reference tariff for services unloading at WICET. Aurizon considers the issue of pricing for access to the overhead power system infrastructure can, and should, be considered independently of the tariffs for access to the track infrastructure.

The incremental costs of the investments in the overhead power system to support the additional WIRP volumes is relatively immaterial to the existing Blackwater AT5 cost base when compared to the project costs for track infrastructure. The economic viability of expanding the overhead power system to accommodate electric trains at WICET given the scale efficiencies and fungible operational benefits is beyond question. Similarly, Aurizon understands that the WIRP access conditions excluded the investment in the overhead power system infrastructure and therefore any concerns regarding socialisation of WIRP infrastructure due to the nature or structure of the WIRP access conditions should not extend to overhead power system. That is, the investment in the overhead power system infrastructure should be considered as extending the operability of the Blackwater overhead power system and considered independently of the WIRP project.

In summary, the final decision must include the WIRP volumes and costs in the derivation of AT5 rates in the Blackwater system.

3.2 The 2014-15 AT5 rate for Rolleston does not take into consideration the time of commencement of electric trains

The AT5 rate of \$6.22/000 gtk for electric services utilising the Rolleston branchline does not take into consideration the:

- The timing of the commencement of those services;
- The additional volumes operating to WICET; and
- The future contribution to common costs.

Aurizon understands from correspondence with the QCA that the incremental allowable revenues for the Rolleston electrification project reflects a full year return of an on capital. However, rail services utilising the overhead power system did not occur until the second half of the financial year. This misalignment between the period of revenue and commencement of railings is only applicable where a dedicated expansion tariff is not expected to prevail, or the additional revenue can be smoothed within the tariff profile for the entire regulatory period (preferred).

As the Rolleston AT5 tariff is subject to an expansion tariff in 2014-15 but reverts to the system price in 2015-16 and 2016-17, it can only be presumed that the electric traction services from Rolleston not only cover their incremental costs but contribute to reducing the Blackwater system price. This submission has already identified the potential implications of not attributing the benefits of any contribution to common costs to the derivation of an expansion price.

The Rolleston AT5 rate should be inclusive of all electric volumes originating on the Rolleston Branchline and it should be smoothed over the full term of the regulatory period such that an incremental tariff only applies where the revenue at the system price is insufficient to cover the incremental costs over the full term of the undertaking.

3.3 Fully distributed cost pricing models are inappropriate for substitutable services

The Blackwater AT5 rates are calculated through the simple formula of Allowable Revenue divided by forecast volumes such that the objective of revenue adequacy for the access provider is achieved. Fully distributed cost pricing models are common in regulated utilities largely because there is market power in the provision of those services with little or no incentive or feasibility for bypass.

For example, at current revenue and volume levels the fully distributed cost approach is suitable for the Goonyella system as it maintains a highly competitive AT5 rate due to its higher levels of asset utilisation. In contrast, the application of fully distributed cost models to substitutable services can elevate prices and promote inefficient bypass where the level of asset utilisation does produce a competitive price relative to any viable substitutes.

Despite extensive consideration of the inherent risks of bypass, the draft decision contains no discussion or analysis of the level of the Blackwater AT5 rates, the longer term impacts on rollingstock investment, or the implications on revenue adequacy from further reductions in demand for the service.

AT5 rates based on fully distributed cost pricing models are not representative of an efficient price and will distort demand decisions with respect to substitutable services.

