Queensland Competition Authority

Consolidated draft decision

Aurizon Network 2014 draft access undertaking Volume II—Capacity and expansions

December 2015

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We wish to acknowledge the contribution of the following staff to this report:

The QCA's Aurizon Network team

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10 BASELINE CAPACITY AND SUPPLY CHAIN ALIGNMENT

We consider the efficient delivery of the CQCN's capacity fundamental to meeting the object of the QCA Act's third party access regime.

For the reasons contained in this consolidated draft decision, we consider the 2014 DAU's capacity focus is too narrow in the way it provides transparency of the CQCN's existing capacity, committed capacity and available capacity. As a result, we refuse to approve Aurizon Network's proposed approach to network development within Part 8 of the 2014 DAU.

The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is to include a new chapter on baseline capacity and supply chain alignment to:

- *provide for the efficient operation of, use of and investment in the CQCN and deliver the efficient supply chain logistics cost*
- *address access holders' and seekers' interests in contracting secure, reliable and sustainable tranches of CQCN capacity*
- *broaden Aurizon Network's scope of participation, so that baseline capacity and coal supply chain coordination are better aligned with the aim of efficiently maximising the CQCN's coal throughput.*

In arriving at these positions, we have had close regard to our remit, as set out in the QCA Act and the section 138(2) matters, and the amendments Aurizon Network and stakeholders have proposed since our initial draft decision.

The detailed drafting of a new Part 7A of the 2014 DAU attached to this consolidated draft decision sets out the way in which we consider it is appropriate to amend the 2014 DAU.

10.1 Introduction

Aurizon Network provides a below-rail service on CQCN's rail infrastructure—that is, Aurizon Network grants access holders capacity to the CQCN, in the form of train paths.

Whether Aurizon Network can meet its contractual obligations, and whether train paths on existing infrastructure are used efficiently, are critical to access holders. Not only do these factors affect their system volumes and operational flexibility, but they also contribute to a transparent understanding of the need for infrastructure expansion.

Only if these arrangements are effective can customers be confident Aurizon Network is delivering the most efficient access service.

Nevertheless, no section in the 2014 DAU deals explicitly with capacity provision. The 2014 DAU includes supply chain coordination, capacity reviews and a network development plan (NDP) process as a subset within Part 8—Network Development and Expansions.

Given the significance of the issues related to the availability and provision of capacity, in our initial draft decision we considered it would be appropriate to deal with capacity in a separate chapter within the 2014 DAU, rather than through Part 8.

10.2 Background

10.2.1 Aurizon Network's proposal

Aurizon Network addressed the following capacity-related issues in Part 8 of the 2014 DAU:

- coal supply chain coordination
- capacity assessments
- capacity deficits
- processes for amending the system operating parameters (SOPs)
- NDP process.

Aurizon Network's approach to each of these is discussed in more detail in subsequent sections.

In initial submissions, stakeholders did not support the coal chain coordination, capacity assessments and network planning processes that Aurizon Network proposed in Part 8 of its 2014 DAU. Stakeholders provided detailed mark-ups to Part 8 to reflect their position on coal chain coordination, SOPs, capacity reviews and the NDP process. Specific stakeholder concerns are outlined in subsequent sections.

10.2.2 Legislative framework and QCA assessment approach

In assessing the capacity assessment and supply chain management proposals in Aurizon Network's 2014 DAU, we have had regard to the factors in section 138(2) of the QCA Act and given them an appropriate weighting, following the approach described in Chapter 2 (Legislative framework).

Against this background, we consider that, in our assessment of the capacity assessment and supply chain management proposals in Aurizon Network's 2014 DAU:

- section 138(2)(a), (b), (d), (e) and (h) should be given a strong weighting
- section 138(2)(c), (g) and (f) should be given a low weighting as they are less practically relevant to our assessment of the 2014 DAU capacity assessment and supply chain management proposals because:
  - Aurizon Network is the owner and operator of the declared service, so section 138(2)(c) does not apply
  - section 138(2)(g) and (f) respectively relates to pricing and the exclusion of assets for pricing purposes, neither of which is practically relevant to the issues surrounding capacity assessment and supply chain management considered in this chapter.

In certain circumstances, the factors we have assigned weight may conflict. As noted in our Chapter 2, when this occurs, we are required to exercise our judgement, having regard for the factors relevant in the circumstances.

Section 138(2)(a) of the QCA Act requires us to have regard to the object of Part 5 of the QCA Act, as set out in section 69E. This is to promote the economically efficient operation, use of and investment in the CQCN, as the significant infrastructure by which the declared service is provided, with the effect of promoting effective competition in upstream and downstream markets.

Further, section 138(2)(h) of the QCA Act allows us to consider any other issues we deem relevant. In this context, we consider the interests of existing access holders relevant, to the extent they are not already access seekers under section 138(2)(e).

In respect of the capacity assessment and supply chain management proposals in Aurizon Network's 2014 DAU, we consider we should have regard to the extent to which they provide a transparent and robust understanding of the CQCN's capacity dynamics, in the context of the overall supply chain.

Such an understanding is essential for developing an overall picture of the existing supply of train paths, determining if the rail infrastructure is being used efficiently and forming an opinion on whether expanding the CQCN infrastructure is warranted. We consider such knowledge can also provide confidence to potential market entrants, thereby promoting effective competition in upstream and downstream markets (section 138(2)(a) of the QCA Act).

In our view, a transparent and robust understanding of the CQCN's capacity, in the context of the overall supply chain, is also consistent with the interests of access seekers and holders (including end users). This is because it provides them with increased confidence that contractual entitlements can be met and that the CQCN is being operated in an efficient manner (s. 138(2)(e) and (f) of the QCA Act).

Further, such an understanding, coupled with effective supply chain coordination, can benefit Queensland's economy if it results in coal-throughput increases that generate additional income. In our view, these outcomes are in the public interest (section 138(2)(d) of the QCA Act).

We also consider a robust and transparent understanding of the CQCN's capacity dynamics, in the context of the overall supply chain, is compatible with the requirement for us to have regard to Aurizon Network's legitimate business interests. We consider having regard to those interests should allow Aurizon Network to:

- recover the efficient costs in providing the relevant service
- earn a normal (regulated) return on its invested capital used in supplying the relevant service,

subject to the constraint that overall revenues obtained in providing the relevant service are not higher than those obtained in a competitive market (see Chapter 2).

Moreover, we note that section 138(2) of the QCA Act does not require that the legitimate business interests of Aurizon Network be given priority. Rather, section 138(2) requires us to undertake a balancing exercise having regard to the matters in paragraphs (a)–(h) of section 138(2). In undertaking this balancing exercise, we can consider that Aurizon Network's legitimate business interests carry less weight than the other section 138(2) matters.

Our analysis is split into the following sections:

- coal supply chain coordination (10.3)
- capacity reviews (10.4)
- capacity deficits (10.5)
- SOP amendment processes (10.6)
- NDP process (10.7).

10.3 Coal supply chain coordination

10.3.1 Aurizon Network's proposal

The 2014 DAU proposed Aurizon Network would use reasonable endeavours to participate in a supply chain group, including to:

- assist in coordinating the performance of that supply chain
- develop a supply chain master plan (SCMP) (cl. 7.5.8)
- coordinate maintenance activities in that supply chain (cl. 8.11.1).

Given the number of CQCN supply chains, Aurizon Network proposed to facilitate maximising the performance of all supply chains consistent with the principles in the 2014 DAU's intent and scope (Part 2). Aurizon Network proposed not to be obliged to take any action as a result of its participation in these supply chain groups. [449]

In initial submissions, stakeholders did not support the 2014 DAU's proposed supply-chain provisions, noting Aurizon Network should be obliged to:

- participate and comply with a supply chain group's decision where its compliance costs are recoverable under the undertaking
- maximise each supply chain's coal throughput in accordance with the delivery of the supply chain group and/or contracted access rights
- prioritise contracted capacity when scheduling.

10.3.2 Summary of our initial draft decision

Against the background of Aurizon Network's proposals and stakeholder comments, our initial draft decision considered that Aurizon Network efficiently delivering the CQCN's capacity is fundamental to the object of the QCA Act's third party access regime. We were of the view this objective is achieved when all access holders and seekers are confident about:

- the development, operation and coordination of the CQCN's supply chains
- planned expansions incurring the lowest costs among the various expansion options considered.

We considered Aurizon Network has a significant role to play in ensuring the CQCN supply chains are efficient and that its infrastructure expansions are low cost. Whilst we recognised Aurizon Network should not be held accountable for the performance of elements of the supply chain that are beyond its control, we considered that Aurizon Network's active participation in coordination matters, as a key service provider in the supply chain, is critical for the efficient operation of the supply chain.

In this context, we considered the 2014 DAU may result in Aurizon Network having a limited or peripheral role in supply chain coordination. We considered this outcome would not promote the efficient operation of the CQCN (ss. 138(2)(a) and 69E of the QCA Act). To promote the CQCN's efficient operation, we considered that it would be appropriate to amend the 2014 DAU to achieve this objective by proposing that Aurizon Network:

[449] Clause 8.11 of the 2014 DAU.

- participate in supply chain groups in a non-discriminatory way to ensure no supply chain has priority over another in delivering contracted capacity
- participate in the development of any SCMP by supply chain groups to ensure accuracy of operational CQCN information being used by the supply chain group in a planning context
- bring to the attention of the supply chain group any supply chain capacity options under investigation by the supply chain group that will impact on the network management principles, SOPs and system rules for a coal system. The supply chain group can then determine whether to raise the capacity options with other supply chain groups operating within, or affected by, the relevant coal system
- consider operational capacity–enhancing improvements through a formal review of the SOPs, if requested by a supply chain group
- adopt all efficient supply chain capacity–enhancing options (emerging from the supply chain group sessions) that do not adversely impact on network management principles, SOPs, and system rules. In such a scenario, Aurizon Network must include the amended parameters in the capacity review process and update the operational capacity rating of the relevant coal system(s) in the subsequent year
- undertake, at the request of supply chain groups, a number of different capacity simulation modelling exercises. The purpose of these exercises is to canvass several different supply chain capacity options, and identify the option that provides the most efficient and robust outcome for the supply chain.

10.3.3 Stakeholders' comments on the initial draft decision

Aurizon Network agreed there are benefits in its involvement and participation in supply chain groups and seeking to improve the relevant supply chains' efficiencies.[450] However, it disagreed with the QCA's proposal that it must participate in and accept the directions/outcomes of each supply chain group, on the basis it is beyond the QCA's powers.[451] In particular, Aurizon Network said there is:

> *... nothing within the QCA power which goes to the efficiency of the wider coal chain. Section 69E discusses "the efficient operation of, use of and investment in, significant infrastructure by which services are provided". The service is access to the railway to run trains and the infrastructure which provides these services is below rail infrastructure. It is not appropriate [...] for [...] Aurizon Network to be required to include provisions in the undertaking to consider the efficiency of anything wider than the declared service.*

Aurizon Network noted the above obligation would require additional modelling and planning resources to operate across all the relevant supply chain groups (i.e. additional administrative costs).[452] Aurizon Network proposed the undertaking should revert to voluntary participation, as provided for in its 2014 DAU.[453]

The QRC and Asciano supported our view that it was appropriate for the DAU to be amended to require Aurizon Network to participate in each supply chain group as it:

[450] Aurizon Network, 2015, sub. 82: 124–125.
[451] Aurizon Network, 2015, sub. 82: 124.
[452] Aurizon Network, 2015, sub. 82: 34.
[453] Aurizon Network, 2015, sub. 82: 122.

- promotes the overall coordination and efficient operation of the supply chain[454]
- minimises the potential for operational or scheduling behaviour that may favour certain access holders or access seekers.[455]

Asciano also said Aurizon Network should participate in the supply chain groups as a regular member rather than coordinator, as this would minimise any potential behaviour for favouring certain access holders/seekers over others.[456]

10.3.4 QCA analysis

After having regard to the section 138(2) matters and stakeholder submissions, we consider it is not appropriate to approve the 2014 DAU's proposal for supply chain groups. Aurizon Network's proposal to only voluntarily participate in supply chain groups does not appropriately balance the factors set out in section 138(2) because it:

- fails to recognise that operating the CQCN efficiently requires Aurizon Network's genuine and active involvement in supply chain groups that extends to implementing actionable outcomes of the supply chain group, where doing this does not adversely affect Aurizon Network's network management principles, SOPs and system rules (s. 138(2)(a))
- does not have adequate regard to the need to have effective supply chain coordination, which we consider to be in the public interest (s. 138(2)(d)). (Refer to Section 2.7 of this consolidated decision on why we consider effective supply chain coordination to be in the public interest)
- provides little assurance to access seekers and holders that Aurizon Network will actually participate in sessions with supply chain groups, given participation is only voluntary under the 2014 DAU (s. 138(2)(e) and (h))
- ascribes a large degree of discretion to Aurizon Network to manage its responsibilities and costs of participating in supply chain groups. While this covers Aurizon Network's legitimate business interests (s. 138(2)(b)), it is overly broad and has to be balanced with respect to the implications that the overall supply chain's efficiency has for the CQCN's efficiency.

Amending the 2014 DAU

The way in which we consider it appropriate for the 2014 DAU to be amended is set out in our CDD amended DAU.

Aurizon Network agrees with our initial draft decision that there is benefit in its participation in supply chain groups. However, Aurizon Network considers the QCA Act does not grant us the authority to require Aurizon Network to participate in and accept the directions/outcomes of each supply chain group. Specifically, Aurizon Network has argued that there is nothing in the QCA's powers under section 69E of the QCA Act that require us to consider the efficiency of anything wider than the declared service.

We agree with Aurizon Network that we are required to consider section 69E of the QCA Act in the context of the CQCN (i.e. the declared service).

The objective of the objects clause of Part 5 of the QCA Act is to promote the economically efficient operation of, use of and investment in the CQCN, with the effect of promoting effective

[454] QRC, 2015, sub. 84: 60.
[455] Asciano, 2015, sub. 76: 19.
[456] Asciano, 2015, sub. 76: 19.

competition in upstream and downstream markets. The CQCN does not exist in isolation. To the extent an initiative impacts the economically efficient operation of, use of and investment in the CQCN, that initiative is something we can have regard to. In fact, we consider our statutory role in determining the appropriateness of an undertaking obliges us to consider the relevance of such initiatives.

For example, suppose a scenario where a supply chain group develops a set of operational practices across the supply chain that requires supply chain participants, including Aurizon Network, to amend existing operating practices. Suppose this initiative can be shown to improve the economically efficient operation and use of the CQCN without adversely impacting on users' access rights or safety. Further suppose this change does not adversely affect Aurizon Network's network management principles, system rules and SOPs. However, the only supply chain participant that does not wish to amend existing operating practices is Aurizon Network. In this scenario, we consider Aurizon Network could not be said to be promoting the efficiency obligations in the object of Part 5 of the QCA Act.

Accordingly, if an initiative impacts the economically efficient operation of, use of and investment in the CQCN, we can consider it in the context of determining whether an undertaking is appropriate.

We further note that Aurizon Network's concerns regarding the need for additional modelling and planning resources are not valid reasons for altering our proposals. There are two issues to consider:

- Our IDD amended DAU provided for Aurizon Network to be exempted from participating in supply chain groups if costs are not recoverable (cl. 7A.3(e)(i)). This is consistent with Aurizon Network's legitimate business interests, and we have retained that position.
- If Aurizon Network incurs more costs than initially envisaged, we note the regulatory framework does not preclude Aurizon Network from requesting recovery of those additional costs (e.g. via a DAAU). We would assess such a proposal and, provided we consider those costs represent legitimate efficient costs, we would approve it. This too is consistent with Aurizon Network's legitimate business interests.

Consequent on our refusal to approve the 2014 DAU's coal supply chain coordination proposals, we proposed in our initial draft decision how the 2014 DAU should be amended. Our amendments set out the method by which we consider the 2014 DAU's best achieves the objectives of the factors in section 138(2) of the QCA Act. Accordingly, it is reasonable and within our jurisdiction to propose Aurizon Network:

- has an obligation to participate in supply chain groups, where the efficient cost of involvement is recoverable under the undertaking
- must abide by the supply chain groups' directions/outcomes when there are no adverse impacts on its network management principles, SOPs and system rules, and has a right to dispute resolution.

We note the QRC and Asciano broadly support our position.

Additionally, we note Asciano's comment that Aurizon Network should not be a coordinator of the supply chain groups, so Aurizon Network's ability to unfairly favour access seekers/holders over others is reduced. In our view, Asciano's concern raises questions about the treatment of access seekers/holders *within* supply chain groups. While our initial draft decision focused on

Aurizon Network participating in a non-discriminatory way[457] *between* supply chain groups, it did not address those issues *within* each supply chain group.

In responding to Asciano's concern, we note the QCA Act requires Aurizon Network to not unfairly differentiate between access seekers in a way that has a material adverse effect on the ability of one access seeker to compete with others. The QCA Act further requires that access undertakings must include provisions for identifying, preventing and remedying conduct of a related access provider that unfairly differentiates in a material way in the negotiation and provision of access (see s. 137(1A) of QCA Act and Chapter 3 (Intent and Scope) for a detailed discussion).

We have revisited our initial draft decision and now propose that Aurizon Network must participate in supply chain groups in a way that does not unfairly differentiate between[458]:

- supply chain groups (i.e. no supply chain is unfairly prioritised over another)
- access seekers in each supply chain group
- access holders in each supply chain group,

in a way that has a material adverse effect on the ability of one or more users to compete with others. This applies both between and within supply chain groups, thereby addressing Asciano's concern within the context of the QCA Act's requirements.

Except for the above refinement, which we consider would be appropriate to include as an amendment to the DAU, we have maintained all other aspects of our initial draft decision (which are not discussed here).

Based on our analysis, we consider our proposals appropriately balance the section 138(2) matters we are required to have regard to when assessing whether to approve or refuse to approve the 2014 DAU.

Our proposed amendments provide sufficient certainty to access seekers and holders that Aurizon Network will participate in sessions with supply chain groups and implement the actionable items emerging from those sessions, subject to no adverse impact on network management principles, SOPs and system rules and the right to dispute resolution (ss. 138(2)(b), (e) and (h)). We consider this ensures effective supply chain coordination, which contributes to promoting efficient CQCN operations, thereby addressing the object of Part 5 of the QCA Act and the public interest (s. 138(2)(a) and (d)).

We also consider our proposals have regard for Aurizon Network's legitimate business interests because efficient costs of participation in supply chain group are recoverable (s. 138(2)(b)). We note we have also provided Aurizon Network the right to dispute its actionable items that emerge from sessions with supply chain groups.

For this consolidated draft decision, we adopt the analysis, reasoning and amendments proposed in our initial draft decision, subject to our comments above.

[457] We have amended the initial draft decision's terms to say 'unfairly differentiate in a way that has a material adverse effect on the ability of one user to compete with another' in our consolidated draft decision, to be consistent with the terminology in the QCA Act.

[458] Clause 7A.3(c)(iii) of the CDD 2014 DAU.

Consolidated draft decision 10.1

(1) After considering the 2014 DAU's approach for Aurizon Network's participation in supply chain groups, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) We instead consider it appropriate to propose Aurizon Network amend the 2014 DAU as follows:

- **(a) Aurizon Network be required to participate in supply chain groups where the efficient cost of involvement is recoverable under the undertaking**
- **(b) Aurizon Network be required to implement actionable outcomes of the supply chain group, subject to: there being no adverse effect on Aurizon Network's network management principles, SOPs and system rules; and holding the right to dispute resolution**
- **(c) Aurizon Network be required to participate in supply chain groups in a way that does not unfairly differentiate between:**
  - **(i) supply chain groups, to ensure no supply chain is unfairly prioritised over another**
  - **(ii) access seekers within a supply chain group**
  - **(iii) access holders within a supply chain group,**

  in a way that has a material adverse effect on the ability of one or more users to compete with others.

(3) **The amendments that we consider to be appropriate to achieve the above are set out in clause 7A.3 of our CDD amended DAU.**

(4) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act, for the reasons set out in our analysis above.**

10.4 Capacity reviews

This section is structured as follows:

- Baseline capacity and annual capacity assessments (10.4.1)
- Expert review of capacity assessments (10.4.2)
- Confidentiality (10.4.3)
- Amendment triggers (10.4.4)
- Useability of capacity assessments' outputs (10.4.5).

10.4.1 Baseline capacity and annual capacity assessments

Aurizon Network's proposal

The 2014 DAU proposed annual capacity assessments to determine the capacity of each coal system (and the CQCN in total). It also proposed more frequent assessments where material variations adversely affected those systems' capacities.[459]

The 2014 DAU proposed that, in undertaking the capacity assessments[460], Aurizon Network would:

- consult with access holders and consider the terms of existing access agreements, SOPs and interfaces with other logistics facilities forming part of each supply chain (cl. 8.11.2)
- make the results of the capacity assessment available to access holders, access seekers and, if applicable, their customers (cl. 8.11.3(d)).

Summary of our initial draft decision

Our initial draft decision supported, in principle, Aurizon Network's commitment to produce a CQCN capacity review. However, we sought to strengthen and clarify the process.

We set a timeframe (i.e. within six months of the 2014 DAU's approval) for Aurizon Network to submit its first capacity review as a *baseline* capacity assessment to us to evaluate. We proposed a baseline capacity assessment process was necessary, given the lack of understanding stakeholders expressed on the capacity of Aurizon Network's coal systems.

We considered it important for Aurizon Network to consult with access holders, access seekers and each supply chain group in preparing its baseline capacity assessments (IDD amended DAU, cls. 7A.4.1(b)(i)–(ii)). We proposed to anchor our criteria for approving the outcomes of Aurizon Network's baseline capacity assessment to:

- consistency with the access undertaking
- the matters in section 138(2) of the QCA Act (cl. 7A.4.1(d)).

We also proposed we could involve ourselves in the baseline capacity assessments if required. In particular, our initial draft decision proposed we could undertake the CQCN baseline capacity assessments ourselves if Aurizon Network:

- elected not to submit a baseline capacity assessment to us
- failed to submit a compliant baseline capacity assessment to us, following our decision not to approve its original baseline capacity assessment (cl. 7A.4.1(f) of our IDD amended DAU).

Following the baseline capacity assessment, we agreed with Aurizon Network that it must undertake annual capacity assessments, at a minimum, to demonstrate whether existing capacity continues to be sufficient to deliver committed capacity. We also proposed those assessments should be comprehensive and rigorous.

We considered the capacity assessments should clearly outline all assumptions, inputs and outputs that underpin Aurizon Network's dynamic capacity modelling of each coal system.[461]

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[459] Clause 8.11.3 of the 2014 DAU.

[460] Aurizon Network undertakes its capacity assessment via its Central Queensland System Capacity Model (CQSCM). This is a dynamic simulation model that can replicate 24 months of operations to determine the CQCN's existing capacity rating on a monthly basis over 24 months.

We proposed the baseline capacity assessment, and the information Aurizon Network relied upon in developing it, should be subject to stakeholder consultation. We considered this important for the assessment to have a degree of credibility and independence.[462]

Stakeholders' comments on our initial draft decision

Aurizon Network agreed to undertake a baseline capacity assessment and provide it to us.[463] In a similar vein, the QRC supported our proposal to require Aurizon Network to submit such an assessment within six months of UT4's approval.

Stakeholders supported the requirement to determine each coal system's baseline capacity on the basis that it would:

- increase transparency[464]
- lead to increased efficiency[465]
- address stakeholders' lack of faith in Aurizon Network's capacity assessments[466]
- reduce unnecessary expenditure and be crucial for determining any future capacity needs[467]
- ensure Aurizon Network can deliver the capacity it has sold.[468]

Stakeholders also made detailed comments on these issues, which the 'QCA analysis' subsection (below) addresses. Aurizon Network and the QRC disagreed on whether the administrative approaches for baseline capacity assessments should be done differently from the annual capacity assessments.

Aurizon Network noted capacity assessments should be undertaken annually or when significant SOP changes are made. Aurizon Network said this approach is consistent with its existing processes, where it performs a capacity assessment annually for all contracted arrangements throughout the CQCN.[469] On this basis, Aurizon Network said a consistent approach should apply to baseline and annual capacity assessments, as the rigour and transparency of each assessment needs to be consistent.[470] Aurizon Network reasoned this by way of example:

> *... if a baseline capacity review is required within 6 months of the start of the Undertaking, then the process for doing so should be the same as an ordinary capacity review. Aurizon Network therefore proposes single drafting for baseline and annual capacity reviews.*

By contrast, the QRC said given the significance of capacity-related issues, the baseline capacity assessment warranted a process whereby our approval is required upfront and that it should be separate to the subsequent capacity assessments.

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[461] We considered this to comprise operation, maintenance and construction planning assumptions; assumptions arising out of the network management principles, SOP and System Rules and outputs relating to existing capacity, committed capacity and available capacity.
[462] This was subject to the information being available in an appropriate format in accordance with Part 3's ring-fencing obligations.
[463] Aurizon Network, 2015, sub. 82: 126–127.
[464] Anglo American, 2015, sub. 95: 27; BMA, 2015, sub. 78: 10; QRC, 2015, sub. 84: 61; Vale, 2015, sub. 79: 2.
[465] Anglo American, 2015, sub. 95: 27; Vale, 2015, sub. 79: 6.
[466] QRC, 2015, sub. 84: 61.
[467] Anglo American, 2015, sub. 95: 27.
[468] Asciano, 2015, sub. 76: 18.
[469] Aurizon Network, 2015, sub. 82: 126.
[470] Aurizon Network, 2015, sub. 82: 126.

QCA analysis

After having regard to the section 138(2) matters and stakeholder submissions, our consolidated draft decision is to refuse to approve the 2014 DAU's approach for undertaking capacity assessments. We consider the 2014 DAU's approach does not appropriately address the section 138(2) matters because it does not:

- identify what the outputs of the capacity assessment(s) will be
- require Aurizon Network to disclose upfront the assumptions (e.g. SOPs, inputs and outputs) underpinning any capacity assessment
- provide for an independent and sufficiently transparent review of CQCN capacity.

While Aurizon Network's approach is broadly consistent with the interests of access seekers and holders, in that it aims to provide more visibility of the CQCN's capacity, it is not sufficiently rigorous for those parties to assess and validate the baseline capacity (s. 138(2)(e) and (h) of QCA Act). Further, we do not consider having a rigorous and transparent capacity-assessment process to be inconsistent with Aurizon Network's legitimate business interests (s. 138(2)(b)).

For the reasons set out above, we do not consider it appropriate to approve Aurizon Network's proposal.

Amending the 2014 DAU

The way we consider it appropriate to amend Aurizon Network's 2014 DAU is set out in our CDD amended DAU.

Stakeholders have long considered the lack of transparency regarding Aurizon Network's capacity to be a major concern, and have also expressed a lack of faith in the associated processes to date. We consider this to be critical because of the impact it has on the effectiveness of a negotiate-arbitrate model. As access holders and seekers (and their customers) ultimately fund Aurizon Network's MAR, it is reasonable for them to establish an agreed understanding with Aurizon Network on its approach and inputs for measuring capacity (i.e. forging a common understanding of what baseline capacity means and is).

It is reasonable for CQCN stakeholders to require this information, as they do not have an alternative source for below-rail services to Aurizon Network. If a competitive below-rail market existed, access holders could change below-rail suppliers if they were dissatisfied with the lack of information and service standards. Because access holders and their customers cannot switch suppliers, we consider it essential that Aurizon Network shares robust capacity-related information with those parties.

To address this, our initial draft decision provided for Aurizon Network to undertake a baseline capacity assessment for each coal system and to consult with access holders, access seekers and each supply chain group in doing so. In this consolidated draft decision, we emphasise our view that Aurizon Network and stakeholders should be collaborative and cooperative during such a process, so that trust can be rebuilt in relation to capacity-related matters. We consider this encourages negotiations to occur before arbitration is necessary, consistent with the tenets of a negotiate-arbitrate model.

Accordingly, our view is that:

- the baseline capacity assessment should be the first step that Aurizon Network undertakes in collaboration with stakeholders, to establish a collective understanding of capacity

- the conditions in the undertaking can be changed if stakeholders and Aurizon Network agree the baseline capacity assessments should have different approaches, definitions or outcomes to those included in the undertaking
- regulatory intervention should be seen as a second-best option, to only be adopted where there is failure of the industry to collaborate on capacity matters in a constructive and cooperative way.

Our position on how Aurizon Network should amend its 2014 DAU, having regard to the section 138(2) matters in the QCA Act, can be divided into:

- purpose and process
- capacity estimates
- consistency between baseline capacity assessments and subsequent capacity assessments.

Purpose and process

The purpose of the baseline capacity assessment is to gain a comprehensive common understanding across stakeholders and Aurizon Network of the capacity of each CQCN coal system.

The approach of reaching a common understanding can enable Aurizon Network and stakeholders to agree on a way to manage any concerns emerging from the outcomes of that assessment process. In our view, this promotes the efficient operation of the CQCN infrastructure by allowing Aurizon Network and stakeholders to collaborate on developing solutions to manage CQCN capacity effectively.

Our consolidated draft decision seeks to promote a consultative and collaborative process between Aurizon Network and stakeholders. We consider there are three outcomes that can emerge under the baseline capacity assessment process, each with specific steps, as follows:

(1) Aurizon Network and stakeholders agree with the approach and outcomes of the baseline capacity assessment, and Aurizon Network submits its assessment to us:

(a) As proposed, Aurizon Network and stakeholders can agree on different approaches and outcomes for the baseline capacity assessment from those prescribed in the undertaking.

(b) We would assess the baseline capacity assessment, and have regard to the section 138(2) matters in the QCA Act and the undertaking in doing so. We would:

(i) consider whether a baseline capacity assessment that Aurizon Network and stakeholders have collaborated and agreed on is appropriate

(ii) anticipate, broadly speaking, that a baseline capacity assessment agreed between Aurizon Network and stakeholders would address the section 138(2) matters and should be approved.

(c) Following our approval of the baseline capacity assessment, Aurizon Network would publish the baseline capacity assessment on its website.

(2) Aurizon Network and stakeholders disagree on the approach and outcomes of the baseline capacity assessment, and Aurizon Network submits its assessment to us:

(a) Our assessment of the baseline capacity assessment would be guided by the undertaking and the section 138(2) matters in the QCA Act.

(b) We would seek stakeholder submissions on Aurizon Network's submitted baseline capacity assessment, and consider them in reviewing the assessment.

(c) If we consider the submitted baseline capacity assessment satisfies the relevant criteria, we would approve it.

(d) If we consider the submitted baseline capacity assessment does not satisfy the relevant criteria, we would indicate to Aurizon Network how it should amend its baseline capacity assessment (including the assumptions underpinning that assessment) for us to approve it.

(e) If Aurizon Network re-submits a compliant baseline capacity assessment, we would approve it. Aurizon Network would then publish the assessment on its website.

(f) If Aurizon Network does not resubmit a compliant assessment (or chooses not to resubmit it), we would undertake our own baseline capacity assessment. In this scenario, we would:

(i) publish on our website our baseline capacity assessment, which we developed while being guided by the undertaking and section 138(2) matters in the QCA Act

(ii) invite persons to make submissions on the assessment

(iii) consider submissions received

(iv) approve or amend our baseline capacity assessment.

(g) Aurizon Network would publish the approved baseline capacity assessment on its website.

(3) Aurizon Network and stakeholders disagree on the approach and outcomes of the baseline capacity assessment, and Aurizon Network does not submit its assessment to us:

(a) In this situation, we would undertake our own baseline capacity assessment.

(b) We would then follow the steps set out in 2(f)–(g) above.

Apart from our refinements above, we have retained our initial draft decision's proposed amendments to the 2014 DAU and propose Aurizon Network:

- submit a baseline capacity assessment to us within six months of the 2014 DAU's approval
- provide details of the assumptions accompanying that assessment.

Outcome 1 is optimal because it provides an opportunity for Aurizon Network to consult and collaborate meaningfully with stakeholders on the baseline capacity assessment process, consistent with a negotiate-arbitrate model. Our involvement is pronounced (i.e. Outcomes 2 and 3) only when Outcome 1 is not reached.

Stakeholders have supported our position in the initial draft decision, but have sought further certainty and clarity relating to our proposed processes. We address their comments in the table below, which we have divided into:

- process for inputs
- process for consultation
- process for outputs.

Table 30: Addressing stakeholder issues on baseline and annual capacity assessments

Matter no.	*Matter*	*Comments*	*QCA position*
Process for inputs			
1	Baseline Capacity Assessment Report	The baseline capacity assessment report should include the report[471] that provides the assumptions Aurizon Network has relied on for the assessment (see cl. 7A 4.1 (b)(iv) in our IDD amended DAU).	We consider clause 7.A.4.1(a)(ii) of our IDD amended DAU already addresses this requirement because the assumptions underpinning the baseline capacity assessment must be provided to us. We consider this should apply under Outcomes 1 to 3, because Aurizon Network has to submit its baseline capacity assessment to us under all three options.
2	Control	The capacity assessment should not include factors an access holder has no control over (e.g. maintenance possessions, speed restrictions and day-of-operation losses).[472]	We disagree with this position. Aurizon Network's capacity assessments depend on below-rail constraints, which include factors beyond an access holder's control. We note this issue does not directly relate to the processes we have set out for Outcomes 1 to 3. It is our overarching position on the factors that should reasonably be included in the capacity-assessment process.
3	Capacity assessment	What a capacity assessment must include (clause 7A.4.2(b)(iv) of the IDD amended DAU) should be linked to what Aurizon Network must consider (and disclose) in conducting a baseline capacity assessment (cl. 7A 4.1(b)(iv)). These assumptions should apply in respect of any subsequent capacity assessment.[473]	We agree with this position because it provides clarity on the nature of assumptions Aurizon Network employs in its baseline and annual capacity assessments. It also promotes consistency between the modelling methods and assumptions for undertaking baseline and subsequent capacity assessments. We consider it is appropriate to amend clause 7.A.4.2(b)(iv) to replicate the wording in clause 7A.4.1(b)(iv). We note this issue relates to subsequent capacity assessments, rather than the baseline capacity assessment.
Process for consultation			
4	Parties involved in consultation	The requirement for Aurizon Network to consult with access	We accept the QRC's position that Aurizon Network should not

[471] The report is to set out Aurizon Network's assumptions affecting capacity and relied upon for the baseline capacity assessment.
[472] Asciano, 2015, sub. 76: 19.
[473] QRC, 2015, sub. 84: 62.

Matter no.	*Matter*	*Comments*	*QCA position*
		holders should be extended to customers and train operators.[474]	only consult with access holders, but with customers and train operators (parties which are not always the access holders). Our IDD amended DAU required Aurizon Network to consult with access holders and each supply chain group (cls. 7.A.4.1(b)(i) and (ii)). While a supply chain group could include all customers and train operators in a coal system, it is reasonable for our drafting to ascribe a distinction to customers and train operators relative to the supply chain groups. This is because below-rail access rights clearly impact on those parties' operations relative to (for example) port terminals and infrastructure service providers. For this reason, we consider it appropriate to amend clause 7.A.4.1(b)(i) in our IDD amended DAU to extend consultation requirements to access holders' customers and train operators. We would require this for Outcomes 2 and 3, and encourage Aurizon Network to adopt it as part of Outcome 1.
5	Consideration of submissions	Clause 7A 4.1 (c)(iii) should be amended to require the QCA to seek submissions from stakeholders on the receipt of the baseline capacity assessment.[475]	We agree with this position. We consider it appropriate to amend clause 7A 4.1 (c)(iii) of our IDD amended DAU to provide that the QCA will seek submissions on Aurizon Network's baseline capacity assessment. We note this would apply where Aurizon Network and industry have not agreed on the approach and outcomes for the baseline capacity assessment (i.e. under Outcomes 2 and 3).
Process for outputs			
6	Transparency of results	Clause 7A 4.1(i) must remain as drafted, so that both the QCA and stakeholders get an un-redacted version of the baseline capacity assessment report.[476]	We support this position, and have retained this in our IDD amended DAU. (See our analysis in Section 10.4.3 below). We consider this would be relevant under Outcomes 2 and 3.

[474] Clause 7A 4.1(b)(i); QRC, 2015, sub. 84: 61.
[475] QRC, 2015, sub. 84: 61.
[476] Anglo American, 2015, sub. 95: 27.

Our consolidated draft decision clarifies the clauses in our IDD amended DAU, consistent with our responses to matters 3, 4, 5 and 6 in the table above.

Capacity estimates

Capacity estimates are the key outputs of the baseline capacity assessment process. To date, we understand Aurizon Network and stakeholders have not reached agreement on how capacity estimates should be presented, calculated and interpreted. We consider a collaborative approach for the baseline capacity assessment, which we are proposing in this consolidated draft decision, could overcome that. In the absence of agreement among those parties, however, we consider it relevant to clarify what we consider meaningful measures of capacity might be.

In response to our initial draft decision, Anglo American noted below-rail capacity is not a defined term in the 2014 DAU.[477] Anglo American also said the QCA should confirm that a figure will be given for the baseline capacity of the CQCN and each of its various systems, as well as its absolute capacity[478] (i.e. without any deductions).[479] We note our IDD amended DAU provided a range of capacity definitions (see the table below).

Table 31: Capacity definitions in our IDD amended DAU

Term	*Definition*
Capacity	The aggregate of all Existing Capacity and all Planned Capacity.
Planned Capacity	The increase in Existing Capacity that is expected to result from an expansion: (a) that Aurizon Network is contractually committed to construct (b) in respect of which construction has commenced.
Existing Capacity	All Committed Capacity and all Available Capacity, after taking into account: (a) Aurizon Network's reasonable requirements for the exclusive or partial utilisation of the rail infrastructure for the purposes of performing activities associated with the maintenance and repair of the rail infrastructure, including the operation of work trains (b) Aurizon Network's allowances for "day of operations" losses, speed restrictions and other operational losses or restrictions applicable to the railed infrastructure and the SOPs (c) Planned Capacity.
Available Capacity	Capacity, excluding all Committed Capacity (other than where the circumstances in clause 7.3(d)(iii) or (iv) apply).
Committed Capacity	That portion of capacity required to: (a) meet TSEs (b) satisfy Aurizon Network's obligations to access holders seeking to renew their access rights (c) comply with any Passenger Priority Obligation or Preserved Train Path Obligation (d) provide access rights to access seekers where Aurizon Network has, in relation to those access rights, contractually committed to

[477] Anglo American notes the issue of below-rail capacity was raised by Aurizon Network in the Aurizon Network Information Request. (Anglo American, 2015, sub. 95: 27)
[478] Or nameplate capacity.
[479] Anglo American, 2015, sub. 95: 28.

Term	*Definition*
	construct an expansion (e) provide access rights for access holders where Aurizon Network has, in relation to those access rights, contractually committed to construct a Customer-Specific Branch Line.

Source: IDD amended DAU

We consider the list of definitions addresses Anglo American's concern that below-rail capacity is not a defined term in the 2014 DAU.

However, consistent with what Anglo American has suggested, we consider it appropriate to supplement the definitions in the table above with one relating to 'Absolute Capacity'. This is a theoretical estimate of capacity that assumes: (i) perfect alignment of below-rail activities with other parts of the supply chain; and (ii) no operational inefficiencies and no need for maintenance activities. We consider providing a measure of absolute capacity important for empowering access seekers and holders to understand how the operational issues in question reduce capacity.

Further, in terms of measuring capacity, we note access holders contract for TSEs, which Aurizon Network provides in the form of a monthly number of train paths. We understand Aurizon Network's access application process relies on the outputs of its dynamic capacity modelling. We also understand the outputs can generate a range of capacity estimates, to reflect different degrees of reliability and the variability of the assumptions employed. In this context, we consider the outputs of Aurizon Network's capacity-assessment process should be monthly-based capacity measures derived from Aurizon Network's dynamic capacity model.

Accordingly, we consider it appropriate for Aurizon Network to amend its DAU by identifying each coal system's:

- absolute capacity—a range of monthly numbers of reference train paths on each coal system's mainline and branchlines (including planned capacity), including converting the monthly number reference train paths to an annual tonnage figure
- existing capacity and planned capacity—a range of monthly numbers of reference train paths on each system's mainline and branchlines, for each month in a year, and the corresponding annual tonnage figures. We note the sum of existing capacity and planned capacity provides an estimate of capacity (see table above)
- 'k-factor'[480] details, which Aurizon Network has used to provide existing capacity and planned capacity estimates. We note the k-factor should also be included in Aurizon Network's SOPs and NDP.

We propose Aurizon Network nominate a 'confidence interval' for the absolute capacity, existing capacity and planned capacity ranges it provides in the baseline capacity assessment, consistent with the outcomes of its dynamic capacity modelling. This interval will convey a degree of reliability on how much capacity Aurizon Network estimates there is (e.g. there is a 95 per cent probability Aurizon Network will achieve capacity of *A* mtpa to *B* mtpa in the Goonyella coal system's mainline in the financial year 2015–16).

We note our proposed measures may not necessarily meet all the reasonable requirements of access seekers, holders and their customers. We understand prescribing measures of

[480] The k-factor can be the ratio of: Existing Capacity to Absolute Capacity; or Capacity to Absolute Capacity.

committed capacity and available capacity might be more complex, given they can depend on the interaction of mine load-outs, branchlines, mainlines, port unloading slots and above-rail activities. In this context, we do not consider it meaningful to nominate capacity estimates for the branchline and mainline separately for those measures. An alternative arrangement might be more appropriate in those cases..

Accordingly, while we propose that Aurizon Network should provide estimates of committed capacity and available capacity, we have chosen not to be prescriptive on what those two measures would look like. We have included drafting in clauses 7A.4.1 and 7A.4.2 of our amended DAU to provide flexibility for Aurizon Network, access holders, seekers and holders to agree on:

- additional or different measures for absolute capacity, existing capacity and planned capacity
- measures for committed capacity and available capacity.

We consider this approach is consistent with our view that regulatory intervention should be considered after trying to establish agreement among stakeholders, reflecting the principles of a negotiate–arbitrate model.

Consistency between baseline capacity assessments and subsequent assessments

We note Aurizon Network has requested there be a consistent administrative approach for the baseline and subsequent capacity assessments. We consider Aurizon Network's position does not appropriately address the section 138(2) matters because it does not recognise a baseline capacity assessment serves a different purpose from subsequent capacity assessments.

The baseline capacity assessment is a scene-setting exercise, which gives supply chain participants visibility of the CQCN's various capacity measures and how contracted demand compares with it. By contrast, the subsequent capacity assessments would update the baseline capacity to reflect changes relating to operational matters and infrastructure investments; in essence, those subsequent assessments adjust the original scene presented to supply chain participants.

In our view, establishing a measure of baseline capacity through a credible process is more difficult than making adjustments to an established baseline. In this context, we consider it reasonable for our involvement to be more pronounced in the baseline capacity assessments relative to the subsequent capacity assessments.

Summary

Our position on the baseline capacity assessment and subsequent capacity assessments has had regard to:

- section 138(2)(a) of the QCA Act because it promotes efficient operation of and investment in Aurizon Network's infrastructure, namely by paving the way for stakeholders to seek cost-effective opex and/or capex solutions to manage capacity issues
- section 138(2)(d) of the QCA Act because it accounts for the public interest by providing a framework for promoting effective supply chain coordination, based on a common understanding of capacity across supply chain participants. Section 2.7 explains why we consider effective supply chain coordination to be in the public interest
- sections 138(2)(e) and (h) of the QCA Act because it provides an opportunity for access seekers and access holders to work cooperatively with Aurizon Network in shaping the approach and outputs for the baseline capacity assessment processes, while also accounting

for the need for greater transparency and understanding on capacity in the absence of a cooperative solution.

While our position on the baseline capacity assessment and subsequent capacity assessments will increase Aurizon Network's stakeholder-consultation and administrative responsibilities (s. 138(2)(b) of the QCA Act), we consider the benefits that an enhanced capacity-assessment process will bring to the supply chain more than offset the impacts imposed on Aurizon Network.

Indeed, we consider Aurizon Network can put forward, for assessment by us, any costs it considers should be allowed to recover as a result of such activities. After assessment by us, any legitimate efficient incremental costs incurred by Aurizon Network for that process can be recovered via access charges.

For our consolidated draft decision, we adopt the analysis, reasoning and amendments proposed in our initial draft decision, subject to our comments above.

10.4.2 Expert review of baseline and annual capacity assessments

Aurizon Network's proposal

The 2014 DAU proposed that Aurizon Network would:

- engage an independent expert to review the capacity assessment of a coal system, where the access holders of at least 60 per cent of the train paths in that coal system have requested it (cl. 8.11.3(e))
- provide copies of the final report by the independent expert to all relevant access holders (cl. 8.11.3(e)).

Summary of our initial draft decision

Our initial draft decision proposed that we should be able to engage an independent expert to support us with assessing Aurizon Network's baseline capacity assessment.

While our initial draft decision proposed that we could engage an expert to review Aurizon Network's baseline capacity assessment, we did not extend this requirement to subsequent capacity assessments. In that case, our IDD amended DAU provided that Aurizon Network could engage the expert in a way already set out in Aurizon Network's 2014 DAU, with one provision. This is to promptly provide the expert's report to us, access holders and seekers and, where applicable, their customers (cls. 7A.4.2(d)(iii)–(vii)).

Stakeholders' comments on our initial draft decision, and our subsequent analysis, can be divided into:

- baseline capacity assessments
- subsequent capacity assessments.

Stakeholders' comments on the initial draft decision

Baseline capacity assessments

The QRC said the expert review which the QCA may procure (cl. 7A.4.1(c)(iv) in our IDD amended DAU) appears not to be linked to any specific outcome.[481] The QRC also said the

[481] QRC, 2015, sub. 84: 61.

expert report should be binding on Aurizon Network, as the QRC does not support independent reviews conducted for informational purposes only.

