

Part 7: Available Capacity allocation and management

7.5 Mutually Exclusive Access Applications

7.5.1 Notification and assistance

- (a) Aurizon Network will identify Access Applications that are or have become Mutually Exclusive Access Applications and will notify an Access Seeker as soon as practicable after Aurizon Network identifies that the Access Seeker's Access Application is or has become a Mutually Exclusive Access Application.
- (b) Aurizon Network will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is not a Mutually Exclusive Access Application.

7.5.2 ~~Capacity allocation for Mutually Exclusive Access Applications~~ Queuing mechanism

(a) Subject to clause 7.5.2(b), ~~t~~his clause 7.5.2 applies in respect of Mutually Exclusive Access Applications or ~~whether where~~ this Undertaking otherwise specifies ~~that an~~ Access Seeker has joined the Queue.

(b) This clause 7.5.2 does not apply to:

(i) an Access Application for Access Rights which are sought according to a Transfer under clause 7.4 or in accordance with the terms of an Access Agreement, except to the extent:

(A) that Transfer includes [Ancillary Access Rights]; and

(B) a separate Access Application is submitted (or deemed submitted) for those [Ancillary Access Rights] in accordance with clause ~~[insert]~~.

in which case the separate Access Application in respect of the Ancillary Access Rights will form part of the Queue under this clause 7.5.2; ~~[Note: the QRC's submission in respect of ancillary access rights is detailed in Part 7 of this Submission.]~~

(ii) an Access Application for Access Rights which can only be granted subject to an Expansion creating additional Available Capacity; or

(iii) in relation to the allocation of Available Capacity that:

(A) is subject to a Provisional Capacity Allocation under Part 8 (including a Provisional Capacity Allocation arising from a reallocation under Part 8— for example, under clause 8.5(g));

(B) is or was subject to Provisional Capacity Allocation that Aurizon Network, in accordance with Part 8, is seeking to reallocate following a withdrawal of that Provisional Capacity Allocation; or

~~(a) is or was subject to a Provisional Capacity Allocation in respect of which the relevant Access Seeker has signed an Access Agreement, Access Conditions or User Funding Agreement relating to corresponding Access Rights.~~

~~(b)(C) Aurizon Network will form a queue to determine which Access Seeker will be allocated Access Rights in priority of other Access Seeker(s) (Queue). The order of that queue will initially be determined based upon the time when Aurizon Network received each Access Application (that is,~~

~~the Access Application received by Aurizon Network first in time is first in the Queue and the Access Application received next in time by Aurizon Network is second in the Queue, and so on).~~

(c) In allocating Access Rights, Aurizon Network will prioritise Access Seekers in accordance with a chronological queue based on the date which Aurizon Network issued an Acknowledgement Notice to each Access Seeker in respect of its Access Application in accordance with **Part 4 (Queue)**, except that:

(i) in respect of Renewals:

(A) a Renewing Access Seeker will be placed ahead of all other Access Seekers in the Queue; and

~~(A)(B) two (2) or more Renewing Access Seekers will be prioritised in date order based on the date which Aurizon Network received the Access Application for the Renewal in accordance with **clause 7.3**; and~~

~~(c) Once formed, Aurizon Network must not change the order of the Queue unless:~~

~~(i) subject to clause 4.10.1(d), the Negotiation Period for an Access Seeker has ceased in accordance with clause 4.10.1(c);~~

~~Aurizon Network determines to not allocate Available Capacity in respect of an Access Application as a result of the operation of **clause** Error! Reference source not found.; or~~

~~(ii) Aurizon Network receives a notification of intent from an Access Seeker under clause 4.7 in relation to a further Access Application by that Access Seeker which is added to the Queue; or~~

(ii) in respect of Conditional Access Rights, where:

(A) Aurizon Network has notified a Conditional Access Holder in accordance with **clause 8.9.3** of a reduction of Conditional Access Rights;

(B) an Access Application is deemed to have been lodged in respect of the reduction; and