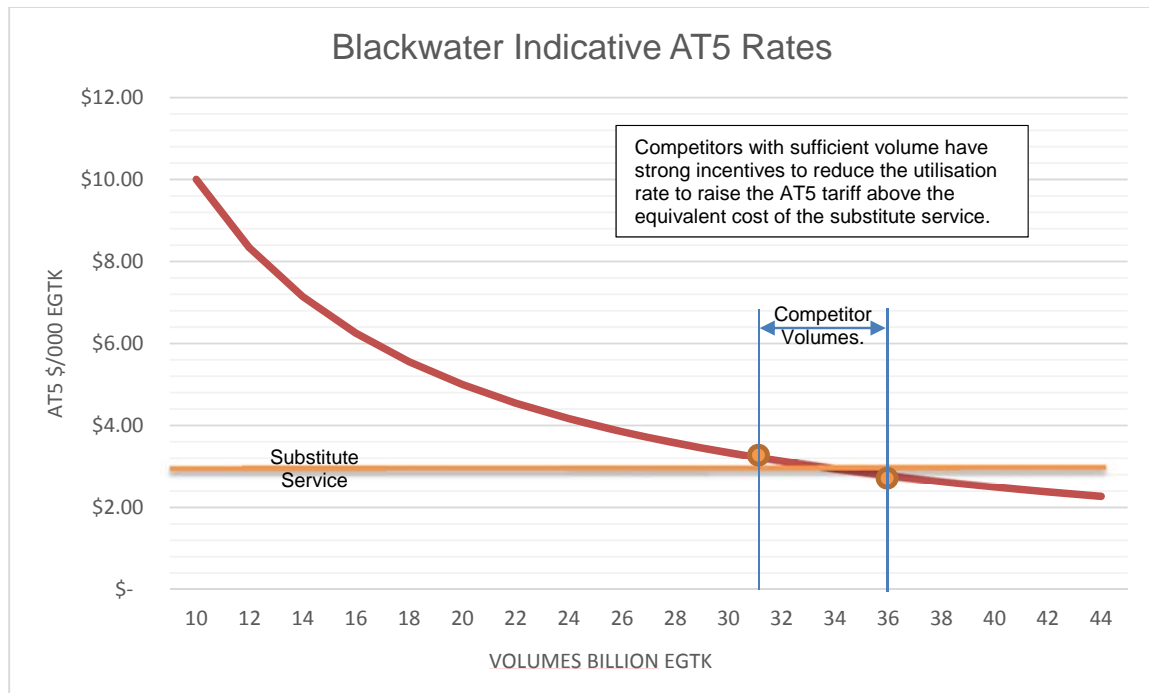
3.4 AT5 rates should be assessed against an access holder's use of the service and not the decision of others not to use the service

Aurizon has previously submitted to the QCA that the price of access to the Blackwater overhead power system should be representative of price for a single service. That is the AT5 rate should be decoupled from utilisation to reduce that ability of the regulatory framework supporting the strategic competitive conduct of raising a rivals costs.

To the extent that the price of access to the overhead power system is not competitive relative to a substitute service then this should reflect the underlying economics of the cost of providing the service, not the decisions of individual access seekers or access holders not to use that service.

This can be demonstrated in the graph below which illustrates the impact of an individual user decision to bypass the overhead power system to raise the price above their own investment in the substitute service.

Figure 1 Implications of volume reductions on competitive prices



Without appropriate reforms which produce AT5 tariff rates where the price of one user's access to the service is independent of another users modal choice decisions then AT5 rates will remain elevated and distort investment decisions in rollingstock. While it remains appropriate to vary the price of AT5 to have regard to overall system demand the rate should reflect what the prevailing price would be if the asset was used to maximum extent possible within that overall system demand. In the example above, this requires AT5 to be set at an utilisation rate of 36 billion egtk and not 31 billion egtk.

The reforms are necessary to ensure that access seekers and access holders who are contemplating rollingstock investment decisions can do so with sufficient degree of regulatory certainty that the economics of that decision will not be undermined by any future changes in market share or the rollingstock investment decisions of other market participants.

The problem is also similar to the QCA's concerns regarding the expansion price in that parties who have made sunk investments will not later be adversely impacted by the decisions of the parties in relation to the use of the declared service. This issue is of greater prominence in the context of expansions of the overhead power system where rail operators who have made investments in electric rollingstock have done so on the regulatory commitments entered into between the service provider and the industry.

In summary, a Blackwater AT5 rate which is based on a fully distributed cost model without reference to the aggregate feasible demand for the overhead power system:

- represents a form of price discrimination between the declared service and the unregulated substitute service which promotes distortionary utilisation decisions and does not aid efficiency (is inconsistent with the requirements of s.168A(b)) of the QCA Act;
- prevents the utilisation of the overhead power system achieving the full benefits of economies of scale and therefore does not provide incentives to reduce costs or otherwise improve productivity (is inconsistent with the requirements of s.168A(d) of the QCA Act; and
- will not promote investment decisions in the most efficient mode of traction (is inconsistent with the s.69(e) of the QCA Act.

To the extent that the AT5 rates which are calculated with reference to the aggregate feasible demand for the overhead power system are above the relative price of the substitute service this would not lead to inefficient outcomes. It will however, provide the appropriate frame of reference for efficient investment to occur and modal competition to prevail.

3.5 Deferral of revenue will only reduce the efficiency of future prices and represent an asymmetric risk to current users of electric services

Determination of the AT5 rates with reference to the aggregate feasible demand for the overhead power system as opposed to expected actual utilisation volumes will generate a revenue shortfall against the allowable revenue. Therefore due to the regulation of substitutable services there is a potential conflict between the objective of an efficient price and the access provider's revenue adequacy (how to ensure the requirements of s.168A(a) of the QCA Act is satisfied).