Aurizon Network supported the QCA's discretion to engage an independent expert to critique the baseline capacity assessments. However, Aurizon Network said that because modelling methodologies can vary significantly and generate statistically significant variations in capacity outcomes, the expert's review should be limited to reviewing how the SOPs are applied to Aurizon Network's modelling approach.

Aurizon Network also said if the QCA procures an expert to evaluate the baseline capacity assessment, then it must do so in accordance with Aurizon Network's terms of reference. These terms include that:[482]

- Aurizon Network will engage an objective and independent expert
- the review will adopt Aurizon Network's capacity model and associated methodology
- the review will comply with Aurizon Network's latest published SOPs or, where relevant, adjusted SOPs that reflect any expansion capacity requirements
- the independent expert will provide its draft and final reports to Aurizon Network
- Aurizon Network will, on receipt of the expert's report, promptly provide the report to the QCA.

Aurizon Network, however, said it was unclear who would pay for an independent review requested by us.[483]

Subsequent capacity assessments

The QRC said clause 7A.4.2(d)(iii) of our IDD amended DAU should be amended to clarify that an independent expert will, in undertaking a review of a capacity assessment, critique any assumptions (including the SOPs) underpinning the capacity assessment.[484]

The QRC remarked the proposed approach may prove difficult to administer. Therefore, the QRC is willing to accept a requirement for the expert to be approved by the QCA and to acknowledge a duty to access holders (and their customers) to act independently and in accordance with the undertaking.[485]

QCA analysis

After having regard to the section 138(2) matters and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU's approach for engaging an expert for reviewing capacity assessments. We consider the 2014 DAU's approach does not appropriately address the section 138(2) factors because it is unlikely to:

- provide a sufficient degree of independence of the assessment, which could lead to a perception of bias. This is not in access seekers' and holders' interests, given the concerns previously expressed on the legitimacy of Aurizon Network's capacity analysis (s. 138(2)(e) and (h) of the QCA Act)

[482] Aurizon Network, 2015, sub. 82: 126–127.
[483] Aurizon Network, 2015, sub. 82: 34.
[484] QRC, 2015, sub. 84: 62.
[485] QRC, 2015, sub. 84: 61–62.

- lead to confidence in the capacity assessments, which may lead to stakeholders questioning the credibility of the results. This may result in decisions being made in the absence of relevant information, which could culminate in inefficient below-rail operations and compromise effective supply chain coordination (which is not in the public interest) (s 138(2)(a) and (d) of QCA Act)

While the 2014 DAU's proposal is not inconsistent with Aurizon Network's legitimate business interests as defined in Chapter 2 (s. 138(2)(b)), we consider it provides Aurizon Network with too great a degree of discretion and does not lend sufficient weight to the other factors discussed above.

Amending the 2014 DAU

The way in which we consider it appropriate for the 2014 DAU to be amended is set out in our CDD amended DAU.

For baseline capacity assessments, we consider involving an expert reviewer is important where Aurizon Network and stakeholders have not agreed on the associated approach and/or outcomes. For subsequent capacity assessments, we consider the expert reviewer would be involved where stakeholders and/or we are not satisfied with the outcomes of those assessments.

Baseline capacity assessments

We do not support Aurizon Network's position that it should be responsible for engaging an independent expert for the baseline capacity assessments. An independent review of those assessments can provide confidence to stakeholders that the outcomes are legitimate. If Aurizon Network engages an expert, and that expert has to abide by Aurizon Network's terms of reference, it raises questions around independence.

Aurizon Network also said if the QCA procures an expert to evaluate the baseline capacity assessment, then it must do so in accordance with Aurizon Network's terms of reference. We consider this too would raise questions around independence, and therefore do not support Aurizon Network's view. For the avoidance of doubt, this is not to say we disagree with the principles proposed by Aurizon Network. Rather, given the importance of independence, we consider developing the terms of reference for the expert's review of the baseline capacity assessment should be our role rather than Aurizon Network's.

We also disagree with Aurizon Network's position that the expert's review should be limited to using Aurizon Network's capacity model. In addition to auditing Aurizon Network's capacity model, we consider the expert should have discretion on proposing whether alternative capacity models better suit the dynamics of CQCN's operations, particularly in situations where the expert considers Aurizon Network's capacity model is not achieving that objective. We emphasise that this is a proposal that the expert may choose to put to us for our consideration. It is not something we need to accept from the expert; we can just have regard to it. It does not remove the need for the expert to audit Aurizon Network's capacity model. Therefore, we do not accept Aurizon Network's suggestion to restrict the expert's scope to only using Aurizon Network's model.

As for which party would bear the costs for the independent peer review, we note that our initial draft decision proposed that we would engage the expert for such a purpose. In that sense, we would be responsible for procurement of the service; the costs, as with all consulting costs, would be passed on to Aurizon Network via the QCA levy (which is part of the access charges).

Subsequent capacity assessments

We note our IDD amended DAU provided for Aurizon Network (rather than us) to engage an independent expert for subsequent capacity assessments. This means:

- Aurizon Network and its appointed expert must abide by the confidentiality and independence terms in our IDD amended DAU
- Aurizon Network must promptly provide its expert's report to access holders and seekers and, where applicable, their customers (cls. 7A.4.2(d)(iii)–(vii)).

Our consolidated draft decision retains this position. We consider the requirement to engage an expert is reasonable, as involving us more heavily in the baseline capacity assessment to establish the assessment's credibility is more useful than involving us in adjusting a credible baseline.

Separately, we agree with the QRC that clause 7A.4.2(d)(iii) should make it clear the expert's review would include assessing the reports supporting Aurizon Network's capacity assessments. All the assumptions that underpin those assessments are relevant to the exercise's integrity. We have amended our drafting to reflect this change.

Overall position

Our further proposed amendments clarify the role we envisage the expert would play in baseline capacity and subsequent capacity assessments. In particular, we consider it appropriate for the DAU to include:

- an option for us to procure a qualified and experienced expert to support us with
  - reviewing Aurizon Network’s baseline capacity assessment (if required)
  - developing our own baseline capacity assessment
- that Aurizon Network must procure an independent expert, in accordance with the terms prescribed in the undertaking, if we and/or the majority of access holders seek a review of Aurizon Network's subsequent capacity assessment(s)
- a requirement for the expert to have regard to Aurizon Network's and stakeholders' submissions on baseline capacity assessments and subsequent capacity assessments
- outcomes of capacity assessments (including where influenced by an expert's advice or reports) be binding on Aurizon Network and stakeholders, provided we consider it appropriate to do so having regard to the section 138(2) matters in the QCA Act.

Our position for the consolidated draft decision is set out in the expert review process (below) for baseline capacity assessments and subsequent capacity assessments. (See cls. 7A4.1(c)(iv) and 7A.4.2(d)).

Table 32: QCA's proposed drafting for engaging expert reviewers for capacity assessments

Step	*Expert review process*
QCA's proposed expert review process for baseline capacity assessment	
1	If Aurizon Network submits its baseline capacity assessment report to us, we can engage an appropriately qualified and experienced expert if required. The expert must be independent and abide by confidentiality conditions.
2	We will take the expert's inputs into account, and give them due weight, when considering whether to approve/refuse the outcome of Aurizon Network's baseline capacity assessment. If we refuse to approve the assessment, our decision will set out how Aurizon Network should amend the baseline capacity assessment for it to be approved.
3	If Aurizon Network does not re-submit a compliant baseline capacity assessment (or chooses not to re-submit), we can undertake our own capacity assessment. We can procure a qualified and experienced expert to support us with that assessment.
4	Aurizon Network and stakeholders can comment on our baseline capacity assessment, including our expert's reports (if any). We will consider those submissions in finalising the baseline capacity assessment.
5	Our baseline capacity assessment will be binding on Aurizon Network and stakeholders, provided we consider it appropriate to do so having regard to the section 138(2) matters in the QCA Act.
QCA's proposed expert review process for subsequent capacity assessments	
1	Within 30 business days after Aurizon Network makes a capacity assessment for an available coal system, the QCA or access holders (holding at least 60% of train paths, or representing 60% of the number of access holders) can notify Aurizon Network they seek an independent expert to review the capacity assessment. We note this requirement can deter Aurizon Network from undermining the outcomes of a baseline capacity assessment, which can happen if Aurizon Network seeks to amend those outcomes in an inconsistent or unreasonable way during a subsequent capacity assessment.
2	Aurizon Network will (acting reasonably) engage the expert, subject to stringent conditions relating to independence and confidentiality (same conditions in our IDD amended DAU).
3	Once Aurizon Network receives the expert's draft report, Aurizon Network must promptly provide it to us, access holders and seekers, and, where applicable, their customers.
4	Aurizon Network and stakeholders can comment on the expert's report.
5	The expert must consider those submissions when finalising its report, and we will consider whether the outcome should be binding on Aurizon Network and stakeholders, having regard to the section 138(2) matters in the QCA Act.

We consider it critical for the outcomes of the capacity assessments to be binding on Aurizon Network and stakeholders. We propose these outcomes be binding if, after having regard to the section 138(2) matters in the QCA Act, we consider it appropriate to do so. This provides confidence and certainty to access holders and seekers (and customers) that reported capacity levels reflect a rigorous assessment process, including independent review, that are not clouded by biases. In making the outcomes binding, we note the process provides an opportunity for Aurizon Network to comment on the expert's assessment prior to the expert's report being finalised.

We consider our approach balances Aurizon Network's, access holders' and seekers' interests (ss. 138(2)(b), (e) and (h) of QCA Act). We also consider this approach promotes efficient investment in the CQCN (s. 138(2)(a) of QCA Act) and effective supply chain coordination, which we consider to be in the public interest (s. 138(2)(d) of QCA Act).

For our consolidated draft decision, we adopt the analysis, reasoning and amendments proposed in our initial draft decision, subject to our comments above.

10.4.3 Confidentiality

Aurizon Network's proposal

The 2014 DAU proposed that Aurizon Network's ability to disclose information during the capacity assessment process is contingent on not causing it to breach its ring-fencing obligations, access agreements and any relevant confidentiality agreement. It proposed Aurizon Network could avoid those breaches by redacting any confidential information from the information it provides during the capacity assessment processes.[486]

Summary of our initial draft decision

Our IDD amended DAU[487] included provisions requiring Aurizon Network to:

- disclose any confidential information, that is permitted by the undertaking, in all capacity assessment reports
- use reasonable endeavours to obtain the consent of third parties to disclose confidential information not covered by the undertaking's reach
- not agree confidentiality obligations that prevent information disclosure relating to capacity assessment reports or that does not permit information disclosure that the undertaking requires.

Stakeholders' comments on the draft decision

Aurizon Network agreed, in principle, with maximising stakeholder transparency but noted there are current restrictions under access agreements or the undertaking that limit disclosing this information. Aurizon Network proposed a new disclosure regime (see Chapter 12) to address these restrictions. [488]

The QRC supported our proposal to curtailing Aurizon Network's ability to rely on confidentiality obligations, so as to permit disclosing baseline capacity assessments, capacity assessments, capacity-deficit assessments and SOPs. However, QRC noted this prohibition should be more clearly linked to the information Aurizon Network must disclose.[489]

In comparison, Aurizon Operations was concerned our proposal would be damaging to its commercial interests, given there is no confidentiality agreement between itself and Aurizon Network outside the provision of the access agreement. Aurizon Operations also argued the undertaking should not permit the disclosure of information without the owner's consent.[490]

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[486] Clause 8.11.3(h) of 2014 DAU.
[487] See clauses 7A.4.1(i)–(j) and 7A.4.2(g)–(h) of our IDD amended DAU.
[488] Aurizon Network, 2015, sub. 82: 128.
[489] QRC, 2015, sub. 84: 63–64.
[490] Aurizon Operations, 2015, sub. 93: 19.

QCA analysis

After having regard to the section 138(2) matters and stakeholder submissions, we refuse to approve the 2014 DAU's approach for managing confidentiality.[491]

We note Aurizon Network's proposal seeks to protect its business interests, namely by honouring confidentiality obligations to access holders and other parties.

However, we consider the proposal overstates the practical confidentiality commitments that apply to it, and curtails the disclosure of information. This is inconsistent with the public interest because it prevents effective supply chain coordination due to the risk of Aurizon Network providing insufficient information during the capacity assessment (s. 138(2)(d)). It also does not support the efficient operation and use of the below-rail infrastructure in those circumstances (s. 138(2)(a) of the QCA Act).

Amending the 2014 DAU

The way in which we consider it appropriate that Aurizon Network amend its DAU is set out in our CDD amended DAU.

Confidentiality is important to an access agreement's contracting parties. It helps them retain their competitive advantage by preventing the disclosure of commercially sensitive information to competitors (and potential competitors).

For this reason, we accept that baseline capacity assessment cannot reveal confidential information, unless Aurizon Network and relevant stakeholders agree, or are taken to have agreed, to the disclosure of that information. We note our IDD amended DAU seeks to achieve that objective (cl. 7A. 4.1 and 4.2). This addresses Aurizon Operations' concern that the undertaking should not permit the disclosure of information without the owner's consent.

Our IDD amended DAU also prevents Aurizon Network from agreeing any confidentiality obligations going forward that prevent the disclosure of information in capacity assessment reports (cl. 7A.4.1 and 4.2). The drafting addresses the difficulties caused by an overly restrictive confidentiality regime identified above.

We note Aurizon Operations' comment that there are no confidentiality obligations outside the provisions of its access agreements with Aurizon Network. We do not accept this comment as Aurizon Operations and Aurizon Network should operate as ring-fenced entities.

The exchange of operational documentation between those entities, other than required by an access agreement, may result in Aurizon Network breaching its ring-fencing provisions. We have considered this in Chapter 4 of this decision.

For our consolidated draft decision, we adopt the analysis, reasoning and amendments proposed in our initial draft decision, subject to our comments above.

10.4.4 Amendment triggers

Aurizon Network's proposal

The 2014 DAU proposed that Aurizon Network would undertake a capacity assessment for a coal system if the SOPs are varied in a way that materially *decreases* existing capacity, and do so annually at a minimum.[492]

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[491] We consider this point in further detail in our decision on the 2014 DAU's proposed network management principles.

Summary of our initial draft decision

Our initial draft decision proposed that Aurizon Network must undertake a capacity assessment if Aurizon Network, acting reasonably, considers SOP variations can materially *change* the relevant coal system's capacity (see section 10.5 of our initial draft decision and our IDD amended DAU, cl. 7A.4.2(a)(ii)).

Stakeholders' comments on the initial draft decision

The QRC supported our initial draft decision. However, the QRC reiterated its support for an expanded list of triggers for capacity assessments.[493] It suggested the expanded list of triggers should include situations where Aurizon Network is aware of below-rail changes not reflected in the SOPs that could result in a material and sustained change to capacity.

QCA analysis

Taking into account the factors set out in section 138(2) of the QCA Act and stakeholder submissions, we do not consider it appropriate to approve Aurizon Network's approach for linking SOP amendments to capacity assessments in the 2014 DAU. Our reasons are that access holders and seekers value understanding the capacity impact of SOP amendments, regardless of whether they are related to capacity increases or decreases.

We note Aurizon Network's response to our initial draft decision does not object to our proposed position on this. However, the QRC has indicated there could be below-rail changes that fall outside the scope of SOPs. We address this concern below.

Amending the 2014 DAU

When SOPs change, capacity estimates will change too. We understand these can occur several times during a year. While it is possible there are below-rail paramters not covered by Aurizon Network's SOPs, we were unable to identify any. Nevertheless, we consider Aurizon Network's subsequent capacity assessments (which happen annually at a minimum) would capture any changes (whether SOP-related or not) that affect the capacity estimates. This, in our view, addresses the QRC's view.

For our consolidated draft decision, we adopt the analysis, reasoning and amendments proposed in our initial draft decision.

10.4.5 Useability of capacity assessments' outputs

Aurizon Network's proposal and our initial draft decision did not discuss the useability of capacity assessments' outputs. However, Aurizon Network and other stakeholders have raised this matter in submissions on our initial draft decision.

Stakeholder comments on the initial draft decision

Aurizon Network questioned the value of relying on any outcome derived from capacity modelling due to the input assumptions and processes used.[494] Aurizon Network suggested a more robust and informative process for access seekers would be to submit access requests, as these would identify what is required to support their access needs.[495]

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[492] Clauses 8.11.3 (a) and (b) of 2014 DAU.
[493] QRC, 2015, sub. 84: 62.
[494] Aurizon Network, 2015, sub. 82: 128.
[495] Aurizon Network, 2015, sub. 82: 124, 128.

Aurizon Network added that any declaration of an estimated available capacity may lead to access seekers misconceiving there is no requirement to build additional below-rail infrastructure. It said access seekers may well proceed to develop their own project assumptions without testing this through the appropriate access process.

Aurizon Operations argued that given capacity is a dynamic rather than absolute construct, industry will be better served by focusing on how the capacity analysis was undertaken, rather than whether the assessment suggests there is sufficient rail infrastructure to align with contracted capacity. Aurizon Operations said focusing on the modelling process and relying on contractual enforcements would achieve a higher degree of confidence in Aurizon Network's business practices than would a regulatory intervention.[496]

QCA analysis

Aurizon Network considers that access seekers should lodge an access request to confirm whether their capacity requirements can be met. We understand that access requests, rather than capacity assessments, is the formal starting point for negotiating an access agreement. In this context, and in contrast with Aurizon Network's position, we consider it highly unlikely access seekers (acting reasonably) would rely on the outputs of capacity assessments to progress their project plans.

That said, we consider it reasonable for access seekers (and holders) to rely on the outputs emerging from capacity assessments in some form. When access seekers are reasonably well informed about Aurizon Network's capacity situation, they can better understand how to prepare their access requests to facilitate expedited outcomes. Contracting parties can make decisions more efficiently if they are well informed. This position is consistent with the interests of parties referred to in the section 138(2) matters (i.e. s. 138(2)(b), (e) and (h)).

We disagree with Aurizon Operations' view that industry should not focus on whether the capacity assessment indicates there is sufficient capacity to meet contracted train paths. Capacity assessments are a means to an end; their outcomes reveal, at an indicative level, if capacity is adequate for Aurizon Network's commitments and proposed commitments. The inputs and approaches for undertaking capacity assessments are not valued for their own sake; they are valued because of what they reveal about capacity. So, industry is only served well when the outcomes of capacity assessments are useable and can be relied on.

Amending the 2014 DAU

Our position is that capacity assessments must generate useable outputs (i.e. outputs that access seekers/holders can rely on in some form). We consider the 2014 DAU should be amended to reflect that access holders and seekers can rely on the outputs of those assessments to, respectively, assess Aurizon Network's compliance with their access agreements and to inform their access applications. It should also inform them about the potential or future productivity gains from using existing infrastructure, and serve as a key indicator of future expansion needs.

The way in which we consider it appropriate that Aurizon Network amend its DAU is set out in our CDD amended DAU.

[496] Aurizon Operations, 2015, sub. 93: 18.

Consolidated draft decision 10.2

(1) Our consolidated draft decision is to refuse to approve Aurizon Network's 2014 DAU capacity review proposal.

(2) The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is as we have indicated in our CDD amended DAU:

(a) The baseline capacity assessment process will be conducted in accordance with the way set out in Section 10.4.1 above, which proposes, among other things:

(i) Aurizon Network must consult with access holders, access seekers (and, where applicable, their customers) in preparing its baseline capacity assessment. Aurizon Network and those parties can agree on different processes and/or outputs than those prescribed in the undertaking.

(ii) Aurizon Network must, unless otherwise agreed with stakeholders, submit an un-redacted baseline capacity assessment report (of the CQCN and each coal system) to us for approval no later than six months after the 2014 DAU's approval.

(b) the baseline capacity assessment (including subsequent capacity assessments) must outline:

(i) operation, maintenance and construction planning assumptions

(ii) network management principles, SOPs and system rules assumptions

(iii) measures of absolute capacity, existing capacity, committed capacity and available capacity.

Access holders can rely on these outputs to validate Aurizon Network's compliance with their access agreements, and access seekers can rely on these outputs to inform their access applications.

(c) When reviewing Aurizon Network's baseline capacity assessment, we can hire a qualified and independent expert to assist with our review of that assessment. The expert will have regard to the need for independence, confidentiality and to account for any stakeholder submissions received during its review

(d) If we do not approve Aurizon Network's baseline capacity assessment, and Aurizon Network has not resubmitted a compliant assessment (or has not resubmitted the assessment at all), then we can appoint an independent expert to support us with our own baseline capacity assessment. The expert will have regard to the need for independence, confidentiality and to account for any stakeholder submissions received during its review

(e) Our approval of the outputs of the baseline capacity assessment (including recommendations from any expert-review process) would be subject to us having regard to the section 138(2) matters in the QCA Act. If we approve those outputs, the outcome will be binding on Aurizon Network and other stakeholders

(f) Aurizon Network must conduct subsequent capacity assessments, annually at least, to demonstrate if existing capacity can deliver committed capacity. If requested by access holders (holding at least 60% of train paths, or representing 60% of the number of access holders) or us, Aurizon Network will

(acting reasonably) engage an independent expert to review the capacity assessment(s)

(g) Aurizon Network must undertake capacity assessments more frequently where the variations in the SOP have materially changed the relevant coal system's capacity

(h) Our approval of the outputs of the subsequent capacity assessments (including recommendations from an expert-review process) would be subject to us having regard to the section 138(2) matters in the QCA Act. If we approve those outputs, that outcome will be binding on Aurizon Network and other stakeholders.

(3) **Our amendments are set out in clauses 7A.4.1 and 4.2 of our CDD amended DAU.**

(4) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act, for the reasons set out in our analysis above.**

10.5 Capacity deficits

Aurizon Network's proposal

Aurizon Network has proposed in its 2014 DAU that if a capacity assessment identifies a capacity deficit, then it would respond as summarised in the table below.

Table 33 Aurizon Network's proposed treatment of access rights for a capacity deficit

(Contracted) access rights	*Conditional access rights*
• Access rights are not subject to any compression. • If contracted access cannot be delivered as a result of the network being unavailable due to an Aurizon Network Cause, then access charges cannot be levied on that path. • Aurizon Network will not contract any new access agreements if it results in increasing the relevant coal system's capacity deficit.	• Conditional access rights are compressed to reflect the capacity review's outcome. • Conditional access holders affected by the capacity deficit will be given a priority allocation of capacity in a subsequent expansion project based on the same terms and conditions of the executed conditional access agreement.

Note: (Contracted) access rights are entitlements to access in accordance with specified TSEs.[497] *In comparison, conditional access rights are contingent on an expansion being completed and commissioned.*[498]

The 2014 DAU does not provide a general obligation to remedy a capacity deficit in existing capacity.[499] Instead, it proposes that Aurizon Network would undertake expansions to address capacity deficits in accordance with the expansion framework in Part 8 (cl. 8.11.3(f)).

Stakeholders said that if a capacity shortfall is identified, then Aurizon Network should assess the impacts on existing access holders and identify solutions to address the shortfall. They submitted that Aurizon Network should not compress existing access holders' access rights in the event of a capacity shortfall. Stakeholders said any compression should apply to conditional access holders of an expansion and, where there are a number of expansions, compression should operate on a last-in first-out basis.

[497] 2014 DAU, p. 172.
[498] Clause 8.10.3 of the 2014 DAU.
[499] Aurizon Network does, however, agree it will fund an Aurizon Network shortfall under cl. 8.10.2(e)(vi).

Summary of our initial draft decision

In our initial draft decision, we noted the 2014 DAU does not oblige Aurizon Network to remedy a capacity deficit in existing capacity due to over-contracting. Instead, the 2014 DAU proposed to do this via an expansion in accordance with the Part 8 expansion framework. There is, however, no guarantee that an expansion would actually occur.

We considered that potential over-contracting has the practical effect of Aurizon Network not honouring its commitments to provide the below-rail services it has sold to its customers. We considered that Aurizon Network's ability to do this was only possible as it is the CQCN's monopoly supplier of below-rail services. We also said Aurizon Network cannot lose market share or suffer the equivalent reputational damage that its proposed course of action could cause in a competitive environment. Given these, we did not consider the 2014 DAU's proposals to be consistent with sections 69E and 138(2)(a) of the QCA Act regarding the efficient operation of, use of and investment in the CQCN.

We also considered Aurizon Network's proposal created unnecessary uncertainty regarding its commitment to supply the service it has contractually agreed to provide, and that such uncertainty would increase risk for access holders and access seekers. Against this background, we considered that it was appropriate for Aurizon Network to amend its DAU to establish a capacity/performance guarantee to recognise Aurizon Network is contractually committed to deliver the below-rail services that access holders are paying for.

We considered that where CQCN existing capacity is assessed as insufficient to reliably deliver existing contractual entitlements, the capacity/performance guarantee on committed capacity should require Aurizon Network to:

- review all network management principles, SOPs, system rules, asset management and maintenance plans to identify whether amendments to its operating assumptions would address the capacity deficit
- consult with access holders, coal chain groups, train operators and terminal operators about whether there are efficient supply chain capacity options to align existing capacity to the CQCN's committed capacity
- submit a report to the QCA which identifies the outcome of the capacity review, results of coal chain consultation process and a project plan for addressing the capacity deficit.

Further, we considered it was appropriate for Aurizon Network to amend its DAU to provide that if an expansion is the most prudent and efficient solution to address the capacity deficit, then Aurizon Network must promptly undertake and fund that expansion to deliver the additional capacity needed to address the deficit.

Stakeholders' comments on initial draft decision

Aurizon Network said if a capacity review reveals there is a capacity deficit, then it would have regard to that capacity deficit prior to:[500]

- executing any access agreement that would increase the deficit's size
- constructing any relevant expansion for that coal system.

Aurizon Network also agreed that it would be willing to assess the effects of the deficit (if any) on existing access rights, and to identify potential solutions to address the deficit.[501]

[500] Aurizon Network, 2015, sub. 82: 127.

However, Aurizon Network disagreed with our initial draft decision that it be required to fund an expansion in respect of a capacity deficit. Aurizon Network argued that it is beyond our power to do so.[502] Nonetheless, Aurizon Network said it is willing to consider funding expansions to overcome capacity deficits on a case-by-case basis. The table below sets out Aurizon Network's proposed conditions for funding (or not funding) expansions.

Table 34: Aurizon Network's proposed funding conditions for addressing capacity deficits

Funding conditions[503]
Conditions where Aurizon Network will fund an expansion
The capacity deficit relates to Aurizon Network cause items, and the rectification only covers the portion of the deficit that can be attributed to those items.[504]
It is limited to the infrastructure required to address the element of the capacity deficit.
At least 60 per cent of affected access holders (by proportion of train paths) elect that an expansion be undertaken.
The expansion satisfies section 8.2.1 (in our IDD amended DAU) and safeguards Aurizon Network's legitimate business interests in connection with initial draft decision 12.1.
QCA has pre-approved the expansion.
The expansion assets will, at or about the same time as the QCA's pre-approval of those assets, be included in the base pool of assets of the relevant coal system.
Conditions where Aurizon Network will not fund an expansion [505]
The capacity deficit is the result of matters under the control of other supply chain participants.
The capacity deficit is due to a change outside the control of any supply chain participant (e.g. a change of law or safety practices).
Should there be an improvement in Aurizon Network's capacity modelling methodology and that improvement contributes to a capacity deficit, that portion of the deficit would not be considered an Aurizon Network Cause item.

Aurizon Network noted it is willing to explore non-expansion options for overcoming capacity deficits including supply chain options[506], review of operations and resumption of unused capacity.[507] Aurizon Network also said any decision to undertake and fund expansions would require changing the study-funding provisions of Part 8 of the 2014 DAU.

Aurizon Network also said:

> *A further option to be considered to overcome a deficit should be a resumption of capacity from existing access holders where those parties agree to the resumption. This may be a more suitable solution than including more costs in the RAB where access holders would prefer to reduce capacity than pay more for greater certainty.*

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[501] Aurizon Network, 2015, sub. 82: 127.
[502] Aurizon Network, 2015, sub. 82: 129.
[503] Aurizon Network, 2015, sub. 82: 129.
[504] Aurizon Network defines 'cause items' as items where it has not complied with an access agreement or its undertaking. (Aurizon Network, 2015, sub. 82: 129).
[505] Aurizon Network, 2015, sub. 82: 129.
[506] Aurizon Network noted supply chain options may require the resolution of significant business issues. (Aurizon Network, 2015, sub. 82: 129).
[507] Aurizon Network, 2015, sub. 82: 124.

Other stakeholders supported our initial draft decision's proposed 'capacity deficit guarantee'.[508]

However, the QRC noted clause 7A.4.3 of our IDD amended DAU should expressly acknowledge nothing in that clause affects or limits Aurizon Network's obligations or liabilities under any access agreement or other agreement. Asciano supported our initial draft decision to require Aurizon Network to undertake and fund any expansion required to meet contracted capacity.[509]

While BMA[510] and QRC[511] broadly supported our proposal, they said the potential for unintended consequences was concerning. In particular, BMA said the QCA should assess the various scenarios before requiring Aurizon Network to undertake expansions. On a similar note, the QRC said there may not be merit in expanding the infrastructure with the capacity deficit if other parts of the system (i.e. non-below-rail assets) cannot accommodate the expansion.

The QRC also said that where a deficit exists, consideration should be given to whether augmenting other parts of the system could more economically address the shortfall.[512] To meet this requirement, the QRC suggested Aurizon Network should procure the approval of the access holders affected by the deficit prior to undertaking the relevant expansion.

QCA analysis

After having regard to the section 138(2) matters and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of how Aurizon Network proposes to manage capacity deficits. Aurizon Network's 2014 DAU proposes to have regard to a capacity deficit prior to:

- executing an access agreement that would increase the deficit
- constructing any relevant expansion.[513]

We do not consider the 2014 DAU appropriately addresses the section 138(2) matters for the following reasons:

- It is inconsistent with the interests of access seekers and holders (s. 138(2)(e) and (h) of QCA Act) because it does not provide a commitment for Aurizon Network to take credible and immediate steps to mitigate the impact of a capacity deficit.
- It does not promote effective supply chain measures to alleviate capacity deficits. We do not consider that this promotes the object of Part 5 or the public interest (s. 138(2)(a) and (d) of QCA Act). See Section 2.7 on why we consider effective supply chain coordination to be in the public interest.

In considering Aurizon Network's capacity-deficit proposal, we took into account Aurizon Network's legitimate business interests (s. 138(2)(b) of QCA Act), but we consider the proposal does not ascribe sufficient weight to the other section 138(2) matters.

[508] QRC, 2015, sub. 84: 64; BMA, 2015, sub. 78: 10.
[509] Asciano, 2015, sub. 76: 18.
[510] BMA, 2015 sub. 78: 10.
[511] QRC, 2015, sub. 84: 64.
[512] QRC, 2015, sub. 84: 64.
[513] Clause 8.11.3 (f) of the 2014 DAU.

Amending the 2014 DAU

The way in which we consider it appropriate for the 2014 DAU to be amended is set out in our CDD amended DAU.

We consider it reasonable for access holders (and seekers) to expect Aurizon Network to be capable of delivering the access rights it has sold. We consider that the objective of Aurizon Network being accountable for resolving capacity deficits is best achieved if Aurizon Network is required to use its best endeavours to provide a capacity deficit solution[514]. Additionally, it promotes certainty for access holders (and seekers) as they can make decisions based on the knowledge that Aurizon Network is committed to mitigating adverse implications a capacity deficit may have for TSEs.

While it is reasonable for Aurizon Network to account for the existence of a capacity deficit in executing access agreements or constructing an expansion (which the 2014 DAU already proposes), we consider the 2014 DAU needs to go a step further in requiring Aurizon Network to seek to resolve that deficit in partnership with the relevant supply chain groups. This echoes the position we have adopted in encouraging Aurizon Network to work collaboratively with stakeholders during the baseline capacity assessment process (see Section 10.4).

The options Aurizon Network has to address a capacity deficit include operational changes and/or capacity expansions. Our initial draft decision considered that operational changes[515] (e.g. SOP or system rules amendments) should be considered before capacity expansions.

Aurizon Network supported our position on the need to consider operational changes. However, Aurizon Network considered that any requirement that it fund expansions to resolve capacity deficits, regardless of the circumstance, was outside our powers. Our initial draft decision was that it would be appropriate for Aurizon Network to amend its DAU to provide that it is required to fund such expansions. We have taken into account Aurizon Network's and stakeholders' submissions, and consider our proposed position addresses our concerns without requiring that we take the step proposed in our initial draft decision.

After identifying the actions that Aurizon Network can take to resolve a capacity deficit, the next step in our analysis is to identify the trigger for establishing if a capacity deficit exists. Our IDD amended DAU defined a capacity deficit as a 'deficit in the Capacity for a Coal System at a particular point in time' (cl. 7A.4.3). We consider a capacity deficit occurs when committed capacity exceeds existing capacity. In some cases, this may happen because Aurizon Network has not planned its capacity needs appropriately; in other circumstances, the deficit may occur because of factors beyond Aurizon Network's control.

In this context, we note Aurizon Network has proposed (in its response to our initial draft decision) that it would fund expansions to address a capacity deficit when, among other things, 'Aurizon Network cause items' are triggering that deficit. Aurizon Network has defined 'Aurizon Network cause items' as situations where it has not complied with an access agreement or its undertaking.

For completeness, we have considered both the definitions of:

[514] We considered what occurs on ARTC's Hunter Valley coal network when there are capacity deficits. The 2011 Hunter Valley Coal Network Access Undertaking only prescribes responses for ARTC to follow when an event has caused a capacity deficit (see clauses 5.3 to 5.5). It does not say what would happen if there is an *underlying* capacity deficit, and how to coordinate long-term responses to resolve that.

[515] We note capacity trading could also potentially resolve a capacity deficit.

- 'Aurizon Network cause items', as set out in Aurizon Network's response to our initial draft decision
- Aurizon Network Cause.

We consider Aurizon Network's proposed definition for 'Aurizon Network cause items' does not link to capacity deficits. The SAA includes provisions on claims and exclusions in respect of the non-provision of access (our IDD amended SAA, cl. 18.4). However, we note these provisions relate to cases where Aurizon Network fails to allow access holders to operate their train services in accordance with scheduled times. These cases cover day-to-day non-provision of access, rather than an underlying capacity deficit. Given this, we do not consider 'Aurizon Network cause items' to be a relevant consideration for whether Aurizon Network should fund an expansion to remedy a capacity deficit.

A similar argument applies in relation to access undertakings. This is because the 2014 DAU is silent on what compliance for resolving a capacity deficit in existing infrastructure entails.

Further, we consider Aurizon Network Cause is not a relevant consideration for establishing if a capacity deficit exists. In this context, we note the definition of 'Existing Capacity'. Existing capacity accounts for Aurizon Network's allowances for day-of-operation losses, speed restrictions, the SOPs and other operational restrictions (IDD amended DAU, Part 12). It also considers Aurizon Network's maintenance and repair activities. We understand Aurizon Network accounts for the impacts of those factors, which are permanent features of its railway operations, in deriving its capacity estimates for each coal system through its own modelling processes.

Aurizon Network Cause, in comparison, refers to the outcome transpiring from those impacts, specifically the infrastructure not being available for use. Accordingly, Aurizon Network Cause is an 'effect' rather than 'cause' and may not address issues associated with sustained capacity deficits. In our view, it therefore does not appear correct that Aurizon Network's scope for remedying a capacity deficit should be anchored to an Aurizon Network Cause.

Against this background, our draft decision seeks to provide arrangements that encourage Aurizon Network and stakeholders to find long-term solutions to address capacity deficits. It does not focus on the conditions under which Aurizon Network will (or will not) fund capacity deficits because, as noted previously, we have not expressly required Aurizon Network to fund expansions.

Accordingly, our position is the following:

- Where a capacity assessment for a coal system identifies a capacity deficit (i.e. committed capacity exceeds existing capacity), Aurizon Network must provide a preliminary report to us within 20 business days on its plans for resolving the deficit..

  The report must:

  - identify the location and size of the capacity deficit
  - identify the access holders and access seekers that are affected by the capacity deficit
  - include Aurizon Network's proposed plan for consulting with the affected access holders and access seekers
  - include Aurizon Network's preliminary views (informed by, among other things, its participation in supply chain groups) on which of the following options can most efficiently resolve the capacity deficit:

    - below-rail operational changes (e.g. SOPs, network management principles, system rules)
    - capacity trading
    - non-below-rail supply-chain options (e.g. above-rail, mine and/or port)
    - below-rail expansions
  - be made publicly available (subject to any reasonable confidentiality-related restrictions, consistent with the relevant provisions in our IDD amended DAU).

  We consider the need to provide a preliminary report to us within 20 business days of identifying the capacity deficit will provide the appropriate impetus for Aurizon Network to be proactive about promptly resolving the capacity deficit in partnership with supply chain groups. It also keeps us informed of Aurizon Network's consultation plans with affected access holders and seekers.

  We propose the next step is for Aurizon Network to then provide a report (see details below) reflecting the outcomes of its analysis of capacity-deficit solutions and its consultation process.

- After Aurizon Network has consulted with affected access holders and access seekers, and it considers below-rail options would address the deficit more efficiently than capacity-trading and non-below-rail options, it must provide us a report within six months of identifying the capacity deficit that:
  - identifies the preferred below-rail operational changes that can address the capacity deficit, including estimates of relevant costs (if any) to implement those changes[516]
  - where below-rail operational changes cannot resolve the deficit, provides evidence of Aurizon Network's consultation with stakeholders that explains why below-rail operational changes are unviable
  - identifies a shortlist of the below-rail expansions explored, including estimates of costs to undertake those expansions
  - identifies whether Aurizon Network and stakeholders have agreed on a specific below-rail expansion to resolve the capacity deficit.

    The purpose of this report, among other things, is to keep us informed of the solutions being considered and the progress of stakeholder consultation.
- Where Aurizon Network and stakeholders agree on a below-rail expansion to resolve the capacity deficit, our position is:
  - Aurizon Network must collaborate with affected access holders/seekers on the cost-sharing arrangements to apply to that expansion.
  - If Aurizon Network and affected access holders/seekers are unable to agree on a cost-sharing arrangement, they can refer a proposed cost-sharing arrangement to us for a decision. For the avoidance of doubt, for a cost-sharing arrangement to be referred to us, **both** Aurizon Network and the affected access holders/seekers need to agree to refer

[516] We note it is open for Aurizon Network to claim legitimate efficient incremental costs via the regulatory process. Alternatively, it can negotiate with stakeholders on different cost-sharing arrangements.

that cost-sharing arrangement to us and agree to be bound by our decision on that arrangement.

- Following agreement of the cost-sharing arrangement (which we note may not happen), Aurizon Network must seek endorsement of the proposed expansion via the customer-voting process in Schedule E. This provides written evidence of customer endorsement of the expansion in question.
- We would assess if that expansion is prudent and efficient in terms of standard, scope and cost. Aurizon Network will proceed with the expansion if we, acting reasonably, consider that expansion to be prudent and efficient.

In arriving at our position, we acknowledge Aurizon Network's response (to our initial draft decision) that proposes conditions[517] under which it will fund an expansion to rectify a capacity deficit. We note Aurizon Network's willingness to provide indications to access holders/seekers on its intentions for resolving deficits, and encourage Aurizon Network and stakeholders to work collaboratively on finding agreed solutions to manage those matters.

Our consolidated draft decision does not set out what would happen if Aurizon Network and stakeholders cannot reach agreement on resolving a deficit (e.g. cannot reach an agreement on a cost-sharing arrangement and on referring the matter to us for a decision). The intent, as a first-best option, is to provide them an opportunity to resolve capacity deficits without any significant regulatory involvement, before we pursue options that require our extensive involvement and/or arbitration. Should such an issue materialise during the UT4 period, we would seek to address that during our UT5 assessment process.

Separately, we note the QRC's view that clause 7A.4.3 of our IDD amended DAU should expressly acknowledge nothing in that clause affects or limits Aurizon Network's obligations or liabilities under any access agreement or other agreement. We support changes that promote certainty and clarity, and have amended clause 7A.4.3 to reflect this suggestion.

We also accept the QRC's view that seeking the approval of access holders and seekers affected by the capacity deficit is important to ensure other parts of the supply chain can accommodate any proposed expansion for resolving a capacity deficit. We note BMA has raised a similar concern. We consider our IDD amended DAU already accounts for these concerns because it requires:

- Aurizon Network to consult with access holders and customers when identifying expansion options to resolve capacity deficits (cl. 7A.4.3(b)(iii)). During that consultation, the parties in question can discuss non-below-rail constraints that preclude the supply chain from realising the capacity that would be induced from the below-rail expansions being considered.
- our approval of the nominated expansion's prudency and efficiency (cl. 7A.4.3(c)).

We consider our overall position balances the section 138(2) matters in the QCA Act because:

- it contributes to effective supply chain coordination, which aligns with the object of Part 5 and is in the public interest (s. 138(2)(a) and (d))
- a collaborative approach for finding capacity-deficit solutions is consistent with access seekers' and holders' interests, as they will have confidence Aurizon Network will act to resolve those issues appropriately (s. 138(2)(e) and (h))

[517] These refer to Aurizon Network's 'will-fund or will-not-fund' conditions outlined in Table 39 above, including Aurizon Network's comment related to modelling improvements.

- it is not inconsistent with Aurizon Network's legitimate business interests because it does not prevent Aurizon Network from recovering its efficient costs and a normal (regulated) return on its invested capital (s. 138(2)(b)).

For our consolidated draft decision, we adopt the analysis, reasoning and amendments proposed in our initial draft decision, subject to our comments above.

Consolidated draft decision 10.3

(1) After considering the 2014 DAU's approach for Aurizon Network's management of capacity deficits, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is as follows:

- **(a) Aurizon Network will use best endeavours to provide a capacity-deficit solution for access holders and seekers**
- **(b) Where a capacity deficit is revealed (i.e. committed capacity exceeds existing capacity), then Aurizon Network must provide a preliminary report to us within 20 business days that:**
  - **(i) identifies the location and size of the capacity deficit**
  - **(ii) identifies the access holders and seekers affected by the capacity deficit**
  - **(iii) includes Aurizon Network's proposed plan for consulting with the affected access holders and seekers**
  - **(iv) includes Aurizon Network's preliminary views (informed by, among other things, its participation in supply chain groups) on which of the following options can most efficiently resolve the capacity deficit**
    - **below-rail operational changes (e.g. SOP amendments)**
    - **capacity trading**
    - **non-below-rail supply-chain options**
    - **below-rail expansions**
  - **(v) is to be made publically available (subject to any reasonable confidentiality-related concerns).**
- **(c) If it is found that below-rail operational changes and/or below-rail expansions most efficiently resolve the deficit, then within six months of the capacity deficit being revealed, Aurizon Network must provide us with a report that:**
  - **(i) identifies the preferred below-rail operational changes that can address the capacity deficit, including estimates of relevant costs (if any) to implement those changes**
  - **(ii) where below-rail operational changes cannot resolve the deficit, provides evidence of Aurizon Network's consultation with stakeholders that explains why below-rail operational changes are unviable**
  - **(iii) identifies a shortlist of the below-rail expansions explored, including estimates of costs to undertake those expansions**
  - **(iv) identifies whether Aurizon Network and stakeholders have agreed on a specific below-rail expansion to resolve the capacity deficit.**
- **(d) Where Aurizon Network and stakeholders agree on a below-rail expansion to resolve the capacity deficit, the following applies:**
  - **(i) Aurizon Network must collaborate with affected access holders/seekers on the cost-sharing arrangements to apply to that expansion.**
  - **(ii) If Aurizon Network and affected access holders/seekers are unable to agree on a cost-sharing arrangement, they can refer a proposed cost-**

sharing arrangement to us for a decision. For the avoidance of doubt, for a cost-sharing arrangement to be referred to us, both Aurizon Network and the affected access holders/seekers need to agree to refer that cost-sharing arrangement to us and agree to be bound by our decision on that arrangement.

(iii) Following agreement of the cost-sharing arrangement (which may not transpire), Aurizon Network must seek endorsement of the proposed expansion via the customer-voting process in Schedule E.

(iv) We would assess if that expansion is prudent and efficient in terms of standard, scope and cost. Aurizon Network will proceed with the expansion if we, acting reasonably, consider the expansion to be prudent and efficient.

(e) Nothing in the provisions above affects or limits Aurizon Network's obligations or liabilities under any access agreement or other agreement.

(3) Our amendments are set out in clause 7A.4.3 of our CDD amended DAU and Schedule E.

(4) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act, for the reasons set out in our analysis above.**

10.6 SOP amendment processes

10.6.1 Aurizon Network's proposal

The 2014 DAU proposed that Aurizon Network would detail its capacity-related assumptions in its SOPs, network management principles and, where relevant, system rules.

SOPs contain Aurizon Network's core assumptions for operating each element of the supply chain within each coal system. The Southern Bowen Basin and Northern Bowen Basin SOPs are available on Aurizon Network's website.[518]

In the event of a SOP review, Aurizon Network will notify access holders and supply chain groups (if any) of the review and consider any submissions raised by them, including any proposed variations. Aurizon Network will respond to the submissions prior to releasing the amended SOPs (cl. 8.11.2(a) of the 2014 DAU).

10.6.2 Summary of our initial draft decision

In our initial draft decision, we considered that a transparent understanding of CQCN baseline capacity across all stakeholders within the coal supply chain meets the object of the QCA Act's third party access regime (ss. 69E and 138(2)(a)).

