Wealth Resources

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Wednesday, 30 September 2015

Professor Roy Green
Chairman
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4000

By email: aurizon@qca.org.au

Dear Professor Green,

RE: Further information upon Aurizon Network's Short-term Transfer Mechanism

Wealth Resources Pty Ltd ('WR') welcomes the opportunity to present this submission in response to the Queensland Competition Authority's ('QCAs') invitation to respond to a range of issues surrounding Aurizon Network's ('ANs') proposed 2014 Discussion Paper on the potential short term transfer mechanism ('2014 Transfer Discussion Paper').

This submission builds upon WRs earlier contribution[1] towards the regulatory review of ANs 2014 Transfer Discussion Paper and the QCA's own Supplementary Draft Decision ('2015 Transfer Discussion Paper SDD').

Response to issues

(1) Please provide examples of previous transfers or hypothetical examples of transfers that you would not undertake if the transfer was subject to the pricing mechanism outlined in decision 4.1 of our Draft Decision.

WR understands the intent of Question 1, but believes the question is overly simplistic in its approach. Access holders have not been provided a choice of choosing one pricing mechanism over another. Hence if a transferee requires additional capacity they will have to either undertake a transfer subject to the pricing mechanism outlined within Draft Decision 4.1 – a mechanism which retains transfer fees as well as a discriminatory application – or wait until spare capacity is provided within the system. However the latter option can require waiting for AN to build spare capacity, potentially knowing that an unimproved system already retains latent capacity. As a result, WR questions whether the approach undertaken by the QCA truly satisfies the object of Part 5 of the Queensland Competition Authority Act 1997 ('QCA Act'), where if the CQCN does retain latent capacity, are the objectives of Part 5 being met. Specifically:

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[1] WR, 2015, *Wealth Resources 2015 QCA Capacity Transfer Mechanism – Supplementary Draft Decision*, 3rd June 2015, available at www.qca.org.au
[2] Queensland Government, 2012, *Queensland Competition Authority Act 1997*, pg. 63, 21st September 2012, available at www.legislative.gld.gov.au

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> *The object of this part [Part 5] is to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.*[2]

WR also continues to be of the view that no transfer fees should apply to transfer of TSE's, no matter their duration or access derivation. Outlined within its previous submission, WR firmly believes that revenue cap regulation mostly protects AN from volume and revenue risk and because of this, the original intent of associating fees with transfers seems a redundant contrivance. WR does not consider transfer fees should apply, but if that is not accepted, WR suggests another potential option for consideration per the suggestion below:

> *...if a transferor transfers some or all of its TSEs from its origin to a closer-in origin on the same mainline path, then the transferee will be charged a transfer fee, but that transfer fee will be fully reimbursed to the transferee if AN over recovers revenue in the relevant year(s)*

We urge the QCA to consider a no transfer fee view but in the alternative, consider the suggestion above.

(2) Please provide examples of 'gaming' behaviour that may occur.

In the absence of an upper limit upon the maximum number of train service entitlements ('TSEs') that can be transferred, WR believes an ability remains for access holders to game the short-term capacity mechanism ('mechanism').

Gaming, or the manipulation of a process to deliver benefits to one or a group of parties at the expense of others is usually associated within regulatory regimes where processes, rules, or regulations are not properly conceived, implemented, administrated and/or enforced. Due to the less than stringent nature of such regimes, regulatory risks could materialise; manifesting from the inability of a regulator to enforce adequately drafted rules and regulations.

For instance in the absence of a limit, existing access holders could potentially undertake transfers with the transferee who intends not to utilise any of the access rights itself. As a result, the transferee could be enacting anti-competitive behaviour by limiting the amount of excess capacity available to other access holders, be they existing access holders or new entrants. Hence at the request of customers, WR notes that AN has proposed to assess the intent of the transferee in utilising the TSEs. Referred to by AN as a '...genuine intention or ability...', AN states that it attempts to determine a transferee's intent via two criteria. Specifically:

- *the short term transferee utilised at least 85% of any access rights previously transferred to it in the same year under a short term transfer provision in its access agreement; and*
- *the proposed short term transferee is fully utilising over the previous three months all of the access rights granted to it under an access agreement relating to train services from*