Aurizon considers that Aurizon Network, the QCA and industry participants need to satisfactorily resolve this conflict. However, it should not come at the financial determinant to Aurizon through its investment in electric traction.

Nor should the issue be resolved through deferral of revenue into future AT5 prices. This has the potential to distort the future relativity of pricing between substitute services. Similarly, this would only be appropriate if there was an expectation of an increase in the total aggregate demand and not merely an increase in the utilisation rate within that current expected demand.

It also represents an unacceptable asymmetric risk to current users of electric traction services. If the underlying economics of electric locomotives are unfavourable in the future then service providers with investment in electric traction will be adversely effected by the relative price movements between substitute services. In contrast if the underlying economics of electric locomotives becomes more favourable than those service providers face the prospect of higher AT5 rates than should prevail if the asset had been efficiently utilised today. This represents an asymmetric risk to existing users of the overhead power system and allows future users to obtain the benefits of switching modes without bearing those risks.

3.6 The pricing arrangements must not preclude the service provider from recovering its efficient investment

As noted, the implications of an efficient AT5 price which reflects an efficient level of utilisation will give rise to a revenue shortfall. However, Aurizon does not consider it appropriate that any revenue shortfall attributable to a rail operator's decision to not utilise the overhead power system should be a financial risk borne by the service provider. The decision to use or not use rail infrastructure which has been provided with the broad endorsement of the collective users of that system is not within the control of the network service provider.

The implications of transferring the utilisation risk to the service provider is to substantially undermine confidence in the access regime that investment made with the support of the users of the system will generate the expected level of return which substantiate the original investment decision.

Accordingly, the AT5 pricing reforms must satisfactorily address how both the users and the provider of the service are not adversely affected by a user's decision not to utilise the common user facility providing the declared service. That is modal choice is not a reasonable basis for imposing asset stranding risks of owner of the facility.

3.7 Expeditious resolution of AT5 is necessary to inform pending rollingstock investment decisions.

Aurizon, like all operators, manages a fleet of rollingstock and deploys that rollingstock in a manner which optimises its commercial performance. Similarly, from time to time, rail operators will need to make decisions regarding the partial renewal of its rollingstock assets. The decisions inevitably require the rail operator to form a view regarding future price movements.

The current level of regulatory uncertainty as to how AT5 will be priced in response to the potential decisions which may be made by other market participants is not a variable that confronts a rail operator who contemplates investment in diesel locomotives. That is the current regulatory framework can potentially undermine the competitiveness of the declared service against its unregulated substitute by imposing additional risks that outweigh the cost advantages.

This represents an unacceptably high disincentive for investment in electric rollingstock and one which is within the statutory powers of the QCA to ameliorate. If this issue is not expeditiously addressed and resolved in the approval of UT4 then potential rollingstock investment decisions and fleet allocation decisions will need to be made which are potentially detrimental to the short and long term pricing of access to the overhead power infrastructure in both the Goonyella and Blackwater systems.

3.8 There is a need to obtain objective evidence of the performance differential between electric and diesel powered locomotives

As evidenced by Aurizon's commitment to the ongoing investment and utilisation of electric locomotives there are substantial operational efficiency benefits between diesel and electric locomotives. This is recently evident in the operation of the 136 wagon train in the Blackwater system that benefited from the performance characteristics of electric locomotives which would have required an additional diesel locomotive.

The QCA notes 'there has been considerable change in the train fleet since UT1 and understand that the relative performance of the two forms of locomotives is not similar. In the absence of evidence of differing performance levels we are not persuaded that the proposed multiplier rates are consistent with the requirements of sections 138 and 168A¹ of the QCA Act.

While the performance levels are reasonably similar across the majority of the transit time there remains a performance differential within the critical section which ultimately defines the system capacity.

Aurizon's response to 2014 DAU highlighted that the cycle time performance of the Blackwater system has increased significantly as the number of diesel locomotives operating in the system has diminished. In addition, Aurizon also recommended that the reporting arrangements be expanded to allow the necessary evidence of diesel and electric impacts on capacity to be collected and published. In particular, this would require the separate reporting of the percentage of diesel and electric train services in the Blackwater system which exceeded the nominated separation time over the constrained section to support the Aurizon Network's conclusion that:

The critical factors constraining the Blackwater system capacity are in fact the ruling grades, and the resulting requirements for headway separation between trains operating on these sections. These factors are significantly impacted by the operation of trains as electric or diesel ...

This is readily apparent in the Southern Bowen Basin Supply Chain Operating Assumptions which clearly show in section 3.6.7 the planned variations in section run times associated with the reduction in headway separation to 20 minutes. Following the planned infrastructure enhancements, the most critical section will be the Westwood to Windah section, which shows expected section run times (SRT) of loaded electric and diesel train services of 13 minutes and 23 minutes respectively ...