We considered that information on the SOPs, on their own, may not be sufficient to meet these objectives. To address this, we considered the SOP review process needed to account for other planning and operational documents that influence the SOPs. In that context, we said stakeholders need a clear understanding of the interaction of the:

- SOPs

[518] The SOPs are available here. (www.aurizon.com.au/network/development)

- maintenance plans and associated assumptions
- construction plans and associated assumptions
- track possession plans and protocols
- TSE calculation methodology for access rights sold through access agreements.

Although the 2014 DAU noted SOPs were available via Aurizon Network's website, we considered there was limited visibility of Aurizon Network's maintenance, construction and track possession planning assumptions. Similarly, there was limited clarity regarding the calculation methodology Aurizon Network would apply to determine the number of TSEs in access agreements.

In our view, this lack of transparency was counterproductive to the evolution of a collaborative approach to ensuring CQCN supply chains maintain or improve their global competitiveness. On this basis, we considered it was appropriate to amend the 2014 DAU to propose that Aurizon Network, immediately following the approval of its 2014 DAU, would:

- consult with access holders (including their customers), supply chain groups and terminal operators regarding its capacity and operating assumptions underpinning the sale and provision of below-rail services, namely:
  - maintenance and construction plans, including associated assumptions, over a two-year timeframe
  - the SOPs underpinning the CQCN's operation
- submit its track possession plans and protocols and TSE calculation methodology to us for approval (our IDD amended DAU, cl. 7A.4.1(b)(iv)).

We also provided that we could review the SOPs if undertaking our own baseline capacity assessment (our IDD amended DAU, cl. 7A.5(c)).

We considered these would assist in mitigating stakeholder concerns and misunderstandings, and would, in combination with the baseline capacity review, support greater coal supply chain collaboration and improve end-to-end coal supply chain efficiency.

10.6.3 Stakeholders' comments on the initial draft decision

Aurizon Network supported our position that it was appropriate to improve the supply chain's understanding on the content of the SOPs and the relationship they share with other planning documents. However, Aurizon Network said it endorsed a collaborative rather than administrative process to achieve this objective.[519] As an example, Aurizon Network said that engaging with supply chain participants (collaborative approach) to clarify and develop the SOPs would be more valuable than immediately publishing the SOPs (administrative approach).

Aurizon Network noted the obligation to consult widely with stakeholders would require significant time and resources, resulting in increased administrative costs for it.[520] In addition,

[519] Aurizon Network queried whether the QCA understood the relationship between the SOP, capacity review and other capacity processes that Aurizon Network undertakes, given the prescriptive nature of the documents and processes proposed by the QCA (Aurizon Network, 2015, sub. 82: 130).
[520] Aurizon Network, 2015, sub. 82: 34.

Aurizon Network said the QCA's involvement in reviewing and approving SOPs would be unnecessary, as:[521]

- direct engagement with access holders (and other supply chain participants) on a voluntary basis will provide the information required without additional administrative costs[522]
- the SOPs describe how Aurizon Network and access holders operate, which should not be subject to our approval.

Aurizon Network supported transparency but noted there are instances where it would breach its existing confidential information obligations under its access agreements or the undertaking (see Chapter 12).[523] Aurizon Network also rejected the proposed inclusion of the TSE definition (and its calculations) in the SOPs. Aurizon Network said the inclusion is inappropriate because the number of TSEs depends on the SOP assumptions (e.g. payloads and operational characteristics) adopted. [524]

Stakeholders (i.e. QRC and Aurizon Operations) proposed the following adjustments to clause 7A.5 of the IDD amended DAU.

Table 34 Key issues raised by stakeholders on the SOPs

Clause in our IDD amended DAU	*Comments*
SOPs (clause 7A.5)	SOPs, and any proposed amendments to them, should require the QCA's approval. Aurizon Network should be obliged to amend the SOPs as approved by the QCA.[525] A specific obligation on Aurizon Network should be included to ensure SOPs (which have been approved by the QCA) are in place for each system at all times.[526]
Notification of stakeholders of SOP review (clause 7A.5 (a)(i))	Due to the importance of ensuring affected customers are notified, there should be an obligation on Aurizon Network to actively seek to keep customers informed (as the requirement for Aurizon Network to notify a customer is limited to the extent the access holder or seeker has provided it with the customer's contact details). Without this obligation, customers will not be equipped with the means to meaningfully comment on capacity assessments.[527]
Aurizon Network to respond to submissions (clause 7A.5 (a)(v))	This clause should be amended to require Aurizon Network to respond to any submissions within 10 business days, as an undefined time period (i.e. reasonably practicable) fails to acknowledge the need for fast and accurate amendments.
Aurizon Network to review SOP with permanent changes (clause 7A.5 (b))	The references to 'permanent' and 'adverse' changes are confusing and misleading. This clause should be amended to require a review where there is a 'sustained change' which 'materially affects the SOPs'.[528] The following additional events[529] should be included as triggers for Aurizon Network to review the SOPs: • the connection of a new coal basin or port terminal

[521] Aurizon Network, 2015, sub. 82: 130–131.
[522] Aurizon Network noted a dispute resolution process is provided within the undertaking if access holders and seekers wish to dispute the outcomes.
[523] Aurizon Network, 2015, sub. 82: 130.
[524] Aurizon Network, 2015, sub. 82: 130.
[525] QRC, 2015, sub. 84: 64.
[526] QRC, 2015, sub. 84: 64.
[527] QRC, 2015, sub. 84: 65.
[528] QRC, 2015, sub. 84: 65.
[529] These amendments were previously proposed in QRC's October 2014 submission (QRC, 2014 DAU, sub. 41:3); QRC, 2015, sub. 84: 64.

Clause in our IDD amended DAU	*Comments*
	• the completion of a major expansion • a 30% increase in system capacity • where requested by access holders for at least 60% of the train paths or the customers representing at least 60% of the train paths, in relation to the relevant coal system. There should be a clear obligation on Aurizon Network to promptly make the outcomes of any review of the SOPs available to all interested parties. [530]
The QCA determines there should be SOP amendment (clause 7A.5 (c))	The QCA's ability to review and amend the SOPs should not be without limitation. Rather, amendments should not be permitted to the SOPs 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. [531]

10.6.4 QCA analysis

The SOPs influence how Aurizon Network measures capacity for its infrastructure. If the SOPs change, so will Aurizon Network's capacity estimates. Understanding this relationship is crucial in instances where SOP amendments reduce system capacity.

In our initial draft decision, we noted there was very limited visibility of the assumptions underpinning Aurizon Network's SOPs and how Aurizon Network calculates TSEs for access holders. Stakeholders have said they value the QCA's involvement for Aurizon Network's SOP developments and amendments, and that they want Aurizon Network to keep them abreast of SOP-related matters in a timely way. In comparison, Aurizon Network noted that obliging it to consult widely on its SOP processes would be costly. Aurizon Network also said it prefers the QCA not have a role in reviewing and approving the SOPs.

After having regard to the section 138(2) matters and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of how Aurizon Network proposes, as a whole, to develop and review the SOPs. This is because Aurizon Network's proposal:

- is unlikely to promote the efficient operation and use of the below-rail infrastructure (s. 138(2)(a), (e) and (h) of QCA Act), since access holders/seekers might not be confident in the accuracy of SOPs for undertaking their operational activities if they consider the SOP process to be deficient. The lack of confidence in those parameters may compromise their ability to align their operations with Aurizon Network, and, in doing so, potentially reduce below-rail efficiency
- is unlikely to sufficiently promote the public interest (s. 138(2)(d) of QCA Act), since the lack of confidence in the accuracy of highly critical SOPs might deter existing access holders from expanding their tonnage requirements, which can impede the growth of coal royalties
- may provide Aurizon Network with an opportunity to unfairly differentiate, either intentionally or unintentionally, in a material way that has an adverse effect on the ability of one or more users/access seekers to compete with each other because of the lower level of transparency around SOPs (s. 138(2)(a), (d) and (e) of QCA Act).

[530] QRC, 2015, sub. 84: 65.
[531] Aurizon Operations, 2015, sub. 93: 20.

While we take into account the cost and administrative implications for Aurizon Network (which relate to its legitimate business interests (s. 138(2)(b) of QCA Act)), we also consider the impacts on other parties arising from an inadequate SOP development and review process. In this case, we give more weight to the importance of transparency and visibility. In doing so, we note Aurizon Network can submit to us for assessment a claim for any additional costs incurred for consultation on SOP-related matters. Any costs we consider to represent legitimate efficient incremental costs can be included in access charges.

Amending the 2014 DAU

The way in which we consider it appropriate that Aurizon Network amend its DAU is set out in our CDD amended DAU.

There are three issues raised regarding the SOPs that we consider appropriate to address, namely: process and transparency; amendment triggers; and confidentiality concerns. We discuss these in turn.

Process and transparency

The QRC has said:

- Aurizon Network should ensure SOPs are in place at all times
- the QCA should be responsible for approving SOPs and any related amendments.

On the first issue, we accept that SOPs should be in place at all times to provide certainty and clarity to access holders and seekers (and their customers). We have amended our drafting accordingly (CDD amended DAU, clause 7A.5(a)(i)(A)).

On the second issue, we note our proposed involvement in the SOPs is limited to when we undertake a baseline capacity assessment of the CQCN (see section 10.4). This assessment is the most important, in our view, as it seeks to establish a credible baseline for all stakeholders to reach a common understanding on. However, we do not consider subsequent capacity assessments require our approval of SOP amendments; at least not directly.

In this respect, we note that any material SOP changes can trigger system rule amendments, which we propose to have oversight on (CDD amended DAU, cl. 7A.2). This is because the SOPs, system rules and network management principles must be mutually consistent.

We consider our oversight of the system rules sufficiently addresses the QRC's concern, in that our involvement in SOPs would only occur where the changes are material enough to affect the system rules. We consider this adequately balances all parties' interests (s. 138(2)(b), (e) and (h) of QCA Act).

The QRC has raised that Aurizon Network should actively seek to keep customers informed, which goes beyond our initial draft decision to require Aurizon Network to only notify a customer where the relevant access seeker or holder has provided that customer's contact details. We do not support QRC's position as Aurizon Network's contract is with access holders (not customers). There should be a strong onus on access holders to transmit information about SOP reviews to their customers. Our initial draft decision already benefits customers in a reasonable way.

Aurizon Operations has said we should not be empowered to amend the SOPs if any amended parameters are inconsistent with the access agreements or impose a net financial effect on the affected parties to those access agreements without their consent. We agree that any SOP we undertake should have regard to the terms of access agreements. In doing so, we will consider

the impact of the SOP amendments on existing access holders, which is a factor we consider relevant under section 138(2)(h) of the QCA Act. We have amended our drafting accordingly.

Aurizon Network has said it is inappropriate for the SOPs to include the TSE definition (and its calculation methodology) because an access holder's number of TSEs depends on the SOPs employed. Given this, we note Aurizon Network has already disclosed the formulae it uses for calculating indicative weekly TSEs under the Capricornia system rules[532] and draft Northern Bowen Basin system rules.[533] For these reasons, we have retained our position to require Aurizon Network to submit its TSE calculation methodology in its baseline capacity assessment.

We do not accept the QRC's position that Aurizon Network be given 10 business days to respond to submissions on the SOPs. The SOPs are characterised by numerous assumptions, some more complex than others. In some cases, 10 business days may be sufficient for resolving the SOPs in response to stakeholder comments. However, in other cases, Aurizon Network may require further discussion with stakeholders/us before deciding how best to amend (if required) the SOPs.

On balance, we consider that 15 business days would be sufficient in most cases for Aurizon Network to respond to submission on the SOPs. Where Aurizon Network considers the SOP submissions raise more complex matters, we propose Aurizon Network can seek our approval to extend the submission period by more than 15 business days.

Amendment triggers

We accept QRC's position that there is benefit in having amendment triggers for the SOPs. We note clause 7A.6(c) prescribes some triggers for reviewing the NDP. These include: expansion infrastructure being completed; and new coal basins and port terminals being connected to Aurizon Network's infrastructure. As access holders and seekers are likely to use the SOPs in informing their operational needs, rather than the NDP (which identifies preliminary medium- and long-term capacity needs), it makes sense to extend the NDP-related triggers to the SOPs.

We agree with the QRC's position that clause 7A.5(b) of our IDD amended DAU, relating to the term 'permanent', would benefit from further clarification. We consider the term 'permanent' does not capture cases where a change might not be permanent but would be sustained or non-transient. We acknowledge these situations could still have a large capacity impact on the coal system. Accordingly, we have amended the term 'permanent' to the word 'sustained' in our CDD amended DAU.

Confidentiality

We acknowledge Aurizon Network's concerns regarding its confidentiality obligations. We consider our draft proposed mark-up already adequately address these matters (cl. 7A.5(f)(ii)).

While clause 7A.5(f)(ii) requires Aurizon Network to submit the SOPs to us on an un-redacted basis, it prescribes that the SOPs provided to stakeholders and published on Aurizon Network's website must be consistent with confidentiality obligations (unless the relevant third parties permit Aurizon Network to publically disclose that information). In addition, clause 7A.5(g) seeks to prevent Aurizon Network from, among other things, agreeing to any confidentiality obligations that prevent the disclosure of the SOP-related information in the future.

For our consolidated draft decision, we adopt the analysis, reasoning and amendments proposed in our initial draft decision, subject to our comments above.

[532] Aurizon Network's Capricornia System Rules: 13.
[533] Aurizon Network's Draft Northern Bowen Basin System Rules: 17.

Consolidated draft decision 10.4

(1) **After considering the 2014 DAU's approach for Aurizon Network's information-provision obligations regarding the assumptions and methods underpinning capacity assessments, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we instead consider it appropriate for Aurizon Network to amend the 2014 DAU is as follows:**

- **(a) Aurizon Network should maintain SOPs at all times.**
- **(b) Aurizon Network should consult with all access holders, end customers and supply chain groups on all capacity and operating assumptions (i.e. SOPs and other parameters) that will underpin Aurizon Network's baseline capacity assessment and subsequent capacity assessments.**
- **(c) Aurizon Network's SOP amendment process must account for, among other things, expansion infrastructure being completed and new coal basins and port terminals being connected to its infrastructure.**
- **(d) Aurizon Network will review the SOPs for a coal system as soon as practicable after it becomes aware that a sustained change has occurred, or will occur, to the coal system that materially affects those SOPs.**
- **(e) Aurizon Network should respond to stakeholder submissions on the SOPs within 15 business days (or a later period, if we agree to such an extension).**
- **(f) The QCA can review or amend the SOPs if it undertakes its own baseline capacity assessment, and, in doing so, must have regard to the terms of access agreements and consider the impact those changes have on access holders.**
- **(g) Aurizon Network should include its track possession protocols and TSE calculation methodology in its baseline capacity assessment.**
- **(h) Aurizon Network should submit SOPs to us on an un-redacted basis, and publish the SOPs on its website in a way that is consistent with honouring confidentiality obligations it is unable to waive with third parties.**

(3) **Our amendments are set out in clauses 7A4.1(b)(iv) and 7A.5 of our CDD amended DAU.**

(4) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act, for the reasons set out in our analysis above.**

10.7 Network development plan

10.7.1 Aurizon Network's proposal

The 2014 DAU provides that Aurizon Network will publish an NDP on its website annually (or more frequently if circumstances change). The 2014 DAU indicates the NDP will contain:

- a review of existing capacity and operational constraints
- opportunities for increasing existing capacity
- a comparison of expansion options for each coal system

- the infrastructure studies to be undertaken in the year ahead (cls. 8.12 (a) and (b)).

The 2014 DAU provides that Aurizon Network must review and update the NDP annually or more frequently, including if circumstances change in a way Aurizon Network expects will adversely affect the NDP in a material way (cl. 8.12(c)).

The 2014 DAU provides that in developing the NDP, Aurizon Network will have regard to coal demand, expression-of-interest submissions, access applications, coal terminal developments, current and previous infrastructure studies, any current SCMP, SOPs, system rules, maintenance plans and any other information it considers relevant (cl. 8.12(d)).

10.7.2 Summary of our initial draft decision

We considered the NDP to be an overarching strategic tool and the most efficient way of disseminating information to supply chain participants on the cost profiles for various rail infrastructure capacity expansions.

We noted stakeholders had raised specific concerns regarding the static nature of the capacity analysis which underpins the NDP, the limited information which could be sourced from the NDP and the impact this had on the NDP's usability for initial investigations around mine projects in their own growth pipeline.

Against this background, we considered the NDP should initially be based on the most recent baseline capacity assessment, with a dynamic extrapolation of the baseline modelling parameters over a five-year horizon. We were conscious that basing the NDP on dynamic capacity modelling could create additional modelling requirements relative to a static assessment. We considered this had to be traded off against the need to establish an NDP that meets stakeholder needs in a timely manner.

A credible NDP should enable access holders and access seekers to commence study investigations of mining projects and to eventually propose expansion projects to take through Aurizon Network's investment stage gate process. If there is merit in extending the NDP to a 10-year time horizon in the context of a dynamic modelling environment, we noted we would consider that as part of the UT5 process.

Our amendments to the NDP sought to ensure access seekers and prospective third party financiers had a medium-term view of:

- progressive (i.e. dynamic) capacity over a five-year planning horizon
- a minimum of three growth scenarios within each coal system, which should be associated with an optimisation project at a terminal in each port precinct connected to that coal system's infrastructure
- scope, standard and preliminary costs of proposed expansion projects under investigation through funding agreements.

Our amendments provided that Aurizon Network must consider submissions from interested parties when developing or reviewing the NDP. They also provided that Aurizon Network's NDP process should comply with the network management principles, and align with any SOPs and SCMPs.

Our amendments provided for any party to trigger a dispute process consistent with Part 11 of the 2014 DAU. They also empowered us to engage an independent expert to peer review the NDP, and to require Aurizon Network and supply chain participants to be bound by that review's findings.

10.7.3 Stakeholders' comments on the initial draft decision

Aurizon Network said the NDP's purpose is to provide a strategic view on the most efficient way to develop the CQCR supply chain over the medium to long term. It said this strategic view provides the basis upon which short- to medium-term enhancements can be evaluated (through detailed investigation under the expansion process), with visibility of the potential longer-term efficiencies that a holistic network strategy can provide.[534]

Aurizon Network provided other comments as summarised in the table below.

Table 35: Aurizon Network's response regarding the NDP process

Matter	*Aurizon Network's comments*
NDP's scope	The QCA's proposal narrows the scope of the NDP to a dynamic medium-term snapshot. A dynamic analysis would require detailed modelling of scenarios that are difficult to define as many variables would be speculative. This conflicts with the principles of effective network planning, which is a core responsibility of (and should thus be determined by) Aurizon Network as the regulated service provider. As a result, the QCA's proposal will reduce the NDP's effectiveness and will work against the section 69E objective of promoting the economic efficiency of investment in the coal supply chain. [535]
Investment decisions	The 2014 DAU's NDP provisions should be viewed in conjunction with the detailed feasibility assessments that occur under the expansion process, as these tools allow for thorough examination of the commercial parameters needed to make an investment decision.[536] The NDP is insufficient to identify investment requirements or tariff implications of any proposed development. Rather, these commercial implications can only be deduced through a specific feasibility investigation as provided for under the expansion process.[537]
Dynamic modelling	Dynamic modelling is not appropriate as[538]: • the NDP outputs may differ significantly from contracted parameters • it promotes modelling outcomes that are incongruous if the input parameters are not of an appropriate level of certainty • developing the necessary detailed assumptions will involve considerable additional time and expense (e.g. additional IT costs) for Aurizon Network.[539]
Supply chain member engagement	Whilst Aurizon Network is committed to voluntarily engaging with supply chain members, it does not believe it should be bound by these consultative processes' inputs. Furthermore, it does not support a formal dispute resolution mechanism for a voluntary document, as it will not enhance the supply chain's efficiency.[540]
Planning alignment	Binding the NDP to current planning paradigms (i.e. SOP, SCMP) would limit the flexibility in supply chain development. Rather than requiring the NDP to align with the SCMP, Aurizon Network proposed it should be required to consider any SCMPs in developing the NDP.[541]
Level of analysis	The level of analysis implied in the QCA approach would be difficult to disseminate, as much of the information is invariably confidential to the particular proponents.[542]

[534] Aurizon Network, 2015, sub. 82: 131.
[535] Aurizon Network, 2015, sub. 82: 131.
[536] Aurizon Network, 2015, sub. 82: 131.
[537] Aurizon Network, 2015, sub. 82: 132.
[538] Aurizon Network, 2015, sub. 82: 132–133.
[539] Aurizon Network, 2015, sub. 82: 34.
[540] Aurizon Network, 2015, sub. 82: 133.
[541] Aurizon Network, 2015, sub. 82: 133–134.
[542] Aurizon Network, 2015, sub. 82: 131.

The QRC supported our proposed amendments to the NDP process, as they would allow for a better understanding of the NDP (particularly its purpose and content) amongst stakeholders. The QRC also supported our proposal to allow access holders to require a peer review of the NDP's preparation or development, as this would assist with improving the plan's accuracy and relevance.[543]

The QRC proposed[544] the NDP should be consistent with good engineering practices[545] and detail the particular segments within each coal system that are constrained.

10.7.4 QCA analysis

After having regard to the section 138(2) matters and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of how Aurizon Network proposes to discharge the NDP process. The 2014 DAU proposes to:

- include information on existing capacity and operational constraints, which appears to be based on a static assessment with limited detail on the scenarios and timeframes Aurizon Network will consider
- review and update the NDP under a set of circumstances open to interpretation (i.e. circumstances Aurizon Network expects will materially adversely affect the NDP)
- have regard to the SOPs, system rules and other assumptions, but not necessarily to be consistent with them.

We consider Aurizon Network's proposal does not appropriately balance the section 138(2) matters in the QCA Act because:

- While static capacity assessments represent a valuable first stage, such assessments do not reflect the CQCN's underlying dynamic nature. In our view, for capacity modelling to be complete and relied on by stakeholders, dynamic modelling is necessary because it accounts for a wide range of operational constraints (e.g. changing speed restrictions, unforeseen network failures) and day-of-operation variability (e.g. delays in loading/unloading and above-rail crew changes). In this context, Aurizon Network's proposal is unlikely to promote access seekers' and holders' interests (s. 138(2)(e) and (h) of QCA Act).

  It also benefits access seekers and holders to have some detail around timing, as they can gain from having clarity on below-rail infrastructure completion timeframes when undertaking investment decision-making processes. This can lead to effective supply chain coordination, which is consistent with object of Part 5 of the QCA Act and the public interest (s. 138(2)(a) and (d) of QCA Act). We therefore disagree that Aurizon Network's proposal to use static capacity assessments is consistent with promoting the economic efficiency of investment in the coal supply chain (s. 69E of QCA Act).

- The uncertainty around the triggers for Aurizon Network to review and update the NDP does not have sufficient regard for access seekers' and holders' interests (s. 138(2)(e) and (h)). We consider these parties value understanding the circumstances under which Aurizon Network can vary the NDP, so they can respond in a pre-emptive rather than *ad hoc* manner when Aurizon Network is proposing such changes.

[543] QRC, 2015, sub. 84: 66.
[544] QRC, 2015, sub. 84: 66.
[545] Similar to the requirement we have proposed for Aurizon Network's SOPs.

We acknowledge Aurizon Network's position about being prudent about managing its costs for undertaking the NDP process is not inconsistent with its legitimate business interests (s. 138(2)(b) of QCA Act). However, we consider the 2014 DAU's proposal lends too much weight to these interests relative to the other section 138(2) factors. In particular, we note stakeholders support using dynamic modelling and the need for the NDP to provide credible outputs they can meaningfully use. Further, we note it is access holders that effectively fund the NDP's development via access charges. Indeed, Aurizon Network can submit to us for assessment a claim for any additional costs incurred in developing the NDP. Any costs we consider to represent legitimate efficient incremental costs can be included in access charges.

For all the reasons set out above, we consider Aurizon Network's proposal does not provide an appropriate balance of the section 138(2) matters in the QCA Act.

10.7.5 Amending the 2014 DAU

The way in which we consider it appropriate that Aurizon Network amend its draft access undertaking is set out in our CDD amended DAU. Subject to the additional matters addressed below, we adopt the drafting of the IDD amended DAU.

Consistent with our initial draft decision, we consider the NDP process should outline the key assumptions used, undergo a stakeholder consultation process (subject to any confidentiality concerns), and allow for those assumptions to be subject to an independent review (QCA/expert).

We consider the NDP's aim should be to provide a *dynamic medium-term* snapshot of the operational capacity that exists in the CQCN. It should also set out each coal system's available capacity and a range of capacity-increasing options to meet future demand.

A dynamic analysis involves parametric assumptions that may not be certain, but that does not mean the analysis, as per Aurizon Network's comment, is not appropriate for the NDP process. We consider the key idea is to understand how changing the various assumptions can affect capacity estimates in relation to the established baseline, and to understand which assumptions have larger impacts on those capacity estimates relative to others. Accordingly, we consider it appropriate for the NDP process to employ Aurizon Network's dynamic modelling outputs and to assess the sensitivity to changes in assumptions relative to those for the established baseline. In our view, Aurizon Network has not provided evidence on why it cannot adopt such an approach and why the approach would not be valuable for assessing the NDP's selected scenarios.

Aurizon Network questioned the need for a dispute resolution process to apply to a voluntary NDP. In our view, NDP outputs are sufficiently important (e.g. stakeholders use the NDP to support their long-term investment decision-making processes, prior to lodging an access application) for the NDP to warrant a dispute resolution mechanism.

Aurizon Network also said it will incur additional IT costs and resources will transpire because of the more detailed capacity modelling our position proposes. In response, we note modelling-related costs for capacity-related matters are recoverable via the sessions with supply chain groups (see Section 10.3, and clause 7A.3(e) of our CDD amended DAU). Further, it is open for Aurizon Network to claim any additional efficient costs (over and above the current approved MAR) via a DAAU, which we would assess for inclusion in access charges.

Aurizon Network is concerned that confidentiality issues may arise from having an NDP process backed by a more detailed modelling exercise. We consider the NDP is more an output- rather than an input-focused document. We understand the NDP would rely on Aurizon Network's

baseline capacity assessments and any subsequent assessments, but need not document the assumptions underpinning for those reviews. Indeed, we note clause 7A.6 (b) of our IDD amended DAU does not require disclosure of any inputs (e.g. SOPs) as part of the NDP process. On this basis, it appears unlikely that confidentiality issues will arise.

Below, we respond to specific stakeholder submissions received on these matters since our initial draft decision on Aurizon Network's NDP process.

Aurizon Network has said binding the NDP to current planning arrangements (i.e. SOPs, SCMP) would limit the flexibility in supply chain development. We consider it reasonable for Aurizon Network to have the flexibility to amend assumptions (e.g. via several scenarios on SOPs) in preparing its NDP. Understanding the capacity impact of various assumptions is critical for comparing the supply-chain options being discussed.

However, establishing a reference point or anchor for that flexibility is important. For example, a change in a particular SOP might mean capacity will increase from *A* mtpa to *B* mtpa (i.e. the NDP process should be consistent with an agreed understanding among stakeholders that capacity stands at *A* mtpa).

Linking the NDP assumptions to the capacity figures is necessary for promoting understanding among NDP participants. Given this, we consider Aurizon Network's NDP process should be anchored to the range of assumptions and capacity estimates provided as part of the approved baseline and subsequent capacity assessments (see Section 10.4).

The QRC has said Aurizon Network's NDP should be consistent with good engineering practices. Our IDD amended DAU requires Aurizon Network's NDP to align with (or have regard to) any SOPs (cl. 7A.6(d)(i)(B)(1)). It also requires Aurizon Network's SOPs to be consistent with good engineering practices (cl. 7A.5(h)). Hence, our CDD amended DAU, via the SOP provisions, requires Aurizon Network's NDP to be consistent with good engineering practices. We consider this sufficient.

The QRC also said Aurizon Network's NDP should identify the particular segments within each coal system that are constrained. We note Aurizon Network has done this as part of its 2013 and 2014 NDPs. We support the QRC's position, and have amended clause 7A.6(b)(i) accordingly. In our view, this improves certainty and clarity around the NDP's outputs.

Finally, we do not accept Aurizon Network's view that it need only voluntarily participate in engaging with supply chain members during the NDP process. Consistent with our reasoning in Section 10.3, we consider Aurizon Network must participate in the NDP process because it meets the efficiency objectives of the object of Part 5 of the QCA Act (ss. 69E and 138(2)(a)).

For our consolidated draft decision, we adopt the analysis, reasoning and amendments proposed in our initial draft decision, subject to our comments above.

Consolidated draft decision 10.5

(1) After considering the 2014 DAU's approach for Aurizon Network's NDP process, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) **We consider it appropriate for Aurizon Network to amend the 2014 DAU as follows**:

- **(a) The NDP's overarching objective should be to identify the medium-term capacity options that will meet future demand for access in each coal system and include options for developing or improving the operational performance, capacity and cost of throughput on the CQCN.**
- **(b) The NDP should identify the particular segments within each coal system that are capacity constrained.**
- **(c) An NDP should provide all supply chain participants with:**
  - **(i) a dynamic capacity review in a five-year planning horizon**
  - **(ii) three growth scenarios within each coal system linking to a port optimisation project**
  - **(iii) the scope, standard and preliminary costs of proposed expansion projects under investigation through funding agreements.**
- **(d) The NDP need not necessarily be consistent with current SOPs, system rules and network management principles. However, Aurizon Network's flexibility in developing the NDP should be anchored to the range of capacity estimates (and assumptions where relevant) that Aurizon Network has provided as part of the approved baseline and subsequent capacity assessments.**
- **(e) The NDP review and update process should account for, among other things, expansion infrastructure being completed and new coal basins and port terminals being connected to Aurizon Network's infrastructure.**
- **(f) A draft NDP should be provided to all relevant supply chain participants who can then make submissions to Aurizon Network on the draft NDP.**
- **(g) The draft NDP can be peer reviewed if requested by access holders, access seekers and their customers.**
- **(h) Aurizon Network must take relevant supply chain participants' views into account in finalising the NDP.**
- **(i) Stakeholders who consider that Aurizon Network has inadequately addressed their views can refer the NDP to us for dispute resolution.**

(3) **Our amendments are set out in clause 7A.6 of our CDD amended DAU.**

(4) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act, for the reasons set out in our analysis above**.

11 AVAILABLE-CAPACITY ALLOCATION AND MANAGEMENT

Part 7 of the 2014 DAU contains capacity management principles relating to transfer, relinquishment and resumption of capacity. This part of the undertaking, along with the network management principles in Schedule G of the 2014 DAU, comprises Aurizon Network's guidelines for allocation and management of capacity available on the network.

We have focused our review on Aurizon Network's proposed capacity management principles, considering them as follows:

- *principles for allocation of available capacity via capacity allocation criteria—whether the operation is transparent and provides parties with sufficient contractual certainty*
- *principles for the treatment of renewals of contracted capacity—whether the operation is transparent and provide parties with sufficient contractual certainty*
- *principles for transfer provisions, both short- and long-term—whether they facilitate the transfer of access rights*
- *principles for resumptions—whether they promote the efficient use of access rights.*

Our consolidated draft decision is to refuse to approve Aurizon Network's proposed arrangements for the allocation and management of available capacity. We propose amendments to Part 7 of the 2014 DAU to:

- *reinstate the queuing mechanism from UT3*
- *reinstate priority treatment for renewal access applications*
- *facilitate short- and long-term capacity transfers*
- *retain relinquishment provisions from UT3*
- *retain resumption provisions from UT3*
- *reinsertion of force majeure provisions into the 2014 DAU.*

11.1 Introduction

This chapter discusses the 2014 DAU proposals for the allocation of available capacity—capacity which can be allocated to an access seeker without an expansion of the network. Chapter 12 discusses the allocation of capacity where an expansion to the CQCN is required to allocate requested capacity.

The management of capacity (access rights) once allocated is also addressed here. Matters discussed in detail include:

- how available capacity is allocated to access seekers
- how access holders retain and renew access rights
- how access holders transfer/swap/trade available capacity.

11.2 Overview

11.2.1 Aurizon Network's proposal

Aurizon Network considered there is only limited surplus available capacity on the CQCN, so available capacity should be allocated in a way that promotes the overarching objective of the access regime, namely, the efficient use of, and investment in the rail infrastructure.[546]

For the 2014 DAU, Aurizon Network considered capacity expansions created the most significant concerns about how capacity will be allocated, but said the approach to capacity allocation is also a significant issue for negotiation of access to existing capacity—particularly as it relates to the renewal of access agreements and negotiations for access where available capacity exists.[547]

Aurizon Network said it does not have all of the information necessary to judge what the highest valued use of capacity is, as the value of capacity depends on circumstances particular to the user. Given this, Aurizon Network proposed that capacity be allocated to users who are able and likely to use that capacity.[548]

Aurizon Network said it wanted to improve the clarity and effectiveness of the 2014 DAU in the following areas:

- the minimum requirements for gaining capacity entitlements
- rights for renewal of existing access agreements
- allocating available capacity amongst competing access seekers.[549]

In its 2014 DAU, Aurizon Network also discussed inclusion of a short-term capacity trading mechanism in response to stakeholder comments. In December 2014, Aurizon Network provided a discussion paper on short-term transfers, as part of its 2014 DAU. Matters relating to the short-term capacity trading mechanism are contained in Section 11.7 below.

In initial submissions, stakeholders were of the view that the replacement of the capacity queue with capacity allocation criteria provided Aurizon Network with too much discretion as to which access seeker it allocated available capacity.[550] The new approach for dealing with resumptions was also considered too subjective and provided Aurizon Network with significant discretion.[551] Stakeholders also noted renewal applications should continue to have priority over access seekers (in the absence of the queuing mechanism), the process should be streamlined and negotiations should be undertaken promptly.[552]

While the majority of stakeholder submissions overwhelmingly supported Aurizon Network's proposal to develop a short-term capacity trading mechanism, some concerns were raised.

[546] Aurizon Network, 2013 DAU, sub. 2: 104.
[547] Aurizon Network, 2013 DAU, sub. 2: 104.
[548] Aurizon Network, 2013 DAU, sub. 2: 104.
[549] Aurizon Network, 2013 DAU, sub. 2: 104.
[550] QRC, 2013 DAU, sub. 46: 61; Asciano, 2013 DAU, sub. 43: 23–4; Anglo American, 2013 DAU, sub. 78: 29–30.
[551] Asciano, 2013 DAU, sub. 43: 74; Rio Tinto, 2013 DAU, sub. 73: 105
[552] QRC, 2013 DAU, sub. 46: 59–60; Anglo American, 2013 DAU, sub. 78: 26–7.

11.2.2 Legislative framework and the QCA assessment approach

Legislative framework

The QCA Act describes matters we are to have regard for. We have considered the section 138(2) factors and are of the view:

- section 138(2)(a), (b), (d), (e), (g) and (h) should be given more weight
- section138(2)(c) and (f) should be given less weight, as they are not as relevant to our assessment of available capacity allocation and management.

Where it is relevant, we consider it appropriate to also have regard to unfair differentiation. The framework of capacity allocation and transfer should not allow Aurizon Network to unfairly differentiate between access seekers in a way that has a material adverse effect on competition in an upstream or downstream market (related market).

We also note section 106 of the QCA Act which provides for a transfer of rights under an access agreement.[553]

Section 138(2)(a)

Section 138(2)(a) of the QCA Act requires us to have regard to the object of Part 5 of the QCA Act. We consider certainty over access rights, no unfair differentiation to capacity, and minimising barriers to participation will promote the object of Part 5.

Certainty will provide confidence for access holders to invest in its long term assets such as mines, which in turn will increase the total value that can be extracted from the use of the CQCN. If Aurizon Network is allowed to unfairly differentiate between access seekers in a materially adverse way, then it may lead to an inefficient allocation of access. This will not promote the object of Part 5 of the QCA Act and may lead to suboptimal outcomes.

We note that section 100(2) of the QCA Act specifically prohibits Aurizon Network from unfairly differentiating between access seekers in a materially adverse way that will have a negative effect on competition in the context of seeking access. We consider fair access to capacity to be consistent with this section.

We also note that section 100(1) of the QCA Act requires the parties to negotiate in good faith for reaching an access agreement. We consider this to supplement the principle that the capacity allocation framework should allocate capacity fairly.

Minimising barriers to participation will promote the demand for capacity across the CQCN. We consider that this outcome will promote the object of Part 5 of the QCA Act because efficiency is likely maximised when capacity is maximised. We are of the view that barriers to participation can be minimised by having a capacity allocation framework that is transparent and flexible, to promote confidence in the framework and decrease transactional and regulatory costs.

[553] This includes: i) the user of a declared service under an access agreement may transfer all or part of the user's interest in the agreement; ii) a transfer must be made by written notice given to the access provider; iii) the notice must state the interest being transferred, the name and address of the transferee and the date of the transfer; iv) the date of the transfer stated in the notice must not be earlier than the day the notice is given; and v) even if a user effects a transfer, the user's obligations under the access agreement continue, unless the transferee and other parties to the access agreement agree.

Section 138(2)(b)

Section 138(2)(b) of the QCA Act directs us to have regard to the legitimate business interests of Aurizon Network. We consider Aurizon Network has an interest in having a capacity management framework in the 2014 DAU that allows it to manage the access to capacity in an effective and orderly manner, and to recover the efficient costs and earn an appropriate regulated return on investment in capacity.

We consider that it is in Aurizon Network's interests to not be unnecessarily burdened by regulation that will restrict its ability to extract efficiencies from its business.

Aurizon Network's interests also include providing the declared service safely. A limited oversight role by Aurizon Network in how the network is being used by users will promote this.

Section 138(2)(c)

Section 138(2)(c) of the QCA Act requires us to have regard to—if the owner and operator of the service are different entities—whether the legitimate business interests of the operator of the service are protected. We have given this factor a lower weight as Aurizon Network is both the owner and operator of the service.

Section 138(2)(d)

Section 138(2)(d) of the QCA Act requires us to have regard to the public interest, including having competition in markets. We consider it in the public interest that the capacity management framework is effective and transparent. An effective framework will promote longevity and ensure inefficiencies are minimised.

Transparency will promote the fair treatment between access holders and will increase the ability of stakeholders to identify inefficiencies. Minimising inefficiencies will likely promote competition in related markets.

Increase in transparency of Aurizon Network's decision-making process will also empower the industry to self-regulate and may promote competition in related markets. Transparency will better arm access seekers and holders with the necessary information to challenge Aurizon Network's decisions where they feel Aurizon Network has shown unreasonable preferential treatment to a related party or is unreasonably discriminating against others.

Section 138(2)(e)

Section 138(2)(e) of the QCA Act requires us to have regard to the interests of access seekers. We consider it in the access seeker's interest to have a capacity management framework that is flexible, transparent, fair and certain. A framework that is flexible allows stakeholders to manage their capacity needs in response to a changing commercial landscape. A transparent, fair and certain framework will promote legitimacy and inspire confidence in the users of the system.

We note that there is likely a benefit trade-off between flexibility and certainty. In our consolidated draft decision we have sought to appropriately balance these two competing interests in the relevant circumstances.

Section 138(2)(f)

Section 138(2)(f) of the QCA Act requires us to have regard to the effect of excluding existing assets for pricing purposes. We have given this factor lower weight as capacity allocation issues are not directly relevant to effects on pricing by excluding existing assets.

Section 138(2)(g)

Section 138(2)(g) of the QCA Act requires us to have regard to the pricing principles in section 168A of the QCA Act. We consider the capacity management framework should ensure the correct attribution of costs associated with the corresponding capacity, particularly when access rights are transferred. This will allow Aurizon Network to recover revenues to at least meet the efficient costs of providing access. This will also provide incentives to reduce costs and improve productivity by imposing market based signals on parties to manage their capacity efficiently.

We are of the view that the discussion above regarding section 138(2)(a) is also relevant and applicable here as pricing is related to the object of Part 5 of the QCA Act.

Section 138(2)(h)

Section 138(2)(h) of the QCA Act requires us to have regard to any other issues that we consider relevant. We note that this broad discretion should be used appropriately.

QCA approach

Therefore having had regard to the statutory criteria, we assessed Aurizon Network's proposed capacity allocation framework with a view to balancing the following aims:

- providing certainty for Aurizon Network, and access seekers and holders
- providing transparency and clarity of processes
- providing flexibility for Aurizon Network, and access seekers and holders
- limiting Aurizon Network's ability to unfairly differentiate between access seekers and holders in a material adverse way
- achieving efficient pricing for services provided by Aurizon Network.

The section should be read in conjunction with our specific analysis in the sections below and our overarching approach in Chapters 2 and 3.

11.3 Allocation of capacity

Where there is available capacity[554], UT3 provides for access rights to be allocated to the first access seeker with whom Aurizon Network can negotiate and execute an access agreement.[555] If there is more than one access application for the same access rights, a queue is formed to determine which access seeker Aurizon Network is to negotiate with first.

Access applications become mutually exclusive where Aurizon Network receives more than one access application for the same access rights.

11.3.1 Allocation mechanism

For the 2014 DAU, Aurizon Network said the CQCN is fully contracted, so access applications for new capacity will typically require expansions. It proposed that the existence of a 'first come first served' queue mechanism served no purpose in an expansion as capacity must be allocated to the parties who are able to use the capacity and be ready and willing to commit to the

[554] Available capacity is defined as capacity excluding all committed capacity, except committed capacity that will cease being committed capacity prior to the time where capacity is being assessed.
[555] Aurizon Network 2010 AU, cl. 7.3.1.

project at the required date. In light of this Aurizon Network replaced the capacity queue in the 2014 DAU with capacity allocation criteria.[556]

Aurizon Network's capacity allocation criteria, in summary, are as follows:

- The access application is for coal-carrying services.
- Aurizon Network is satisfied that the access seeker will be able to use the access rights at the level sought.
- The allocation of capacity does not relate to an expansion or a customer specific branch line.
- Access rights requested could be used without adversely affecting existing access holders.
- The access agreement is for at least 10 years or the remaining life of the mine.
- Where it relates to existing capacity that becomes available, Aurizon Network is reasonably satisfied that the access seeker will be able to use that capacity on the date of availability.

Aurizon Network said the capacity allocation criteria still provided access seekers with a clear framework that must be followed for the allocation of capacity, while also allowing it to allocate capacity in accordance with its legitimate commercial interests and being consistent with the objectives of the access regime. They are also consistent with the capacity allocation approach used by other major rail network providers such as ARTC in the Hunter Valley and Brookfield Rail in WA.[557]

Stakeholders generally considered that Aurizon Network's approach was unreasonable and unfairly biased in favour of Aurizon Network, and would allow Aurizon Network wide discretion over which access seekers it could allocate capacity to.[558]

Summary of the initial draft decision

When the queuing mechanism was initially approved for UT2, we considered a queuing mechanism was required to provide consistent treatment of access seekers. We concluded that if access seekers were forced to compete for access rights on terms set by Aurizon Network, Aurizon Network would have the incentive to constrain capacity to provide a return in excess of efficient costs.

We noted Aurizon Network's concern that the queue incentivises gaming behaviour and encourages 'queue sitting' by access seekers as there are no costs associated with joining a capacity queue and prolonging negotiations. However, evidence was not provided on how often this occurred, how many access seekers may do this, or how Aurizon Network determined the genuine nature of the access seeker.

Further, it was noted that a number of triggers are currently available to Aurizon Network to re-order the queue[559]—including evaluation criteria for Aurizon Network to determine if an access seeker is genuine by assessing:

- whether the access seeker has secured, or is likely to secure, rights required to leave the network to unload at its destination
- whether the access seeker has secured a rail haulage agreement

[556] Aurizon Network, 2013 DAU, sub. 2: 106–107.
[557] Aurizon Network, 2013 DAU, sub. 2: 107–108.
[558] QRC, 2013 DAU, sub. 46: 61; Anglo American, 2014 DAU, sub. 7: 44.
[560] Asciano, 2014 DAU, sub. 76: 7; Vale, 2014 DAU, sub. 79: 6; Anglo American, 2014 DAU, sub. 95: 28, 31.

- the speed and timeliness of the access seeker in negotiations.

Overall, our initial draft decision was to refuse to approve Aurizon Network's proposed capacity allocation mechanism and to maintain the queuing mechanism. We were of the view that this is consistent with the legitimate business interests of Aurizon Network who would continue to earn a fair return on its investments irrespective of how available capacity is allocated. We were also not convinced Aurizon Network's proposal was in the interests of access seekers as it reduces transparency.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with the QCA's draft decision, noting that its proposed criteria were developed in consultation with industry as a result of identified administrative inefficiencies and a lack of clarity in the UT3 process.

Aurizon Network expressed concern about additional restrictions on its capability to effectively manage the capacity of the CQCN proposed by the QCA, which it considered go beyond or distort the 2010 AU. It stated that the QCA proposals:

- constrain Aurizon Network from preventing capacity hoarding and other anti-competitive behaviour by its customers
- force Aurizon Network to entertain any party that has an interest in existing access rights irrespective of their capacity or genuine intent to do so and prioritise their request simply on basis of it being received earlier than another access seeker
- frustrate Aurizon Network's ability to respond promptly in instances where it is clear that the access holder is not able to utilise the access rights
- remove Aurizon Network's ability to withdraw a renewal application if the ability of the party is not demonstrated
- maintain a lumpy, mechanistic and inflexible approach to the treatment of applications within the capacity queue.

While Aurizon Network disagreed with the QCA's decision to reinstate the UT3 provisions, Aurizon Network stated that it could support the reinsertion of the queuing mechanism subject to there being workable criteria for the reordering of the queue to facilitate the efficient allocation of access rights.