[2] Queensland Government, 2012, *Queensland Competition Authority Act 1997,* pg. 63, 21st September 2012, available at www.legislative.gld.gov.au

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the same origin to the destination as that specified in the short term transfer notice (and vice versa).[3]

WR notes that a criteria based approach is utilised by the QCA in approving draft access undertakings. Hence WR agrees that criteria should also be established so as to prevent access holders from gaming the mechanism. In fact within its previous submission to the QCA, WR highlighted that incumbent access seekers could undertake such behaviour – what it referred to as capacity hoarding – at the detriment of new access seekers.[4]

Whilst the gas industry contains it owns differences, such accusations have been made towards gas producers within the east coast gas supply industry.[5] Particularly, gas producers have been accused of restricting gas supply, i.e. undertaking capacity hoarding behaviour in an attempt to prevent access by other shippers.

Whatever the industry the outcome is the same, i.e., access seekers or shippers are prevented from obtaining required access which is required to transport product. As previously stated by WR, this could constitute a 'barrier to entry' for new access seekers, resulting in significant time delays if capacity cannot be transferred.[6] As highlighted in the response to Question 1, with capacity being hoarded AN could be forced into augmenting existing system infrastructure to alleviate any capacity constraints caused by anti-competitive behaviour, with such costs distributed across all users of the system who would ultimately benefit from such capacity. Yet in these circumstances, a false positive could be given thereby indicating capacity even though access holders could be controlling any spare or available TSEs. As per the response to Question 1, WR fails to see how this satisfies the object of Part 5 within the QCA Act.

(3) Please provide any comments on whether Aurizon Network's proposed 85% requirement will identify and stop gaming behaviour identified in your response to Question 2.

As a transferee's utilisation is limited to the relevant system, the transferee's utilisation requirement should reflect the average long-run utilisation of same system. It therefore comes as no coincidence that within the 2014 Transfer Discussion Paper, AN has proposed a requirement that matches both the volume forecast of the Blackwater system, i.e., 85% of total contracted tonnages; and the high level design yearly average system availability of the Central Queensland Coal Network ('CQCN').[7]

It would therefore seem logical that a requirement of this magnitude be proposed and if a transferee was attempting to game the mechanism, i.e. undertake to hoard capacity, then the transferee would exhibit lower utilisation rates than that of the system. However, WR is not convinced that the proposed requirement in isolation would be enough to identify and/or stop gaming behaviour.

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[3] AN, 2014, *Aurizon Network 2014 Draft Access Undertaking – Discussion paper on potential short-term transfer mechanism*, pg. 9, 31st December 2014, available at www.qca.org.au

[4] WR, 2015, *Wealth Resources 2015 QCA Capacity Transfer Mechanism – Supplementary Draft Decision*, 3rd June 2015, available at www.qca.org.au

[5] QCC, 2015, *Public Submission to the East Coast Gas Inquiry – Issues Paper*, 8th July 2015, available at www.accc.gov.au

[6] WR, 2015, *Wealth Resources 2015 QCA Capacity Transfer Mechanism – Supplementary Draft Decision*, 3rd June 2015, available at www.qca.org.au

[7] AN, 2014, *2014 Network Development Plan*, pg. 20, available at www.aurizon.com.au

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(4) Please provide comments on alternatives to Aurizon Network's proposal that you consider more appropriate. Please provide illustrative examples in your response.

As per Table 1 below, WR notes that the FY14 system availabilities across the four systems of the CQCN were all higher than 85%,[8] where systems with lower throughput exhibiting higher availabilities.

TABLE 1 – FY14 SYSTEM AVAILABILITIES

System	Availability
Blackwater	89%
Goonyella	86%
Moura	97%
Newlands	92%

AN has proposed that a transferee utilise at least 85% of any access rights provided, equal to that of the high level design yearly average system availability.