The diesel service achieves the required SRT of 20 minutes only through the use of 4x4000 diesel locomotives (which in other circumstances may be considered to be overpowering the diesel train). It is also clear from this that the driver of the required 20 minute train separation on this section is in fact the diesel train, given that the electric train is expected to clear this ruling grade section in 13 minutes. The practical effect is that where a diesel service fails to clear this section in 20 minutes it will sterilise an additional network path³.

The draft decision does not address this point in its consideration of the capacity multiplier. Given the purported lack of evidence of performance differentials it would seem prudent to accept and implement this reporting to gather the necessary evidence so as to inform efficient rollingstock investment decisions (particularly where an operators cycle time assumptions are to be impaired by scheduling arrangements benchmarked to an alternate model).

Similarly, in undertaking the baseline capacity review, Aurizon Network should also be required to undertake an analysis of the capacity of the Blackwater system which reflects both current electric utilisation rates and the maximum feasible electric utilisation rates in order to promote efficient investment decisions.

³ Aurizon Network (2012) Response to Draft Decision – Electric Traction Services Pricing, September, p. 23

Recommendations

The AT5 rates for the Blackwater system should be inclusive of egtk's attributable to services operating to the Wiggins Island Coal Export Terminal.

The AT5 rate for Rolleston over the UT4 period needs to be assessed against the contribution to common costs for duration of that same period and an incremental price applied only where there is evidence that no contribution to common cost is made.

The AT5 rates for the Blackwater system need to be based on the maximum feasible demand having regard to the demand to train paths over the UT4 period.

The QCA, Aurizon Network and Industry participants need to resolve as a priority matter how any revenue shortfalls from an efficient AT5 rate are recovered without deferring recovery to future AT5 rates or imposing revenue or asset stranding risks on the access provider.

The quarterly performance report should include the separate reporting of the percentage of diesel and electric train services in the Blackwater system which exceed a transit time of 20 minutes over the Westwood to Windah section.

The baseline capacity review should include an analysis of the capacity differential between current electric utilisation rates and the maximum technically feasible electric utilisation rate and determine an appropriate capacity multiplier where required.

4 Improving utilisation of existing capacity

A key objective of Part 5 of the QCA Act is the efficient utilisation and investment in rail infrastructure with prices for access that provide incentives to improve efficiency. However, this is also intended to have the effect of promoting effective (not perfect) competition in upstream and downstream markets.

Accordingly, there is a trade-off and inherent tension between the objectives of promoting transparency and coordination for the purpose of improving efficiency and allowing effective competition to operate in the downstream market. The standardisation or homogenisation of train services within the CQC merely serves to replicate a perfectly competitive market by limiting the scope of competition to price.

The inherent problem with standardisation is that it can preclude any differentiation intended to address the individual preferences of producers. The role of competitive above rail environment to respond to those preferences through innovation in commercial offerings. Standardisation can limit and stifle that innovation.

The draft decision includes a number of elements aimed at improving the transparency, coordination and efficiency of the supply chain.

4.1 The capacity review should seek to promote confidence in the capacity modelling

Coal export supply chains are highly complex and dynamic processes with a significant number of components, interfaces, incidents and exogenous shocks. As the number of components, scale of operations and interfaces increase, this complexity and variability of performance increases.

Therefore, capacity is a dynamic concept and changes in any of these aspects will inevitably produce different levels of capacity. It is also not an absolute construct. Rather, it is a probabilistic assessment of the confidence with which a given or expected level of throughput will be achieved. Given the increased emphasis by stakeholders on transfers and flexibility, the assessment of capacity is likely to have some degree of variability at different points in time.

To ensure enduring industry confidence, and avoid stakeholders not accepting the outcome of capacity reviews, Aurizon considers that the industry will be better served by focussing on how the capacity analysis is undertaken, rather than whether current assessments suggesting there is currently sufficient rail infrastructure to align to contractual entitlements..

It is both desirable and preferable that the access undertaking provides this degree of confidence by focussing on:

- reviewing and endorsing the modelling architecture as being appropriate to the nature of rail operations;
- reviewing and endorsing whether the model design incorporates the appropriate tolerances, thresholds and probabilities to align with the contractually assumed risks;
- the robustness of the model calibration procedures;
- the governance, peer review and change procedures; and
- the quality assurance practices applied to the ongoing development of the models.