Other stakeholders generally supported the reinstatement of the queuing mechanism from the 2010 Access Undertaking. Vale generally supported the amendments to Part 7 based on the principle that capacity allocation and management remains transparent to all stakeholders, which it believed should lead to more efficient decision making. Anglo American supported the queuing mechanism as the only truly equitable method of allocating capacity between competing access seekers, but suggested Aurizon Network should be required to advise access seekers of their position in the queue and notify them if they are removed. Asciano supported the reinstatement of an objective capacity allocation mechanism as used in the 2010 AU.[560]

The QRC said that the criteria that Aurizon Network must consider to cease negotiations with an access seeker set out in clause 7.2.1 of the IDD amended DAU should align with clause 4.12 of the IDD amended DAU.[561] In respect of the queuing mechanism, the QRC said that the drafting

[560] Asciano, 2014 DAU, sub. 76: 7; Vale, 2014 DAU, sub. 79: 6; Anglo American, 2014 DAU, sub. 95: 28, 31.
[561] QRC, sub. 84: 46.

should more clearly describe the circumstances in which the queue applies, and the relevant exceptions.[562] QRC provided drafting to this effect.

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of the capacity allocation mechanism.

Aurizon Network's proposed mechanism allows it to designate priority in a subjective manner. Under its proposal, Aurizon Network allocates capacity to a party that it has assessed to have satisfied the criteria in the 2014 DAU. Where two or more access seekers satisfied the criteria, capacity is allocated to the first party that submits an access agreement. This second-stage prioritisation is not specified in Part 7 of the 2014 DAU as proposed by Aurizon Network.

Under this approach, Aurizon Network holds significant discretion, potentially allowing it to withhold allocating capacity until it can extract unreasonably favourable terms from an access seeker. This is inconsistent with the object of Part 5 of the QCA Act and is unlikely to be in the interests of access seekers and the public.

The lack of a process for an appropriate level of transparency and certainty under Aurizon Network's proposed approach may allow it to unfairly differentiate between access seekers in a materially adverse manner, to the detriment of competition in related markets. This may manifest in preferential treatment, for example allocating priority in circumstances where there are competing access seekers to an Aurizon Network's related party, or unfairly discriminating against another access seeker. This is inconsistent with the object of Part 5 of the QCA Act and is unlikely to be in the interests of access seekers and the public.

We recognise that Aurizon Network has a legitimate role to play in the allocation process to ensure allocation is done in the most effective manner. A flexible process is also in the interests of access seekers and in the public interest. However we are of the view that Aurizon Network's proposed mechanism is too subjective in its operation and that flexibility can be preserved within the designs of a less subjective allocation process that will appropriately balance access seekers' interests.

For these reasons, we do not consider Aurizon Network's proposed Part 7 of the 2014 DAU appropriate to approve having had regard to the section 138(2) factors.

Amending the 2014 DAU

In this consolidated draft decision, we are of the view that it is appropriate to adopt our initial draft decision in relation to Part 7 of the 2014 DAU. In our view, prioritising by order of receipt reduces the risk of unfair differentiation between access seekers by providing an appropriate level of transparency and certainty for access seekers. This mechanistic approach minimises the potential for disputes arising from the capacity allocation process by clearly setting out the basis on which priority is established. Such certainty would provide access seekers confidence in utilising the capacity allocation mechanism. An effective capacity allocation mechanism that access seekers have confidence in is in their interests, in Aurizon Network's interest and in the public interest.

In response to the concerns raised by Aurizon Network, particularly 'queue sitting', we note that Aurizon Network:

[562] QRC, sub. 84: 51.

- has the ability under clause 7.2.1 of the CDD amended DAU to refuse to allocate capacity if it reasonably considers that the access seeker will not use its requested volumes. This should enable Aurizon Network some scope to manage gaming behaviour if it occurs
- has the ability under clause 7.2.2 of the CDD amended DAU to remove an access seeker from the capacity queue when it becomes clear that the access seeker is unable to use the rights if allocated.

We are of the view that this inclusion will sufficiently recognise Aurizon Network's legitimate interests without sacrificing benefits gained from having a more certain and transparent process.

We do not consider this approach will significantly increase regulatory and transactional costs for Aurizon Network and access seekers compared to Aurizon Network's proposed approach, under which it still assesses whether an access seeker is reasonably able to fully utilise access rights it is seeking. The only difference is that Aurizon Network will maintain a queue and appropriate registers. We do not think this is an unreasonable imposition of regulation that will significantly impact Aurizon Network's legitimate business interests.

We also do not consider a general process for reordering of the queue to be necessary as Aurizon Network has the ability to remove an access seeker from the queue and/or refuse to allocate capacity under the queuing mechanism proposed by our consolidated draft decision.

We have also proposed amendments to the 2014 DAU to improve consistency as suggested by Aurizon Network and the QRC. We do not consider these revisions to be minor or inconsequential as consistency will improve clarity and certainty of operation of these provisions.

Consolidated draft decision 11.1

(1) **After considering Aurizon Network's proposed capacity allocation criteria our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking in the manner proposed in clauses 7.2 and 7.5 of the CDD amended DAU by replacing its criteria based allocation process with a queue process.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

11.3.2 Capacity registers

In line with the removal of the queue, the 2014 DAU removed both the capacity notification register and the committed capacity register (together 'the registers'). These registers were initially developed to assist Aurizon Network to identify and coordinate the reallocation of capacity to interested parties. They included a requirement that Aurizon Network contact interested parties when capacity became available (due to relinquishments or resumptions).

The Capacity Notification Register recorded parties' interests in additional capacity. The Committed Capacity Register recorded parties' used capacity.

Summary of the initial draft decision

In UT3, the Capacity Notification Register was maintained by Aurizon Network in the circumstance where a request for access is received for access rights that cannot be provided in the absence of an expansion. When capacity becomes available, Aurizon Network is to notify all parties on the register and ask them to submit an access application for queuing purposes.

We considered in the initial draft decision that the information that is intended to be captured by the Capacity Notification Register (identification of capacity that can only be provided via an expansion) would be valuable, not only to Aurizon Network for its planning purposes, but also to access seekers who may be looking to participate in a future expansion.[563] Feedback was sought from stakeholders on the merits of retaining the Capacity Notification Register.

Under UT3, with respect to the Committed Capacity Register, an access holder with access rights under an AA will automatically be placed on the register. We noted Aurizon Network said that it would address this type of register—with access holders indicating their intention to transfer their rights—through the capacity trading mechanism.[564]

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with the QCA's draft decision. It noted that its proposed changes were agreed with industry and are an improvement on the 2010 AU.

Aurizon Network expressed the view that the QCA's proposed amendments in clause 7.2.3(a)(ii) of the IDD amended DAU (to include 'DTMR in respect of its committed Capacity' and the imposition of a requirement that any party that has an interest in existing access rights be included in the Committed Capacity Register) are an unnecessary administrative burden. It stated that it did not understand how these changes contribute towards the purpose of the Committed Capacity Register or assist the QCA in satisfying its objective in section 69E. Aurizon Network requested that the QCA remove these provisions.[565]

Aurizon Network considered that the proposed requirement in clause 7.2.3(a)(iii) that any party with an interest in existing access rights be included in the Committed Capacity Register is unnecessary as they are not allocated any capacity yet. It noted that this increases the administrative costs associated with the register.[566]

Anglo American supported the QCA's initial draft decision to reinstate the Capacity Notification Register and Committed Capacity Register.[567]

The QRC disagreed with the initial draft decision. It considered that the capacity registers are now redundant, particularly given the more robust expansion framework. However, it considered that there is a need for visibility to the queuing mechanism if reinstated. To achieve transparency, the QRC believed that Aurizon Network should be required to publish the same record of the queue which it maintains for the purpose of capacity allocation.[568]

[563] However, we noted the usefulness of such a register could vary depending on the accuracy of information contained in it and the level of transparency of that information.
[564] Aurizon Network, 2014 DAU, sub. 4: 172.
[565] Aurizon Network, 2014 DAU, sub. 82: 135, 139.
[566] Aurizon Network, 2014 DAU, sub. 82: 34.
[567] Anglo American, 2014 DAU, sub. 95: 29.
[568] QRC, 2014 DAU, sub. 84: 47.

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of removing the capacity notification register and the committed capacity register.

Aurizon Network's proposal would likely result in it being the holder of all relevant information. This outcome reduces transparency and introduces inefficiencies as access seekers themselves are unable to plan ahead their capacity until they begin the process of seeking capacity from Aurizon Network. While Aurizon Network is in the best position to provide information regarding capacity issues from a network perspective, access seekers are in the best position to forecast their individual capacity needs.

Such lack of transparency is likely to create an environment where Aurizon Network is able to unfairly differentiate between access seekers to the detriment of competition in related markets as it removes any ability for access seekers to cross check Aurizon Network's decisions. This outcome is inconsistent with the object of Part 5 of the QCA Act and significantly impacts access seekers' interests.

We also note that the registers complement the queuing mechanism for allocation of capacity as proposed in the CDD amended DAU.

In consideration of the legitimate business interests of Aurizon Network, we acknowledge that maintaining the registers would impose some administrative costs and reduce flexibility. However we are of the view that this would not be a significant burden. We are of the view that the costs and reduction in flexibility are justified due to the benefits of transparency provided by the registers.

Furthermore, we do not consider it is in Aurizon Network's legitimate business interests to become the sole holder of information relating to capacity. This would only allow it to promote the improper use of monopoly power, for example to unfairly differentiate between access seekers in a materially adverse manner.

For these reasons, we do not consider Aurizon Network's proposal appropriate to approve having had regard to the section 138(2) factors.

Amending the 2014 DAU

In this consolidated draft decision, we are of the view that it is appropriate to reinstate the registers. The registers provide a mechanism for access seekers and Aurizon Network, to forecast future capacity needs on the CQCN and to record the order of priority for available capacity in a transparent manner. We consider this would appropriately amend Aurizon Network's proposal.

We consider that transparency promotes the object of Part 5 of the QCA Act and promotes the interests of all stakeholders because it minimises the ability of Aurizon Network to unfairly differentiate between access holders in a materially adverse manner to the detriment of competition in related markets. Transparency also promotes the public interest as it empowers the industry with information to self-regulate, where participants can cross-check decisions made by Aurizon Network. This is likely to promote efficient outcomes in the long run that are in the public interest.

We also consider that parties with an interest in existing access rights (that is, joint access holders for example) may have the opportunity to have their interest recorded on the register. This would be at their request only and would not require Aurizon Network to seek out those parties.

Consolidated draft decision 11.2

(1) **After considering Aurizon Network's proposed removal of the capacity notification register and the committed capacity register our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking by reinserting the capacity registers, in the manner proposed in clause 7.2 of the CDD amended DAU.**

(3) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

11.4 Provisions moved to the standard access agreements

Aurizon Network's 2014 DAU proposed to move a number of provisions for the management of available capacity from the access undertaking into the SAAs.

Aurizon Network noted the primary role of the access undertaking is to facilitate negotiation with access seekers, but once an agreement has been negotiated the agreement should govern the relationship between it and an access holder. Aurizon Network concluded it is unnecessary to retain provisions in the access undertaking that are also addressed in the SAAs.

Given this, Aurizon Network proposed the following provisions be removed from the access undertaking:

- capacity resumptions
- capacity relinquishments (and associated fees)
- the parts of capacity transfer which are reflected in the SAAs.[569]

A discussion of these provisions is in Chapter 8 on SAAs.

11.4.1 Summary of the initial draft decision

We proposed to move the provisions relating to force majeure from the SAAs into the undertaking.[570]

We considered that if a force majeure event occurred, the event would likely impact more than one access holder due to the extreme nature of force majeure events. All affected access holders should be treated in a manner that does not unfairly differentiate between the access holders. Given this, we proposed that access holders will have train services reduced on a proportional basis after a force majeure event.

Furthermore a force majeure event is analogous to what we considered to be a permitted short-term resumption of capacity since under a force majeure event, Aurizon Network's inability to provide train services will impact on the availability of capacity. We considered conditions respecting resumptions should be transparent (and be applied in a manner that does not permit unfair differentiation).

[569] Aurizon Network, 2013 DAU, sub. 2: 99–100.
[570] The force majeure clause in its 2014 DAU SAAs provides for Aurizon Network to suspend its obligations to provide a service, if it is prevented from doing so because of a force majeure event.

11.4.2 Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with the initial draft decision, reiterating its view that force majeure provisions should remain in the access agreement. More generally, Aurizon Network disagreed with the QCA's proposal that certain provisions of the access undertaking be incorporated by reference into the AA and TOD in order to ensure certain terms are applied consistently across all access holders (refer to Aurizon Network comments on this issue in Chapter 12).

In terms of the QCA's proposed drafting, Aurizon Network stated that:[571]

- the inclusion of clause 7.7.1(c) of the IDD amended DAU in the force majeure provisions is unnecessary as the scheduling of train services in circumstances in which there is a shortfall in capacity is already dealt with in Schedule G
- it had concerns about the time period within which a force majeure notice must be provided under clause 7.7.

Aurizon Network also considered that imposing the obligation in the QCA's proposed clause 7.7.3 (which requires it to bear the cost of replacing damaged or destroyed infrastructure resulting from a force majeure event) is beyond the QCA's power. Aurizon Network did not accept this provision.

Anglo American supported the QCA's initial draft decision to move the force majeure provisions back into the access undertaking.[572]

The QRC's detailed comments in relation to the force majeure provisions are outlined in the table below.[573]

Table 36 QRC's comments on force majeure provisions

Issue	*QRC's comment*
Mitigation in respect of a force majeure event	Aurizon Network should be subject to an express obligation to mitigate and minimise the effects of a force majeure event. This is a standard requirement in respect of force majeure.
Notice regarding force majeure event	Aurizon Network should have an obligation to provide regular updates to the affected access holders (and its customer and train operator).
Provision of notices in relation to force majeure to customer and train operator	A customer should receive all notices in relation to a force majeure event and should receive them at same time as the access holder.
Resuming provision of access rights after force majeure event	Drafting of clause 7.7.2 should be tightened so that Aurizon Network is unable to benefit from the suspension of its obligations where it is unable to provide access due to any reason other than the relevant force majeure event.
Test for determining whether the cost of repairing damage or destruction to network is not economic	Clause 7.7.3(a)(ii) should be amended by deleting the words 'in Aurizon Network's reasonable opinion'. The test as to whether repairing damage or destruction to the network is not economic should be an objective test rather than a subjective test which is dependent on Aurizon Network's opinion.
Contribution by customers to the repairs or replacement of the	Clause 7.7.3(a) should be amended to require Aurizon Network to provide a copy of the notice in relation to the relevant repairs or replacement to

[571] Aurizon Network, 2014 DAU, sub. 82: 135–136.
[572] Anglo American, 2014 DAU, sub. 95: 29.
[573] QRC, 2014 DAU, sub. 84: 52–54.

Issue	*QRC's comment*
network	the access holder's customer. Clause 7.7.3(c)(i) should clarify that where a customer has paid the amount for the cost of repairs or replacement to Aurizon Network, it is the customer rather than the access holder who should receive a refund of any amount by which the amount paid exceeds the actual cost of repairs or replacement.
Obligation for Aurizon Network to undertake repairs or replacement within a reasonable time	Clause 7.7.3(b) should expressly require Aurizon Network to refund any payment received if the QCA does not proceed with those repairs or replacement within a reasonable time.
Obligation to pay additional costs where actual costs of repairs or replacement exceed what was agreed	It is essential that Aurizon Network be subject to stringent obligations in relation to carrying out the relevant works. Aurizon Network should be subject to undertaking the work diligently, efficiently and in accordance with good industry practice.
Reduction of access rights as a result of a force majeure event	Clause 7.7.3 should be amended to facilitate a request by an affected access holder (or its customer) to require Aurizon Network to undertake repairs or replacement at a later date if the access holder (or its customer) agrees to fund those repairs or replacement.
Right of dispute	Clause 7.7.3 should include an express right for an access holder, customer and train operator to dispute any matters under that clause.

11.4.3 QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we refuse to approve the 2014 DAU in respect of the force majeure provisions.

The removal of the force majeure provisions from the 2014 DAU would ultimately decrease certainty surrounding the operation of the access rights after a force majeure event (as defined in the 2014 DAU). As a force majeure event is likely to affect capacity drastically, and sometimes on a wide scale, we consider it paramount that there is a level of certainty and consistency of treatment for all relevant stakeholders in the event of a force majeure event.

Aurizon Network's approach may lead to inconsistent treatment of affected access holders depending on individual access agreements. This may cause unnecessary delays and economic costs to all relevant stakeholders in the event of a force majeure event. We consider this outcome would not be in the interests of Aurizon Network or access holders and would not promote the efficient use of and investment in infrastructure. Furthermore, uncertainty may lead to Aurizon Network allocating capacity in relevant situations that will unfairly differentiate between access holders.

We considered it is in the legitimate business interests of Aurizon Network to ensure it has the flexibility to conduct its business in the way it sees fit. However, we consider that the benefits of certainty outweigh the benefits of flexibility gained by placing these provisions in the SAA. We also note that Aurizon Network and relevant parties can still negotiate their own terms in access agreements to over ride these provisions in the undertaking as long as it is not doing so in a manner that unfairly differentiates between access seekers in a materially adverse manner.

For these reasons, we do not consider Aurizon Network's proposal appropriate to approve having had regard to the section 138(2) factors.

Amending the 2014 DAU

In this consolidated draft decision, we are of the view that it is appropriate to reinstate the force majeure provisions in the 2014 DAU.

We have considered whether separate force majeure provisions are necessary given the operation of Schedule G. We consider that specific force majeure provisions are desirable to ensure clarity regarding access rights in the event of a force majeure event. As outlined above, certainty is critical in such circumstances. However, where the matters are adequately dealt with in Schedule G, we have the view that some duplicating provisions should be removed from the undertaking.

In its submission, Aurizon Network raised concerns with the 48-hour time period for a notice under the force majeure provisions. However it did not elaborate its concerns. In such circumstance, we are unable to adequately assess Aurizon Network's legitimate business interests. We consider 48 hours is sufficient time to provide a notice, given that a force majeure event will likely cause services in the affected areas of the CQCN to cease completely. Aurizon Network should be well placed to know when such an event occurs.

In its submission, QRC proposed that Aurizon Network should bear the cost of replacing damaged or destroyed infrastructure resulting from a force majeure event. We do not agree with this position having weighed up the factors outlined in section 138(2) of the QCA Act. We note that while Aurizon Network submitted that we are beyond power in requiring it to meet this cost, clause 7.7.4 of our amended DAU did not actually propose this.

It is necessary to consider whether the cost of repair or replacement of the infrastructure makes economic sense in the circumstances, and that the cost of replacing infrastructure should be borne in a proportional manner. This would promote the object of Part 5 of the Act and take into account the interests of all relevant stakeholders.

We have also made some minor drafting amendments in the CDD amended DAU in response to Aurizon Network's and stakeholders' comments. While these do not cause any material change in policy, we do not consider the amendments to be minor or inconsequential as these changes increase clarity and certainty of operation.

Consolidated draft decision 11.3

(1) **After considering Aurizon Network's proposed treatment of force majeure as drafted in the Standard Access Agreements our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking by reinserting the force majeure provisions into the access undertaking in the manner proposed in clause 7.7 of the CDD amended DAU.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

11.5 Renewals

Under UT3, an access holder may submit an access application to Aurizon Network to renew its access rights under certain conditions. A renewal does not apply where the access rights have been transferred. Also, a renewal application will initially be placed ahead of all other access applications in the queue (other than another renewal application). A renewal application can

also be pushed down the queue should there be conditional access holders in the queue as well.[574]

11.5.1 Aurizon Network's proposal

Aurizon Network said the position that an expiring user should have a first option to negotiate access to the capacity in its existing access agreement has been a longstanding tenet of its undertaking. Removal of the queuing mechanism necessitated a change to how it used this principle.

Aurizon Network said that while a user does not have a guaranteed ability to renew an access agreement under any circumstances, it does have the right to be the first party to negotiate access to that capacity, provided the access seeker continues to meet the requirements of the access undertaking. One such requirement is that the access seeker is reasonably likely to use the capacity.[575]

It proposed that the first option to negotiate for renewal rights be preserved if:

- the renewing access holder does not attempt to renew earlier than three years prior to expiry
- an access agreement is executed at least 12 months prior to expiry
- the term of the agreement is for a minimum of 10 years or the remaining mine life (whichever is shorter).[576]

Aurizon Network said a renewing access seeker must complete and submit an access application for the access rights it is seeking to renew. The negotiation of those rights will be done in accordance with Part 4 of it 2014 DAU. Nothing in the renewals clause (cl. 7.3 of the 2014 DAU) obliges Aurizon Network to execute an access agreement for renewal, or enter into an access agreement for renewal on the same terms of the existing agreement.[577]

In our initial draft decision we considered two issues: whether it is appropriate that a renewal application should be put ahead of the queue, and whether in certain circumstances, a new application process was needed at all. These issues are discussed in detail below.

11.5.2 Priority of renewal applications

Summary of the initial draft decision

We were of the view that an access application that is a renewal application should be placed ahead of all other access applications in the queue (that are not other renewal applications).

We considered this meets the interests of access holders (s. 138(2)(h) of the QCA Act) as placing priority on renewals in the queue will provide a greater degree of certainty and security of access rights for the life of a mine (or other type of long-term asset).[578] It also provides mining investors with the confidence that access to transportation is available, even on renewal of the AA, on similar terms and conditions.

[574] 2010 AU, clause 7.3.4.
[575] Aurizon Network, 2013 DAU, sub. 2: 105–6.
[576] Aurizon Network, 2013 DAU, sub. 2: 109–10.
[577] Aurizon Network, 2014 DAU, sub. 4: 168–170.
[578] We considered this meets the interests of access holders (s. 138(2)(h) of the QCA Act).

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with the QCA's draft decision. It stated that its proposed amendments to renewal provisions were developed to clarify and assist in administration of these provisions. Aurizon Network rejected the reinsertion of UT3 provisions, except for any provisions which give renewal applications priority in the queue. It reiterated its position that its renewal provisions should be approved as they advance the interests of access seekers consistent with section 138(e) of the QCA Act.[579]

Other stakeholders broadly supported the QCA's initial draft decision in relation to renewals—in particular, reinstating the priority for renewals applications. Detailed comments include:

- BMA, Asciano and Anglo American supported the QCA's proposed changes to the renewals process that reinstate the high priority given to renewals through the capacity queue process.[580]
- BMA considered that the renewal process should recognise the development of new coal terminals in essentially the same location as existing terminals (for example, at Gladstone port). At present, the process locks a user into renewing at the same destination. Where it can be shown that the below rail impact of serving one port terminal or another is effectively the same, a user should be given the same renewing contracting rights even if they wish to transfer from one terminal to another.
- Anglo American said that reinstating preferential treatment for access holders wishing to renew their existing agreements increases regulatory certainty. Anglo American believed that, if the access has previously been held for at least 10 years, the renewing party should be able to renew for periods of at least five years to keep the 'first rights' alive and align with existing 'exit capability' commitments.[581]
- The QRC supported the QCA's proposal to ensure priority is given to renewing access seekers and to streamline the renewal process.[582]
- The QRC supported the QCA's proposal to clarify that a renewing access holder will not lose its priority where a delay is caused by a breach of the undertaking by Aurizon Network. However, it recommended this exception be expanded so that a renewing access holder does not lose its priority:
  - if the failure to execute an access agreement at least 12 months prior is caused by an act, omission or delay by Aurizon Network (even if not a breach of the undertaking), or
  - if the access holder has agreed with Aurizon Network, at least 12 months prior to expiry, to enter into an agreement in accordance with the undertaking.
- The QRC sought clarification in regard to what are considered equivalent access rights for the purpose of renewals.[583]

[579] Aurizon Network, 2014 DAU, sub. 82: 136, 139.
[580] BMA, 2014 DAU, sub. 78: 7; Asciano, 2014 DAU, sub. 76: 18; Anglo American, 2014 DAU, sub. 95: 29.
[581] Anglo American, 2014 DAU, sub. 95: 29.
[582] QRC, 2014 DAU, sub. 84: 47–48.
[583] QRC, 2014 DAU, sub. 84: 47–48.

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we decided to not approve the 2014 DAU in respect of the renewal process.

Aurizon Network's proposal would likely decrease the certainty of whether an access holder would be able to renew its access rights. Under Aurizon Network's proposal, an access holder in some circumstances would have a right to be the first party to negotiate for access but no guarantee that its access rights will be renewed. Aurizon Network's bargaining power is likely significantly higher than that of an access holder seeking renewal because of its monopoly status. We consider such bargaining power disparity would not be in the interests of access seekers.

We also note that the Aurizon Network's proposal may create an environment where it can unfairly differentiate between access seekers if there are competing bids between an Aurizon Network related access seeker and a non–Aurizon Network related access seeker.

Access holders are likely to have invested significant resources into assets that rely on its access rights to be productive. For example, the life of a mine may be many times longer than the life of an access agreement. Under Aurizon Network's proposal, it is not guaranteed that an access seeker will have priority renewal, but only a first right to negotiate if Aurizon Network considers that it satisfies certain conditions. This uncertainty may decrease the willingness of access holders to invest in its related long term assets, resulting in an inefficient use of, and investment in the CQCN.

We recognise Aurizon Network's legitimate business interests in wanting a negotiation process that is flexible. This allows it to respond appropriately to the changing demands of the market, promoting the object of Part 5 of the Act. We also consider that a flexible process would be in the interests of access seekers and in the public interest.

While the approach proposed by Aurizon Network may increase flexibility, we note that the capacity allocation mechanism in the consolidated draft decision already allows Aurizon Network to refuse to allocate capacity to an assess seeker in limited circumstances. We consider that in light of this mechanism, flexibility is appropriately balanced with certainty of renewal under the approach specified in our CDD amended DAU.

While Aurizon Network has suggested its proposals are in the interests of access seekers, it has not explained how this is the case. However we recognise that removing priority for access holders renewing access rights would assist new access seekers, and that this needs to be balanced with the interests of existing access holders and the public interest.

For these reasons, we are of the view that Aurizon Network's proposal is inappropriate having had regard to the section 138(2) factors.

Amending the 2014 DAU

In this consolidated draft decision, we consider that it is appropriate to adopt our initial draft decision in relation to renewal applications. We consider that stakeholders' interests are appropriately balanced in our CDD amended DAU.

We have considered the specific issues raised in submissions:

- Allowance for different coal terminal destinations—in our view, clause 7.3 of the IDD amended DAU already allows for this as renewals can relate to changed origin and destination as long as the train paths are substantially the same. We do not consider that the drafting need be more explicit on this. We note that the train services need to be in the

same track segments and must not be in excess of those under the relevant access holder's access agreement.

- Renewal for periods of at least five years to keep the 'first rights' alive—we do not consider such prescriptive arrangements necessary as renewals should reflect access agreements in any case.
- Exceptions for loss of priority—as above, we consider that including specific exceptions is not consistent with a simplified and streamlined framework. Access holders should be able to negotiate special arrangements to suit their circumstances
- Extension of priority to ancillary access rights—as noted above the drafting already allows for changes in destination in extending priority to renewals.

We have also made some drafting amendments in the CDD amended DAU in response to stakeholder comments. While these changes do not cause any material change in policy, we do not consider them to be minor or inconsequential as they increase clarity and certainty of operation.

Our final decision in relation to the above discussion is in consolidated draft decision 11.4 below.

11.5.3 Renegotiation

Summary of the initial draft decision

Anglo American said a renewing access seeker should not be required to submit a new AA; rather, a renewal should be treated as an extension of the current AA. The QRC said there should be no requirement for a renewing access seeker to submit a new access application, except where renewal is for capacity below the level currently contracted.

While we agreed with QRC and Anglo American that there appeared to be little benefit in submitting a new access application for the negotiation of existing access rights, we considered there was merit in revisiting and aligning certain aspects of the access agreements to the access undertaking in force at the time when those agreements were up for renewal.

We agreed Aurizon Network would require information on the future operations of the access holder, but considered an access seeker lodging a renewal application should not be subject to the same submission procedure as a new access seeker, unless the access rights or operation vary from the existing provisions. Rather, we considered that Aurizon Network could be provided with the information it requires[584] via an update of the relevant schedules of the undertaking.

We considered this process would allow for a streamlined renewal of an AA under circumstances where operations and access rights volumes are fundamentally the same—providing the access holder with certainty of contracting.

In light of the above we proposed to reinstate Aurizon Network's UT3 renewal provisions

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with this draft decision. It noted that its proposed amendments to the renewal provisions were developed to clarify and assist in the administration of these provisions. Aurizon Network disagreed with the reinsertion of UT3 renewal application

[584] As proposed in schedule B of its 2014 DAU.

provisions and noted that it has several concerns regarding the QCA's amended drafting of these provisions which are inconsistent with UT3.[585]

Specific comments, along with our responses are noted in the table below.

Table 37 Stakeholders' comments on renewal applications

Renewal issue	*Comments*	*QCA response*
Renewal criteria	Aurizon Network submitted that the QCA's amended drafting in clause 7.3(j) removes Aurizon Network's ability to withdraw a renewal application under Part 4, effectively removing its ability to request additional information, or request the demonstration of supply chain rights for a renewal. Aurizon Network noted that its position was supported by industry and should be reinstated. Aurizon Network considered this proposed amendment could ultimately lead to the misalignment of port and rail capacity. The renewing access seeker should be able to demonstrate that they have supply chain rights and, if not, Aurizon Network must be able to cease their access application.[586]	Aurizon Network is able to refuse to allocate capacity if an access seeker is unable to demonstrate that it has a reasonable likelihood of being able to use the capacity. We see no reason to change this aspect of our decision.
Renewal on same terms	Aurizon Network believed that the QCA's proposed clause 7.3(h) appears to require it to renew access rights on the same terms as currently contracted, except in some circumstances outside of its control. It considered this a reversal of the UT3 provisions where renewing access seekers negotiate terms based on the SAA in place at the time of renewal. It also considered it beyond the scope of what the QCA can require as Aurizon Network and an access seeker are permitted to negotiate and agree any form of access agreement in accordance with section 100 of the QCA Act. Aurizon Network also noted its position not to be required to renew access rights on the same terms is supported by industry. Accordingly, Aurizon Network requested that the QCA revert to Aurizon Network's proposed drafting of this clause.[587]	Our IDD amended DAU provided a process for Aurizon Network to agree with the renewing access seeker if it seeks to vary the terms. Therefore, Aurizon Network has in our view some control over the outcome. We see no reason to change this aspect of our decision.
Application and renegotiation process	Anglo American supported the QCA's initial draft decision relating to renewing access holders to ensure they are not required to undertake the entire negotiation process again.[588]	We do not consider that a list of elements that can be negotiated needs to be set out. In the interests of a streamlining the undertaking, such detail is a matter for the parties

[585] Aurizon Network, 2014 DAU, sub. 82: 136.
[586] Aurizon Network, 2014 DAU, sub. 82: 139–140.
[587] Aurizon Network, 2014 DAU, sub. 82: 140.
[588] Anglo American, 2014 DAU, sub. 95: 29.

Renewal issue	*Comments*	*QCA response*
	Anglo American noted that to enforce these provisions, the QCA should provide a list of the elements that can be renegotiated.[589]	concerned.
Renewal rights as a transferee	QRC supported the position that a renewal includes access rights granted to an access holder as a transferee (clause 7.3(c)). However, it considered that this right should be restricted to permanent transfers where the transferee has received a transfer of the relevant access for the entire remaining term of those access rights..[590]	We agree that it should be restricted to permanent transfers.
Time to negotiate renewals	QRC supported the proposal to increase the time during which Aurizon Network must negotiate a renewal from 3 to 5 years. However, clause 7.3(e) should be amended to clarify that a refusal by Aurizon Network under that clause does not then extinguish the access seeker's rights to request a renewal or enter into a further agreement within 5 years before expiry.[591]	We have clarified this position (clause 7.3(e)).
Form of renewed access agreement	QRC said that a renewing access seeker should be required to align the terms and conditions of the renewed agreement with the SAA in force at the time. The intention of clause 7.3(h) should be clarified.[592]	Our drafting implies this position. We have clarified the drafting however in our CDD amended DAU.

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, our decision is to refuse to approve Aurizon Network's proposed renewal provisions.

We consider that the proposed approach suffers from a lack of sufficient certainty for access seekers. This outcome is unlikely to promote the object of Part 5 of the QCA Act.

Under the proposed framework, Aurizon Network is able to roll over agreements with some access seekers, but it is not required to do the same for others. We consider that a renewal process that allows for this discretion to be undesirable as it allows for unfair differentiation between access seekers in a materially adverse way. Such outcome would not promote the object of Part 5 of the QCA Act and would not adequately take into the interests of stakeholders and the public interest.

The rationale outlined in Section 11.5.2 (Priority of renewal applications) applies equally here.

In this consolidated draft decision, we are of the view that it is appropriate to adopt our initial draft decision in relation to renewal applications.

We recognise that it is in the interests of all stakeholders that the mechanism if flexible. We consider that it should in some circumstances have the discretion to refuse to allocate capacity under the capacity allocation provisions. In light of this, we are of the view that renewal applications should not be assumed to simply 'roll over'.

[589] Anglo American, 2014 DAU, sub. 95: 29.
[590] QRC, 2014 DAU, sub. 84: 48.
[591] QRC, 2014 DAU, sub. 84: 48.
[592] QRC, 2014 DAU, sub. 84: 49.

It is in the public interest that renewal applications are not simply rolled over, and are brought in line with the access undertaking in force at the time to maximise consistency and competition in contestable markets. We note that parties can agree to override the terms of an undertaking in their access agreements to roll over the terms of an agreement.

Therefore it is appropriate that a minimum level of certainty and flexibility should exist within the access undertaking for both access seekers and Aurizon Network. It is appropriate that access holders seeking to renewal their access agreements on the same terms should have their application accepted rather than having to renegotiate. However Aurizon Network should retain some discretion within the capacity allocation framework.

As noted in Table 38, some stakeholder submissions asked for more onerous terms to be included in the renewal provisions. We do not consider this to be appropriate. The purpose behind the renewal provisions is to ensure that an access holder has the confidence to invest in long-term assets. This is likely achieved by the proposals we have outlined in our initial draft decision.

We have also made some drafting amendments in the CDD amended DAU in response to stakeholder comments. While these do not cause any material change in policy, we do not consider the amendments to be minor or inconsequential as these changes increase clarity and certainty of operation.

Consolidated draft decision 11.4

(1) **After considering Aurizon Network's proposed provisions in respect of treatment of renewal applications our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking to reinstate the provisions from UT3 in the manner proposed in clause 7.3 of the CDD amended DAU.**

(3) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

11.5.4 Replacement mine concept

Summary of the initial draft decision

Aurizon Network sought to address requests from stakeholders to reinstate the replacement mine concept in the 2014 DAU. While the definition of a replacement mine from UT3 has not been applied, we considered the intent of Aurizon Network's proposed amendment achieved the same result. That is, an access holder may renew an access agreement with substantially the same terms, such as the origin or destination for the access rights are in a similar geographic location or the renewed access rights require the same use of mainline paths.

However, we agreed that further information was required before we could make a decision to approve the proposal—such as the proposed map of track segments, to determine whether the concept of track segments is a viable option.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with the QCA's initial draft decision in relation to the replacement mine concept. It submitted that its proposed changes to the replacement mine concept in the

2014 DAU were developed in response to a request from stakeholders in order to more clearly define the boundaries for a replacement mine. Aurizon Network's view was that its proposal is an improvement on the current provision in UT3 and which advances the interests of access seekers under section 138(e) of the QCA Act. It also noted that its revised concept had the support of the QRC.[593]

While Anglo American was open to the 'replacement mine concept', it acknowledged the comments of the QCA in the initial draft decision that Aurizon Network is yet to provide enough clarity and transparency around the concept to properly analyse the effectiveness of these provisions. Anglo American stated that, until this clarity is provided, the QCA should not support the inclusion of this provision.[594]

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we refuse to approve Aurizon Network's proposed removal of the replacement mine concept.

We recognise that the revised arrangements may promote greater flexibility; however, in the absence of further information, the changes may lead to uncertainty regarding its operations. This result would not be in the interests of Aurizon Network or access holders.

Our initial draft decision stated that further information is required before we can move away from the UT3 approach. Aurizon Network has not provided any detail and the QRC has not responded on the issue. We also note that the origin for a renewed train service can be within a track segment, allowing some flexibility for renewals.

Furthermore, in the context of our decision not to accept Aurizon Network's proposed mechanism for renewal application, we are of the view that it is inappropriate to accept Aurizon Network's proposed treatment of the concept of replacement mines, as the two matters are linked.

Amending the 2014 DAU

We consider the 2014 DAU should be amended by allowing for renewals to be on largely the same terms.

[593] Aurizon Network, 2014 DAU, sub. 82: 136.
[594] Anglo American, 2014 DAU, sub. 95: 30.

Consolidated draft decision 11.5

(1) **After considering Aurizon Network's proposed amendment to the replacement mine concept our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking by reinserting provisions relating to the replacement mine concept from UT3, in the manner proposed in our CDD amended DAU.**

(3) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

11.6 Transfers and relinquishment

Aurizon Network's 2014 DAU—which reflects the framework in UT3—is built upon the concept that there are two forms of capacity transfer:

- the surrender or relinquishment of access rights to Aurizon Network
- a transfer of access rights from an access holder to an access seeker.

The proposal is also built on the principle that a transfer or a relinquishment of access rights will incur a fee.

Table 38 Transfer and relinquishment provision in UT3

Undertaking provision	*Detail*
Transfers and relinquishments	Under UT3 (cl. 7.3.6), unless otherwise specified in an access holder's access agreement, an access holder may relinquish or transfer all or part of its access rights.
Customer initiated transfers	Where there is a customer of an access holder seeking to transfer some or all of its access rights to another access seeker (above rail operator), UT3 provides that the customer may initiate a transfer — a 'customer initiated transfer'.
Transfer and relinquishment fees	In Aurizon Network's UT2, the transfer fee and the relinquishment fees were separate fees. For UT3, Aurizon Network combined the transfer and relinquishment processes into one. For a short-term transfer, no fees are payable if the transfer is for less than two years.

Aurizon Network's proposal

The following table summarises Aurizon Network's 2014 DAU proposed amendments to transfer and relinquishments.

Table 39 Aurizon Network's proposal for transfers and relinquishments

Undertaking provision	*Aurizon Network's proposal*
Transfers	Streamline the provisions to amend the access agreement to allow for the transfer of capacity (and moved much of the detail to the standard access agreements). Aurizon Network said that a transfer of access rights relates more to the relationship between itself and an access holder, than to the negotiation of access.[595]
Short-term transfers	Reduce the timeframe for a short-term capacity transfer from two years to twelve months. Aurizon Network considered this to be a more appropriate timeframe for a short-term transfer. The practical impact being there will be zero relinquishment fees for capacity transfers of less than twelve months in duration.[596]
Customer initiated transfers	Move details of customer initiated capacity transfers to the SAA. It said that it proposed to streamline the provisions associated with amending access agreements to transfer capacity and as such, moved much of the detail to the standard access agreement.[597]
Ancillary access rights	Ancillary access rights have been designed to facilitate transfers occurring where the transfer is for an origin further out from the existing origin. The additional corridor is deemed to be the ancillary access right. Where an access holder requests to transfer access rights (which require ancillary access rights to enable the transfer to take place) the access seeker will gain priority over those ancillary access rights, provided there are no other access seekers Aurizon Network is negotiating with needing the same access rights.[598]
Transfer and relinquishment fees	Aurizon Network may make reasonable assumptions about future events that may impact the amount of the relinquishment/transfer fee, which is based on the present value of take-or-pay charges for the term of the access agreement.[599]

General comments regarding transfers

In light of stakeholders and Aurizon Network's agreed progression towards more flexible and tradable access rights, we considered there to be a number of provisions in the 2014 DAU and the SAAs which required further consideration due to the different concepts of short-term capacity transfer and permanent capacity transfer.

In light of this, this section (Section 11.6) predominantly relates to relinquishments and permanent capacity transfers unless otherwise specified. Our consolidated draft decision here primarily relates to matters dealing with fees in connection with a transfer. The mechanism and process by which transfers are undertaken are located in our discussion relating to short-term capacity transfers in Section 11.7, as our supplementary draft decision dated 30 April 2015 supersedes our initial draft decision dated 30 January 2015.

We are of the view that a transfer assessment process should not distinguish between short-term or permanent transfers, as the process from Aurizon Network's perspective is the same. The distinguishing factor between those two categories of transfers is the length of period of the transfer, and the imposition of a fee. We discuss this is in the next section (Section 11.7).

[595] Aurizon Network, 2013 DAU, sub. 2: 113.
[596] Aurizon Network, 2013 DAU, sub. 2: 114.
[597] Aurizon Network, 2013 DAU, sub. 2: 113.
[598] Aurizon Network, 2013 DAU, sub. 2: 370.
[599] Aurizon Network, 2013 DAU, sub. 2: 370.

In both Sections 11.6 and 11.7 a reference to our initial draft decision is a reference to our initial draft decision dated 30 January 2015; a reference to our supplementary draft decision is a reference to our supplementary draft decision dated 30 April 2015.

11.6.1 Transfers and relinquishments

Summary of the initial draft decision

In our initial draft decision, we said we would approve reinstating drafting from UT3, other than for certain issues relating to transfer and relinquishment fees. We concluded we would approve provisions from UT3 being reinstated until such time as a transfer mechanism is implemented.

We considered this aligned with Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act) and met the interests of access seekers (s. 138(2)(e) of the QCA Act), as it would provide for consistency in the treatment of transfers until such time as a transfer mechanism is developed and implemented. We also considered our proposal to revert to the UT3 transfer provisions is consistent with section 106 of the QCA Act.[600]

Stakeholders' comments on the initial draft decision

Aurizon Network stated that the initial draft decision is not sufficiently clear on whether it related to short-term capacity transfer or otherwise. It stated that the short-term capacity transfer mechanism is separate to the existing transfer and relinquishment process under the SAAs. It considered that clarity is required from the QCA.[601]

Asciano stated that it strongly supported the QCA's initial draft decision positions with respect to relinquishment and resumption provisions.[602]

Anglo American supported the QCA's initial draft decision to reinstate the UT3 provisions relating to transfers and relinquishments until such time as the transfer mechanisms proposed by Aurizon Network (including the short-term transfer mechanism proposal) can be properly understood and it has provided enough transparency to ensure that the QCA and stakeholders understand what each of the transfer mechanisms is intended to achieve.[603]

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we decided not to approve Aurizon Network's proposed approach to transfers (excluding short-term capacity transfers) and relinquishments because they do not appropriately balance the interests of all relevant stakeholders.

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[600] We consider our proposal is consistent with section 106 of the QCA Act as it provides for: i) the user of a declared service under an access agreement may transfer all or part of the user's interest in the agreement; ii) a transfer must be made by written notice given to the access provider; iii) the notice must state the interest being transferred, the name and address of the transferee and the date of the transfer; iv) the date of the transfer stated in the notice must not be earlier than the day the notice is given; and v) even if a user effects a transfer, the user's obligations under the access agreement continue, unless the transferee and other parties to the access agreement agree.

[601] Aurizon Network, 2014 DAU, sub. 82: 136.

[602] Asciano, sub. 76: 18.

[603] Anglo American, sub. 95: 30.

Aurizon Network's proposed approach does not provide adequate transparency and certainty in relation to how relinquishment fees are calculated, and does not adequately address customer initiated transfers.

The following sections further explain our decision to not approve Aurizon Network's proposal and outline how we consider the 2014 DAU should be amended with reference to the UT3 relinquishment and transfer provisions. The sections below are organised into four parts dealing with:

- location of the provisions
- the calculation of fees
- fee waivers
- customer initiated transfers.

11.6.2 Location of the fee provisions

Summary of the initial draft decision

Aurizon Network drafted provisions relating to transfer and relinquishment fees in the 2014 access agreements. In our initial draft decision, we were of the view that these provisions should be moved back into the undertaking with the exception of the provision that allowed Aurizon Network to make assumptions about future events in its calculation of transfer/relinquishment fees. We also considered a more transparent provision, for the calculation, would be to require Aurizon Network to provide an access holder with information detailing:

- how it calculated the relinquishment fee, and how that met the relevant provisions of the access undertaking
- all assumptions used in the calculation and why those assumptions are reasonable assumptions to make.

We considered these provisions are consistent with the legitimate business interests of Aurizon Network (s. 138(2)(b) of the QCA Act) and would ensure a consistent source for the calculation of relinquishment fees for UT3 and UT4. We also considered this approach to be in the interest of access holders (s. 138(2)(h) of the QCA Act) as it increases transparency of Aurizon Network's calculations and assumptions.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with the QCA's proposal that certain provisions of the access undertaking be incorporated by reference into the access agreement and TOD. Aurizon Network said that the appropriate place is in the AA and TOD as Aurizon Network should have the ability to agree otherwise and not be in breach of the undertaking.[604]

The QRC supported the QCA's initial draft decision to include the transfer, relinquishment and resumption provisions in the access undertaking, but said there should be greater clarity as to how these new provisions interact with existing access agreements. It would be useful to clarify which mechanisms operate as an additional right available to access holders (or their customers), compared to the mechanisms which should only apply to the extent they are

[604] Aurizon Network, sub. 82: 110.

incorporated by reference. The QRC said that Aurizon Network should reinstate access rights if they have not been contracted after six months.

The QRC also considered the QCA should clarify whether or not the relinquishments, transfers, resumption or force majeure provisions in the undertaking can be varied by the parties when entering into a new agreement[605].