(C) there is Available Capacity which is capable of satisfying that Access Application in respect of the reduction,

then,

(D) the Conditional Access Holder will be given priority in the Queue behind any Renewals in respect of the Access Application for the reduction; and

~~(iii) where there are two (2) or more Conditional Access Holders affected, each Conditional Access Holder will be treated as having the same position in the Queue for the purpose of negotiating and allocating the Available Capacity.~~

~~(d) Without limiting **clause 7.5.2(c)(iii)**, if the further Access Application is a Renewal, then Aurizon Network will initially place that Renewal ahead of all other Access Applications in the Queue that are not Renewals.~~

~~(e) If **clause 7.5.2(c)(iv)** applies, Aurizon Network must:~~

~~(i) change the order of the Queue only to give the Conditional Access Holders the highest position in the Queue after any Renewals; and~~

~~(ii)(E) treat each Conditional Access Holders as having the same position in the Queue for the purposes of negotiating and allocating Available Capacity.~~

(d) An Access Seeker will be removed from the Queue where:

~~(iii)(i)~~ the Access Seeker's Access Application has been withdrawn or the Negotiation Period for an Access Seeker has ceased in accordance with Part 4; or

~~(iv)(ii)~~ Aurizon Network has determined not to allocate Available Capacity to an Access Seeker as a result of the operation of clause 7.2.1.

~~(f)(e)~~ Aurizon Network will notify each Access Seeker who has an Access Application in a Queue of the initial position of their Access Application in the Queue and thereafter of any change to that position in the Queue and the reason(s) for that change.

~~(g)(f)~~ An Access Seeker may assign its position in a Queue to another party where:

(i) that party is a Railway Operator and the Access Seeker has entered into an agreement with that Railway Operator to provide the Train Services and requires that Railway Operator to hold the Access Rights;

(ii) is a related body corporate of the Access Seeker and the assignment is not a Material Variation; or

(iii) that party has acquired the whole or a substantial part of the assets of the Access Seeker.

~~(iv)(g)~~ If a dispute concerning positions in a the Queue or any other aspect of Aurizon Network's management of a the Queue is referred for resolution under clause 11.1 Part 11, Aurizon Network must not change an Access Seeker's position in that Queue unless and until that dispute is resolved in favour of such a change in position.

7.5.3 Capacity allocation for Mutually Exclusive Access Applications

~~(h) This clause does not apply:~~

~~(i) as between two or more Access Seekers with Access Applications that can only be granted Access Rights subject to an Expansion creating additional Available Capacity the process in Part 8 will apply instead; or~~

~~(ii) in relation to the allocation of Available Capacity that:~~

~~(A) is subject to a Provisional Capacity Allocation under Part 8 (including a Provisional Capacity Allocation arising from a reallocation under Part 8 for example, under clause 8.2.3(b))~~

~~(B) is or was subject to Provisional Capacity Allocation that Aurizon Network, in accordance with Part 8, is seeking to reallocate following a withdrawal of that Provisional Capacity Allocation; or~~

~~(C) is or was subject to a Provisional Capacity Allocation in respect of which the relevant Access Seeker has signed an Access Agreement, Access Conditions or User Funding Agreement relating to corresponding Access Rights; or~~

~~(iii) an Access Application submitted by a Transferee in respect of Transferred Access Rights.~~

~~(f)(a)~~ If Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity, then Aurizon Network will enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be

exercised or created – for example, a [Rail Connection Agreement](#)) for the Available Capacity for those Access Applications that meet the requirements of **Part 4** but may not enter into an Access Agreement with an Access Seeker lower in the Queue in priority to an Access Seeker higher in the Queue, without the written consent of that Access Seeker which is higher in the Queue.

~~(b)~~ Where Aurizon Network has allocated Available Capacity under this **clause 7.5.37.5.2** and none of the remaining Access Seekers can be granted the Access Rights sought as there is insufficient Available Capacity to do so, then negotiations with those remaining Access Seekers are suspended and **clause 4.4(c)** will apply.