By focussing on these aspects of the capacity modelling, stakeholders can obtain a higher degree of confidence in Aurizon Network's business practices and rely on contractual enforcements as the appropriate check and balance as opposed to regulatory intervention. That is, the requirement for a

capacity review does little to improve stakeholder understanding of how capacity modelling is undertaken and, as opposed to the operating assumptions used, what factors determine the appropriate confidence interval and how is it selected.

Through understanding how Aurizon Network maintains best practice capacity modelling procedures there is a substantially reduced requirement for the disclosure of commercially sensitive operational data and information. In Aurizon's view, the QCA may be seeking to solve the wrong underlying economic problem.

Recommendations

The access undertaking should include measures which improve stakeholder confidence in Aurizon Network's capacity modelling practices.

4.2 Transparency of operator information needs to balance coordination against commercial detriment

As noted in section 4.1, the disclosure of operational data and information should be unnecessary where there is a high degree of confidence with the capacity modelling. The primary objective should be whether the relevant supply chain participant believes the operating assumptions employed by Aurizon Network are an accurate representation of their operations.

While Aurizon does not object to disclosing its operating information where it considers there are coordination benefits from doing so, the access undertaking should not require the disclosure of operating assumptions and information which it considers to be harmful to its commercial interests. That is, the extent of information disclosed by Aurizon should be at Aurizon's discretion and not a QCA mandate via the access undertaking.

Of particular concern to Aurizon is the QCA's disclosure requirements for the baseline capacity review, capacity assessment and capacity deficit which requires the Aurizon Network to produce a report which sets out, among other matters:

- operational, maintenance, construction and planning assumptions in each Coal System; and
- Network Management Principles, System Operating Parameters and System Rules, if applicable, for each Coal System.

As a related party, Aurizon does not maintain a confidentiality agreement with Aurizon Network outside the provisions of its access agreements. As a consequence the proposed access undertaking could require Aurizon Network to fully disclose all relevant aspects of Aurizon's operations.

Importantly, the undertaking should not permit the disclosure of information without the owner's consent. In this regard, the draft decision is contrary to the commercial interests of Aurizon to protect information which is intrinsically related to its competitive position and the disclosure could damage Aurizon's commercial activities.

The provisions regarding the system operating assumptions also provide in clause 7.5(c) that:

If the QCA undertakes a Baseline Capacity Assessment under clause 7A.4.1(f) and determines that the System Operating Parameters for a Coal System require amendment, the QCA may include the review and amendment of the System Operating Parameters in its Baseline Capacity Assessment.

The QCA's ability to review and amend the system operating parameters should not be without limitation. In this regard, the QCA should not be able to amend a system operating parameter if that amendment is inconsistent with the rail operator's access agreement. For avoidance of doubt, an amendment to a system operating parameter should not impose a Net Financial Effect on a rail operator under an Access Operator Agreement or Train Operations Agreement.

Recommendations

The access undertaking should include provisions which circumvent Aurizon's legitimate commercial interests by disclosing operating assumptions and parameters (Confidential Information) which could be commercially harmful.

The access undertaking should not seek to preclude Aurizon Network from entering into arrangements which allows Aurizon to protect its Confidential Information.

Amendments should not be permitted to System Operating Parameters if the amended parameter is inconsistent with an Access Agreement or would impose a Net Financial Effect without the agreement of the affected party to that access agreement.

4.3 Relinquishment Fees for above rail productivity improvements are disproportionate to the costs and do not consider benefits

The response by Aurizon in October 2014 to the 2014 Draft Access Undertaking, brought to the QCA's attention the disincentives for productivity improvements in above rail operations where those improvements would require the relinquishment of unused train paths.

That submission demonstrated that:

- The size of the relinquishment fee is disproportionate to the costs imposed; and
- There is no recognition of the broader benefits of reducing network congestion.

The draft decision acknowledges that the waiving of relinquishment fees appears to be a concern where there is no alternative demand which results in a transfer of costs to other access holders.

Despite the quantitative analysis provided to the QCA which demonstrated that there was little cost implication to other users of the system, the draft decision incorrectly concludes that:

The Aurizon Operations proposal would have the effect of shifting a proportion of the costs of making efficiency gains on to the network at a time of low demand. We do not consider that a cost shift from a rail operator to the remainder of the network would necessarily promote the efficient use and investment in significant infrastructure.

Aurizon acknowledged that the proportion of the fixed costs which would be transferred to the network was limited only to the foregone AT2 revenue. As AT2 represents a small proportion of the total access charge, the amount of this transfer is immaterial and is unlikely to exceed the benefits associated with reducing congestion on the network.

Importantly, the quantum of any relinquishment fee associated with above rail productivity improvements, where the aggregate contracted net tonnes and net tonne kilometres is unchanged, should be capped at the actual costs which are being transferred.