Aurizon Network accepted suggestions that it provide more information to access holders. It noted that it already voluntarily provides this information to access holders.[606]

Anglo American agreed that Aurizon Network be required to provide a transferring or relinquishing access holder with information regarding how a relinquishment or transfer fee is calculated and any assumptions relied on to calculate it.[607]

QCA analysis

After considering submissions, and having regard to the section 138(2) factors, we have decided to not approve the 2014 DAU in relation to removing the transfer and relinquishment fees provisions from the undertaking.

Aurizon Network's proposed approach increases the potential for inconsistency arising over generations of undertakings in relation to provisions such as relinquishments. This creates unnecessary complexity, administrative and transaction costs, and decreases certainty for Aurizon Network, access seekers and holders.

We also consider that these matters are overarching in nature and go beyond the specific interests of individual access holders. In addition, the inconsistency may increase the risk that it may unfairly differentiate between stakeholders in a material way. The removal of these provisions would not adequately take into consideration the public interest and stakeholder interests, and would not promote the object of Part 5 of the QCA Act.

We have considered Aurizon Network's legitimate business interests but are of the view that while flexibility may be desirable, a level of certainty is required. We consider that it is in Aurizon Network's interests to have the relevant provisions included in the undertaking as consistency will likely reduce associated administration and transaction costs of managing different transfer and relinquishment processes.

We do not agree with QRC's view that resumed access rights would be reinstated after six months. We consider that if it is appropriate for access rights to be resumed, there would be no case for reinstatement, and it would not be in the interests of Aurizon Network or other access seekers to do so.

Amending the 2014 DAU

Including these provisions in the undertaking provides greater scope for all parties to take advantage of improvements being made to these processes over time. In addition, stakeholders will have greater confidence in what the process involves, as certainty and transparency will be enhanced.

[605] QRC, 2014 DAU, sub. 84: 49–50.
[606] Aurizon Network, 2014 DAU, sub. 82: 136–137.
[607] Anglo American, 2014 DAU, sub. 95: 30.

Consolidated draft decision 11.6

(1) **Our consolidated draft decision is to refuse to approve Aurizon Network's proposed amendments to remove the transfer and relinquishment fees provisions from the undertaking.**

(2) **We consider it appropriate that Aurizon Network amend its 2014 DAU by reinserting the provisions dealing with fees into the 2014 DAU, in the manner proposed in clause 7.4 of the CDD amended DAU and also in a manner consistent with our consolidated draft decisions 11.7 and 11.8.**

(3) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in this section**.

11.6.3 Fee calculations

In our initial draft decision, we were of the view that all transfer and relinquishment provisions including the manner in which fees are calculated should be included in the 2014 DAU.

Stakeholders' comments on the initial draft decision

Stakeholders' comments on transfer and relinquishment fee calculations together with our responses are outlined in the table below.

Table 40 Stakeholders' comments on transfer and relinquishment fees

Issue	*Comment*	*QCA response*
Aggregation of transfer period	Asciano noted that the initial draft decision(cl. 7.4.2(h)(ii)) has reinstated provisions that state the transfer fee is zero if the transfer period is less than two years and amended it to take account of all other previous transfers for train services with the same origin and destination (ie. transfer periods are aggregated). Asciano sought clarification as to whether these apply across access agreements held by the same and different access holders and Access Undertaking generations. It also requested the QCA clarify the rationale for this approach[608]	The intent of this clause was to manage the risk of gaming behaviour by transferors who could avoid fees by making many small transfers. If these transfers aggregate to exceed 2 years over the preceding three, then a zero fee would not automatically apply. This is in the interests of other access holders (s. 138(2)(h).
Inclusion of transfer provision in Access Undertaking	Sojitz queried why a transfer fee mechanism still existed given that Aurizon Network has operated under a revenue cap since UT2 and is fully protected from revenue shortfalls associated with transferring access rights. Sojitz supported the outright removal of what it considered an outdated and redundant mechanism.[609]	The transfer fee mechanism provides a basis for costs to be recovered from those who cause the costs rather than from all other access holders. This is in the interests of other access holders (s. 138(2)(h).
Assumptions in calculating fees	QRC supported the initial draft decision to require Aurizon Network to notify an access holder of the amount of fees and how calculated. QRC proposed that this obligation be clarified so that it clearly requires disclosure of any	In our view, the clause as drafted is sufficient, as Aurizon Network is required to advise how the fee is calculated. Without being specific, we consider this means that Aurizon

[608] Asciano, 2014 DAU, sub. 76: 18.
[609] Sojitz, 2014 DAU, sub. 97: 3.

Issue	*Comment*	*QCA response*
	assumptions made by Aurizon Network and written reasons for them.[610]	Network would need to disclose the key assumptions made. We also consider beyond some key assumptions, a certain level of flexibility must exist within the calculation framework for it to be workable.
Reduction of relinquishment fee	QRC considered that where Aurizon Network is aware an access holder intends to relinquish its access rights, there should be an obligation on it to notify that access holder if it becomes aware of an opportunity to enter into an agreement with another party which could reduce its relinquishment fee. QRC considered that Aurizon Network should be obliged not to unreasonably delay the negotiation and execution of any such agreement[611]	Reducing the relinquishment fee is not in the business interests of Aurizon Network, as it would impose an obligation on it that is unreasonable. Aurizon Network need not be set up as a broking house. The relinquishing holder should manage this cost itself and seek to identify any offsets in the market through normal transfer arrangements. We agree that Aurizon Network should not be able to unreasonably delay negotiations. Our initial draft decision already reflects this.
Revision of transfer or relinquishment fee	QRC considered that clause 7.4.4(b)(ii) should be amended to clarify that if the access holder has paid an amount in excess of the revised calculation, then the excess should be refunded to the access holder[612]	Our initial draft decision already reflects this.

QCA analysis

After having regard to the section 138(2) factors and stakeholder comments, we have decided to not approve the 2014 DAU in relation to the manner fees are calculated.

As outlined in Section 11.6.2 of this consolidated draft decision, we consider it appropriate that these provisions are contained in the undertaking.

Amending the 2014 DAU

We consider it appropriate that Aurizon Network should amend the 2014 DAU by reinserting the relevant provisions into the undertaking and specifying in the provisions the manner in which Aurizon Network will assess the relevant fees payable by an access holder under these provisions. It is also appropriate that Aurizon Network is required to provide a notice outlining the key assumptions it has relied upon to calculate the fee.

However, we do not consider it is appropriate that Aurizon Network is required to act as a brokering house to assist access holder to transfer their access rights as suggested by the QRC. This would not adequately acknowledge Aurizon Network's legitimate business interests, by increasing the administrative and regulatory burden. Access holders are in the best position to broker transfers with other access holders. The capacity registers discussed in Sections

[610] QRC, 2014 DAU, sub. 84: 50.
[611] QRC, 2014 DAU, sub. 84: 50.
[612] QRC, 2014 DAU, sub. 84: 50.

11.3.5–11.3.8 should provide sufficient resources to access holders seeking to transfer capacity to identify another party seeking capacity.

11.6.4 Waiver of relinquishment fees

Summary of the initial draft decision

In our initial draft decision, we noted Aurizon Operations' concern that relinquishment fees[613] discourage train operators from pursuing efficiency improvements, where the cost of a relinquishment fee outweighs the benefits of any operational savings. We also noted that Aurizon Operations was concerned that if Aurizon Network chose to waive the collection of a relinquishment fee, it would be exposed to the prospect of financial loss through the determination of the revenue cap adjustment amount.

We considered that where a relinquishment fee is waived, either Aurizon Network absorbs the associated fixed cost (relinquishment fee), or those costs are passed onto access holders. We were not convinced that the fixed cost of providing the service should be waived in order to encourage productivity improvements for train operators.

We noted there will naturally be an incentive to pursue efficiency gains for train operators when the benefits outweigh costs. Also, waiving relinquishment fees appears to be a concern where there is no alternative demand—which means costs would transfer to other access holders.

Against this background we considered Aurizon Operations' proposal would have the effect of shifting a portion of the costs of making efficiency gains on to the network at a time of low demand. We did not consider that a cost shift from a rail operator to the remainder of the network would necessarily promote the efficient use of and investment in significant infrastructure. Rather, we considered the party pursing the efficiency gains should bear the full cost of making that decision.

Stakeholders' comments on the initial draft decision

Stakeholders' comments on a range of matters relating to the initial draft decision and our responses are summarised in the table below.

[613] Relinquishment fees are designed as an exit fee, to capture the fixed cost of providing access to an access holder. If the access holder 'exits' the network or no longer requires use of a tranche of access rights, the relinquishment fee is paid to ensure the fixed cost of leaving the system is not transferred to other users of the system.

Table 41 Stakeholders' comments on the waiver of relinquishment fees

Comment	*QCA response*
In relation to efficiency improvements: (a) BMA submitted that QCA refusal of the right to waive relinquishment fees where additional paths are created by the adoption of more efficient practices (eg. longer trains) is likely to significantly deter investment in incremental efficiency gains [614]. BMA said that the relinquishment fee could punish early adopters of technological improvements.[615] (b) Aurizon Network said that the waiver of relinquishment fees should be permitted in certain circumstances where operator efficiency improvements lead to greater commercial and economic efficiency in the network (such as longer train consists)[616] (c) Aurizon Network submitted that the cost of unused access rights) should be borne by all access holders in the system. BMA noted that the efficiency improvement will benefit all users on the system over time.	We noted in our initial draft decision that if relinquishment fees were waived, the cost would be effectively passed on to other users. These other users might then in effect subsidise the efficiency improvements. Thus, part of the costs of the efficiency investment would be offset, which could distort decisions to make such investments. Any unused access rights generated by the access holders' initiative would presumably be able to be transferred to other users. We remain unconvinced that waivers of relinquishment fees are necessary to encourage investment—the benefits of the investment need to be weighed against the full costs, and if fixed costs are not reduced, but merely shifted, then this should be recognised through a form of exit fee.
Aurizon Operations and Aurizon Network disagreed with the QCA's conclusion that its proposal results in cost shifting. The proportion of fixed costs transferred to the network limited to foregone AT2 revenue, which is a small proportion of total access charge. The amount transferred is immaterial and unlikely to exceed the benefits of the increase in available capacity for use by access holders/seekers. [617]	While on the one hand, Aurizon Network considered that relinquishment fees would discourage investments in efficiency, it also stated that the amount transferred is immaterial. We do not see these two positions can co-exist. We do not see this argument as a reason to remove relinquishment fees.
Aurizon Operations noted that 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.	We are of the view that the costs of relinquishment should be accurately reflected and should not be passed on to other users.
Aurizon Operations considered that the pricing principles in section 168A require that prices for access to the service should provide incentives to reduce costs/improve productivity.	We agree that this is the case, but as we noted above, the relevant benefits need to be compared to all costs to ensure efficient investment decisions.
Aurizon Operations recommended the access undertaking should include: (a) 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 are unchanged (b) a mechanism whereby the rail operator can seek a rebate on the AT2 component of a relinquishment	We are of the view that the costs of relinquishment should be accurately reflected and should not be passed onto other users.

[614] BMA, 2014 DAU, sub. 79: 6–7.
[615] BMA, 2014 DAU, sub. 79: 6–7.
[616] Aurizon Network, sub. 82: 141.
[617] Aurizon Operations, 2014 DAU, sub. 93: 20–22; Aurizon Network, sub. 82: 142.

Comment	*QCA response*
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.[618]	

QCA analysis

After having regard to the section 138(2) factors and stakeholder comments, we have decided that transfer and relinquishment fees provisions should be included in the provisions relating to transfers and relinquishments.

We are of the view that Aurizon Operations' proposal would have the effect of shifting a portion of costs of making efficiency gains onto the network. We do not consider it appropriate that the benefits of any efficiency gains are kept by one access holder, while the costs associated with the transaction are socialised. We consider such an outcome would be inefficient and would not promote the object of Part 5 of the Act. It would not be consistent with the pricing principles.

The development of an effective transfer mechanism is in the public interest. A transfer mechanism that does not truly reflect the costs associated with relinquishment is not effective and may incentivise relinquishments that do not achieve real efficiency gains.

We have considered stakeholder interests having had regard to their responses, as noted above.

Amending the 2014 DAU

In this consolidated draft decision, we are of the view that it is appropriate to adopt our initial draft decision on provisions relating to fee waivers.

However, we have made some drafting amendments in the CDD amended DAU in response to stakeholder comments. While these do not cause any material change in policy, we do not consider the amendments to be minor or inconsequential as these changes increase clarity and certainty of operation.

[618] Aurizon Operations, 2014 DAU, sub. 93: 20–22.

Consolidated draft decision 11.7

(1) **After considering Aurizon Network's proposal in regards to its calculation of transfer and relinquishment fees our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its 2014 DAU with respect to the calculation of transfer and relinquishment fees to include a process where Aurizon Network provides an access holder with information detailing:**

- **(a) how it calculated the relinquishment fee, and how that meets with the relevant provisions of the access undertaking**
- **(b) all assumptions used in the calculation and why those assumptions are reasonable assumptions to make.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

11.6.5 Customer initiated transfers

Summary of the initial draft decision

Aurizon Network included provisions in its 2014 DAU for customer initiated transfers in the transitional provision section for use with pre-UT4 access agreements.

Given our position that all capacity management provisions must be contained within the access undertaking, rather than access agreements, we considered the same principle should apply to customer initiated transfers. As such, this provision should be moved to Part 7 of the 2014 DAU.

We considered this would facilitate equal treatment of all end-customers, irrespective of what generation of access agreement an access holder has executed.

We considered this was in the public interest (s. 138(2)(d)) as customers of access holders (train operators) will have the ability to initiate a transfer of access rights to another above rail provider. We considered that by retaining these provisions it allowed customers the ability to change their above rail provider, thereby encouraging competition in the above rail market. We considered this aligns with the object of Part 5 of the QCA Act (s. 69E).

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with the initial draft decision. It noted that its proposed changes in the 2014 DAU were developed in response to industry feedback seeking a streamlined transfer process. Aurizon Network's position was that customer initiated transfer provisions should be included in the access agreement in order to provide contractual certainty to both it and the access holder and to assist in the administration of these provisions.[619]

Anglo American commented that it agreed with the initial draft decision that the customer initiated transfer provisions in UT3 be reinstated. It considered that these provisions are important to allow access holders to appropriately and easily deal with their access rights and capacity allocation under an access agreement and that the process allows access holders to

[619] Aurizon Network, 2014 DAU, sub. 82: 137.

manage their capacity without detrimentally impacting any other access holder, access seeker or Aurizon Network itself.[620]

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we have decided to not approve the 2014 DAU in relation to its treatment of customer initiated transfers.

We prefer to maintain our position that an equal treatment of transfers irrespective of what generation of access agreement is involved, is appropriate in the interests of access holders.

As we noted in Section 11.6.2 of this consolidated draft decision, including provisions of this nature in the undertaking rather than in the access agreements will promote certainty, which promotes the object of Part 5 of the QCA Act and promotes the interests of Aurizon Network and stakeholders.

Amending the 2014 DAU

We consider it appropriate to propose amending the 2014 by including provisions relating to customer initiated transfers.

Consolidated draft decision 11.8

(1) **After considering Aurizon Network's proposed change to the provisions relating to customer initiated transfers our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking by reinstating provisions relating to customer initiated transfers in the 2014 DAU as proposed in clause 7.4 of the CDD amended DAU.**

(3) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

11.7 Short-term capacity transfer mechanism

After stakeholder submissions were made on its 2013 DAU, Aurizon Network acknowledged stakeholder desire for greater flexibility in the management of access rights. It acknowledged the QRC's proposal for a process to facilitate short-term transfers by enabling customers within a cluster (or a short geographical distance of one another) to seek preapproval of a transfer.[621]

In response, Aurizon Network decided to develop a capacity trading mechanism to be incorporated in the 2014 DAU and SAAs in consultation with its stakeholders.[622]In December 2014, Aurizon Network provided the QCA with a discussion paper outlining a proposed short-term mechanism which we released for comment by 30 January 2015.

Aurizon Network's short-term capacity transfer mechanism is intended to allow capacity transfer requests from access holders to be processed in the weekly planning process to develop the Intermediate Train Plan (ITP). Outside of the ITP scheduling timeframe, Aurizon

[620] Anglo American, 2014 DAU, sub. 95: 30.
[621] Aurizon Network, 2013 DAU, sub. 77: 28–9.
[622] Aurizon Network, 2014 DAU, sub. 48: 5.

Network considers the general capacity transfer mechanisms in the 2014 DAU provide sufficient transfer flexibility for access holders and access seekers. The short-term capacity transfer mechanism manages transfers between existing access holders[623] within the weekly ITP scheduling environment.

Short-term capacity transfer notices may be given not more than seven business days and not fewer than 48 hours prior to the close of train orders for the Intermediate Train Plan (ITP). Transfer notices can be issued within the ITP period for train paths that have not already been scheduled. However, train services once scheduled in an ITP cannot themselves be the subject of a short-term transfer.

As Aurizon Network's discussion paper on a potential short-term transfer mechanism (Box 3) was out for consultation at the time the initial draft decision on the 2014 DAU was published, we did not form a view on the issue in our initial draft decision.

After considering submissions, we released a supplementary draft decision in April 2015. This supplementary draft decision consolidated our assessment of both the discussion paper and the transfer provisions in the 2014 DAU and expressed our view on whether the capacity transfer provisions, in their entirety,[624] address the matters set out in sections 138(2) and 168A of the QCA Act and meet the object of Part 5 of the QCA Act (s.69E).

To provide further clarity on selected issues, on 16 September 2015 we issued Stakeholder Notice 11 seeking submissions from industry on short-term capacity transfers. We invited stakeholders to provide examples of transfers that they would not have undertaken if a transfer fee was imposed on those transfers. We also sought submissions on the appropriateness of Aurizon Network's proposed criteria for assessing short-term capacity transfers.

[623] Short-term capacity transfers can only occur between existing access holders because it requires the transferor and transferee to already have in place a current access agreement (based on the suite of SAAs in the 2014 DAU), rail operating plan, interface risk management plan and access interface deed (if applicable).

[624] If Part 7 of the 2014 DAU was amended in the manner proposed by Aurizon Network in its discussion paper.

11.7.1 Aurizon Network's position

Box 3: Aurizon Network's discussion paper on a potential short-term transfer mechanism

Aurizon Network notes the objectives of the transfer mechanism are two-fold:

(a) Provide access holders with additional flexibility to manage demand variability and take-or-pay obligations (in a revenue cap environment) through timely short-term transfers of train service entitlements.

(b) Provide for the transfer of access rights to occur at a time as close as possible to the operation of the proposed service—allowing for access holders to manage short-term variability within the supply chain.

The intent is that there will be two transfer processes: long-term transfers (as per the existing access agreement provisions) and short-term transfers.

Aurizon Network says it is committed to developing a short-term transfer mechanism subject to the following principles:

- It will not be exposed to any additional liability or risks as a result of facilitating the short-term transfer mechanism.
- No other access holder will be adversely affected by a short-term transfer.
- Below rail network capacity must be available.
- Other elements of the supply chain (including operators) are able to accommodate the short-term transfer.

Short-term transfer features

Feature	***Proposal***
Two types of transfers—with and without additional capacity (requires capacity assessment). All must have a common destination.	• additional access rights—could occur if the capacity recipient's location is further from the destination than the capacity holder • no additional access rights—same route used and common destination
Timing of transfer notice	• pre-orders for transfers must occur not less than 48 hours prior and not greater than seven days prior to close of train orders • post-scheduling: once the intermediate train plan is issued, further requests can be made if the intermediate train plan shows available paths
Fees	• no transfer fees
Frequency of transfers	• a maximum of 25 per cent of an access holder's TSEs for the relevant origin to destination train service in a financial year
Tariff	• a transfer will only be approved if access charges based on the same reference tariff
Train service type	• a transfer will only be approved if access charges based on the same train service type
Amount limited by load out capability	• amount of transfer must not exceed load out capability—as agreed by Aurizon Network and operator of load out facility
Utilisation	• Aurizon Network may refuse a transfer if it considers the transferee does not have a genuine ability or intention to use the capacity. A transferee would need to demonstrate at least 85% use of short-term access rights.
Contractual requirements	• amendments to the access undertaking and variation of the access agreements

11.7.2 Initial stakeholders' submissions

Initial submissions in response to Aurizon Network's discussion paper focused on a range of matters as detailed in the table below. Most stakeholders sought flexibility and simplicity as guiding principles.

Table 42 Stakeholders' comments in response to Aurizon Network's discussion paper

Issue	*Comment*
General approach	The QRC generally accepted Aurizon Network's proposal as a first step, and disagreed with QCA's view that there is no need for separate processes in relation to short-term and long-term transfers.[625] BMA also supported Aurizon Network's proposal of introducing incremental changes, subject to later review:[626] Springsure Creek Coal supported the transfer mechanism as proposed by Aurizon Network, believing it will improve the efficiency of the coal export chain.[627] Vale supported the introduction of a short-term trading mechanism and believed this should be a different process to a long term transfer.[628] Asciano said that the Schedule G of the 2010 access undertaking provides a basis for a short-term transfer mechanism.[629] Asciano also said that ring-fencing should apply to short-term transfers to ensure that there is no perceived discrimination in favour of a related operator.[630]
Duration	QRC said short-term transfers should be restricted to 3 months.
Limits on transfers	BMA, Anglo American and Asciano were concerned that the 25% maximum limit on total TSEs that can be transferred in an access holder's access agreement during a year is overly restrictive.[631]
Timing of transfers	Vale and Anglo American considered that restricting the notification and approval process to 7 days before the train order will not provide sufficient time.[632]
Origin and destinations	BMA said that if the various elements of the supply chain are able to accommodate a proposed transfer request, it should be accepted even if the destination coal terminals are different.[633] Asciano and Anglo American also said transfers should be allowed even if the port destinations are different.[634] Springsure Creek Coal queried the 'common destination' requirement.[635] Aurizon Operations said that provided the outloading capacity of the mine and the inloading capacity of a destination are 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.[636]
Transfer fees	QRC, Anglo American and Asciano agreed with Aurizon Network that no transfer fee should be payable.[637]
Tariff treatment	QRC generally accepted the treatment of tariffs for short-term transfers as proposed

[625] QRC, 2014 DAU, sub. 84: 55–58.
[626] BMA, 2014 DAU, sub. 78: 7–8.
[627] Springsure Creek Coal, 2014 DAU, sub. 94: 6–9.
[628] Vale, 2014 DAU, sub. 79: 6.
[629] Asciano, sub. 63: 3–4.
[630] Asciano, sub. 63: 10.
[631] BMA, 2014 DAU, sub.78: 7–8; Anglo American, sub. 65: 9–10; Asciano, sub. 63: 7.
[632] Vale, sub. 64: 3; Anglo American, sub . 65: 3.
[633] BMA, 2014 DAU, sub. 78: 7–8.
[634] Asciano, sub. 63: 8; Anglo American, sub. 65: 4.
[635] Springsure Creek Coal, sub. 94: 6.
[636] Aurizon Operations, 2014 DAU, sub. 93: 22.
[637] QRC, sub. 84: 58; Anglo American, sub . 65: 6; Asciano, sub. 63: 12.

Issue	*Comment*
	by Aurizon Network, subject to comments to contrary. Asciano considered the tariff treatment to be restrictive on trade.
Implementation issues	Asciano sought clarification on the take or pay obligations of transferred access rights from a UT1 access agreement into a UT3 or UT4 access agreement.[638]
Approvals	• QRC generally agreed with the supplementary draft decision in respect of the approval process for long term transfers, subject to comments regarding Part 7. • QRC generally agreed with the recommendations in relation to the approval process in Aurizon Network's paper, subject to any comments to the contrary.

11.7.3 Summary of the supplementary draft decision

Our supplementary draft decision of April 2015 was to refuse to approve the short-term capacity transfer mechanism proposed by Aurizon Network on the basis that it is not suitable for purpose. In our supplementary draft decision we proposed a range of amendments to Aurizon Network's proposal that we considered appropriate. Rather than two separate transfer mechanisms for short-term and permanent transfers, we considered it appropriate that the capacity allocation and management part of the 2014 DAU was amended to:

- incorporate short-term transfer arrangements into one simplified process by incorporating QCA-amended concepts of pre-approved transfers and rapid capacity assessment transfers
- give effect to transfers where a transfer notice is provided at least 48 hours from the date of transfer and the transfer notice meets pre-defined access criteria
- provide an ability for a transfer notice to be considered by Aurizon Network in a more timely manner subject to a rapid capacity assessment
- allow Aurizon Network a maximum of three months to consider transfer notices that require a detailed capacity assessment before responding to the notice
- incorporate a governance framework for the administration of the transfer provisions
- require the access charges for the transferred Train Service Entitlements (TSEs) to be the higher of the access charges set for the origin of the TSEs in the transferor's access agreement and the access charges set for the origin of the TSEs in the transferee's access agreement
- provide for amendments to existing access agreements to allow access holders to access the new transfer provisions.

11.7.4 Stakeholders' comments on the supplementary draft decision

Aurizon Network

Aurizon Network submitted that the short-term transfer mechanism is not a QCA Act requirement and is therefore offered voluntarily by Aurizon Network and cannot be compelled by the QCA. Aurizon Network believed that the QCA cannot refuse to approve a DAU because it does not contain a short-term transfer mechanism that the QCA prefers over the Aurizon Network proposal, particularly where the alternative mechanism proposed by the QCA contains elements that are inconsistent with the QCA Act and, in some cases, are unworkable.

[638] Asciano, sub. 63: 13.

Aurizon Network stated that it was willing to volunteer a short-term transfer mechanism and, where appropriate, adopt aspects of the mechanism proposed by the QCA in its draft decision. However, it noted that there are aspects of the QCA's proposal that cannot be accepted.[639]

Other stakeholders

The QRC stated that it was largely supportive of the short-term transfer mechanism proposed by Aurizon Network, suggesting only minor amendments. The QRC maintained the view that the mechanism proposed by Aurizon Network will deliver substantial benefits, including promoting the efficient use of the infrastructure, while the arrangements proposed by the QCA will deliver more limited benefits.[640]

BMA emphasised the importance of flexibility in making a short-term mechanism effective. However, BMA believed that the QCA's proposed mechanism adds to the complexity as it is not clear how the proposed mechanisms will interact with those already existing in the access undertaking. It submitted that strengthening existing provisions may be a better option than introducing a completely new restrictive and complex mechanism. BMA also noted that an established baseline capacity is necessary for the short-term transfer mechanism to work.[641]

Aurizon Operations noted that the mechanism proposed by Aurizon Network was intended to operate separately from the existing framework to facilitate transfers on a short-term basis between access holders, at no cost, and was agreed with industry in the development of the 2010 AU.[642]

Asciano submitted that it did not support either the capacity transfer system proposed by Aurizon Network or the alternative approach proposed by the QCA in its draft decision. Asciano said that Schedule G provides the basis for a mechanism to facilitate short-term transfers, if applied effectively and enhanced to take account of take-or-pay considerations.[643]

Asciano was concerned that the short-form access application adopted for transfer by the QCA (clause 7.4.2(c)(ii)) has the potential for Aurizon Network to treat transfer requests differently which may disadvantage certain access holders. If adopted, it considered there needs to be clear criteria for when a short-form access application can be used and a template of a short-form access application should be established and consistently applied across all access holders.

Asciano submitted that the QCA should assess the potential impacts which this disparity has in relation to take-or-pay impacts and ensure that some access holders are not adversely impacted by this exception.[644]

11.7.5 Further consultation

On 16 September 2015, we published Stakeholder Notice 11 seeking submissions from stakeholders on examples of transfers that they would not undertake if the transfer was subjected to a transfer price. We also sought submissions on any 'gaming' concerns, and whether the criteria proposed by Aurizon Network to assess short-term capacity transfer were appropriate.

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[639] Aurizon Network, 2015 STT DD, sub. 101: 3–5.
[640] QRC, 2015 STT DD, sub. 103: 1.
[641] BMA, 2015 STT DD, sub. 100: 1,3.
[642] Aurizon Operations, 2015 STT DD, sub. 102: 2.
[643] Asciano, 2015 STT DD, sub. 99: 6.
[644] Asciano, 2015 STT DD, sub. 99: 9–10.

Generally, the stakeholder submissions did not detail examples of transfers that stakeholders would not have undertaken if a transfer fee was imposed. Stakeholders submitted mixed responses regarding concern about gaming behaviour and the appropriateness of Aurizon Network's proposed criteria.

Aurizon Network reiterated its general position with comments regarding possible amendments to its proposed criteria.[645]

Aurizon Operations submitted that it supported a zero fee short-term capacity transfer mechanism and that the criteria proposed by Aurizon Network were appropriate.[646]

BMA submitted that it supported a zero fee short-term capacity transfer mechanism but considered that the criteria proposed by Aurizon Network are too restrictive, and that the regulatory framework should support a centralised clearing house for short-term trading of capacity.[647]

The QRC submitted that it supported a zero fee short-term capacity transfer mechanism, but if the QCA were to impose a transfer fee, it should only take into account loss of revenues related to the AT3 and AT5 tariff components. QRC also considered some criteria proposed by Aurizon Network to be inappropriate.[648]

Wealth Resources submitted that it supported a zero fee short-term capacity transfer mechanism but considered that the criteria proposed by Aurizon Network were inappropriate to stop gaming behaviour.[649]

11.7.6 QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we have decided to not approve the 2014 DAU in relation to short-term capacity transfers. We considered that a number of matters were inappropriate to approve and should be amended.

Separate processes

The separate process as proposed by Aurizon Network introduces further costs and complexity that is unnecessary to achieve the aims of differentiating a short-term capacity transfer from a permanent capacity transfer.

We would have concerns if transferors and transferees are reticent about undertaking transfers that would otherwise increase the efficiency of the network because they are confused about how the combined process as proposed in our supplementary draft decision would work.

However, we are of the view that on balance it would be inefficient to have a separate process dealing with transfers whether or not they are short-term or permanent. We maintain the view that there are potential efficiency benefits in a single process by decreasing administration costs for both Aurizon Network and stakeholders.

Price arrangements

Aurizon Network's proposal sought to socialise the difference in revenues in a long-haul to short-haul transfer situation (for readability, this is referred to as a transfer fee).

[645] Aurizon Network, sub. 115: 1.
[646] Aurizon Operations, sub. 116.
[647] BMA, sub. 117.
[648] QRC, sub. 118.
[649] Wealth Resources, sub. 119.

While we are not prepared to approve cost socialisation in general terms as that proposed by Aurizon Network, we recognise that in some cases it may be appropriate to socialise the transfer fee.

In an environment where access rights are contracted for periods of decades, the ability of users to efficiently manage their capacity efficiently in the short term is greatly limited. Therefore we recognise that there is much demand for a short-term capacity transfer mechanism that is effective and flexible.

However, cost socialisation is unlikely to promote efficiency in the context of the object of Part 5 of the QCA Act as it allows efficiency benefits to be kept by individual parties while spreading the costs among other users. We discussed this 'winners and losers' outcome at section 4.3 of our supplementary draft decision.

A process that allows for winners and losers does not adequately take into consideration the interests of access seekers affected by the transfer. Cost socialisation rewards users with large portfolio rights purely because of the fact that they hold a large portfolio, and are in the best position to use a short-term transfer mechanism to minimise cost. Marginal gains are extracted from having options rather than from making incremental efficiency gains from business operations. This outcome would not be in those other users' interests as they are paying more than what they should be paying.

Furthermore, under Aurizon Network's proposal, cost socialisation happens in a manner that is not necessarily transparent to other users because they are unlikely to have knowledge of the interactions between the transferor, transferee and Aurizon Network. This would be particularly true if a transfer was conducted by a party shifting capacity within its own portfolio of access rights. We are of the view that this would not be in the interests of access seekers.

We also consider that it is in the public interest to have a capacity transfer system (dealing with both permanent and short-term transfers) that is cost reflective and is sustainable in the long run. Socialisation of costs is unlikely to promote these outcomes by the very nature of cost socialisation. A price mechanism will ensure that users contemplating a transfer will weigh up the benefits against the costs. This is an efficient and effective way to ensure transfers, whether permanent or short-term, are creating value for the whole system.

We recognise the demand for a flexible short-term capacity transfer mechanism, particularly in the current commodities environment. However, it is in the public interest that we balance flexibility to ensure that the mechanism does not allow unfair cost distribution among users.

Gaming

In Aurizon Network's submission to Stakeholder Notice 11, it stated that of the access requests executed or still being negotiated in FY2015, 19 of a total of 22 do not have a transfer fee attached.[650]

This suggests 19 temporary transfers were long-haul to short-haul transfers, and only three were transfers where additional access rights were required. While this could imply gaming is occurring, it could also simply be because short-term transfers are easier to arrange if they move from long-haul to short-haul, and are therefore more likely to occur.[651] There is a possibility that the transfers were conducted within an access holder's portfolio as a cost minimising exercise.

[650] Aurizon Network, 2015 submission to Stakeholder Notice 11, p. 3.
[651] Gaming as defined in Aurizon Network's 2015 submission to Stakeholder Notice 11, question 2.

We consider that there is clear incentive for a party to undertake such transfers to minimise costs. If a party with a portfolio of access rights is able to shift all of its railing needs to the least-cost option (whether to minimise take-or-pay obligations or to minimise total access charges) then it is rational that it does so.

We note that stakeholders generally are of the view that gaming does not occur. However, we are concerned that the current framework for short-term transfers is too opaque for the effects of those transfers to be fully examined. We are unable to form a firm view on whether or not gaming occurs based on the information currently available. In these circumstances we should err on the side that allows stakeholders greatest flexibility and impose regulation that is least restrictive and intrusive. However, specific records should be kept so that we can better assess these issues in future regulatory periods.

Criteria proposed by Aurizon Network

Aurizon Network proposed a set of criteria for assessing short-term capacity transfers. Aurizon Network has submitted that it would consider relaxing the criteria except the requirement that a transferee is required to confirm that the load out facilities have capacity.[652]

While we consider the general principle that short-term transfers should be subjected to criteria, Aurizon Network's original proposal as set out in its December 2014 discussion paper may be unnecessarily restrictive. We take this view particularly in the context of transfers where no additional access rights are required.

Under its proposal, Aurizon Network has an ability to refuse a transfer if the criteria are not satisfied. Of particular concern is the requirement that short-term transfers are limited to a maximum of 25 per cent of the TSEs in an access holder's access agreement. We consider that this would be particularly unfair for access holders with a small portfolio of access rights and would not be in the interests of access seekers.

Furthermore, the more criteria that are imposed on the transfer mechanism the less flexible the framework becomes. In some cases, restrictive criteria can create unnecessary barriers to participation. We are of the view that the 25 per cent of total TSEs cap criteria proposed to be unnecessarily restrictive and would not be in the interests of access seekers and the public interest.

Having considered the legitimate business interests of Aurizon Network, it is unclear as to how the 25 per cent of total TSEs cap will better promote its legitimate business interests. In a revenue cap situation Aurizon Network should be agnostic towards whether transferor or transferee uses the access rights. This limitation is also unlikely to be particularly relevant in assessing whether it would impact other users on the same coal system. We therefore consider it inappropriate.

Aurizon Network proposed a range of criteria to reduce the likelihood of gaming behaviour. These include written confirmation from load out facilities that there is capacity to load a train, the transferee utilised at least 85 per cent of any access rights previously transferred to it in the same year, and the transferee is fully utilising over the previous three months all of the access rights granted to it from the same origin to the destination.

[652] Aurizon Network, 2015 submission to Stakeholder Notice 11.

For similar reasons outlined above, we consider these criteria to be unnecessarily restrictive, and protection against gaming could be implemented in a less restrictive manner, particularly in circumstances where stakeholders are generally of the view that gaming does not occur.

Another issue is the uncertainty relating to the definition for 'short-term origin' and the uncertainty regarding what is a common destination. We consider that these definitions will need to be clear, or we are unable to consider Aurizon Network's proposal appropriate. We are of the view that any criteria regarding the origin and destination should not be overly restrictive as to negatively impact the flexibility of a short-term transfer mechanism. We note that in its submission to Stakeholder Notice 11, Aurizon Network submitted that it would consider broadening the common destination to include a destination within the same port precinct.

Conclusion

Given the reasons outlined in this section, we are of the view that it would be inappropriate to approve Aurizon Network's proposal. We consider that there should be a single process for transfers and we consider particular criteria proposed by Aurizon Network to be inappropriate.

In the following sections we propose particular amendments to the 2014 DAU.

Consolidated draft decision 11.9

(1) After considering Aurizon Network's short-term capacity transfer mechanism our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking in a manner consistent with our CDD amended DAU and our consolidated draft decisions 11.10, 11.11, 11.12, 11.13, 11.14, 11.15 and 11.16 below.**

(3) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

11.7.7 Amending the capacity transfer mechanism

In our supplementary draft decision we broadly considered that it would be appropriate to set out three criteria of transfers specifically criteria A, criteria B, and criteria C transfers regardless of whether they are permanent or temporary transfers.

Criteria A transfers are 'one-for-one' transfers where no additional capacity is required (that is, 'one-for-one' transfers or transfers for a shorter haul on the main line) and the transferee has an existing access agreement. Criteria B transfers are transfers where additional capacity may be needed and a rapid capacity assessment is undertaken by Aurizon Network and the transferee has an existing access agreement. Criteria C transfers are transfers where Aurizon Network undertakes a more detailed capacity assessment to determine the viability of the transfer.

In this consolidated draft decision we are of the view that the 2014 DAU should be amended in a manner broadly consistent with the way outlined in our supplementary draft decision. However, we are of the view that it may not be appropriate to impose a transfer fee for short-term capacity transfers for the 2014 DAU period.

We also consider that it crucial that a reporting regime is included in the 2014 DAU for reporting on the use of the capacity transfer mechanism in order to better inform our decision making process for the next regulatory period.

11.7.8 Price mechanism for short-term capacity transfers

We are of the view that our analysis as set out in section 4.3 of our supplementary draft decision remains appropriate as a starting position. That is, we consider that as a general position, a fee should be payable on all transfers (whether short-term or permanent) if there is a shortfall in revenues. A cost reflective transfer fee would promote the object of Part 5 of the QCA Act, is consistent with pricing principles and would be in the public interest as outlined in our supplementary draft decision and in Section 11.7.6 above.

We do not consider Aurizon Network's argument that the terms of a short-term capacity transfer mechanism are agreed with industry and therefore the QCA should accept it to be persuasive. The legislative test set out in the QCA Act directs the QCA to have regard to the interests of stakeholders as one of a range of factors to consider, not to rubber stamp industry agreed positions.

Another argument advanced by stakeholders is that, since we approved fee-free short-term capacity transfers for a period of two years under UT3, we should approve the 2014 DAU. This argument is not persuasive. The QCA Act does not bind the QCA to previous decisions.

We consider Aurizon Network's legitimate business interest to have low relevance to our analysis as it will still receive the same amount of revenues and earn a regulated return on assets whether a price mechanism applies or not.

A key issue that stakeholders have consistently raised is that any imposition of a transfer fee would discourage transfers and therefore result in a less efficient use of rail infrastructure.

In Stakeholder Notice 11 we sought evidence from stakeholders regarding transfers that would not occur if there was a transfer fee. While in general stakeholders submitted that a transfer fee would discourage a transfer, no submission provided evidence that a short-term transfer, real or hypothetical, would simply not occur.

The QRC used hypothetical examples to show that, depending on take-or-pay arrangements, the revenue loss of a transfer could be quite small, while there could in fact be a revenue gain if the transferor was not going to use the train path and was not triggering a take-or-pay liability. In this case, the use of the train path increases revenue.

We recognise that short-term transfers could under some circumstances result in revenue gains that would be offset against the revenue cap, generating benefits for all. However, in principle, we maintain the view that a price signal is appropriate—the benefit of being able to ship extra coal needs to outweigh the marginal cost of a transfer fee, in order to achieve an efficiency gain. We note that while revenue gains from railings that would not have otherwise occurred could offset revenue shortfalls for short-term transfers to shorter-haul paths, this socialised approach does not prevent individual miners with larger portfolios gaining from a fee-free short-term transfer mechanism.

A practical argument advanced by stakeholders is that it would be difficult to establish a system for calculating transfer fees and that it would add complexity. We accept that imposing a charge adds complexity as compared to no fee, but we consider that Aurizon Network has the capabilities as it is able to do so where additional access rights are required (that is in transfers where additional capacity is required).

In its submission to Stakeholder Notice 11, Aurizon Network did not provide evidence to support its argument that its billing systems and processes would require material changes. Lastly, in some situations it may be appropriate to accept short-term costs for a mechanism that appropriately prices transfers.

While the weight of our analysis would suggest that a transfer fee is appropriate in all circumstances, we acknowledge that a fee has not applied during the 2014 DAU period for short-term transfers and that to apply a fee retrospectively during the 2014 DAU period would be complex and would not be in the interests of access holders who have made decisions to transfer on the basis of known arrangements. Also, there is limited available information on the nature of transfers that have occurred, whereas such information would be valuable in considering this issue further. We therefore consider that for the 2014 DAU period, it would be appropriate for a zero transfer fee to apply to short-term capacity transfers. This implies differentiated treatment of short-term transfers compared to permanent transfers. We discuss differentiating criteria in Section 11.7.9 below.

We also propose not to adopt the 2014 DAU proposal that a transfer fee be zero if aggregated transfers are for a period of less than two years out of three years over the same origin and destination. We consider that each short-term transfer should be fee-free, regardless of the frequency. As noted below, we propose to monitor transfers, and any gaming behaviour designed to avoid fees would be revealed.

We are of the view that for future regulatory periods, a pricing mechanism would need to be closely examined. As a starting point, socialisation of costs should not occur unless there is strong evidence that if a transfer fee is imposed, the transfer would not occur and the transferor would not utilise the relevant TSEs.

In order to make appropriate regulatory decisions in the future, we consider it appropriate that the 2014 DAU is amended to include a reporting regime. This is discussed in further detail in Section 11.7.13 below.

In summary, we are of the view that a price mechanism is only applicable on permanent transfers. We do not propose that a transfer fee is imposed on short-term transfers for the 2014 DAU period.

Gaming behaviour

We consider two uses of a short-term capacity trading mechanism to be gaming behaviour. Specifically:

- Excess capacity is transferred to a shorter-haul mine with the transferee having no intention of using the transferred paths, for the purpose of reducing take-or-pay liabilities.
- Capacity is transferred to a shorter-haul train path for the purpose of reducing total access charge liabilities where the transferor would utilise the transferred capacity if no transfer occurred.

We are of the view that both scenarios are more likely to occur where an access holder with a large portfolio of rights is able to use the short-term capacity transfer mechanism to 'manage' its suite of rights to lower total cost. Both scenarios are undesirable as the effect is that the transferee will lower its individual liabilities at the expense of other users on the coal system.

This would not be an appropriate use of the short-term capacity transfer mechanism for reasons covered in Section 11.7.6. This type of outcome would not be consistent with the object of Part 5 of the QCA Act, and would not be in the interests of access seekers and the public interest.

Stakeholders have argued that they should be permitted to manage their suite of access rights in a manner that is most efficient for them. While this would be in individual access holder's interests, an individual access holder should not unfairly profit at the expense of all the other

users. We are of the view that this type of activity would fall under the second category of gaming behaviour outlined above.

In such cases, an access holder would use its capacity regardless of whether it was transferred. The only difference is that if it is able to transfer to a lower access charge at zero cost, then rationally it would. The opportunity cost of this transfer is simply the difference between the access charges. This cost does not disappear but is shifted to all the other users.

Aurizon Network's proposal includes a set of criteria focusing on whether the transferee will use the capacity it gains. While this will address the first category of gaming behaviour, it would not necessarily address the second. This is because Aurizon Network's proposed criteria do not ascertain whether the transferor would have used the capacity if the capacity was not transferred. Aurizon Network's approach is therefore unnecessarily restrictive as it decreases flexibility but does not adequately address issues relating to gaming behaviour. We have addressed the restrictiveness of Aurizon Network's proposed criteria in Section 11.7.6.

We sought specific submissions from stakeholders regarding the risk of gaming. Generally, the majority of stakeholders are of the view that gaming does not occur but have not provided necessary evidence to support that position. In these circumstances we are unable to form a view regarding the real level of risk of gaming behaviour occurring.

In our supplementary draft decision, we sought to address gaming behaviour by the use of a pricing mechanism. This would be appropriate, but as outlined in the previous section we are of the view that, on balance, the 2014 DAU should not impose a transfer fee.

We consider it crucial that a record-keeping regime is in place for the 2014 DAU period so that gaming issues can be assessed in the future under an evidence based approach.

Consolidated draft decision 11.10

(1) **After considering Aurizon Network's short-term capacity transfer mechanism, our consolidated draft decision is to approve Aurizon Network's proposal in relation to a zero transfer fee for short-term transfers**.

11.7.9 Criteria A transfers

As outlined above, in our supplementary draft decision, we considered the process for permanent and short-term transfers should be the same. We proposed various criteria for A, B, and C transfers, differentiating the extent of Aurizon Network's assessment process.

In this consolidated draft decision, we are of the view that permanent criteria A transfers should have the following criteria:

- Transferred TSEs must use the same mainline path.
- Transferred TSEs must exit at the same destination on the mainline path.
- The transferee must not require additional TSEs for a complete network path from the transferee's origin.
- The transferee must confirm a rail operator will operate the transferred capacity.
- The transferee must confirm the rail operator's train service will be a like-for-like train service.

- The transferee must confirm there is capacity to load the train at the origin, and capacity to unload the train at the destination.

Transfers satisfying the above criteria will represent a one-for-one transfer of access rights. If a transfer is a one-for-one transfer, it may be unnecessary for Aurizon Network to undertake a capacity assessment as the potential for this transfer to impact other users is minimal.