Whilst the 85% presents average system availability which could actually vary year upon year, WR understands the rationale behind the quantum proposed by AN. Yet, WR would like to amend the proposed requirement to ensure that it at least matches that contained within current and future development plans, especially in circumstances where AN is able to increase the efficiencies of its maintenance effort. For example, in situations where AN is able to attain maintenance efficiencies, it would be reasonable to expect system availabilities to increase, further stepping away from the 85%. In this light, WR proposes to change the wording of the requirement to as follows:

- *...the short term transferee utilised a percentage of any access rights previously transferred to it in the same year under a short term transfer provision in its access agreement, at least equal to the overall high level design – yearly average system availability contained within the Aurizon Network's current Network Development Plan...*

(5) Please provide any comments on whether the requirement to demonstrate ability to load a train will identify and stop any 'gaming' behaviour identified in your response to Question 2.

WR is of the view that a transferee demonstrating the '...ability to load to a train...' will not assist in identifying nor stop gaming of the mechanism, as most access holders already retain the ability to load of train.

(6) Please provide comments on alternatives to Aurizon Network's proposal that you consider more appropriate. Please provide illustrative examples in your response.

[8] AN, 2014, *2014 Network Development Plan,* available at www.aurizon.com.au

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WR believes a better alternative to prohibit gaming would be for the potential transferee to demonstrate '...an absolute requirement to load a train.' Specifically, a potential transferee could demonstrate the requirement to load a train via the provision of evidence. When combined with the proposed 85% requirement, transferee's would then need to demonstrate two perspectives; one that is ex-post and refers to their own historical levels of utilisation that should at least match that of their own system; and one that is ex-ante, via providing evidence that their request for additional TSE's over the next two years is warranted via the provision of evidence.

However these proposed amendments would not assist access seekers such as WR. WR, being a new entrant into the CQCN, would not be able to demonstrate historical utilisation that at least matches that contained within ANs Network Development Plan. Therefore, WR seeks to amend the wording of the requirement further to accommodate such examples. For instance:

- *If the transferee is an existing access holder which has been in operation for at least 12 months, then the short term transferee should:*
  - *demonstrate a utilisation percentage of any access rights previously transferred to it in the same year under a short term transfer provision in its access agreement, at least equal to the overall high level design – yearly average system availability contained within the Aurizon Network's current Network Development Plan; and*
  - *demonstrate an absolutely requirement to load a train via the provision of evidence indicating demand for the additional TSEs.*

Alternatively:

- *If the transferee is an existing access holder which has been in operation for less 12 months, then the short term transferee should:*
  - *demonstrate an absolutely requirement to load a train via the provision of evidence indicating demand for the TSEs.*

(7) Please provide comments on alternatives to Aurizon Network's proposal that you consider more appropriate. Please provide illustrative examples in your response.

Refer answer to Question 6.

(8) Please provide comments on the appropriate definition of common destination. Please provide illustrative examples in your response.

WR notes that the term 'common destination' is not explicitly defined within ANs 2014 Draft Access Undertaking nor within the 2014 Transfer Discussion Paper. Nonetheless, it could be inferred from the 2014 Transfer Discussion Paper that 'common destination' ultimately means the same destination.

However WR disagrees with this rigid definition especially as the CQCN becomes more integrated, and where ports within the CQCN can have multiple terminals. Take for instance the newly commissioned Wiggins Island Coal Export Terminal ('WICET'), a 27Mtpa terminal that is approximately 1km from the existing terminal destinations of RG Tanna ('RGT') and Barney Point Terminal ('BPT').

Therefore WR believes that an appropriate definition of common destination should not be restricted to mean the same destination, but include reference to other terminals within the same port.

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(9) Please provide comments on the extent to which 'gaming' behaviour identified in your response to Question 2 will continue under the pricing mechanism outlined in Decision 4.1 of our Draft Decision and why this would be the case.

WR believes transferee's could still potentially attempt to game the mechanism by hoarding capacity as outlined in response to Question 2.

(10) Please provide comments on the practical requirements of adopting the pricing mechanism outlined in decision 4.1 of our Draft Decision, the impact these may have and why. Please provide illustrative examples in your response.

Refer answer to Question 1.

Thank you for your consideration of this submission.

Yours sincerely

Michael Li
General Manager
Business Development