Regardless of whether there is alternate demand for the train paths, the pricing principles in section 168A of the QCA Act require that prices for access to the service should provide incentives to reduce costs or otherwise improve productivity.

To the extent that the QCA's concern is the quantum of the cost transfer, it should seek to address that problem and remove the significant financial disincentives for improving productivity. Table 1 shows an indicative example of the absolute extent of that cost transfer based on the following assumptions:

- Above rail efficiency: 2%
- Haulage distance: 250 km
- AT2 Rate: \$1,311 per path
- AT3 Rate: \$4.69 per 000 ntk
- AT4 Rate: \$0.95 per nt
- Remaining contractual term 4 years

Table 1 Indicative Relinquishment Example for Above Rail Productivity Improvement

	Before	After	Difference
Contracted Paths	200	196	4
Net Tonnes	1,000,000	1,000,000	0
Ntk (000s)	250,000	250,000	0
AT2 Train Path Revenue	262,200	256,956	5,244
AT3 Ntk Revenue	1,172,500	1,172,500	0
AT4 Nt Revenue	950,000	950,000	0
Total Revenue	\$2,384,700	\$2,379,456	\$5,244
Relinquishment Fee	\$4,769,400		

The example shows that the relinquishment fee of \$4.7 million is substantially disproportionate to the cost transfer of \$0.005 million (or no more than \$0.021 million over the remaining duration of the access rights, including the AT1 component).

As the draft decision rejects the ability to waive a relinquishment fee, it also precludes the consideration of any benefits which may accrue to the relevant system from the relinquishment of those paths. Given the stakeholder concerns in relation to capacity which underpins the QCA requirement for a baseline capacity assessment, it appears both reasonable and appropriate to support efficiency initiatives which reduce congestion and improve confidence in the availability of system capacity.

At a minimum, the access undertaking should at least include the ability to have those benefits scrutinised to determine whether the benefits outweigh the costs associated with an above rail productivity initiative.

Recommendations

The access undertaking should include a mechanism whereby the component of a relinquishment fee attributable to the net tonne kilometre and the net tonnes is able to be waived where it is associated with above rail productivity improvements and the total contracted net tonne kilometres and net tonnes are unchanged.

The access undertaking should include a mechanism whereby the rail operator can seek a rebate on the AT2 component of a relinquishment fee which is commensurate with any benefits arising from an above rail productivity improvement and the total net tonne kilometres and net tonnes are unchanged.

4.4 Short term transfers mainly balance contractual liabilities with utilisation

Aurizon is supportive of mechanisms which improve the ability of access holders to balance their contractual liabilities against their expected, or revised, utilisation profiles. The ability to achieve this objective should be subject to an acceptable level of consequence and risk to the service provider and other access holders.

The main productivity benefit to be obtained from short term transfers is the increased certainty that train orders will be fulfilled where the system is operating close to, or at, full capacity. There is little incentive for a producer to accept take or pay liability for contracting train paths on a short term basis where there is a high degree of confidence that it can achieve its desired level of throughput from ad hoc services. Therefore, the benefits are principally limited to balancing take or pay liability against utilisation.

Aurizon considers that subject to other parties not being adversely effected any transfer mechanism should offer as much flexibility as possible. Provided the outloading capacity of the mine and the inloading capacity of a destination is not exceeded then the framework should allow for the transfer of origin and destination combinations. However, these should not be limited to specific ports within a coal system, where more than one port exists.

Nevertheless there would appear to be some conditions which limit this flexibility. For example, as there is potential for the cumulative impact of short term transfers to consume any latent capacity on different parts of the network, there is the prospect that capacity that was assumed to be available may be committed at the time another access holder seeks a transfer. Therefore, it is reasonable that the network provider retain some discretion to reject a transfer request where capacity is not, or ceases to be, available to accommodate that request.

Aurizon also considers concerns regarding adverse implications on caps for lower levels of access rights and suggestions for a review of the performance of short term transfers after a period of time should also be addressed in the access undertaking.

It is also important that the administration of the transfer framework is robust and supports real-time management of train service entitlements to ensure the contested train path decision making process in the network management principles can be given effect.

In order to assess whether the short term transfer mechanism is achieving its objectives, the annual reporting arrangements should include a record of the transfers which occurred in each system.

5 Prices should be stable, predictable and not produce unintended consequences

The QCA draft decision in relation to pricing frameworks and pricing principles represents a significant shift away from the socialised financial model which has underpinned investment in rail infrastructure to a stricter application of the concept of user pays.