We are of the view that it is appropriate to include the following additional criteria for short-term criteria A transfers:

- Transferred TSEs must not be held by the transferee for a period longer than three months.
- Transfers apply to coal carrying services only.
- The transferor's and transferee's access charges must be calculated using the same reference tariffs

A timeframe for short-term capacity transfers would differentiate it from a permanent transfer. We do not consider it appropriate to form a view on to prevent the same transfer to occur back to back at this time. This approach would provide a high level of flexibility and encourage user participation.

We consider it appropriate at this time to limit the use of the short-term capacity transfer mechanism for use by parties transferring coal-carrying services only, and where the parties' access charges are calculated using the same reference tariffs. We have arrived at this view having considered the access holders' interests of having a transfer mechanism that is simple to use.

We consider that our proposal is appropriate on balance as it is necessary to restrict the scope of short-term transfers in the context where a transfer fee is not applicable (see Section 11.7.8). These restrictions are unlikely to be needed if transfers were subject to a transfer fee.

We also consider it appropriate to amend the anti-gaming provisions proposed by Aurizon Network by substituting them with a requirement that the transferee to provide notice that there is capacity at loading and unloading facilities to service the transferred TSEs. This is likely to promote the object of Part 5 of the QCA Act and the public interest by promoting user participation.

A transfer mechanism that is least restrictive will be in the interests of access holders but at the same time we are of the view that one party's activities should not adversely impact other users. A notice affirming that there is sufficient capacity at loading and unloading facilities is likely sufficient to safeguard against this in the context of short-term transfers. Furthermore, Aurizon Network's legitimate interests are not unduly impacted as it is revenue neutral, and network disruption effects are minimal in the context of criteria A transfers. Where Aurizon Network can demonstrate that the transferee is unable to use the relevant TSEs, Aurizon Network can then refuse to undertake the transfer.

In addition, we consider it appropriate to adopt our reasoning outlined in section 3.3.3 of our supplementary draft decision relating to criteria A transfers except where inconsistent with the matters outlined above.

Consolidated draft decision 11.11

(1) **After considering Aurizon Network's short-term capacity transfer mechanism our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking in a manner consistent with clause 7.4 of our CDD amended DAU so that:**

- **(a) access holders can permanently transfer 'as of right' if the transfer meets access criteria A:**
  - **(i) transferred TSEs utilise the same mainline path**
  - **(ii) transferred TSEs exit at the same destination on the mainline path**
  - **(iii) transferee does not require additional access rights to complete the train path from the transferee's origin**
  - **(iv) transferee can confirm a rail operator will operate the transferred capacity**
  - **(v) transferee must confirm it has supply chain rights for the transferred access rights**
- **(b) transfers are short-term transfers if the following additional access criteria are met:**
  - **(i) transferred TSEs must not be held by the transferee for a period longer than three months**
  - **(ii) transferred TSEs are for use by coal-carrying services**
  - **(iii) the same reference tariff must apply to both the transferor and transferee's access charge.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

11.7.10 Access criteria B—rapid capacity assessment

QCA's supplementary draft decision

In our supplementary draft decision we did not consider there to be a need to strictly apply all access criteria A for a transfer to qualify for a rapid capacity assessment under access criteria B because Aurizon Network has full discretion to approve or refuse transfers which fulfil access criteria B. We also considered Aurizon Network's restrictions on transfers, where it retains full discretion to approve a transfer, are not consistent with the object of the QCA Act, creating unnecessary hurdles for the parties and limiting the ability to use transfers to respond to market variations.

We concluded that a rapid capacity assessment can be made where the transferred TSEs will use the same mainline path, meaning that the transfer must occur in the same system and, if it requires additional capacity on the mainline of that system, not affect the capacity of any other access holder. In these circumstances, the only capacity issues that need to be subject to rapid capacity assessment are the physical constraints on the branch lines leading into the mainline path, the physical constraints associated with a point of origin further out on a mainline path than the transferor's point of origin, and/or the physical constraints on the rail infrastructure which lead from the mainline path to the different unloading facilities in a port precinct.

We considered our proposed access criteria B to be consistent with sections 69E and 138(2) of the QCA Act as it would:

- enable more transfer requests to be processed
- increase transfer flexibility amongst transferors and transferees
- improve the timeliness of the transfer market
- result in the use of TSEs that would otherwise not have been consumed by the transferor.

Stakeholder comments on the supplementary draft decision

Aurizon Network accepted the QCA's proposals in supplementary draft decision 3.4. Aligned with its response to supplementary draft decision 3.2(b), Aurizon Network considered that where the rapid capacity assessment is undertaken, the transferee should have an existing access agreement for the access rights sought to ensure that it can process the transfer within required timeframes.[653]

Both BMA and Asciano submitted that, for transfers requiring a rapid capacity assessment, it is necessary to have an approved baseline system capacity in place for each coal system.[654]

QCAs analysis

In this consolidated draft decision, we adopt our supplementary draft decision 3.4 relating to criteria B transfers for the reasons set out in section 3.3.3 of that supplementary draft decision except where:

- the transfer is a short-term capacity transfer, Aurizon Network is not required to undertake an assessment of a transfer fee
- the short-term capacity transfer has the additional criteria requirements:
  - transferred TSEs must not be held by the transferee for a period longer than three months
  - transferred TSEs are for use by coal-carrying services
  - the same reference tariff must apply to both the transferor and transferee's access charge (see consolidated draft decision 11.10).

We consider the matters we have outlined in relation to the differentiating criteria in Section 11.7.9 above are equally relevant and applicable for criteria B transfers.

[653] Aurizon Network, 2015 STT DD, sub. 101: 6, 12.
[654] BMA, 2015 STT DD, sub. 100: 2; Asciano, 2015 STT DD, sub. 99: 8.

Consolidated draft decision 11.12

(1) **After considering Aurizon Network's short-term capacity transfer mechanism our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking in a manner consistent with clause 7.4 of our CDD amended DAU so that:**

- **(a) access criteria B differ from access criteria A in the following way: transferred TSEs use the same mainline path as the transferor, ancillary access rights required at the point of origin and/or at the destination port precinct are to be identified and subject to capacity assessment**
- **(b) Aurizon Network will undertake a rapid capacity assessment on transfer notices which meet access criteria B**
- **(c) Aurizon Network will refuse an access criteria B transfer request if the rapid capacity assessment shows that existing access holders' access to the network will be adversely affected by the transfer**
- **(d) transfers are short-term transfers if the following additional access criteria are met:**
  - **(i) transferred TSEs must not be held by the transferee for a period longer than three months**
  - **(ii) transferred TSEs are for use by coal-carrying services**
  - **(iii) the same reference tariff must apply to both the transferor and transferee's access charge.**

(3) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

11.7.11 Criteria C transfers—other transfers

Criteria C transfers are those transfers that require Aurizon Network to undertake a capacity assessment. We consider the only amendments to be made in relation to criteria C transfers are those in relation to the timelines relating to those transfers discussed below in Section 11.7.12 below.

In some circumstances, users may temporarily transfer Criteria C transfers. We consider that it is only necessary to differentiate permanent and short-term transfers in the following manner:

- Where the transfer is a short-term capacity transfer, Aurizon Network is not required to undertake an assessment of a transfer fee.
- Short-term capacity transfer has the additional criteria requirements:
  - transferred TSEs must not be held by the transferee for a period longer than three months
  - transferred TSEs are for use by coal carrying services
  - the same reference tariff must apply to both the transferor and transferee's access charge (see consolidated draft decision 11.10).

We consider the matters we have outlined in relation to the differentiating criteria in section 11.7.9 above are equally relevant and applicable here.

Consolidated draft decision 11.13

(1) **After considering Aurizon Network's short-term capacity transfer mechanism our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking in a manner consistent with clause 7.4 of our CDD amended DAU so that criteria C transfers are short-term transfers if the following additional access criteria are met:**

- **(a) transferred TSEs must not be held by the transferee for a period longer than three months**
- **(b) transferred TSEs are for use by coal-carrying services**
- **(c) the same reference tariff must apply to both the transferor and transferee's access charge.**

(3) **We consider it appropriate to make these decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

11.7.12 Capacity transfer timelines

QCA's supplementary draft decision

In terms of timelines for capacity transfers, in our supplementary draft decision we were of the view that capacity transfers should not be subject to fixed regulatory timelines. Rather, the timing for Aurizon Network to respond to a transfer notice should be dependent on the scale of capacity assessment required to determine whether the requested transfer can be provided without adversely affecting any existing access rights. We considered that the timeframes for notice lodgement and Aurizon Network's response should be aligned to the efficient timeframes required for Aurizon network to determine whether sufficient capacity exists to give effect to the transfer notice. This outcome is consistent with the QCA Act and provides an objective and verifiable process for establishing the reasonable timeframes required for Aurizon Network to consider and respond to transfer notices.

In terms of access criteria A and B transfer and response times, we did not consider Aurizon Network's proposed timing to be efficient or reasonable. In our view, the only timing limitation on these transfers should be with respect to Aurizon Network's ability to administer the transfer and, if required, conduct a rapid capacity assessment and respond to the transfer notice. We proposed a two business day timeframe for Aurizon Network to administer an access criteria A transfer and to advise the parties to an access criteria B transfer that a rapid capacity assessment is required. The time for Aurizon Network to complete a rapid capacity assessment and approve or refuse to approve an access criteria B transfer should not exceed two business days. This means an access criteria B transfer

- will occur with two business days' notice from the date of transfer
- could occur with four business days 'notice from the date of transfer.

In terms of access criteria C transfers and response times, we did not consider the three-month notice period proposed by Aurizon Network in the 2014 DAU represented the most efficient process because the timeframes required to conduct a detailed capacity assessment will vary on a case-by-case basis. We also considered that the timeframes for detailed capacity assessments would vary depending on the complexity of the transfer. However, we did not agree with Aurizon Network that a detailed capacity assessment should be completed within a maximum

three-month limit. In our supplementary draft decision, we therefore proposed that Aurizon Network should respond to a notice for an access criteria C transfer within two business days of lodgement, with details on the scope and timing of the detailed assessment required before Aurizon Network can provide a final response. The time to complete a detailed capacity assessment and respond to an access criteria C transfer notice should not exceed three months.

Stakeholder comments on the supplementary draft decision

Aurizon Network noted that the supplementary draft decision amendments would require a significant increase in resources—staff would have to be available to work outside normal business hours to ensure they can respond to these requests.[655] Aurizon Network believed that this supplementary draft decision introduces inefficiencies in the planning and scheduling process and is more likely to have an adverse impact on other access holders.

Aurizon Operations submitted that transfers that are permitted to occur within the post-ITP environment need to be supported by robust and real-time systems that can track those transfers and note consumption against the relevant access agreement for the purposes of the NMPs and contested train path decision making.

Aurizon Operations was also cognisant of potential scheduling issues that may occur within the day of operations and post-ITP environment that could impact capacity and the access rights of other access holders.[656]

Asciano believed that, given the lengthy (three month) assessment timeframe for criteria C transfer requests, any criteria C transfers should not be considered a short-term transfer. Further, it believed that it should be clarified whether criteria C transfers are intended to replace the longer term transfer process in the 2010 AU (sections 7.3.6 and 7.3.7). It noted that, if this is the case, it is concerned that the ability for a customer to initiate a transfer has been entirely removed (noting that the QCA's supplementary draft decision amended DAU deletes these sections).

Asciano was also concerned about Aurizon Network's discretion in rejecting a transfer when an access agreement is being negotiated (cl. 7.4.2(j)). It considered that rejection this late in the transfer process should not be allowed unless there is clear objective evidence that the proposed transfer cannot proceed.[657]

QCA analysis

In this consolidated draft decision, we adopt our supplementary draft decision 3.5 for the reasons set out in section 3.3.4 of that supplementary draft decision.

We consider this appropriate having had particular regard to Aurizon Network's legitimate business interests. In its response to Stakeholder Notice 11, Aurizon Network stated that in financial year 2015 it processed 29 access requests relating to the transfer of access rights and 19 of those have a transfer fee of zero. We assume that means 19 transfers were long haul to short haul transfers. In those cases the investment by Aurizon Network should be minimal as these transfers are most likely one for one type transfers and the likely impact of these transfers on other users is likely nil.

[655] Aurizon Network, 2015 STT DD, sub. 101: 7, 12–13.
[656] Aurizon Operations, 2015 STT DD, sub. 102: 3.
[657] Asciano, 2015 STT DD, sub. 99: 8–9.

Of the 10 remaining requests, five are waiting for the access seeker to action and two were cancelled by the access seeker. This means that effectively only three requests in financial year 2015 required a capacity assessment.

We are not persuaded that in these circumstances our supplementary draft decision would require Aurizon Network to significantly increase resources as it would have to have staff available to work outside normal business hours to ensure they can respond to these requests. We note that this may not be the case in the future.

We consider that our proposal would provide certainty and increase transparency in the process. This outcome would be in access seekers' interests and the public interest. We also consider that this may promote greater user participation, promoting the object of Part 5 of the QCA Act.

In our supplementary draft decision, we identified Criteria C transfers where a detailed capacity assessment would be required and proposed an outline of Aurizon Network's process. We consider that transfers, whether A, B, or C, are imitated by the provision of a transfer notice by the transferee. This is also regardless of whether it is a permanent or short-term transfer.

Consolidated draft decision 11.14

(1) After considering Aurizon Network's short-term capacity transfer mechanism our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking in a manner consistent with clause 7.4 of our CDD amended DAU so that:**

- **(a) all transfer notices must be lodged with Aurizon Network not fewer than 48 hours prior to the transfer date**
- **(b) Aurizon Network must respond to the transfer notice not more than two business days after the transfer notice is lodged and**
  - **(i) schedule transfers under access criteria A**
  - **(ii) either advise access criteria B transfers that a rapid capacity assessment is required, or**
  - **(iii) advise access criteria B transfers that a detailed capacity assessment is required and outline the scope and timing before a response to the notice can be provided**
- **(c) where Aurizon Network has to undertake a rapid capacity assessment to respond to a transfer notice, Aurizon Network must approve or refuse the transfer within four business days of the notice being lodged**
- **(d) the information that should be included in an Aurizon Network transfer response contains**
  - **(i) the result of the capacity assessment**
  - **(ii) an indication of whether the transfer can be approved or refused**
  - **(iii) reasons for refusing the transfer request.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

11.7.13 Obligations to keep a register

QCA's supplementary draft decision

In our supplementary draft decision we proposed that a regulatory governance process be established to monitor transfers to ensure Aurizon Network uses its transfer discretion reasonably and in a non-discriminatory manner consistent with the QCA Act.

This proposed governance process required that Aurizon Network maintain a register of transfer notices lodged with it and its responses and timeframes taken. We also required that Aurizon Network provide us with a copy of its transfer register on a quarterly basis and that it conduct an annual review of the process, in consultation with stakeholders, with the results of the review and any proposed amendments submitted to the QCA for consideration and approval.

We believe this approach is consistent with section 138(2)(d) and (e) of the QCA Act and will increase the transparency and accountability of Aurizon Network's administration of the transfer process.

Aurizon Network's comments on the supplementary draft decision

Aurizon Network agreed with supplementary draft decision 3.6, subject to some amendments.

QCA analysis

In this consolidated draft decision we consider it appropriate to adopt our supplementary draft decision 3.6 for the reasons outlined in section 3.3.5 of that supplementary draft decision.

Furthermore, we consider that a reporting regime crucial in the circumstance where our consolidated draft decision allows for cost socialisation. A register will help us to make more informed decisions in the future based on evidence.

Consolidated draft decision 11.15

(1) **After considering Aurizon Network's short-term capacity transfer mechanism our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking in a manner consistent with clause 7.4 of our CDD amended DAU so that:**

- **(a) Aurizon Network will keep a register of all transfer notices, its responses and the timeframes taken to respond (cl. 10.5.2(e))**
- **(b) Aurizon Network will provide a quarterly update of the transfer register to the QCA as part of its regulatory reporting obligations under the 2014 DAU**
- **(c) Aurizon Network will annually review, in consultation with stakeholders, the transfer provisions in the undertaking and submit the results of the annual review, and any proposed amendments to the transfer provisions in the undertaking, to the QCA for approval.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

11.7.14 Implementation of capacity transfer provisions

QCA's supplementary draft decision

In our supplementary draft decision we were of the view that the relevant interests under section 138(2) are best balanced when the capacity transfer framework is implemented via the 2014 DAU with consequential amendments made to the SAAs and existing access agreements. We recommended that short-term transfers be incorporated by amending the transfer provision in section 7.4 of the 2014 DAU. This would mean that all transfers are streamlined into a one-step process.

Further, in consolidating all capacity transfer provision within Part 7.4 of the 2014 DAU draft decision, any future changes in subsequent regulatory periods will automatically flow through to access agreements, removing future barriers to transferring access rights between different access agreements, encouraging operational flexibility and ensuring potentially unused TSEs can be transferred. We have also provided for a process to amend existing access agreements to allow for the proposed transfer flexibility.

We also did not consider Aurizon Network's proposed transfer indemnity clause was required to protect its legitimate business interests under section 138(2)(b) of the QCA Act. We recognised that our approach to managing the costs of transfers may result in a greater credit risk to

Aurizon Network under the transferee's access agreement and were therefore willing to consider amendments to the SAA to clarify that the provision of security (or amount of security) may be reviewed by Aurizon Network where a transferee is taking on greater obligations as a result of the transfer. However, we would also expect that the SAA would provide that where a transferor's obligations are reduced as a result of the transfer, its security would also be reduced. In our view, this approach balances both section 138(2)(b) and (e) and ensures Aurizon Network reviews the security provisions of both the transferor and transferee when it gives effect to a transfer.

Stakeholder comments on the supplementary draft decision

Aurizon Network disagreed with the QCA's supplementary draft decision 5.1(a). Its view is that matters relating to the management of access rights which have been provided to access holders should be through the relevant access agreement, as the access agreement constrains the contractual entitlements for the TSEs that are proposed to be transferred.

Aurizon Network noted that alternative options which would ensure timeframes are met include:

- the original access holder to continue to provide the relevant security for the access rights which are transferred, effectively taking on liability itself to underwrite the creditworthiness of the transferee for those rights, or
- no change in security for either the transferor or transferee, however, if the transferee has greater credit risk and fails to make payment, the revenue lost would be recovered via a revenue cap adjustment.

Aurizon Operations reiterated its view that contract provisions that impact on access rights and commercial arrangements are best left to the access agreements as that is the basis on which the parties contracted at the relevant time and should not be subject to future change and uncertainty between regulatory periods.[658]

BMA submitted that the principle relating to the short-term transfer mechanism should be in the access undertaking to ensure these can be equitably applied across all access holders. It noted that for provisions to be applicable they need to be contained in an access holder's access agreement. However, a default application of the new provisions to existing agreements will materially alter the commercials originally agreed by the parties.[659]

Asciano was of the view that the QCA's proposal is ineffective as a short-term transfer mechanism as it requires the terms and conditions of existing access agreements to be amended in order to allow access holders to apply the mechanism. It considered that making amendments across all pre-existing access agreements would be problematic and having the short-term transfer mechanism provision contained in individual access agreements would provide the potential for Aurizon Network to treat access holders differently.[660]

QCA analysis

In this consolidated draft decision we consider it appropriate to adopt our supplementary draft decision 5.1 for the reasons outlined in section 5.1.2 of that supplementary draft decision.

[658] Aurizon Operations, 2015 STT DD, sub. 102: 3.
[659] BMA, 2015 STT DD, sub. 100: 3.
[660] Asciano, 2015 STT DD, sub. 99: 7.

We consider that it is appropriate that terms dealing with capacity should reside within the 2014 DAU rather than the SAA. This would increase certainty and transparency to the process, providing a level of comfort to stakeholders without negatively impacting on Aurizon Network's legitimate business interests. This outcome would promote the object of Part 5 of the QCA Act and would be in the interest of access seekers and the public interest.

We consider the matters outlined in Section 11.4.3 of this consolidated draft decision to be relevant and equality applicable here.

Consolidated draft decision 11.16

(1) **After considering Aurizon Network's short-term capacity transfer mechanism our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking in a manner consistent with clause 7.4 of our CDD amended DAU and the SAA so that:**

- **(a) clause 7.4 is amended to include specified access criteria, timeframes and governance processes in which Aurizon Network should administer transfers**
- **(b) if agreed by both parties, Aurizon Network will amend existing access agreements to incorporate the new transfer provisions**
- **(c) the SAA is amended to permit Aurizon Network to address any increased or decreased credit risk arising from a transfer.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

11.8 Retention of contracted capacity

Aurizon Network's 2014 DAU proposed Aurizon Network resume contracted capacity where the access holder either under-utilises its contracted train paths, or where access holders do not hold supply chain rights.

11.8.1 Aurizon Network's proposal

Ongoing requirement for ability to use access rights

Aurizon Network said that UT3 did not include an ongoing requirement for access holders to continue to demonstrate their ability to use their access rights—which Aurizon Network considered necessary to ensure alignment in capacity entitlements across all elements of the supply chain.

Aurizon Network said this meant that in the event an access holder lost its port terminal capacity entitlements, the rail network would become underused. Further, while an underuse of access rights may eventually be captured through the capacity resumption provisions—that already apply in access agreements—this mechanism operates with a substantial lag, resulting in a period of inefficient network utilisation.[661]

[661] Aurizon Network, 2013 DAU, sub. 2: 112.

To ensure there is alignment across the supply chain, Aurizon Network proposed an ongoing requirement that access holders demonstrate they have sufficient capacity at an unloading point. If the access holder fails to demonstrate they hold the rights to unload (at the level of using their fully contracted capacity rights), a capacity resumption review could be triggered[662].

Resumption

Aurizon Network said that it has a legitimate business interest in protecting itself from being required to negotiate with insolvent access seekers, having an ability to resume unused or underused capacity, and

> *...protecting itself from the impacts of unsafe or environmentally damaging practices by access seekers and ensuring that access arrangements are offered in a way that does not disadvantage its related above rail operator in competing with third party operators.*[663]

Aurizon Network noted its resumption proposal promoted efficient use of access rights and allowed for Aurizon Network to better manage and allocate capacity on the network.[664]

11.8.2 Summary of the initial draft decision

Supply chain rights

Supply chain rights are also discussed in Chapter 8 (Access agreements). This section discusses supply chain rights in the context of proposed resumptions.

As outlined in Chapter 8, we proposed to accept supply chain rights in principle, but proposed amendments to ensure it is not too burdensome for access holders to satisfy.

We agreed that Aurizon Network should have the ability to request an access holder to demonstrate it will continue (or is likely to continue) to have the relevant rights over the term of the agreement. However, we did not consider that a failure of an access holder to demonstrate it holds supply chain rights should trigger an immediate resumption process. We considered an access holder should have the opportunity to demonstrate that it is using reasonable endeavours to rectify the situation.

We considered this balanced the legitimate interests of Aurizon Network (s. 138(2)(b) of the QCA Act) as it will be informed of access holders having possession of supply chain rights against the interests of access holders (s. 138(2)(h) of the QCA Act) to have the ability to commercially manage its access rights.

Resumption

We noted that if there is alternative demand, the access holder would have the opportunity to enter into a transfer of the non-required access rights. We considered access holders should have the opportunity to transfer access rights, thereby minimising its transfer/relinquishment fees, before resumption is triggered by Aurizon Network.

Further, we were not convinced that resumption provisions required strengthening for the following reasons:

- It is not clear a change in Aurizon Network's resumption provisions will result in an alignment with similar provisions at ports.

[662] Aurizon Network, 2013 DAU, sub. 2: 112.
[663] Aurizon Network, 2013 DAU, sub. 2: 49.
[664] Aurizon Network, 2013 DAU, sub. 2: 368.

- No evidence has been provided that users have contracted for train paths in excess of their capability of use.

We considered that realignment of capacity entitlements across the supply chain, if required, should not be undertaken at the discretion of one service provider (Aurizon Network) on supply chains with multiple users and multiple service providers. We believed this detracted from the likelihood of achieving effective supply chain coordination and therefore the efficient use of the network infrastructure (s. 69E of the QCA Act).

We considered in our initial draft decision that retention of the UT3 resumption provisions would not hinder Aurizon Network's ability to resume unused or underused capacity. Rather, we considered retention of the UT3 resumption provisions provides a greater balance between access holder's requirement of certainty over contracted access rights and Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act).

Given this, our initial draft decision was that the existing resumption provisions from UT3 be retained.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with moving the provisions for resumptions from the access agreement to the undertaking. Aurizon Network submitted that the UT3 provisions did not allow Aurizon Network to resume capacity in cases where it was clear that the access holder would no longer use those access rights, for example, a mine closure. Aurizon Network submitted the following:[665]

- Removal of the provisions results in a higher likelihood of take or pay triggering in a given system due to access holders holding onto rights they cannot use. This could favour those access holders that have the ability to pay to hold onto such capacity.
- Where an event or circumstances results in an access holder not being able to use that capacity, Aurizon Network needs to be able to proactively respond and allocate capacity to those access holders most likely to use it. Aurizon Network considered that resumption for a failure to hold or have the benefit of supply chain rights, in addition to a concept of an underutilisation event, should be reinstated in the access agreement and TOD.
- Relying on UT3 provisions may result in it being required to undertake an expansion, even where the system has capacity which is not available due to hoarding.
- there are sufficient safeguards incorporated into the resumption provisions to protect access holders.
- It agreed with the QCA that access holders should have the opportunity to transfer or relinquish access rights prior to resumption taking place, and proposed that the existing resumption provisions be amended to provide for this.
- If it is forced to retain the resumption rights purely through the 85 per cent utilisation test over four consecutive quarters, it will allow the capacity hoarder to leverage the time (potentially 18 months) it would take it to resume, to unreasonably force the access seeker to pay a premium to transfer the right to them. Aurizon Network stated it could not understand why the QCA would support a position which enhances third parties' ability to

[665] Aurizon Network, 2014 DAU, sub. 82: 142–143.

profit from trading of regulated train paths and require access seekers to pay more than the regulated price.

Anglo American supported the QCA's initial draft decision in relation to resumption due to lack of supply chain rights or where Aurizon Network believes that a user is underutilising its access rights.[666]

The QRC submitted the following comments in relation to capacity resumptions and information requests:[667]

- When issuing an 'Information Request Notice' under clause 7.6(a) when considering resuming capacity, Aurizon Network should be required to include in the notice reasonable details of the sustained alternative demand for the capacity which it is seeking to resume. It considered this information critical to ensuring that access holders and the QCA can determine whether Aurizon Network has acted properly in subsequently issuing a resumption notice.
- There should be a right to dispute an 'Information Request Notice' where there were insufficient grounds for issuing the notice. Such an upfront dispute right would complement existing dispute rights and would limit incidence or incorrect resumption.

In regard to the trigger for capacity resumption for cyclic traffic, the QRC commented:[668]

- 'Resumption Trigger Event' in respect of cyclic traffic in clause 7.6(a)(ii) is drafted ambiguously. The QRC recommended that this be clarified so that a trigger event only occurs if "an Access Holder fails to operate at least eighty five percent (85%) of the Train Services allowed under the Access Holder's Train Service Entitlement during each Quarter, for four (4) consecutive Quarters".

In terms of capacity resumptions where Aurizon Network fails to contract the resumed access rights, the QRC submitted that:

- Aurizon Network should also have an obligation to reinstate resumed access rights where Aurizon Network fails to contract those resumed access rights within six months after the resumption.

The QRC also submitted a number of comments regarding the drafting of the capacity resumption provisions by the QCA:[669]

- References to the access holder 'operating' train services in clause 7.6(a)(i) should be replaced with references to the access holder 'causing' train services to be operated (as an access holder will never operate train services in its capacity as access holder).
- Clause 7.6(c) should clarify that the access holder is only bound by clause 7.6(c) if Aurizon Network issued the information request notice within the required timeframe.
- Clause 7.6(d)—'can demonstrate' should be replaced with 'has demonstrated' in accordance with the QRC's recommendation to require Aurizon Network to notify of the sustained alternative demand for capacity.

[666] Anglo American, 2014 DAU, sub. 95: 30.
[667] QRC, 2014 DAU, sub.. 84: 51.
[668] QRC, 2014 DAU, sub. 84: 51.
[669] QRC, 2014 DAU, sub. 84: 51.

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we decided to not approve the 2014 DAU in respect of provisions relating to retention of contracted capacity.

We consider that the removal of these provisions from the undertaking and the placement of an ongoing obligation on access holders to demonstrate they have sufficient capacity at an unloading point would create uncertainty and additional administrative burden that is unnecessary. This would not promote the object of Part 5 of the Act and would not be in the interests of Aurizon Network or stakeholders due to additional administrative burden.

Aurizon Network's proposed resumption framework based on a forward looking basis allows it to potentially distort competition in related markets by providing preferential treatment to a related party and discriminating against a non-related party. This position is inconsistent with the object of Part 5 of the QCA Act.

We recognise Aurizon Network's legitimate business interest in ensuring its network is being used efficiently and that it has an interest in being able to take back unused capacity. Under its proposal, Aurizon Network will have greater control to resume unused capacity from parties who are can afford to pay. It is difficult to ensure Aurizon Network applies its framework in a consistent manner to ensure it does not unfairly differentiate in a materially adverse way. This is the inherent drawback of the forward-looking framework that it has proposed.

We are of the view that Aurizon Network's proposed framework is inappropriate, would be too intrusive, and would create unnecessary administrative burden for stockholders as well as itself. We consider that Aurizon Network's interests can be incorporated in a less intrusive manner.

For these reasons, we are of the view that Aurizon Network's proposal is inappropriate having had regard to the section 138(2) factors.

Amending the 2014 DAU

In this consolidated draft decision, we are of the view that it is appropriate to adopt our initial draft decision in relation to the treatment of provisions relating to resumption.

We consider that the 2014 DAU should be amended by reinstating the 2010 AU resumption provisions. We consider that the process is transparent and well understood. It recognises Aurizon Network's legitimate business interests but also does not unnecessarily burden access holders.

Consolidated draft decision 11.17

(1) **After considering Aurizon Network's proposed resumption provisions, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we consider it appropriate that the 2014 DAU be amended, is for the 2010 AU resumption provisions to be reinserted as proposed in clause 7.6 of the CDD amended DAU.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

11.9 Mutually exclusive access applications

Aurizon Network noted there have been several material amendments made by the QCA to the provisions for mutually exclusive access applications that have not been included in the initial draft decision. Aurizon Network did not accept these changes, making the following comments:[670]

- The QCA has removed Aurizon Network's ability to prioritise an access seeker who is ready and willing to enter into an access agreement in accordance with a set of criteria (such as length of term, promotion of efficient investment, community concerns, health and safety) (clause 7.5.2(j)). By removing this discretion, Aurizon Network may be obliged to enter into an inefficient agreement over another that would have improved the economically efficient operation of the system. It considered this outcome contrary to its legitimate business interests, while also frustrating the legitimate aspirations of a qualified access seeker. Aurizon Network maintained it should have the ability to reorder the capacity queue according to who is best placed to sign up access rights and contribute to the system. Aurizon Network therefore requested the original provisions of clause 7.5.2(i) be reinserted.
- The QCA has imposed an obligation on Aurizon Network not to enter into negotiations with an access seeker that is lower in the queue than another, without written permission of the higher placed entity (clause 7.5.2(j)). Aurizon Network believed this is inefficient and creates an administrative burden, while also providing opportunity for the higher placed applicant to game the system to the disadvantage of its competitors. Where Aurizon Network has the capacity to satisfy more than one party in the queue, it is impractical and unreasonable to expect one negotiation to finish before entering into another. It also noted that there may be confidentiality issues around how another access seeker may grant this permission. Aurizon Network submitted that the new provisions are in conflict with the public interest of having competition in markets and requests the original drafting be reinstated.
- The QCA has deleted clause 7.5.2(j)(i) which allowed Aurizon Network to allocate available capacity in accordance with its passenger priority obligations or preserved train path obligations. Aurizon Network did not accept this amendment as, under section 266 of the *Transport Infrastructure Act 1994*, it has obligations in allocating train paths to give priority to regularly scheduled passenger services which are Preserved paths. As such, any requests to use these Preserved paths should not be subject to the capacity queue. The proposed deletion is also inconsistent with the overarching provision in clause 2.5(d) of the QCA's draft

[670] Aurizon Network, 2014 DAU, sub. 82: 140–141.

which provides that 'nothing in this undertaking can require Aurizon Network to act in a way that is inconsistent with its Passenger Priority Obligations or Preserved Train Path Obligations'.

Stakeholders' comments on the initial draft decision

The QRC submitted that clause 7.5 should more clearly describe the circumstances in which that queue applies and the relevant exceptions to that queue. The QRC submitted a mark-up which reflects its recommendations.[671]

The QRC commented that the criteria in clause 7.2.1 should be aligned with those in clause 4.12 (circumstances in which Aurizon Network may cease negotiation) to ensure consistency.[672]

The QRC considered that the 'IAP' should be inserted after 'access application' in clause 7.3(j)(i) so that the provisions which allow Aurizon Network to treat an IAP as having been withdrawn under Part 4 will not apply in respect of a transfer.[673]

QCA's analysis

After having regard to the section 138(2) factors and stakeholder submissions, we decided to not approve the Aurizon Network 2014 DAU in respect of the mutually exclusive access application provisions.

We consider Aurizon Network's proposal provides too much subjectivity in how it would prioritise access applications. As outlined in the rationale in Section 11.3.1, this may lead to Aurizon Network unfairly differentiate between access seekers by showing preference for a related party over non-related parties, distorting competition in contestable markets. This outcome would not promote the object of Part 5 of the QCA Act.

We also acknowledge Aurizon Network's concern that our initial draft decision proposal will potentially prevent it from allocate capacity based on a party it perceives to be able to extract best value from the access rights. However, flexibility must be balanced with certainty and transparency. Because Aurizon Network is a monopoly and it is part of a vertically integrated business, it has inherent incentives to favour related parties. We consider that in these circumstances it is important that a minimum level of transparency and certainty is retained in the capacity allocation framework.

We recognise that Aurizon Network has a legitimate business interest in ensuring that the capacity allocation framework is flexible. We consider that is an appropriate level of flexibility in our proposed framework. Under our proposal, Aurizon Network can refuse to allocate capacity to an access seeker, and to remove an assess seeker from the queue in a limited number of circumstances.

We have also proposed amendments to the 2014 DAU to improve clarity as suggested by stakeholders. We do not consider these revisions to be minor or inconsequential as consistency will improve clarity and certainty of operation of these provisions.

[671] QRC, 2014 DAU, sub. 84: 51.
[672] QRC, 2014 DAU, sub. 84: 51.
[673] QRC, 2014 DAU, sub. 84: 49.

Consolidated draft decision 11.18

(1) **After considering Aurizon Network's proposed mutually exclusive access application provisions, our consolidated draft decision is to refuse to approve the proposal.**

(2) **We consider it appropriate that Aurizon Network amend its draft access undertaking by reinstating the queuing provisions based on those from UT3, in the manner proposed in clauses 7.2 and 7.5 of the CDD amended DAU.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

12 NETWORK DEVELOPMENT AND EXPANSION PROCESS

Part 8 of the 2014 DAU contains the network development and expansion processes underpinning the CQCN. All coal-based CQCN expansions, whether single-customer, small-scale, network-resilience or large multi-user based, are covered under the network development and expansion process.

Aurizon Network has proposed a formal stage-gate investment process which outlines its legitimate business requirements, customer information and demand requirements, funding options, funding agreements and dispute resolution processes.

We consider that Aurizon Network's approach to expansions in the 2014 DAU significantly changes the role played by prospective users and third parties in funding expansions. As such, we further considered the interests of prospective users and of third parties so that they have an expansion role within the 2014 DAU.

Our consolidated draft decision is to not approve Aurizon Network's proposed network development and expansion process. We consider the way in which Part 8 of the 2014 DAU should be amended to align with sections 69E and 138(2) of the QCA Act is to:

- *address Aurizon Network's legitimate business interests*
- *implement an efficient investment and expansion process*
- *address access seekers' and financiers' needs within the expansion process*
- *broaden the scope of participation in the expansion process.*

The detailed drafting of Part 8 accompanying this consolidated draft decision includes the amendments required.

We rely on and adopt the relevant sections of our initial draft decision both for the reasons for the refusal to approve this part of Aurizon Network's 2014 DAU and the way in which we consider it appropriate to amend the 2014 DAU, subject to our comments below.

12.1 Introduction

Over recent years there has been significant expansion of the CQCN:

> *Aurizon Network's RAB is growing. At the beginning of UT3, Aurizon Network's RAB was around $3.4 billion with contracted capacity of around 184.7 million tonnes per annum (mtpa). By the end of UT4, Aurizon Network estimates that its RAB will be around $6.2 billion, with an infrastructure capacity of around 310 mtpa.*[674]

This has taken place without there being a formal process for developing and assessing the costs and benefits of CQCN expansions.

Stakeholders raised concerns that Aurizon Network has been able to control information flows, restrict access to expansion studies and dictate the scope and outcome of any studies sought. Stakeholders considered this has resulted in unnecessary delays in progressing investment studies of coal mine and terminal projects. Many stakeholders said, in the absence of regulatory

[674] QCA, draft decision, Aurizon Network 2014 Draft Access Undertaking–Maximum Allowable Revenue, p. 158.

discipline around stage-gating[675] CQCN investment projects and user funding arrangements, they were left no choice in UT3 but to accept access conditions[676] imposed by Aurizon Network to avoid unnecessary delays.[677]

One of the most significant changes in the 2014 DAU is the introduction of a formal expansion stage-gate process. Aurizon Network's 2014 DAU consolidates, into Chapter 8, the capacity assessment process to provide access holders certainty that Aurizon Network can reliably deliver contracted capacity through the term of their access agreements. It replaces and codifies the Coal Rail Infrastructure Master Plan process in UT3 which comprised:

- a network expansion process to initiate and progress expansion projects
- a capital cost pre-approval process for investors funding expansion projects
- capacity reviews
- the NDP.

The network expansion process proposed in the 2014 DAU included the Standard User Funding Agreement (SUFA) under which expansion funding negotiations were to run in parallel. The objective of the proposed SUFA was to provide a workable, bankable and credible alternative for financing an expansion compared to Aurizon Network financing the expansion. Aurizon Network proposed that the SUFA should be triggered in circumstances where Aurizon Network decided not to fund an expansion at the regulated rate of return. We released a draft decision for the SUFA on 31 October 2014.

The network expansion process has to respond to both a SUFA funded expansion and an Aurizon Network funded expansion. This chapter focuses on these elements, while Chapter 10 concentrates on baseline capacity, capacity reviews and the NDP.

12.2 Overview

12.2.1 Aurizon Network's proposal

The network expansion framework proposed in Aurizon Network's 2014 DAU represents a standard 'stage-gate' investment process. In practice, the roles of the parties involved in the expansion process and the risk/liability regime underpinning an expansion depend on how it is applied.

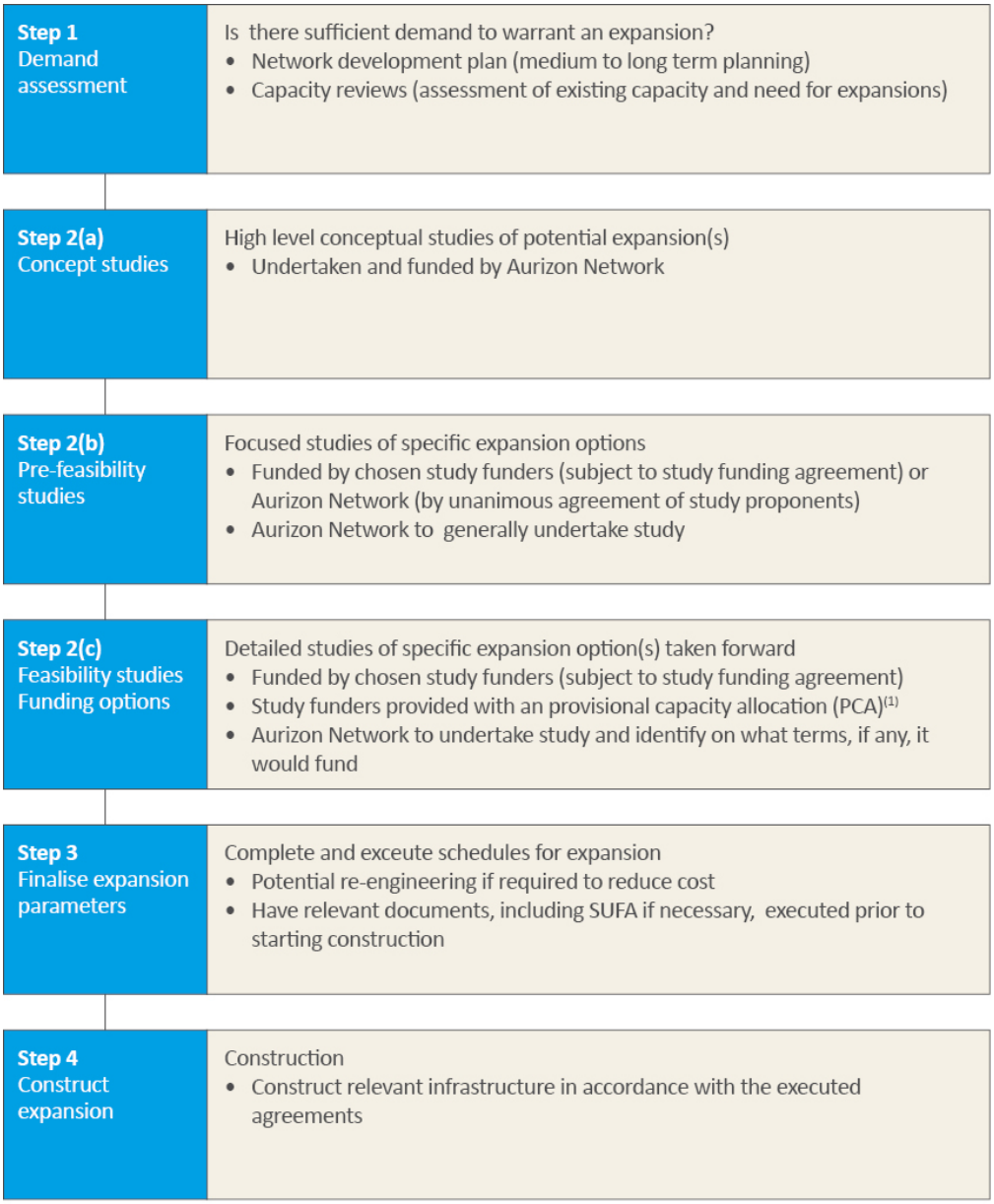
The following diagram broadly summarises the process set out in the 2014 DAU.

[675] A staged process under which an investment project is considered, namely from a demand assessment to construction.

[676] Defined in UT3 to be provisions to mitigate Aurizon Network's exposure to the financial risks associated with providing access to an access seeker (UT3 cl. 6.5.2).

[677] QRC, 2014 DAU, sub. 42: 35, 2013 DAU, sub. 46: 64–65; Anglo American, 2013 DAU sub. 39:10–11, 2014 DAU, sub. 7: 55; Vale, 2014 DAU, sub. 24: 1.

Figure 5 Stages in the 2014 DAU expansion process set out in clauses 8.2–8.9 of the 2014 DAU



(1) A PCA represents the expected access rights that a funder may recieve, subject to the final capacity outcome of the expansion.

The 2014 DAU proposed that this process:

- only applies to coal-based expansions (cl. 8.2.1(p) of the 2014 DAU)
- is subject to Aurizon Network's legitimate business interests, as defined by Aurizon Network (cl. 8.2.1(f) of the 2014 DAU).

The 2014 DAU also:

- removes any voluntary obligation to invest in an expansion project[678]
- provides for the amendment of the user funding provisions to be consistent with any outcome in the current SUFA process being undertaken in accordance with the UT3.[679]

[678] In UT3 this was set at up to $300 million.

The key implication is that all expansions, whether single-customer, small-scale, network-resilience- or large multi-user based are covered under the network investment framework within the 2014 DAU.

12.2.2 Legislative framework and QCA assessment approach

Under the QCA Act, we are required to have regard to the factors set out in section 138(2) in approving a draft access undertaking. The legislative framework is discussed further in Chapter 2.

Section 138(2)(a)

Section 138(2)(a) of the QCA Act requires us to have regard to the object of Part 5 of the QCA Act. Any expansion of the CQCN should meet the object of the QCA Act to promote the economically efficient operation of, use of, and investment in, infrastructure by which services are provided, with the effect of promoting competition in upstream and downstream markets (s.69E of the QCA Act). In respect of access determinations, section 119 of the QCA Act also provides some guidance that extensions should be technically and economically feasible and consistent with the safe and reliable operation of the facility.

We consider certainty over expansion processes combined with principles of no unfair differentiation between access seekers, and minimising barriers to expansions will promote the object of Part 5. The expansion process can only be effective and efficient if it starts from a clear, transparent and common understanding of the existing capacity of the CQCN. This defines by how much and when systems within the CQCN should be expanded.

We consider such transparency is necessary if the 2014 DAU is to be consistent with sections 69(E) and 138(2)(a) of the QCA Act which require us to have regard to the efficient operation of, use of and investment in CQCN infrastructure. We are also of the view that a greater understanding of existing capacity is in the interests of all stakeholders and underpins the effective application of the pricing principles in the QCA Act (s. 168A of the QCA Act)

Certainty will provide confidence for investments in capacity, which in turn will increase the total value that can be extracted from the entire coal supply chain. Maximisation of the CQCN's economic value will promote the efficient operation of, use of and investment in the CQCN, which will promote effective competition in other markets.