Aurizon considers that socialised pricing involves a range of benefits which have not been given robust consideration. Similarly, the expansion pricing principles may also include a number of unintended consequences. Without a detailed and fully considered economic analysis of the expansion pricing principles and the consequences of departing from a fully socialised model, Aurizon is circumspect as to whether the access undertaking should include fixed and binding principles as to how an expansion should be priced.

While Aurizon does not object to the concept of equity or fairness in pricing and supports the concerns of its customers, these concepts need to be balanced against the broader objectives of efficiency and the public interest

Given the combination of the due diligence undertaken by a supply chain participant's financiers and the raft statutory disclosure obligations, it does not appear likely that a producer would contract for port and rail capacity exceeding the expected productive capacity of the mine. However, this is not to say that production may not achieve those levels due to a range of other factors. Therefore, this should not be directly influential in determining whether to depart from socialisation.

5.1 The expansion pricing arrangements are unclear and a significant shift from current practice and due diligence should be performed to prevent unintended consequences

The draft decision includes binding pricing principles for expansions which require an access holder to pay an access charge which is the higher of:

- The existing reference tariff; or
- The minimum revenue contribution.

An outcome of the process may quarantine the costs and volumes for an expansion from the existing cost base and those access seekers will not be subject to the socialisation of their volume risk. That is the take or pay will be based on their contracted volumes and they will not obtain the benefits of socialisation.

In addition, the QCA has not accepted the concept of a materiality clause or any form of transition arrangements over time to ensure users obtaining the same service from the same infrastructure pay the same price.

Aurizon welcomes the QCA's acknowledgement⁴ that differentiating between existing users and expansion users in this way:

- is unsustainable and overly complex; and
- creates an asymmetric risk transfer that further disadvantages the expanding users.

⁴ QCA (2015) DD, p. 373

It would be preferable that the pricing frameworks reduced the impacts on expansion users in a way which reflected the interests of both the existing and expansion users.

Recommendation

The QCA should undertake a comprehensive economic analysis and impact assessment before making a decision to shift from socialised pricing and making changes to take or pay. This analysis should have regard to the relevant industry economics.

5.2 The QCA draft decision may have unintended adverse impacts on expansion users

The draft decision proposes that the system test be continuously applied such that expansion users may find themselves subject to either an expansion price or the system price over time. However, in doing so, there is no recognition of the previous contribution to common cost made by expansion users.

This is likely to be particularly harmful where the volatility in the expansion user's price is driven by the utilisation of existing users. For example, an expansion user is subject to an expansion price of \$4.20 nt. The prevailing system price is about \$4.00 nt. If annual demand declines and the system price increases to \$4.30 nt then the expansion customer pays the higher price and makes a contribution to common costs of \$0.10 nt. In the following year, the demand by existing users rebounds and the price returns to \$4.10 nt. However, the expansion customer's price remains at \$4.20 nt. The expansion user obtains no benefit from its contribution to common costs.

Alternatively, the expansion user may pay the system price for a substantial period of time and it may face supply or demand issues (i.e. unforeseen issues with the geology of the deposit or reduced coal quality) which reduces its utilisation to an extent that its price exceeds the system price. Similarly there is no recognition of the previous contribution to common costs made by the expansion user.

Therefore, there may be benefit in fully socialising expansion costs within a system where the expansion users have been subject to the system price for five consecutive years.


Aurizon considers the QCA could assess an alternative approach whereby only those expansion costs above the level of the system price are quarantined to expansion users and these impacts identified above can be largely ameliorated. This would address the interests of existing users without unintentionally imposing more onerous obligations on expansion users regarding use of the existing infrastructure.

Recommendation

The access undertaking should recognise previous contributions to common costs when determining the expansion tariff and should include a mechanism to fully socialise expansion costs with the system cost when the expansion tariff has been previously socialised.

5.3 Price reform needs to balance stability and predictability against simplicity

When stakeholders make investment decisions and enter into commercial arrangements, particularly for long term rail haulage, these decisions are underpinned by the principle of stability and predictability of the current below rail pricing arrangements. Accordingly, the QCA should only contemplate changes to the current arrangements where it identifies a material market failure or where there would be material and demonstrated efficiency gains. Aurizon does not support any changes to the current take or pay



arrangements or socialisation which adversely effects users with rights to the declared service that may arise from any material impact in its commercial risks associated with those changes.

The QCA's suggested approach to achieving take or pay equality between UT1 and post UT1 agreements is to separately identify tariffs, volumes and revenue between the two generational arrangements. The effect would be that the benefit of any overpayment of take or pay by UT1 access holders would be reflected as a reduction in UT1 prices. This seems a rather administratively burdensome approach to what is in effect just giving money back to UT1 access holders which is above the relevant system allowable revenue.

It would appear that rather than splitting the system and maintaining disparate pricing arrangements, the relevant objective could achieved simply by Aurizon Network rebating any excess UT1 take or pay amounts (after all other take or pay has been reduced to zero) back to those access holders.

Recommendations

The introduction of a fixed cost pricing regime and associated changes to take or pay should not apply to existing access arrangements.

6 Ringfencing arrangements should not adversely affect Aurizon's ability to improve its efficiency

As the Aurizon Network business is vertically unbundled⁵ from the rail operations within the Aurizon Group the Queensland Access Regime requires the access undertaking to include measures which prevent or preclude the provider of the declared service from unfairly differentiating in favour of its related operator.

The QCA has proposed a number of changes to the governance provisions. A consistent theme from the draft decision is that whilst there is no evidence that the current governance arrangements do not work, there is no confidence in the current and, therefore, proposed arrangement.

On balance, when these measures are considered in isolation, they do not appear unreasonable. However, in aggregate they have the potential to lead to an increased level of compliance risk associated with how Aurizon Network interfaces with its related operator.

As the framework is designed to protect the interests of third parties, the reporting requirements and assessment of non-compliance extends only to decisions or conduct that is in favour of a related operator. It does not, and there should be no requirement, for the arrangements to extend to decisions or conduct which favours a third party. This can lead to the consequence where the access framework is based on a biased perception of discriminatory conduct in favour of a related operator.

To the extent the access undertaking expands on the matters Aurizon Network can be found to be non-compliant then this can have adverse effects on how the service provider engages its related operator. This is particularly the case where the costs of non-compliance are substantially greater in relation to the related operator than is the case for third party operators. This can manifest itself in excessive level of risk aversion which may lead to potential preferential dealing between the service provider and third party access seekers.

The prospect of this occurring is greatly enhanced where breach reporting extends to matters which have limited or no material adverse effect on third parties. In this regard, the reporting of breaches under Part 3 extends beyond that intended by the objectives of the access regime. This is evident in the difference in the requirements between clause 2.4(b) of the access undertaking which states:

Aurizon Network must not unfairly differentiate between Access Seekers in negotiations for the provision of Access or between Access Holders in providing Access

and s.100(2) of the QCA Act which, as framed more broadly:

*In negotiating access agreements, or amendments to access agreements, relating to the service, the access provider must not **unfairly differentiate** between access seekers in a way that has a **material adverse effect** on the ability of one or more of the access seekers **to compete** with other access seekers*

⁵ The regulated service is provided through a separate network company with independent management of the network.

This issue is comparable to the non-discrimination obligations in the telecommunications access regime under Part XIC of the *Competition and Consumer Act 2011*. While there is an obligation of non-discrimination, the ACCC has prepared a guideline which identifies what conduct would constitute discrimination. The guideline⁶ notes that:

The ACCC does not consider that any and all differences in terms, conditions or manner of treatment between access seekers amount to 'discrimination between access seekers' in all circumstances.

As a guiding principle, differences which lead to outcomes that are consistent with the objective of Part XIC — the long-term interests of end-users — will not be considered by the ACCC as discriminatory.

The ACCC considers that the combined effect of these considerations is that differences would only be considered non-discriminatory by the ACCC in the limited circumstance where they do not undermine the competitive process in downstream markets and the efficient investment in and use of telecommunications infrastructure.

The ACCC correctly concludes that it should only concern itself with conduct which is inconsistent with the objects of the legislation. In this regard legislators have drafted the QCA Act to ensure that only conduct which is likely to be inconsistent with the objects clause should be addressed.

The inherent problem with expanding the statutory obligation to include any differentiation is that, as already noted, decisions in favour of a third party operator are unreported. The practical consequence is that the increased level of risk aversion in negotiations and dealings with a related operator is substantially greater than dealing with third party operators.

Aurizon recognises that stakeholders require confidence in the fact that Aurizon Network will not make decisions which are inconsistent with promoting competition in the rail haulage market. However, this should not create an environment which is contrary to Aurizon engaging Aurizon Network to improve the operational efficiency and competitiveness of its service to facilitate those objectives on behalf of customers.

Aurizon would therefore support amendments which could only lead to the finding of non-compliance and a reporting of a breach which is contrary to the requirements of the QCA Act. This is necessary to ensure the access provider is not disincentivised to deal with Aurizon in the same manner that it would engage a third party operator.

Recommendation

Aurizon recommends that breach reporting and non-compliance for differentiation between access seekers be limited to decisions or conduct which is contrary to the requirements of the QCA Act.

⁶ ACCC (2012) Part XIC non-discrimination guidelines, April.