We note that section 100(2) of the QCA Act specifically prohibits Aurizon Network from unfairly differentiating between access seekers in a material adverse way that will have a negative effect on competition in the context of seeking access. For example, Aurizon Network may engage in preferential treatment of a related above rail operator and discriminating against others in expansions. We consider fair access to capacity to be consistent with this principle and will promote the object of Part 5 of the QCA Act and may minimise suboptimal outcomes in the supply chain.

We also consider that it would promote the object of Part 5 of the QCA Act if the barriers to participation were minimised. In that regard, the interests of third party financiers should be adequately recognised as their participation can be vital in some circumstances.

[679] The SUFA DAAU process is at the initial draft decision stage and we envisage incorporating the outcomes of this process in our final decision on the 2014 DAU.

When the practical requirements for an expansion are considered in light of the weighting of the factors in section 138(2) of the QCA Act, we believe that the criteria that any expansion should fulfil are that it:

- aligns with supply chain investments of customer, rail and terminal facilities
- does not adversely impact on the use of existing rail infrastructure by access holders
- is scoped and constructed to deliver the minimum additional supply chain capacity required
- delivers the lowest cost expansion growth pipeline for supply chain capacity
- does not favour one coal chain over another coal chain in the provision of capacity.

We also specifically note that facilitating expansions of the CQCN that account for end-to-end supply chain developments is consistent with section 69E and 138(2)(a) of the QCA Act, as well as the public interest (s 138(2)(d) of the QCA Act). Limiting unfair differentiation and providing that existing access holders are made no worse off from an expansion with respect to contractual rights is a means of appropriately balancing the interests of access seekers and holders (s 138(2)(e) of the QCA Act) with Aurizon Network's legitimate business interests (s 138(2)(b) of the QCA Act).

Section 138(2)(b)

Chapter 2 of the decision considers that the term 'legitimate business interests' of an owner or operator of a facility are those commercial interests that, if catered for, would allow the owner or operator to recover its costs in providing the relevant service, including a regulated rate of return and recovery of any relevant incremental operating and maintenance costs.[680]

Legitimate business interests suggest that a firm is able to recover the efficient costs it incurs in capacity expansions, that the expansion processes are smooth and unencumbered by excessive regulatory processes that add to costs, and that network development proceeds consistent with safety requirements.

In circumstances where the interests of an access provider, access seeker and the public are not aligned, the protection of the 'legitimate business interests' of the access provider considered alongside the factors listed in paragraphs (a)–(h) of section 138(2).

Section 138(2)(c)

This factor is considered less relevant as Aurizon Network is both the owner and operator of the declared service.

Section 138(2)(d)

It is in the public interest that network development and expansions are managed in an effective, transparent and cost effective manner. Transparency will promote the fair treatment between access seekers and will increase the ability of stakeholders to identify inefficiencies in the process. An effective expansions approach that reflects competitive benchmarks, and

[680] The precise definition and treatment of operating cost, maintenance expenditure, depreciation and tax is specific to a regulatory regime, as is the approach to calculating revenue requirements. They are not underlying principles and have to be considered relative to the regulatory regime on a case-by-case basis. If the investment is undertaken via the SUFA then, Aurizon Network's legitimate business interests are satisfied through retaining any relevant incremental operating and maintenance costs associated with operating the SUFA infrastructure.

avoids material unfair differentiation, will maximise the overall return from the CQCN, promoting the public interest.

Section 138(2)(e)

It is in the access seeker's interest to have a network development framework that promotes transparency and certainty. Access seekers need to be confident that they can compete on equal terms with entities that are related to Aurizon Network, and that appropriate processes apply for funding and constructing expansions that are understood and accepted by the industry. Such a framework will promote legitimacy and inspire confidence in the users of the system. A framework that maximises certainty will also promote the object of Part 5 of the Act as outlined above.

Expansions could have significant implications for existing users in terms of service quality and cost and network development and expansion projects should not unduly impact the rest of the network and their interests.

Section 138(2)(f)

This factor is less relevant in the context of network development and expansions as these matters deal with adding infrastructure to the CQCN.

Section 138(2)(g)

Volume III of our decision deals specifically with the pricing principles underpinning expansions.

Section 138(2)(h)

We also consider the interests of existing access holders, train operators, terminal operators and supply chain groups are relevant under section 138(2)(h), to the extent they are not already 'access seekers' under section 138(2)(e).

As set out in the legislative framework chapter, an issue that we consider relevant is that an undertaking should be effective in all respects, including being drafted in a way that minimises costs for those who seek to utilise the undertaking. On refusing to approve the undertaking, we have the necessary discretion to propose amendments to respond to this issue, and have done so. Such changes are not minor but respond to a substantive issue relevant to our consideration.

Given the role of the SUFA, we are also of the view that the interests of prospective third party financiers are relevant under section 138(2)(h) of the QCA Act, particularly as their involvement is critical in promoting efficient investment in the CQCN consistent with the object of Part 5 of the QCA Act as set out in section 69E.

Section 119

In respect of access determinations involving extensions, section 119 of the QCA Act provides guidance that these should be technically and economically feasible and consistent with the safe and reliable operation of the facility.

12.2.3 Overview

In the 2014 DAU, Aurizon Network adopted the following approach to expanding the CQCN. It would:

- only fund expansions at the regulated rate of return, if it chooses to

- provide no voluntary funding obligation for small/medium sized expansions
- only adopt the expansion process for coal related projects.

We consider Aurizon Network's 2014 DAU position creates uncertainty as to when, and on what terms, Aurizon Network will invest in expanding the CQCN. It shifts the risks of investment appraisal and project financing for CQCN expansion to access seekers and potential funders of the rail expansion.

An expansion process that satisfies the objectives of the QCA Act, should reflect the role that access seekers and prospective third party financiers may be required to undertake, which includes an opportunity for the development of a credible alternative to an Aurizon Network funding proposal to be developed.

This means access seekers and prospective third party financiers will require the ability to provide their Boards with a comprehensive appraisal of the costs and benefits of any proposed CQCN infrastructure investment. Any investment proposal will be competing with alternatives for scarce capital and will need to be of high quality. In this context, if the expansion process is to be effective it should:

- provide reliable transparent outputs with respect to standard, scope, cost, time to complete and capacity for all projects that go through it
- accurately describe the risks, their allocation and the mitigation strategies.

Furthermore, if the SUFA is to be a workable, bankable and credible alternative to Aurizon Network funding, up-front commitments on standard, scope, cost, time to complete and capacity are needed, as well as a capital pre-approval regulatory process.

This places significant demands on the expansion process from an output perspective. An effective expansion process that satisfies the objectives of the QCA Act and the factors in section 138(2), in our view must provide that:

- Aurizon Network is subject to a timeframe within which it must advise whether it is willing to fund at the regulated return
- negotiations undertaken include all stakeholders to provide full transparency and accountability on the terms, conditions and capacity impacts of the expansion proposals
- standardised contracting frameworks in a form acceptable to funding parties underpin the expansion
- adoption of appropriate investigation and study processes underpin the expansion
- approval and governance processes align with those adopted by access seekers and prospective third party financiers when taking investment proposals to their Boards
- effective simple and transparent dispute resolution mechanisms are available.

It is also necessary to consider whether, in the absence of a voluntary funding obligation from Aurizon Network, all proposed CQCN expansions should go through the expansion process. It may be that alternative approaches to financing projects can be developed once they are understood or that the SUFA will prove more flexible than anticipated.

We consider an expansion process that accounts for the above will be consistent with the QCA Act, as it will appropriately address the interests of all stakeholders (s. 138(2) of the QCA Act). The above approach will also provide a transparent approach to assessing whether alternative

financing options can be developed and reduce incentives for monopoly behaviour, thereby complying with the object of the access regime in the QCA Act (s. 69E of the QCA Act).

Participation

We consider that the ability to participate in the expansion process should only be constrained when practically necessary. The greater the level of input into the development of the CQCN, the greater the potential for innovation and improvement. It is therefore important for an undertaking to consider who can participate in the expansion process and who can undertake expansion studies.

With respect to participation in the expansion process we are of the view that coal companies, train operators, terminal operators and other freight commodities all require access to the declared service in order to compete in their own markets. Any expansion or entry into these markets could require the expansion of the CQCN. For this reason, the expansion process should be available to all access holders, access seekers and customers of the declared service regardless of commodity type (rather than just coal expansions on the CQCN as proposed in the 2014 DAU).

In relation to expansion studies, we consider that a third party who wishes to investigate new business opportunities in the upstream and downstream markets should not be precluded from funding a study simply because they are not an access seeker.

SUFA

The SUFA has been developed to provide an alternative financing option if Aurizon Network decides not to fund an expansion at the regulated rate of return. This, theoretically, provides competition in the financing of expansions. However, the SUFA is still untested and may only be useful for larger scale expansion projects.

The current limited applicability of the SUFA, coupled with there being no mandatory funding obligation in Aurizon Network's 2014 DAU, results in competitive tension for the financing of small/medium-scale expansions being extremely limited.

We are of the view that Aurizon Network's position on expansions in the 2014 DAU means that it may have an incentive to require commercial terms. How the actual return received is measured in the context of commercial terms will depend on the structure of those terms.

Key issues for consideration

The remainder of this chapter provides the background to our decision on the following key areas of the 2014 DAU expansion process:

- general principles underpinning the expansion process
- infrastructure investment study processes
- funding an expansion
- expansion capacity commitments and contractual entitlements.

Our decision for each of these areas is detailed in the marked drafting of Part 8 and associated schedules contained in the 2014 DAU.

12.3 General principles underpinning the expansion process

12.3.1 Aurizon Network's proposal

The general expansion[681] process principles included in the 2014 DAU cover Aurizon Network's obligations with respect to funding, constructing and permitting the construction of any expansion to its network. They are outlined in the table below.

Table 43 Aurizon Network's general expansion process principles

Area	*Principle*
Aurizon Network's legitimate business interests	
Definition	What constitutes Aurizon Network's specific legitimate business interests is defined to include what Aurizon Network considers relevant. The definition is applicable where an access dispute has been referred to the QCA for arbitration.
Efficient investment and the expansion process: Understanding need and characteristics of efficient expansion	
Demand assessment	Aurizon Network will commence a demand assessment for an expansion of its own volition or where requested by an existing or proposed coal terminal and an access seeker. Aurizon Network may undertake a demand assessment with reference to current access applications and interested customers, its own market intelligence, any expression-of-interest process, liaison and consultation with supply chain groups and analysis from expert advisors. Aurizon Network is obliged to notify all interested customers to participate in the demand assessment.
Efficient investment and the expansion process: access to efficient financing and obligation to fund	
Funding options	Aurizon Network has first option to fund a capacity expansion at the regulatory rate of return and must notify all access seekers of its decision with respect to funding during the study stages of the project. An Aurizon Network funding notification is enforceable by access seekers and the QCA.
Funding obligations	Aurizon Network must permit the expansion of the network where the project is fully funded consistent with the access undertaking. Aurizon Network must undertake asset replacement works consistent with the terms of its access agreements. Aurizon Network is not obliged to construct private rail infrastructure, except where it is required to connect private rail infrastructure to its network.
Meeting users and financiers needs in the expansion process	
Concept studies	Aurizon Network will undertake and fund all concept studies of an expansion project following completion of a demand assessment process. Access seekers retain the right to fund a concept study so long as it does not provide an unfair advantage to the funding access seeker compared to the non-funding access seekers.
Study funding agreements	A Standard Study Funding Agreement (SFA) is included in the 2014 DAU to allow access seekers and funders to fund the cost of expansion studies. Aurizon Network has a right to negotiate a funding agreement with an access seeker outside the terms of the access undertaking so long as it does not unfairly discriminate against other access seekers seeking capacity from an expansion and does not alter the

[681] The definition of expansion excludes customer-specific branch lines, connecting infrastructure and any capital expenditure which involves asset replacement and renewal expenditure.

Area	*Principle*
	capacity allocation process contained in the access undertaking.
Capacity allocation	Aurizon Network is permitted to reallocate capacity in specified circumstances. Any disputes over a proposed reallocation of capacity can be referred to the QCA.
Dispute resolution	Key decision points in the expansion process are subject to regulatory oversight via specific dispute resolution provisions.
Scope for participation	
Coal and non-coal traffic	The expansion process does not apply to non-coal traffics requiring an expansion in order to gain access to the network The expansion process only allows for the involvement of rail operators if nominated by a coal customer.

QCA analysis

Our decision responds to Aurizon Network's proposal and considers the following:

- Aurizon Network's legitimate business interests
- efficient investment and the expansion process
- meeting users and financiers needs in the expansion process
- scope of participation.

12.3.2 Aurizon Network's legitimate business interests

Summary of the initial draft decision

As noted in our assessment approach, Aurizon Network's legitimate business interests must be addressed alongside those of other stakeholders (that is, we are required to regard to each of the factors in section 138(2) of the QCA Act). We considered that Aurizon Network's legitimate business interests would be appropriately recognised through the provision of the regulated rate of return and any relevant incremental operating and maintenance costs when it chooses to invest.

In terms of the 2014 DAU defining what constitutes Aurizon Network's legitimate business interests, we were of the view Aurizon Network can make submissions with respect to its view of its legitimate business at the appropriate time in the expansion process and we would consider such submissions on a case-by-case basis. This mirrors the flexibility provided for in the QCA Act which does not further define 'legitimate business interests'.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with the QCA's initial draft decision as it considered that it requires protection of its legitimate business interests should it extend the network. Aurizon Network considered that this is a fundamental principle of section 119 and that it does not require that the QCA take account of the interests of any other party. Aurizon Network rejected the notion that section 119 requires any balancing of its interests with those of any other party and that, as a consequence, any reflection of this principle in the access undertaking should similarly not require balancing of interests. [682] Aurizon Network said that as a consequence:

[682] Aurizon Network, 2014 DAU, sub. 82: 149–150.

the QCA's UT4 draft decision is seeking to establish powers for the QCA that are inconsistent with the fundamental principle of the QCA Act.[683]

Aurizon Network had no concerns over the QCA's deletion of the examples of legitimate business interests in Part 8.

Other stakeholders supported the QCA's initial draft decision to omit references in Part 8 to Aurizon Network's legitimate business interests:

- The QRC agreed with the QCA's view that Aurizon Network's legitimate business interests are appropriately satisfied through the provision of the regulated rate of return and relevant operating and maintenance costs upon investment. It considered that there is no need to incorporate direct references to Aurizon Network's legitimate business interests as part of the expansion process.[684]
- Anglo American agreed with the QCA's view that there is no justification for the 2014 DAU to define further what constitutes Aurizon Network's legitimate business interests.[685]

QCA analysis and consolidated draft decision

Taking into account the factors set out in section 138(2) and stakeholder submissions, we do not consider it appropriate to approve Aurizon Network's approach to define its legitimate business interests in the 2014 DAU.

In our view:

- in considering whether to approve the 2014 DAU we have taken Aurizon Network's legitimate business interests, including in relation to expansions, into account
- Aurizon Network's legitimate business interests are appropriately satisfied through the provision of the regulated rate of return and any relevant incremental operating and maintenance costs when it chooses to invest
- Aurizon Network's legitimate business are taken into account in the event of a dispute (see s. 119 of the QCA Act and Part 11 of the 2014 DAU)

A list of factors relevant to the Aurizon Network's legitimate business interest does not need to be restated in the 2014 DAU. For the 2014 DAU in considering the proposed expansion process requirements and obligations we have already had regard to Aurizon Network's legitimate business. In doing so, we gave weight and genuine consideration to this factor and the other factors referred to in section 138(2), and while we must 'have regard' to those factors, no factor must necessarily be given 'fundamental weight' balanced against the others.

Aurizon Network's definition and list of its legitimate business, in our view, sought to give Aurizon Network's interests fundamental weight balanced against the interests of access seekers and others, and for that reason it was not appropriate to approve. In respect of expansions Aurizon Network's legitimate business interest are evaluated alongside the interests of other stakeholders, namely access seekers (section 138(2)(b) and (e) respectively) and the objectives of the QCA Act (s. 138(2)(a)).

We have set out in the CDD amended DAU how we consider the 2014 DAU should be amended.

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[683] Aurizon Network, 2014 DAU, sub. 82: 150.
[684] QRC, 2014 DAU, sub. 84: 71.
[685] Anglo American, 2014 DAU, sub. 95: 31.

Consolidated draft decision 12.1

(1) After considering Aurizon Network's 2014 DAU proposal in respect of its legitimate business interests (clause 8.2.1(f) of the 2014 DAU), our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) We consider it appropriate that Aurizon Network amend its draft access undertaking to:

(a) remove all references, direct or indirect, to Aurizon Network's legitimate business interests from the expansion process in Part 8 of the 2014 DAU (see clause 8.2.1 of the CDD amended DAU).

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

12.3.3 Understanding the needs and characteristics of efficient expansion

Summary of the initial draft decision

In our initial draft decision, we focused on the demand assessment process and considered the following questions:[686]

What information is used and who is involved in the demand assessment?

In our view an efficient expansion of the CQCN should align with other supply chain investments so that the object of the QCA Act is met, namely to promote economically efficient investment in the CQCN (s. 69E).

We removed any expressions-of-interest process conducted by Aurizon Network from the list of relevant information that can be used when undertaking a demand assessment. It was not clear to us that this represents an objective evidence source upon which to base a demand assessment. We considered the use of such evidence would not be in the interests of stakeholders given it could inadvertently lead to investment distortions (s. 138(2)(b), (d), (e) and (h) of the QCA Act).

What is included in a demand assessment report?

The demand assessment report in the 2014 DAU does not identify access seekers or potential access seekers by name or, as practicable, by origin–destination pairs for train services. Our initial draft decision strengthened the confidentiality provisions by providing for information to be released at an aggregated level so that it cannot be associated with specific companies. We considered this appropriately addressed the interests of access seekers and access holders with Aurizon Network's legitimate business interests (s. 138(2)(b) and (e) of the QCA Act).

We also included specific provisions to allow the demand assessment report to consider differing capacity options along the geographically dispersed branch lines. Additionally, the demand assessment report was restricted in the initial draft decision so that the estimated demand on the mainline does not exceed the quantum of the out-loading capacity being sought at a terminal. We considered that these provisions aligned with the objective of achieving

[686] This presupposes that there is a clear and transparent understanding of the capability of the existing infrastructure. This is considered in more depth in relation to Part 7 of the 2014 DAU which relates to the allocation and management of existing capacity.

efficient investment and meet the object of the third party access regime in the QCA Act (s. 69E).

What information is it reasonable for Aurizon Network to request?

The 2014 DAU allows Aurizon Network to request information from access seekers including the status of coal reserves/coal resources, mining tenure and key approvals. Our initial draft decision was that such information is commercially sensitive and not needed to develop a demand assessment for a concept level study. We considered the regulatory regime is sufficiently flexible to deal with any legitimate concerns regarding future asset stranding risks.

Overall, we did not consider it in Aurizon Network's legitimate business interests to have a right to access this information (s. 138(2)(b) of the QCA Act) at the demand assessment stage of the process. We were also of the view that it is not in the interests of access seekers to provide this information (s. 138(2)(e) of the QCA Act).

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with the initial draft decision to strengthen the role of information regarding supply chain dynamics in the demand assessment process. Aurizon Network also agreed with the initial draft decision to include specific provisions to allow the demand assessment report to consider different capacity options in branch lines. Aurizon Network supported the provision for the demand assessment to not exceed the quantum of the out-loading capacity being sought at a coal terminal.[687]

Anglo American supported broadening a demand assessment to consider other supply chain options before expansions and considered that this will be supported by the baseline capacity assessment process and any moves towards independent central coordination.[688]

The QRC questioned whether the definition of 'expansion' could be made clearer by expressly acknowledging that an exansion is to increase capacity.[689]

Exclusion of EOI information

Aurizon Network disagreed with the initial draft decision to exclude any expression of interest (EOI) process information and information regarding the status of coal reserves, mining tenure and key approvals from the list of relevant information to consider in a demand assessment. It considered that the demand assessment should be based on the best available information, which should include information gained from EOI processes and the status of coal reserves, tenure and development approvals. Aurizon Network submitted that this information would facilitate its assessment of 'true demand', assessed in the reasonable expectation of the use of access capacity.

Stakeholders generally supported the QCA's initial draft decision in relation to the exclusion of EOI information and information on the status of coal reserves, mining tenure and approvals from the demand assessment process. The QRC had concerns about Aurizon Network's access to confidential information in using EOI process and coal reserve, mining tenure and approvals status information as part of the demand assessment.[690] Asciano also considered such

[687] Aurizon Network, 2014 DAU, sub. 82: 144.
[688] Anglo American, 2014 DAU, sub. 95: 31–32.
[689] QRC, 2014 DAU, sub. 84: 70.
[690] QRC, 2014 DAU, sub. 84: 72.

information commercially sensitive and not required to develop a demand assessment for a concept level study.[691]

Anglo American believed information from EOI processes conducted by Aurizon Network should be excluded due to the potential for bias. It also believed that Aurizon Network's demand assessment should be restricted to rail-related issues, avoiding out-loading access at ports and information on the status of coal reserves, both of which it considered are protected by other mechanisms in the access undertaking and not appropriate matters to be decided on a subjective basis by Aurizon Network.[692]

Aggregation

Aurizon Network submitted that the demand assessment report may be highly aggregated and therefore of limited value, and disagreed with the QCA's position on aggregation of information. Aurizon Network said that depending on location of existing and potential mines, it may be difficult to aggregate information so that it cannot be associated with specific companies.[693]

QCA analysis and consolidated draft decision

Taking into account the factors listed in section 138(2) of the QCA Act and the stakeholder submissions received, we refuse to approve Aurizon Network's 2014 DAU provisions regarding demand assessment included in the expansion process.

Aurizon Network's 2014 DAU demand assessment allowed it an unreasonably high level of discretion potentially allowing it to unfairly differentiate between competing access seekers. For example, this could arise from Aurizon Network's right to access certain information at the demand assessment stage of the process. Relevantly:

- The inclusion of EOI information in the demand assessment process: such information could give Aurizon Network an unreasonable level of discretion and affect the impartiality of its decisions. Inclusion of expressions of interest information is not in the interests of stakeholders with the reason being that it could inadvertently lead to investment distortions; that is, it could lead to unfair differentiation of a material nature between access seekers. Ultimately, it could affect access seekers' confidence to invest in long-term assets such as mines, thus impacting investment in the CQCN (s. 138(2)(b), (d), (e) and (h) of the QCA Act).
- Aggregation of information: aggregated information is sufficient to assist in the demand assessment and expansion decision-making process. We accept that it is foreseeable that information may not be able to be sufficiently aggregated to preserve the commercial confidentiality of some users. We consider that confidentiality should be preserved to the extent required and accepted by industry participants. Information on status of coal reserves/coal resources, mining tenure and key approvals is commercially sensitive and not needed to develop a demand assessment for a concept level study.

We consider it is appropriate to amend the 2014 DAU to address the interests of access seekers and access holders (s. 138(2) (e) and (h) of the QCA Act) and Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act). Our proposed changes provide firms with confidence to invest in the Queensland coal sector (s. 138(2)(a) and d)), which satisfies the overall object of the QCA Act.

[691] Asciano, 2014 DAU, sub. 76: 20.
[692] Anglo American, 2014 DAU, sub. 95: 31–32.
[693] Aurizon Network, 2014 DAU, sub. 82: 150–151.

Consolidated draft decision 12.2

(1) **After considering Aurizon Network's 2014 DAU proposal in respect of its demand assessment included in the expansion process, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) The way in which we consider it is appropriate that Aurizon Network amend the 2014 DAU is to:

- **(a) strengthen the role that information regarding supply chain dynamics plays in the demand assessment process, with Aurizon Network obliged to account for this**
- **(b) exclude any expressions of interest process conducted by Aurizon Network from the list of relevant information for undertaking a demand assessment**
- **(c) strengthen the confidentiality provisions, so that information is aggregated to a level such that it cannot be associated with specific companies**
- **(d) include specific provisions to allow the demand assessment report to consider differing capacity options in the branch lines**
- **(e) restrict the demand assessment report so that demand on the mainline does not exceed the quantum of the out-loading capacity being sought at a coal terminal**
- **(f) exclude information regarding the status of coal reserves/coal resources, mining tenure and key approvals from the demand assessment process.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

12.3.4 Access to efficient financing and obligation to fund

Summary of the initial draft decision

In coming to our initial draft decision we considered the following matters:

- Aurizon Network's decision to fund an expansion
- commercial terms.

Aurizon Network's decision to fund an expansion

The 2014 DAU requires Aurizon Network to notify feasibility study funders of its funding intention 40 business days after a feasibility SFA becomes unconditional. Aurizon Network's funding decision can either be to fund at the regulated rate of return or require commercial terms for funding the expansion.

We considered that due weight should be given to the requirements of access seekers and third party financiers who may be required to fund expansions in order to promote efficient investment in expansions. Our initial draft decision was that Aurizon Network must notify access seekers and funders of the likelihood of it funding the project, or otherwise, at the commencement of the pre-feasibility study. Final notification to access seekers as to whether Aurizon Network would fund the project should then occur at the commencement of the feasibility study.

An early notification would give access seekers and financiers sufficient countervailing negotiating power and control to align project timelines to their growth path and associated port terminal developments. We also considered such an approach provides access seekers and potential financiers with the necessary flexibility to decide whether to user-fund the project, even where Aurizon Network subsequently indicates a willingness to fund the project at the regulated rate of return. Ultimately, our proposed requirement will provide certainty to access seekers and customers (e.g. coal producers), that network expansions will occur, to underpin complementary investment in mines or ports.

For these reasons of improved certainty and flexibility, we considered that our proposed approach in the initial draft decision achieved an appropriate balance between the interests of access seekers, prospective third party financiers and the legitimate business interests of Aurizon Network (s. 138(2)(b), (e) and (h) of the QCA Act).

Commercial terms

Aurizon Network introduced the concept of commercial terms into the expansion process in the 2014 DAU. This has replaced the role of access conditions included in UT3.

Our initial draft decision was to refuse to approve the concept of commercial terms in the 2014 DAU, to reintroduce a form of access conditions and to require that access conditions be accepted by us before they can be included within the regulatory regime.[694]

Our view in the initial draft decision was that the inclusion of commercial terms as defined by Aurizon Network creates a potential distortion in the efficient allocation of resources in investment decisions. Such commercial terms could be inconsistent with the factors set out in section 138(2) of the QCA Act. In such circumstances, accepting commercial terms in their current formulation by Aurizon Network would not be appropriate.

However, we considered commercial terms may provide incentives for Aurizon Network to scope capacity increments on criteria other than coal chain efficiency. In particular, they may create or increase an existing bias towards capacity-oriented rail infrastructure projects when alternative operational solutions exist and can provide an appropriate and lower-cost capacity increase. A concept analogous to commercial terms may have some benefits as it could facilitate efficient investment decisions.

We considered that access conditions appropriately address the legitimate business interests of Aurizon Network, and the interests of access seekers (s. 138(2)(b) and (e) of the QCA Act). These conditions do not preclude Aurizon Network or financiers proposing access conditions on a case-by-case basis. Any proposal can be objectively assessed to ascertain whether it is legitimate. This amendment aligns with and ensures efficient investment decisions and is consistent with the object of the third party access regime in the QCA Act (section 69E).

Stakeholders' comments on the initial draft decision

Aurizon Network's decision to fund an expansion

Aurizon Network disagreed with the QCA's initial draft decision that it should notify access seekers and funders of its intention to fund the project, or otherwise, at the regulated rate of return at the commencement of the pre-feasibility study. Aurizon Network considered that it is unreasonable to require an entity to commit to funding a project when the understanding of the ultimate project scope, capital cost, program and risk profile is quite low. Aurizon Network

[694] This is discussed in more detail in relation to pricing principles in Chapter 16 of this consolidated draft decision.

also noted the uncertainty around external factors, with the state of equity/debt markets, coal and construction services and internal conditions unknown at the point of project commitment.

Aurizon Network submitted that this would fall outside of reasonable corporate governance arrangements and would be contrary to Aurizon Network's legitimate business interests (s. 138(2)).[695]

The QRC agreed with the QCA's proposal that Aurizon Network notify access seekers and funders of the likelihood of it funding a project or otherwise at the commencement of a pre-feasibility study. It also agreed with the QCA proposal that Aurizon Network be required to provide final notification at the commencement of a feasibility study as to whether it will fund a project as this will enable an access seeker to engage with financiers or internal approvals as early as possible and to be better placed to align project development timelines to operational ramp up needs.[696]

The QRC also supported the QCA's proposal which largely reinstates the access condition provisions of UT3. The QRC noted that ensuring that the ability of Aurizon Network to secure access conditions is not misused is critical. It noted that, given that SUFA is complex, untested and involves significant transaction costs, Aurizon Network will continue to have a substantial advantage and significant bargaining power when negotiating access conditions for projects. The QCA approval requirement goes some way to ensuring this power is not misused.[697]

Commercial terms

Aurizon Network disagreed with the initial draft decision to remove the concept of 'commercial terms' and to use access conditions and a requirement for these to be approved by the QCA. Aurizon Network had two concerns:

- Risk to development schedule—the application of the access conditions regime posed an unacceptable risk to the project development schedule funded by Aurizon Network, with flow on impacts to related supply chain projects. It submitted that the QCA approval requirement meant that the projects, and all other associated coal chain developments, must be put on hold for the period of the QCA's assessment and are subject to the risk of non-approval. This would not be in accordance with the section 69E object to promote investment. Aurizon Network noted that approval of access conditions under the 2010AU took eight months.
- Adverse effect on ability to finance—the QCA approval requirement unreasonably prejudiced Aurizon Network's ability to compete in the market for funding expansions as other potential funders who utilise the SUFA model have 'no need for any condition precedent of regulatory approval and, therefore, do not face the risk of QCA non-approval'. It considered that this asymmetric treatment would make Aurizon Network uncompetitive and reduce effective competition in the market for financing coal chain developments. Also this would not be in Aurizon Network's legitimate business interests.[698]

Aurizon Network noted that it considered it was unclear which item of section 138(2) of the QCA Act had been applied to reach the conclusion that the inclusion of the access conditions provisions is necessary and justifiable.

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[695] Aurizon Network, 2014 DAU, sub.:82: 151–152.
[696] QRC, 2014 DAU, sub. 84: 3.
[697] QRC, 2014 DAU, sub. 84: 40.
[698] Aurizon Network, 2014 DAU, sub. 82: 152–153.

Asciano[699] and Anglo American supported the QCA's initial draft decision rejecting commercial terms and reinstating access conditions requiring QCA approval. Anglo American believed that, due to Aurizon Network's monopoly position in the supply chain, it is essential that any amendments to the approved regulatory restrictions are outlined, assessed and recorded by the QCA.[700]

QCA analysis and consolidated draft decision

Taking into account the factorsd listed in section 138(2) of the QCA Act and the submissions received on the initial draft decision, we refuse to approve Aurizon Network's 2014 DAU proposals in respect of efficient financing and its obligation to fund expansions.

Overall, we considered that Aurizon Network's 2014 DAU created an imbalance in its favour in any negotiations with access seekers and other financiers. It does not provide access seekers and third party financiers who may be required to fund expansions in order to promote efficient investment in expansions, any indication or certainty as to whether Aurizon Network would support the expansion at the pre-feasibility stage.

Aurizon Network's 'commercial terms' proposal, in our view, had the potential to allow Aurizon Network to unfairly differentiate between access seekers. For example, Aurizon Network could be in a position to seek an above regulated rate of return from certain customers compared to others.

Aurizon Network's proposal was not appropriate when considered in light of: (a) the objective of encouraging and promoting the economically efficient investment in infrastructure (section 138(2)(a)); and (b) the interests of access seekers who would otherwise be subject to Aurizon Network's stronger position to set terms (section 138(2)(e)). Further, the proposal had the potential to allow Aurizon Network to unfairly differentiate between access seekers which is a matter the QCA considers relevant to its assessment of Aurizon Network's proposal.

Amending the DAU

Aurizon Network's decision to fund an expansion

The way to amend the 2014 DAU was to propose that Aurizon Network notify the likelihood that it would fund the expansion at the pre-feasibility stage. While Aurizon Network disagreed with our position, QRC supported our position. Our view is that Aurizon Network should at this stage be able to indicate a likelihood of whether or not it would invest at the regulated rate of return or whether access conditions are required. We would expect that Aurizon Network would have sufficient information at this stage of the process to evaluate this likelihood.

This requirement is not a full commitment, but an early indication to access seekers and financiers on the project potential. An expression of likelihood to invest or not to invest is in our view non-binding, but is in the interests of access seekers as it provides some transparency and direction, and assists to expedite the process. We consider that it also remains consistent with the legitimate business interests of Aurizon Network (s. 138(2)(b) of the QCA Act) as it does not adversely affect Aurizon Network's ability to invest at the regulated rate of return.

Commercial terms

In response to the two issues raised by Aurizon Network in regard to reinstatement of access conditions rather than commercial terms:

[699] Asciano, 2014 DAU, sub. 76: 20.
[700] Anglo American, 2014 DAU, sub. 95: 3.2.

(a) Risk to development schedule—we note that while approval could take some time, this could be in parallel with pre-approval for a project to be included in the RAB. Time for QCA approval should be allowed for in the planning timeline. While all other things being equal this could delay projects, we see this as necessary to balance the interests of access seekers against Aurizon Network's stronger negotiating position.

(b) Adverse effect on ability to finance—again, we note that while Aurizon Network would need to allow sufficient time for QCA approval of access conditions, this should not disadvantage it in competing with other funders. Regardless of who is funding, approval is required for access conditions. Without such provisions, Aurizon Network would have an unreasonable position of advantage and this would not be balancing their interests against those of access seekers or of other third party funders. We note that Aurizon Network has the right to finance any project, at the regulated rate of return. No approval is required by the QCA if it is funding at the regulated rate of return - this is consistent with Aurizon Network's legitimate business interests. Aurizon Network can also negotiate access conditions, subject to QCA approval, to offset any project-specific risks and we do not consider that Aurizon Network would be at any disadvantage compared to other market participants. Overall, we consider our proposal provides an equal footing for Aurizon Network and other third party funders.

The amendments proposed, which introduce access conditions approved by the QCA place Aurizon Network and third party funders on an equal footing, balancing the interests of Aurizon Network, access seekers and access holders (s. 138(2)(b) (e) and (h) of the QCA Act). We further consider that this proposed amendment promotes efficient investment in significant infrastructure (consistent with the object of Part 5 (section 69E)).

Consolidated draft decision 12.3

(1) After considering Aurizon Network's 2014 DAU proposal in respect of efficient financing and its obligation to fund, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is that:

(a) Aurizon Network should notify access seekers and funders of its decision to fund the project, or otherwise, at the regulated rate of return at the commencement of the pre-feasibility study

(b) Aurizon Network should remove the concept of 'commercial terms' from the 2014 DAU, reintroduce a form of access conditions and require that access conditions be approved by the QCA.

(3) **We consider it appropriate to make this consolidated draft decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

12.3.5 Meeting users' and financiers' needs in the expansion process

Our decision took into account:

- the role of concept studies
- risk allocation in study funding agreements

- outputs of study funding agreements
- dispute resolution.

We were of the view that our initial draft decision with respect to dispute resolution, concept studies and the risk allocation and outputs associated with a SFA appropriately balance the interests of access seekers and third party financiers, with Aurizon Network's legitimate business interests (s. 138(2)(b), (e) and (h) of the QCA Act).

Concept studies

The expansion process in the 2014 DAU requires Aurizon Network to provide relevant access seekers with general details of the concept studies undertaken.

Our initial draft decision was that a concept study report should be provided to all stakeholders and included in the subsequent updated NDP.

Aurizon Network supported this draft decision.[701]

We note broad support for the initial draft decision in relation to concept studies, and rely on our reasoning in our initial draft decision to refuse to approve Aurizon Network's proposal and adopt the amendments proposed in that decision. Our consolidated draft decision proposes no change to the initial draft decision.

Risk allocation in the study funding agreements

Summary of the initial draft decision

The SFA and associated risk allocation are critical to securing funding for the study and subsequent finance for the project itself. A simplified SFA can balance risk allocation so that risks are borne by the party best positioned to control and manage those risks.

Our initial draft decision was to develop an alternative SFA based on the principles that provide for:

- the lowest overall cost for construction and access
- neither party being required to include cost contingencies for possible losses caused by another party's actions
- a clear assignment of accountabilities between the parties
- alignment of contracting parties to the contractual obligations and entitlements
- open and transparent communication channels in the delivery of contracted access services
- a reduced risk of disputes between the contracting parties.

Stakeholders' comments on the initial draft decision

Aurizon Network did not agree with the initial draft decision to propose an alternative SFA as attached to the QCA's draft decision. It considered that this draft SFA allocates risks to Aurizon Network associated with expansions that it does not volunteer to assume, constraining its right to exercise its commercial judgement. Aurizon Network proposed that the QCA adopt a form of SFA consistent with the risk profile it volunteers to accept.[702]

[701] Aurizon Network, sub. 82: 145.
[702] Aurizon Network, sub. 82: 153.

Further details of Aurizon Network's views on the allocation of particular risks under the redrafted SFA are summarised at the end of the chapter.

Vale noted that a workable standard studies funding agreement that provides all stakeholders with an opportunity to move between project development stages is important to achieving an efficient expansion process. Vale considered that the current studies funding agreement is unbalanced and will not provide an appropriate mechanism to assist in the efficient development of a project.

QCA analysis and consolidated draft decision

It is in the interests of access seekers, that a workable SFA assigns accountabilities and allocates risks appropriately between appropriate parties in order to be effective and promote investment (s. 138(2)(a), (b) and (e)). The SFA proposed with the 2014 DAU did not achieve these objectives and accordingly we do not consider it is appropriate to approve the 2014 DAU.

The way we consider the 2014 DAU should be amended is to adopt the proposed SFA. That SFA provides addresses the interests of access seekers and those of Aurizon Network under section 138(2) of the QCA Act. Our responses to a number of issues raised in relation to the drafting of the SFA are discussed at the end of this chapter.

Outputs of study funding agreements

Summary of the initial draft decision

Access seekers and third party financiers are required to play a role in the expansion process—therefore, the outputs of SFAs must be able to meet their requirements, in addition to those of Aurizon Network. In particular, the outputs have to be sufficiently robust to provide a workable, bankable and credible SUFA and an effective expansion pricing process. They also have to address scope, standard, cost, time-to-complete and capacity. In this context, we were of the view in the initial draft decision that the 2014 DAU does not fully account for the needs of the SUFA or the expansion pricing process.

While in our initial draft decision we accepted Aurizon Network's position that it be given first option to conduct investment studies on the CQCN, we decided to strengthen the study scope criteria, timelines and outputs and to provide that, if those are not met access seekers and third party funders may exercise their step-in rights.

Furthermore, concerns regarding the provision of confidential information to third party study proponents were addressed by requiring study proponents to execute confidentiality agreements with Aurizon Network and relevant stakeholders. Third party study proponents are also required to comply with the undertaking in the same way as Aurizon Network.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with our initial draft decision on the basis that the output requirements are too inflexible, the SFA scopes are vague and the specification of feasibility study scope is flawed. Aurizon Network's position on this issue is explained further below.

Inflexibility of output requirements

Aurizon Network expressed the view that output requirements for different types of studies should not be 'hard wired' in UT4 so that they apply in all circumstances (in Part 12 definitions). It considered this approach inconsistent with good project governance for large commercial enterprises, and considered that greater flexibility would be of value to access seekers, allowing them to develop an optimal project investigation strategy. It argued that the QCA's approach

would prevent Aurizon Network and the relevant study funders from adopting, for example, a 'lighter' option enabling less accuracy to reflect the study funders' business circumstances.

Aurizon Network proposed an alternative approach using a defined set of different 'classes' of study deliverables that are the result of different levels of project investigation. The classes define different levels of accuracy, and also differentiate by design definition, the estimating methodology, vendor selection and exit fees.

Table 44 Aurizon Network's proposed study classes[703]

Estimate Class	*Class 5*	*Class 4*	*Class 3*	*Class 2*	*Class 1*
Typical estimate accuracy	+50% –30%	+35% -25%	+25% –15%	+15% –10%	+10% –5%
Typical design definition	0% to 2%	1% to 15%	10% to 40%	30% to 75%	65% to 100%
Estimating methodology	Parametrically using benchmarks, allowances for key cost drivers	Parametrically using benchmarks, assembly driven models	Priced assembly-level bill of materials for significant cost areas. Parametrically and assembly driven models for less significant areas	Deterministic estimating method, with forced take-offs of undefined areas	Fully defined, deterministic estimating

In addition, Aurizon Network proposed that a reference class of study deliverables should be set in UT4 for:

- concept study—Class 5 (as a minimum)
- pre-feasibility study—Class 4 (as a minimum)
- feasibility study—Class 3 (as a minimum)

Aurizon Network stated that the proposed reference requirements for a pre-feasibility study and a feasibility study have been set at the lower end of the normal range that applies within large commercial enterprises. Further, Aurizon Network proposed that should a higher class be preferred by either the study funders or Aurizon Network, other parties would not be able to dispute that nomination—so that the class of a study will always be the higher of:

(a) the class required by study funders, and

(b) the class required by Aurizon Network.

Once a class has been set for a particular study—a classification process which Aurizon Network considered should not be subject to dispute resolution—then the usual dispute resolution mechanism of the access undertaking would apply to the completion of study schedules.

Aurizon Network noted that the class for a concept study would normally be its reference class, but may be a higher class if considered appropriate by Aurizon Network.[704]

[703] Aurizon Network, sub. 82: 154–155.
[704] Aurizon Network, sub. 82: 155.

Vagueness of study scope

Aurizon Network expressed the view that the template SFA proposed by the QCA renders the study scope of a project specific agreement unacceptably vague for such a substantial agreement. It said that the proposed SFA does not allow the scope of works of a project specific study funding agreement to specify the access requirements of the agreement's study funders or the project scope requirements/constraints for that study. It submitted that good contracting practice requires a clear specification of requirements at the time of its execution. Aurizon Network has proposed that the scope of works for a project specific study funding agreement should specify:

- the access requirements of the agreement's study funders
- the class of deliverables required for that study
- the project scope requirements/constraints for that study.

Aurizon Network considered that the template SFA should make provision for these details to be documented on a project specific basis.[705]

Flawed specification of feasibility study scope

Aurizon Network submitted that the definition of feasibility study in the redrafted access undertaking is flawed as it requires that the feasibility study be based on the preferred alternative from the pre-feasibility study. Aurizon Network said that this is not consistent with the nature of the pre-feasibility studies.

It noted that a pre-feasibility study will not decide or specify the project configuration that will be adopted in the feasibility study. Accordingly, Aurizon Network proposed that the scope of the feasibility study should not be mechanistically taken from the pre-feasibility study but rather should be decided by the proposed feasibility funders and Aurizon Network on the basis of business circumstances at the time as well as the pre-feasibility study's conclusions.[706]

QCA analysis

Our assessment of Aurizon Network's 2014 DAU against the section 138(2) factors, and our responses to Aurizon Network's submission are set out in the sections below.

Inflexibility of output requirements

Aurizon Network's approach in its 2014 DAU potentially allows it to take advantage of its monopoly power when dealing with study funders by preferring standards that are not in line with funders' preferences. This could affect efficient investment in infrastructure which is inconsistent with the section 69E object of Part 5 of the QCA Act.

Furthermore, the proposed undertaking arrangements should be flexible, non-complex and effective, and Aurizon Network's approach did not support these objectives.

Aurizon Network's proposed five-class system does not in our view improve flexibility. Rather, we consider that it adds complexity and limits study levels to defined categories which may not suit study funders' requirements. Classes 3, 4 and 5 correlate to the concept study, pre-feasibility and feasibility study levels but allow for higher standards if required. In effect, this allows an element of vagueness, effectively blurring the differences between the study forms,

[705] Aurizon Network, sub. 82: 155–156.
[706] Aurizon Network, sub. 82: 156.

while also adding to complexity. Taking into account the factors of complexity and effectiveness (s. 138(2)(h)), we do not consider Aurizon Network's revised proposal is appropriate.

Aurizon Network's approach could allow it to exercise monopoly power over study funders by preferring standards that are not in line with funders' preferences. This could in turn affect efficient investment in infrastructure and thus be inconsistent with the section 69E object of Part 5 of the QCA Act. Given this, we do not consider that Aurizon Network's proposal is consistent with section 138(2) of the QCA Act.

Given our refusal to approve Aurizon Network's 2014 DAU and our view on its further proposals, the way in which we propose the 2014 DAU be amended is to take a high standard for each form of study, commensurate with engineering expectations, and allow for the scope of work to be adjusted to allow for lower accuracy commensurate with circumstances. Our proposed amendments address the interests of access seekers and the legitimate business interests of Aurizon Network under section 138(2) of the QCA Act.

Vagueness of study scope

Aurizon Network called for the study scope in the SFA to allow for the access requirements of the agreement's study funders, the class of deliverables required for that study (effectively the level of the study), and the project scope requirements/constraints for that study.

In our view, it would not be appropriate for the SFA to specifically list these specifications as this would potentially promote Aurizon Network's interests above the interests of access seekers. We consider it is a matter to be determined or negotiated according to circumstances. We would expect that access requirements, the type of study and the requirements for that study would be relevant in the SFA. There are no constraints on parties negotiating particular variations on the study forms.

Flawed specification of feasibility study

Aurizon Network said the flaw was that the feasibility study cannot be based on the preferred alternative from the pre-feasibility study, as there will not be a single such option.

As noted above, the effectiveness of Aurizon Network's proposal is an issue we take into account when considering whether to approve an undertaking (s. 138(2)(h)). We consider it is difficult to see the value of a pre-feasibility study that does not generate options that would be taken into account for the feasibility study.

The amendments we consider appropriate are that, the pre-feasibility study should identify a preferred alternative, or a combination of 'building blocks' for what would be a preferred option. We accept that the pre-feasibility study may not identify a single option. .

We note that other stakeholders have not commented on the revised definitions of study levels.

Step-in rights

Our initial draft decision was to provide that step-in rights can be activated by access seekers and third party funders if an executable SFA, study scope criteria, timelines and outputs are not delivered.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with the initial draft decision that a nominee should be able to conduct a ‘step-in’ study should Aurizon Network fail to enter a study funding agreement or a delay is expected (as set out in section 8.6 of the IDD amended DAU).

However, Aurizon Network had a number of comments, in respect of step-in rights related to information requirements of the nominee and the effect on Aurizon Network of the entry of a nominee (section 8.6), as noted in the table below, together with our responses:

Table 45 Aurizon Network's comments on step-in rights

Aurizon Network's comment	*QCA response*
Aurizon Network's obligation to provide reasonable assistance to that nominee is conditional upon that nominee entering into an 'information supply' agreement with Aurizon Network to compensate for the costs it incurs in providing that assistance. The charging arrangements in that agreement should be the same as the charging arrangements under the form of the SFA, except that no project management fee shall be payable.	The undertaking requires that Aurizon Network provide information 'reasonably required' by the nominee, and the formal processes for the provision of such information an arrangement at the discretion of Aurizon Network. In return, Aurizon Network will agree to seek reimbursement of its reasonable direct costs—excluding any and all profit, margin and overhead. We agree with Aurizon Network's suggestion, noting that Part 3 provisions would apply in respect of confidential information.
Aurizon Network's obligation to provide reasonable assistance under this information supply agreement should be expressly restricted to assistance that Aurizon Network may lawfully provide without breaching the terms of the undertaking or any confidentiality agreement	We do not see a need to expressly restrict the forms of assistance Aurizon Network would provide to a nominee. Provisions are in place for example in regard to handling confidential information as in clause 8.6(c)(ii) of the CDD amended DAU.
The nominee must be required to perform a study with the scope, and to the standard, that would, in the absence of the 'step-in' arrangements, be required from Aurizon Network under a study funding agreement	The nominee would still need to comply with the same scope and standards for any form of study as set out in the undertaking and the definitions. The nominee is simply assuming control of the study.
Aurizon Network did not agree that, in circumstances where it is prepared to enter a study funding agreement that complies with the requirements of Part 8, a nominee may instead be appointed to conduct the investigation and design of an extension (section 8.2.1(l) of the IDD amended DAU). Aurizon Network submitted that there could be an unreasonable burden on Aurizon Network if there is a sizeable number of nominees and nominee-managed studies, or there are studies being conducted in parallel with the study being conducted by Aurizon Network, which would be an unreasonable duplication.	The intent of the IDD drafting under clause 8.2.1(l)(i)(B) is to allow for a nomination of a party to undertake the study if Aurizon Network seeks reimbursement of any profit, margin or overhead on the costs of that investigation or design. We note that there would only be one party nominated by an access seeker or group of access seekers for any particular study and this should not impose unreasonable demands on Aurizon Network. We have provided amendments in the CDD amended DAU.
Aurizon Network submitted that, with respect to section 8.2.1(l), there is no requirement, among other things, for any nominee: (a) to enter into a confidentiality, use of information and protection of intellectual property undertaking in favour of Aurizon Network (b) to be appropriately qualified and experienced, whereas this requirement is featured in the nominee 'step-in' arrangements of the QCA's redrafted undertaking (section 8.6(b)) (c) to provide a copy of the nominee's report or any other information about the nominee's investigation and design to Aurizon Network, or	We note that section 8.2.1(l) requires that 'except where set out to the contrary in Part 8', Aurizon Network would be responsible for investigation and design of an expansion unless it seeks reimbursement of more than reasonable direct costs. This clause is intended to provide for cost effective investigation and design work. We consider that the list of additional requirements proposed by Aurizon Network to be placed on the nominee is not necessary given that it applies only to early stage investigation and design. Further, it would be in the access seekers' interests to provide that the nominee be suitably qualified

Aurizon Network's comment	*QCA response*
to consult with Aurizon Network (d) to conduct its investigation and design in respect of the project-specific scope (e) conduct its investigation and design to the standard that would be required of Aurizon Network if it were to conduct a pre-feasibility study or feasibility study in accordance with Part 8.	and experienced, and would follow relevant processes such as consulting with Aurizon Network.
Aurizon Network said there is no provision for Aurizon Network to dispute the conclusions of a nominee-conducted study, whereas Aurizon Network has this right in the nominee 'step-in' arrangements in the QCA-proposed section 8.6(d).	In our view, Aurizon Network can prevent this outcome by complying with clause 8.2.1(l)(i)(A).
Aurizon Network proposed that, in circumstances where it is prepared to enter a study funding agreement that complies with Part 8, it should be the only party responsible for investigation and design of an expansion, other than in the circumstances where the 'step-in' provisions of section 8.6 apply.[707]	This conforms to our view on Part 8.

In summary, Aurizon Network generally supported step-in rights. In relation to its proposals set out in the table above, prescribing information requirements for the nominee are not necessary, could be used by Aurizon Network to unfairly differentiate between access seekers (by using the provisions to restrict or slow step-in), and otherwise could be used to promote Aurizon Network's interest over those of access seekers.

Confidentiality agreements

Our initial draft decision was to require study proponents to execute confidentiality agreements with Aurizon Network and relevant stakeholders.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with the QCA's initial draft decision, but noted some practical issues:

- As Aurizon Network does not engage the nominee, it is unable to ensure that the nominee enters into any confidentiality agreements.
- It is unclear how the requirement in section 8.6(c)(ii) of the IDD amended DAU provides that the nominee must enter into a confidentiality undertaking to Aurizon Network would operate as the nominee is not governed under the undertaking.
- As the contemplated confidentiality undertaking is restricted to the disclosure or use of information the disclosure which could result in a breach of Aurizon Network's ring-fencing obligations, the nominee would be free to place in the public domain, or to use for its own purposes, any information provided by Aurizon Network, provided that doing so would not result in a ring-fencing breach.
- The confidentiality undertaking does not address the confidentiality of information of 'relevant stakeholders' or the protection of Aurizon Network's intellectual property in respect of matters such as capacity modelling.

[707] Aurizon Network, sub. 82: 157–158.

Aurizon Network proposed that the outcomes sought by the QCA should be achieved by stating that a party's entry into a suitable confidentiality, use of information and intellectual property undertaking in favour of Aurizon Network should be a precondition to that party's appointment as nominee.

It noted that this undertaking could form part of the information supply agreement contemplated above. Should the QCA be seeking to protect the confidentiality of information of 'relevant stakeholders', then the nominee's entry into suitable confidentiality and use of information obligations in favour of them could be another precondition of the nominee's appointment.[708]

QCA analysis and consolidated draft decision

Aurizon Network was unconvinced that the clause 8.6(c)(ii) requirement for confidentiality would be effective for nominees. In our view, the clause 8.6(c)(ii), while not a precondition, is a requirement of the nominee—that is, the nominee must give Aurizon Network an undertaking in respect of confidential information and other matters. They would also need to comply with the Part 3 ring-fencing provisions. The onus would be on Aurizon Network to provide that these requirements are met by any particular nominee. We have provided clarified drafting in the CDD amended DAU in response to the general suggestions provided by Aurizon Network.

Third party compliance

Our initial draft decision was to require third party study proponents to comply with the undertaking as if they are Aurizon Network. Aurizon Network agreed with the QCA's draft decision.[709]

We refer to our reasons for refusing this aspect of the 2014 DAU in our initial draft decision and adopt the changes proposed in our initial draft decision.

Dispute resolution

The expansion process in the 2014 DAU is subject to numerous dispute resolution processes. This is complex and unnecessary and ignores the processes already incorporated in Part 11 of the 2014 DAU. For simplicity, in our initial draft decision we required that any dispute with respect to Part 8 should be subject to the dispute resolution mechanism in Part 11 of the 2014 DAU.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with the QCA's initial draft decision which requires that all processes and decisions made with respect to the expansion process are subject to our initial draft decision regarding the dispute resolution mechanism in Part 11.

Aurizon Network and QRC provided some suggestions for the process as summarised below, with our responses.

[708] Aurizon Network, sub. 82: 158.
[709] Aurizon Network, sub. 82: 159.

Table 46 Stakeholders' comments on dispute resolution

Comment	*QCA response*
Aurizon Network submitted that where the parties to a proposed study funding agreement or a proposed SUFA agreement (or deed) cannot agree on the terms following a negotiation process, the scope of binding dispute resolution under Part 8 should be limited to the 'completion' of the applicable template agreement (or deed) under UT4. This means insertion of project specific information as contemplated by the template agreement. Aurizon Network considered that dispute resolution should not be available if the modifications are not mutually acceptable.[710]	In our view, departure from base terms of template documents (e.g. the SUFA), would only be by agreement, that is, they are agreed and disputes should not arise. Disputes should generally not arise about the templates themselves (clause 8.8.1(a)(iv)) of the IDD amended DAU). Otherwise, disputes fall within clause 8.2.2(a) of Part 8 of the amended DAU.
Aurizon Network submitted that where a dispute resolution mechanism is available under any agreement (or deed) entered into by Aurizon Network and a party, the QCA dispute resolution provisions under Part 11 should not also be available. That is, the Part 11 provisions should only be able to be invoked if and to the extent that the party is unable to invoke a contractual dispute resolution mechanism. Aurizon Network proposed guidance principles for disputes on the completion of SUFA construction agreements. It said that each matter under dispute shall be determined by reference to the 'central position', adopted in respect of that matter in 'relevant construction contracts', for 'comparable projects' and 'comparable counterparties'. Aurizon Network provided definitions for these concepts.[711]	We would anticipate that disputes would only be referred to the QCA under section 8.2.2 of the IDD amended DAU if contractual mechanisms failed. That is, the access seeker or proposed funder may dispute certain matters by referring to the QCA. We do not consider that it is necessary to set out the mechanics of settling SUFA construction disputes through using a competitive benchmarking approach for relevant construction contracts. Clause 11.1.1(c) is amended so that any disputes arising in respect of right or obligation of a SFA or SUFA is dealt with under the relevant agreement rather than the undertaking.
Aurizon Network submitted that it should not be obliged, as an outcome of a dispute process over a SUFA construction agreement, to accept a standard of infrastructure that fails to comply with its safety management system. To address this, Aurizon Network has proposed a procedure that would apply if a dispute resolution process in respect of a SUFA construction agreement results in a reduction in infrastructure standard. To facilitate SUFA as a funding model, Aurizon Network proposed a review mechanism that may be applied to each certificate of non-compliance, involving the relevant access seekers referring any certificate of non-compliance to an expert for its review.[712]	We do not envisage that Aurizon Network should have to accept non-compliant safety standards. Such standards would need first and foremost to be met to satisfy Aurizon Network's regulatory obligations. We also consider that Aurizon Network should not be afforded a different dispute resolution process for a construction agreement for reasons of consistency.
Aurizon Network noted that section 8.2.2 of the redrafted undertaking calls for all disputes in respect of Part 8 to be referred directly to the QCA (and not under the staged approach in Part 11). Aurizon Network was concerned that the combined effect of clause 8.2.2(a) of the IDD amended DAU and the deletion of clause 8.9.2	We note Aurizon Network's comments. We note that in our IDD amended DAU, a dispute notified under clause 8.2.2(c) is a dispute for the purposes of clause 11.1. We consider that if a party disputes another party's refusal to vary a standard agreement, we

[710] Aurizon Network, sub. 82: 159.
[711] Aurizon Network, sub. 82: 161.
[712] Aurizon Network, sub. 82: 162.

Comment	*QCA response*
of the 2014 DAU is that users can dispute the provisions of the template SUFA under Part 11.[713] Aurizon Network considered that direct reference to the QCA is a superior approach to addressing these disputes than the application of the standard staged method. Aurizon Network also noted that the fact that everything in the expansion domain can go for dispute resolution has MAR implications as it is likely to increase costs.[714]	can resolve the dispute quickly by applying the standard agreement. It is unclear why Aurizon Network would need to incur additional costs that would not be already accounted for.
The QRC supported the consolidation of the dispute provisions applying to Part 8 proposed in the initial draft decision (section 8.2.2). However, it considered that more specific timeframes should apply. It also considered that expert determination should be incorporated as it may expedite dispute resolution.[715]	We note that clause 8.2.2(b) includes timings for referral to the QCA and notification of Aurizon Network. QRC has not proposed any specific timings. Disputes may vary substantially in magnitude and specific timelines would not be practical.

QCA analysis

A factor that we have given weight to in our consideration of Aurizon Network's 2014 DAU is whether the proposed arrangements are workably effective and non-complex. Overlapping dispute resolution regimes do not achieve these objectives, and for that reason we did not consider this aspect of the 2014 DAU was appropriate to approve

Conclusion

After having regard to the criteria listed in section 138(2) of the QCA Act, and considering submissions received on the initial draft decision, we refuse to approve Aurizon Network's 2014 DAU proposals in respect of addressing users' and financiers' needs in the expansion process.

We did not consider Aurizon Network's proposal to be appropriate because Aurizon Network's SFA does not provide an appropriate allocation of risk between the parties—in respect of costs and contingencies for another party's actions, a clear assignment of accountabilities between the parties, and transparent communications. We are of the view that Aurizon Network's proposal does not appropriately take into account the interests of access seekers, and prospective third party financiers with Aurizon Network's legitimate business interests (s. 138(2)(b) (e) and (h) of the QCA Act).

Further, the 2014 DAU does not fully account for the needs of the SUFA or the expansion pricing process to deliver workable, bankable and credible outcomes. We considered that the provisions where access seekers and third party funders may exercise their step-in rights were not appropriate, and that the provision of confidential information to third party study proponents needs to be addressed.

The way in which it is appropriate to amend the 2014 DAU is set out in our initial draft decision, and we adopt those proposed amendments with our further proposed amendments as our consolidated draft decision.

[713] Aurizon Network, 2014 DAU, sub. 82: 98.
[714] Aurizon Network, 2014 DAU, sub. 82: 34.
[715] QRC, 2014 DAU, sub. 84: 71.

Consolidated draft decision 12.4

(1) **After considering Aurizon Network's 2014 DAU proposal in respect of addressing users' and financiers' needs in the expansion process, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is to:**

- **(a) provide for concept study reports to be given to all stakeholders by including them in the next updated network development plan**
- **(b) propose an alternative SFA that reflects a more appropriate allocation of risk as attached to this consolidated draft decision**
- **(c) strengthen the study scope criteria, timelines and outputs requirements**
- **(d) provide that step-in rights can be activated by access seekers and third party funders if an executable SFA, study scope criteria, timelines and outputs are not delivered**
- **(e) provide for study proponents to execute confidentiality agreements with Aurizon Network and relevant stakeholders**
- **(f) require third party study proponents to comply with the undertaking in the same way that Aurizon Network would**
- **(g) require that all processes and decisions made with respect to the expansion process are subject to our consolidated draft decision regarding the dispute resolution mechanism in Part 11 of the 2014 DAU.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

12.3.6 Scope of participation

Summary of the initial draft decision

The expansion process proposed in Aurizon Network's 2014 DAU only applies to coal-related access. Our initial draft decision concluded that this is unduly restrictive and discriminatory.

While section 250 of the QCA Act defines the declared service in terms of use of a coal system, this is descriptive of the railway infrastructure and does not limit the declared service only to the carriage of coal.

We therefore considered that coal companies, train operators, terminal operators and other freight commodities should all be able to seek to acquire the declared service in order to compete in their own respective markets. Any expansion or entry into these markets could require the expansion of the CQCN. Consequently, Part 8 of the 2014 DAU should apply and be available to:

- all access holders, access seekers and customers of the declared service regardless of commodity type
- new entrants and all supply chain participants in the relevant coal system.

Third parties that want to investigate new business opportunities within upstream and downstream markets should not be precluded from funding an Aurizon Network study simply

because they are not access seekers as defined in Part 2 of the 2014 DAU. Indeed, we considered any such preclusion to be contrary to the factors that we have regard to (s. 168(2)(a) refers to the object of this part, and under s. 69E we may take into account whether the proposal promotes the economically efficient use of and investment in infrastructure).

Our initial draft decision proposed that Aurizon Network must cooperate with any rail expansion study for a third party who is willing to fund such a study.[716] We also proposed audit rights to all study funding agreements so that Aurizon Network is not able to double-dip in the provision of study manager services in a regulated and non-regulated context.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with this initial draft decision on the basis that it should only be obliged to cooperate with an access seeker or a customer. It further noted that it cannot identify the legal basis on which the QCA has determined that Aurizon Network must cooperate with parties other than access seekers or customers (that is, potential access seekers).

In terms of concept studies, Aurizon Network noted that the question of it cooperating with any third party willing to fund a concept study does not arise given the drafting of the undertaking which provides that a concept study would generally be funded by Aurizon Network (although an access seeker or a customer may agree with Aurizon Network to fund a concept study).[717]

Asciano supported the initial draft decision's inclusion of access seekers, train operators and others in the expansion process.[718]

QCA analysis and consolidated draft decision

Taking into account the factors listed in section 138(2) of the QCA Act, and the submissions received, we refuse to approve Aurizon Network's 2014 DAU proposals in respect of the scope of participation in the expansion process.

We consider that Aurizon Network's DAU is not appropriate because it does not allow for a sufficiently broad scope of participation.

To promote the efficient use of and investment in infrastructure, third party access seekers including non-coal companies, should be able to fund an expansion study (s. 138(2)(a)). It may be in such parties' interests, at their discretion, to cooperate with or to provide any relevant information to Aurizon Network in regard to their access requirements.

A wider scope of participation in the expansion process would promote competition in downstream markets and would also promote efficient use of infrastructure. This addresses the interests of access seekers, prospective third party financiers, Aurizon Network's legitimate business interests (s. 138(2)(b) (d), and (e) of the QCA Act) and is consistent with the object (s. 69E) of the Act.

We adopt the amendments proposed in our initial draft decision. We consider it appropriate that the 2014 DAU be amended to include third party access seekers as defined in Part 12 in the range of participants in clause 8.2.5 of the CDD amended DAU.

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[716] The regulatory process through which an access seeker can trigger an efficient expansion process, obtain conditional access rights and have the costs included in the RAB for the purposes of developing reference tariffs consistent with the undertaking.

[717] Aurizon Network, 2014 DAU, sub. 82: 162–164.

[718] Asciano, 2014 DAU, sub. 76: 20.

Consolidated draft decision 12.5

(1) **After considering Aurizon Network's 2014 DAU proposal in respect of the scope of participation in the expansion process, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is so that Aurizon Network cooperates with any rail expansion study for a third party who is willing to fund such a study, as indicated in our CDD amended DAU (clause 8.2.5).

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

12.4 Infrastructure investment study process

12.4.1 Aurizon Network's proposal

Aurizon Network's 2014 DAU obliges it to promptly undertake pre-feasibility and feasibility studies where funded by customers. The staged progression of studies from pre-feasibility to feasibility is accompanied by the following conditions:

Table 47 Aurizon Network's infrastructure investment study process

Area	*Conditions*
Eligibility to participate in investment study process	Study funders must be access seekers and/or end customers. Aurizon Network and train operators can only fund as an access seeker where they have been specifically nominated by a coal customer (cls. 8.2.4 and 8.6 of the 2014 DAU). Study funders have to meet eligibility criteria to participate in funding the study. Eligibility criteria get more detailed as the project progresses through each stage (cls. 8.4 and 8.5 of the 2014 DAU). The exception is Aurizon Network can fund a pre-feasibility study, provided Aurizon Network and all access seekers and/or coal customers are in agreement (cl. 8.4(a)(iii) of the 2014 DAU). In contrast there is no right for Aurizon Network to fund feasibility studies.
Aurizon Network's performance of an SFA	If Aurizon Network fails to enter into or complete a SFA the matter can be referred to the QCA to trigger step in rights (cl. 8.7 of the 2014 DAU). The QCA may determine the relevant study be undertaken by another party and Aurizon Network must comply with the determination, subject to confidentiality requirements (cl. 8.7(b)–(d) of the 2014 DAU).
Funding of SFAs (cls. 8.4 and 8.5 of the 2014 DAU)	Study funders cover all study costs in each successive stage of the project. Study funders are reimbursed by Aurizon Network as a study progresses from the pre-feasibility to feasibility to execution stage. This process culminates in the study costs being included within either a SUFA or an Aurizon Network funding package (with or without commercial terms).
Study funder rights (cls. 8.4 and 8.5 of the 2014 DAU)	Study funders from a previous study phase will be given the opportunity to fund the next stage of the expansion project. Study funders can provide input into the terms and conditions of Aurizon Network's study (e.g. study scope) and will receive a copy of the study report. Feasibility SFA funding customers are given a provisional capacity allocation for

Area	*Conditions*
	the capacity created from the expansion. Each customer's allocation will be in direct proportion to their study funding obligation. Aurizon Network retains a right to withdraw and re-allocate the provisional capacity allocation if a customer's circumstances change.
Arbitration and dispute processes (cls. 8.2–8.7 and 8.8 of the 2014 DAU)	The QCA arbitration is available to customers seeking to dispute key Aurizon Network decisions through the study process and/or to trigger customer step in rights.

Among other stakeholders, the QRC was generally supportive of Aurizon Network's staged development of expansion projects and the capacity allocation process. However, Anglo American and Asciano[719] raised specific concerns with the stage-gate process and the level of discretion retained by Aurizon Network in allocating capacity to be created from an expansion. Asciano said the complex and prescriptive drafting of these provisions creates a cumbersome and time-consuming stage-gate process.

Our initial draft decision took into account:

- Aurizon Network's legitimate business interests
- efficient investment, users' and financiers' needs, and the scope of participation.

12.4.2 Aurizon Network's legitimate business interests

Summary of our initial draft decision

We considered Aurizon Network's approach to its roles as principal consultant for studies and study manager needed to appropriately align with the roles of prospective users and third party financiers. As principal consultant for studies, the stage-gate study process provides for Aurizon Network to design and undertake all regulatory expansion studies at the cost of access holders, access seekers and other potential funders. We considered Aurizon Network's principal role is reasonable given the need for capacity expansion studies to consider operational and technical issues concerning the CQCN and the delivery of existing contractual entitlements.

In providing the services of a study manager, we amended the study timeframes and deliverables for each study phase so that Aurizon Network's study deliverables would be timely and to the standard required to address the business interests of access seekers, access holders, relevant supply chain participants and prospective third party financiers. If Aurizon Network does not deliver against these outputs then study funders can trigger step-in rights under section 8.7 of the 2014 DAU.

We proposed amendments to remove what we considered to be onerous information requirements which Aurizon Network could require from study funders and required Aurizon Network to identify target capacity for each study.

In our initial draft decision, we did not consider that the information requirements appropriately addressed Aurizon Network's legitimate business interests and those of study funders, particularly as the study funders are the parties bearing the costs of the study. Establishing a target capacity is in the interests of all study funders to provide confidence their capacity needs will be considered in the study process.

[719] Asciano 2014 DAU, sub. 22: 118–120; Anglo American 2014 DAU Part 8(A), sub. 10: 21–30.

Overall our initial draft decision was to refuse to accept Aurizon Network's proposals in the 2014 DAU in respect of its role as principal consultant for studies and study manager in the expansion process.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with the QCA's initial draft decision in relation to the infrastructure investment study process.[720]

Other stakeholders raised a number of issues with our initial draft decision. These are summarised in the table below.

The QRC[721] provided detailed comments on provisions in the SFA, while Anglo American[722] submitted its own marked-up version of the SFA. These issues are discussed at the end of this chapter.

Table 48 Comments on the infrastructure study process

Issue	*Comment*[723]	*QCA response*
Amending scope of studies	QRC had concerns that under the SFA, Aurizon Network has the ability to force changes to scope (cl. 9.2(a) of the SFA). This was inconsistent with the drafting of the initial draft decision. QRC also said that clause 9.5(c) of the SFA should be deleted, that is, if Aurizon Network proposes to vary scope and study funder does not agree to pay, SFA automatically terminates. QRC said this was commercially unreasonable.[724]	We consider it reasonable that Aurizon Network has discretion to change the scope of a study in response to defined scope change events. This would seem appropriate in encouraging efficient investments to take account of changed circumstances outside of parties' control. In regard to clause 9.5(c) of the SFA, we consider that if Aurizon Network is unable to deliver on scope, it should be able to negotiate a change, otherwise the agreement would be terminated.
Information provision to access seekers Clause 8.3.4(g)(i)	QRC said that the level of information provided to access seekers should be aligned with that provided to the QCA, with obligation on Aurizon Network to provide an unredacted study document to QCA extended to relevant access seeker (cl. 8.3.4(g)(i)).[725]	We consider that Aurizon Network should not be obliged to provide access seekers with unredacted information as provided to QCA. The clause allows for the information to be provided to other parties to the extent permitted under confidentiality obligations. We consider this to be in the legitimate business interests of Aurizon Network.
Target capacity	QRC supported the amendments made by the QCA regarding determination of target capacity by Aurizon Network. QRC said Aurizon Network should be required to provide an explanation of the calculation of target capacity and access seekers should have ability to dispute this.	Under clause 8.3.3 of the IDD amended DAU, Aurizon Network is to assess the target capacity as a basis for a feasibility study taking account of a number of factors including port capacity and potential staging. Aurizon Network is required to notify all relevant access seekers. Aurizon Network is required to act in good faith, and in our view, has an incentive to reach an accurate calculation of target capacity. Further,

[720] Aurizon Network, 2014 DAU, sub. 82: 146.
[721] QRC, 2014 DAU, sub. 84: 173–195.
[722] Anglo American, 2014 DAU, sub. 95: 46.
[723] Clause references refer to the IDD amended DAU.
[724] QRC, 2014 DAU, sub. 84: 74.
[725] QRC, 2014 DAU, sub. 84: 74.

Issue	*Comment*[723]	*QCA response*
		the target capacity builds on the outcomes of the pre-feasibility study and the demand assessments from relevant access seekers. This should provide sufficient transparency for access seekers.
Provisional capacity allocation	QRC disagreed with deletion of requirement to provide written notice of withdrawal of provisional capacity allocation. Also, Aurizon Network should only have a limited window in which to exercise this right (cl. 8.5(e) & (f)). The permitted window should commence within a certain period after receipt of a notice under clause 8.5(e)(i). QRC supported right for feasibility funders to assign SFA to a replacement access seeker. QRC also supported proposed treatment of costs between replacement funders, Aurizon Network and existing access seeker.[726]	We note that for the purposes of the undertaking, under section 12.3 of the CDD amended DAU, a notice has no legal effect unless it is in writing. We do not consider that Aurizon Network should only have a limited window in which to exercise the right to withdraw all or part of a provisional capacity allocation. We have allowed the funder a period of 20 days to respond under clause 8.5(e).
Provisional capacity allocation	Aurizon Network disagreed with the QCA's modifications of these provisions governing withdrawal of provisional capacity allocation. Aurizon Network said clause 8.5(d) of the draft DAU weakens the trigger events and clause 8.5(e)(i) increases the show cause period. Aurizon Network said that the most appropriate course of action for other feasibility funders where one funder is not expected to be able to use its capacity in future is the timely replacement of the funder concerned by another bona fide access seeker. The proposed changes benefit some access seekers, but are against the interests of others.[727] QRC supported the right for feasibility funders to assign their rights to a replacement funder.[728]	We do not consider that our drafting weakens the trigger events for withdrawing all or part of a provisional capacity allocation. Circumstances where the access seeker ceases to satisfy all the requirements could arise even if one requirement is not met. We also required that Aurizon Network act in good faith. We consider that the ability to assign the SFA to a replacement access seeker in accordance with the terms of the SFA is reasonable We agree with Aurizon Network that where one funder is not expected to use its capacity, another bona fide funder should be sought to take up the capacity. We consider that our approach facilitates this, while still taking account of the interests of the original funder by allowing sufficient time (20 business days) to respond.
Notice of dispute referred	QRC said that we should reinstate obligation for Aurizon Network to provide written notice of referral of a dispute to the QCA following publication of a study by a nominee to better enable access seekers to make submissions to the QCA.[729]	We note that for the purposes of the undertaking, under section 12.3 of the CDD amended DAU, a notice has no legal effect unless it is in writing.
Standard of works	QRC said that for clarity, reference to scope (cl. 8.6(e)(iii)) should expressly include the	We agree that for clarity, reference to scope (cl. 8.6(e)(iii)) should expressly

[726] QRC, 2014 DAU, sub. 84: 75.
[727] Aurizon Network, 2014 DAU, sub. 2: 174–175.
[728] QRC, sub. 84: 75.
[729] QRC, 2014 DAU, sub. 84: 76.

Issue	*Comment*[723]	*QCA response*
	standard of works as included at clause 8.6(d).[730]	include the standard of works as included at clause 8.6(d).
Assignment	Anglo American supported the initial draft decision relating to assignment of study funding rights and provisional capacity, as long as the assignee meets criteria that the initial rights holder was required to meet to participate in study process. In this case, assignment could reduce risk of losing a party from an expansion process. Anglo American said that assignment rights should include any provisional capacity allocation (PCA), otherwise there is little incentive for users to assign SFAs. Assignment should be for proportion of PCA which is the same as the assignment of the feasibility funder's rights under the SFA. Concerns regarding appropriateness of assignee could be addressed by the following: • assignee contracts with Aurizon Network on the same terms as original funder • requiring that the PCA is assigned for purposes of mine development, or for a customer of a mine • assignee feasibility funder must accept and pay any costs required for pre-feasibility studies, feasibility studies or expansions as required • assignee must meet criteria for determining who is relevant access seeker for a study. The relevant criteria are in clause 8.4.2(c).[731] Anglo American said that if these conditions were met, it could not see a negative impact on Aurizon Network.	In our initial draft decision, we requested industry input on this issue. While we consider that the terms suggested by Anglo American are implied, we agree to include them in the SFA.

QCA analysis and consolidated draft decision

After having regard to the factors listed in section 138(2) of the QCA Act and the submissions received, we refuse to approve Aurizon Network's 2014 DAU proposals in respect of the scope of participation in the expansion process.

We do not consider it appropriate to approve Aurizon Network's 2014 DAU proposal in respect of addressing infrastructure investment studies. It is our view that Aurizon Network's proposals were not appropriate as the amended study timeframes and deliverables for each study phase could result in onerous information requirements being imposed on study funders, and required Aurizon Network to identify target capacity for each study. We do not consider that the information requirements appropriately address Aurizon Network's legitimate business interests and those of access seekers, access holders, train operators, relevant supply chain

[730] QRC, 2014 DAU, sub. 84: 76.
[731] Anglo American, 2014 DAU, sub. 95: 34–35.

participants and prospective third party financiers (s. 138(b), (e) and (h) of the QCA Act). This is particularly the case, given the study funders are the parties bearing the costs of the study.

Our proposed amendments are designed to address this imbalance. We also consider that our approach Aurizon Network's 2014 DAU proposal creates barriers to the efficient investment in infrastructure (which is contrary to the factors we take into account, notably section 138(2)(a) and 69E of the QCA Act).

We have made some drafting changes in the interests of clarification, following submissions from stakeholders.

Consolidated draft decision 12.6

(1) After considering Aurizon Network's 2014 DAU proposal in respect of addressing infrastructure investment studies, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is in the manner we have indicated in our CDD amended DAU, as follows:

(a) Aurizon Network should manage studies and deliver scope and output within the study scope and timeframes.

(b) Study funders should be able to trigger the study step-in rights if a study's scope or timeframes are not met by Aurizon Network.(clause 8.6 of the CDD amended DAU).

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

12.4.3 Efficient investment, users' and financiers' needs, and the scope of participation

Our initial draft decision was split into the following:

- supply chain coordination and options assessment
- deliverables and access to efficient financing
- identifying study funders.

Supply chain coordination and options assessment

Summary of the initial draft decision

As noted in Chapter 10 (Baseline capacity and supply chain alignment) we considered supply chain coordination critical to meeting the requirements of the object of the third party access regime in the QCA Act and in the public interest (ss. 69E and 138(2)(a), (b) and (d) of the QCA Act). This view was reiterated in our approach to assessing the 2014 DAU expansion process which noted that the criteria any expansion should fulfil are that it:

- aligns to supply chain investments in customer, rail and terminal facilities
- does not adversely impact on the use of existing rail infrastructure by access holders
- is scoped and constructed to deliver the lowest cost for additional supply chain capacity
- does not favour one coal chain over another coal chain in the provision of capacity

- delivers the lowest cost expansion growth pipeline for supply chain capacity.

Against this background, our proposed drafting for the 2014 DAU strengthened the requirement for Aurizon Network to cooperate with study funders, relevant supply chain participants and terminal operators to identify the range of supply chain capacity increments available to increase CQCN capacity.

We considered that Aurizon Network could subcontract elements of the study to relevant supply chain participants to allow a suite of capacity options to be investigated to the scope and standard required for inclusion in a study report. Our view was that the greater the level of input into the study process the more potential there was for innovation and a challenging of whether existing practices can be improved or changed to increase available capacity in the CQCN (e.g. by allowing additional trains to be scheduled). This helps achieve the objective of expansions that take place from an efficient baseline.

This study funding process will allow final study reports to rank the rail expansion options and supply chain capacity alternatives in terms of reliability and certainty of delivered supply chain capacity.[732] This will enable study funders to identify rail and supply chain capacity projects to take through to the next study stage or to take to execution in an informed manner that allows the trade-offs between options to be clearly understood in the decision making process. In adopting this process we considered that confidentiality concerns could be accommodated through the use of confidentiality agreements and redacting aspects of the study reports if necessary.

In addition to meeting the object of the third party access regime in the QCA Act and the public interest, we considered this to be in the interests of access holders, access seekers, train operators, relevant supply chain participants and prospective third party financiers and aligns with Aurizon Network's legitimate business interests (ss. 138(a), (b), (d), (e) and (h) and 69E of the QCA Act).

Overall, our initial draft decision was to refuse to accept Aurizon Network's 2014 DAU proposals regarding the role of supply chain coordination and the options assessment approach in the expansion process and to require the amendments as set out in the IDD amended DAU.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with our initial draft decision which required it to cooperate with study funders, relevant supply chain participants and terminal operators to reduce the scope of the rail expansion and attain a lower overall cost of delivery for new capacity increments to the CQCN. It did not consider that a reduction of scope is an appropriate objective. It noted that projects need to be considered on a 'whole of supply chain' basis—higher capital expenditure on below rail assets may be justifiable due to favourable operational or capital outcomes in other parts of the coal supply chain.

Similarly, Aurizon Network submitted that attaining a 'lower overall cost of delivery for new capacity increments to the CQCN' will not necessarily lead to greater economic efficiency. It considered that each of the 'reduced scope' and 'lowered cost' objectives proposed by the QCA is comparative in nature and, hence, only meaningful if a reference point is proposed.[733]

[732] This is considered further in the section on capacity commitments and contractual entitlements in this chapter. This covers also our proposed approach to target capacity.
[733] Aurizon Network, 2014 DAU, sub. 82: 164.

Aurizon Network agreed with our initial draft decision requiring it to cooperate and provide copies of final reports.

Aurizon Network disagreed with our initial draft decision requiring it to investigate a number of alternative supply chain capacity enhancements to reduce the scope of the expansion in each study process. Aurizon Network submitted that:[734]

- it should not be required to investigate supply chain projects that would modify or supplement the assets controlled by other coal supply chain parties, noting that it does not control these assets and does not have access to them for the purpose of conducting studies
- it should only apply its project investigation capability to below rail projects, and not to other elements of the supply chain. It noted that, as a matter of practice, it may be prepared to investigate other coal supply chain enhancements in collaboration with other parties
- it considered that Aurizon Network and study funders, which will be either access seekers or customers, will be well placed to take a 'whole of supply chain' view when deciding, on a specific study basis, the scope for a particularly study funding agreement. It submitted that the scope of the feasibility study should not be taken from the pre-feasibility study
- it did not agree that it should investigate a number of alternative supply chain capacity enhancements at the feasibility study stage. It submitted that to do so is inconsistent with good project governance practice, which requires one option to be studied at the feasibility study stage. It submitted that the concept stage is the appropriate point at which alternatives should be considered. Aurizon Network considered that the QCA's proposed approach would result in an unreasonable cost burden borne by feasibility study funders and an unreasonable period of time to complete the feasibility study.

Aurizon Network agreed with our initial draft decision that requires it to execute confidentiality agreements with all study participants, subject to those agreements providing it with sufficient disclosure rights. It considered that the form of confidentiality agreements must permit Aurizon Network to disclose all information required in order to comply with the undertaking.[735]

The QRC supported the QCA's proposal to require Aurizon Network to participate in coal chain groups.[736]

QCA analysis and consolidated draft decision

Taking into account the factors listed in section 138(2) of the QCA Act and the submissions received, we refuse to approve Aurizon Network's 2014 DAU in respect of participation of parties in the expansion process.

Aurizon Network's proposals were not appropriate because there was not sufficient provision for cooperation with study funders, relevant supply chain participants and terminal operators to identify the range of expansions or supply chain capacity increments available to increase CQCN capacity.

In regard to issues raised by Aurizon Network in its submission, we agree that a reduction in scope may on its own not be an appropriate objective. It is conceivable that costs may be lower overall if the scope is not reduced, particularly if there are savings elsewhere in the supply chain.

[734] Aurizon Network, 2014 DAU, sub. 82: 164–165.
[735] Aurizon Network, 2014 DAU, sub. 82: 165.
[736] QRC, sub. 84: 60.

We were also concerned that Aurizon Network's 2014 DAU did not provide a means to check whether additional capacity can be achieved by reviewing operational changes that could be then applied to reduce the scope of an expansion. In this regard, we gave the object 69E of the Act additional weight in considering the undertaking. In our view, encouraging the efficient investment in infrastructure is a key consideration (s. 138(2)(a) and 69E of the QCA Act). We acknowledge this requires collaboration between Aurizon Network and other supply chain participants. However, such collaboration appears to be in the mutual interests of relevant parties, and was in fact suggested in Aurizon Network's own drafting in respect of demand assessments for expansions (s. 8.2.4(b)(ii) of the 2014 DAU). Further, consultation with other supply chain participants on expansion/planning matters would seem to be a pre-requisite to ensuring that infrastructure investment is 'efficient'. We consider this to be in the interests of access seekers as well as the legitimate business interests of Aurizon Network (s. 138(2)(e) and (b)).

The way we consider it is appropriate to amend the 2014 DAU is set out in our initial draft decision and the CDD amended DAU. In respect of our proposed amendments:

(a) A best endeavours approach is appropriate given that such collaboration cannot be guaranteed.

(b) We accept that examining options that involve supply chain enhancements should be resolved at concept or pre-feasibility stages. However, the option considered at the feasibility stage could include operational enhancements that result in effective capacity increases.

(c) We have proposed further amendments to address issues raised in submissions.

We consider this to be in the interests of access seekers as well as the legitimate business interests of Aurizon Network (s. 138(2)(e) and (b)).

Consolidated draft decision 12.7

(1) After considering Aurizon Network's 2014 DAU proposal in respect of the participation of parties in the expansion process, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is for it to adopt a best endeavours approach to:

- **(a) cooperate with study funders, relevant supply chain participants and terminal operators to reduce the scope of the rail expansion consistent with a lower overall cost of delivery for new capacity increments to the CQCN**
- **(b) cooperate with study funders, access seekers, rail operators, access holders, supply chain groups and terminal operators in undertaking each study stage and provide copies of the final report at each stage in the expansion process**
- **(c) investigate a number of alternative supply chain capacity enhancements to reduce the scope of the rail expansion in each study process.**
- **(d) execute confidentiality agreements with all study participants.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

Deliverables and access to efficient financing

Summary of the initial draft decision

In our initial draft decision we considered that not only do the study reports delivered via the expansion process have to outline the options available; the study outputs must meet an appropriately high quality standard[737] and should be provided in a timely manner. This is necessary to allow access seekers and prospective third party financiers to take the project to their corporate board as part of their wider business investment stage gate process.

We were of the view the timely production of quality study outputs is critical to driving the ability of third parties to source competitive third party financing. This is necessary to provide for a credible alternative to Aurizon Network's financing proposals for a given expansion.

We developed clear, comprehensive and precise definitions of the study scope and deliverables for concept, pre-feasibility and feasibility studies. We considered that this will facilitate the timely execution of SFAs and remove the need for a costly dispute process around scope and outputs.

However, we noted that it does not guarantee that Aurizon Network, acting as both principal study consultant and study manager, delivers quality outputs, to the timeframe required across the scope of the study. Where Aurizon Network fails to deliver either an executable SFA or study outputs of the required quality within an agreed time frame, step-in rights can be triggered. If step-in rights are triggered, both parties should make submissions to us and all relevant considerations will be taken into account in these deliberations.

[737] Mining companies and financiers have internal engineering, financial and commercial standards which an investment project must meet before it can be submitted to its Board for approval.

We further noted that step-in rights do not provide any assurance that Aurizon Network is undertaking the study at an efficient cost. Allowing study funders to audit study costs will, to some extent, incentivise Aurizon Network to efficiently manage the costs of each study process. We clarified processes regarding SFA termination and the obligation on Aurizon Network to mitigate damages, so that these step-in and audit rights can be used effectively and are perceived as credible.

We considered these measures suitably emphasise the criticality of timely, high-quality study outputs to the credibility of the expansion process. Our view in the initial draft decision was that this is in the interests of access holders, access seekers, train operators, relevant supply chain participants and prospective third party financers, as well as aligning with Aurizon Network's legitimate business interests (s. 138(2)(b), (e) and (h) of the QCA Act).

Overall, our initial draft decision was to refuse to accept Aurizon Networks 2014 DAU proposals regarding the process for developing study outputs and to require the amendments as set out in the initial draft decision.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with our initial draft decision which required a specific definition of study scope and deliverable for concept, pre-feasibility and feasibility studies. As noted in Section 12.3.5 above, Aurizon Network proposed that the study scopes be aligned to five classes and considered that the output requirements in the QCA's proposed definition are too inflexible, the SFA scopes are vague and the specification of the feasibility study scope is flawed. Aurizon Network said that financiers' commitment to fund and miners' commitment to invest are generally premised on the basis of feasibility studies.[738]

Aurizon Network agreed with step-in rights if it delays execution of a SFA or release of a final report, as proposed in our initial draft decision. However, it disagreed with the proposed SFA rights to audit study costs to confirm that Aurizon Network has efficiently managed the costs of each study process. Aurizon Network did not agree that the auditing process should assess whether costs have been incurred reasonably, and considered that the auditing process should be confined to an assessment of whether costs have been incurred in accordance with the SFA.[739]

Aurizon Network agreed with our initial draft decision which provides SFA rights to include termination clauses with the obligation on Aurizon Network to mitigate damages, on the condition that a study can only be terminated for convenience by all study funders, rather than any study funder. Aurizon Network opposed unilateral termination and considered the following:

- Any termination for convenience right for a study funder under the SFA should only be capable of being exercised by all study funders for the applicable study.
- Should such a study termination occur, Aurizon Network should be obliged under the SFA to mitigate the costs of terminating that study.[740]

Stakeholder comments on step-in rights are noted in Section 12.4.3 above.

[738] Aurizon Network, 2014 DAU, sub. 82: 146–147; 165–166.
[739] Aurizon Network, 2014 DAU, sub. 82: 166.
[740] Aurizon Network, 2014 DAU, sub. 82: 147.

QCA analysis and consolidated draft decision

After having regard to the factors listed in section 138(2) of the QCA Act and considering submissions received on the initial draft decision, we refuse to approve Aurizon Network's proposals in respect of study funding arrangements in the expansion process.

Aurizon Network's proposal is not appropriate because it does not allow for clearly defined study scopes and timelines for concept, pre-feasibility and feasibility studies. This lack of clarity and transparency could result in delays and disputes, which would not be in the interests of access seekers and study funders, and could affect investment in the industry. (s. 138(2)(a), (e) and (h) of the QCA Act)

Further, we consider that step-in rights do not provide sufficient assurance that Aurizon Network is undertaking the study at an efficient cost potentially preferring its own interests (s. 138(2)(b) and (e)).

In regard to audit processes, Aurizon Network considers audits should assess whether costs are incurred in accordance with the SFA, rather than costs being assessed as having been incurred 'reasonably' (cl. 11.1 of the SFA). Aurizon Network gave an example of where it funds a pre-feasibility study and subsequently a feasibility study is conducted, in which case it should be able to recover the costs from the feasibility funders[741]. We are concerned that Aurizon Network's 2014 DAU proposal (and submission on this issue) may not manage these costs effectively. As noted above, the effectiveness of the 2014 DAU is a consideration we have had regard to under section 138(2)(h). Failing to effectively manage costs does not balance Aurizon Network's interests with those of access seekers and the public (s. 138(2)(b) and (e)).

Amending the DAU

The way in which we consider it is appropriate to amend the 2014 DAU is set out in the CDD amended DAU. In this regard:

(a) We retain a view that 'reasonable' costs allows for some discretion in recovering such costs, while excluding cases where costs are clearly and blatantly unreasonable. Audits should be able to assess whether the costs have been reasonably incurred given the SFA.

(b) In regard to the option for any study funder to terminate a SFA, we are of the view that should an individual study funder terminate, the remaining parties would need to meet to discuss the options for continuation of funding and the ongoing viability of the study. While the ability to terminate would seem to be not in the interests of the remaining access seekers, a restriction on any one party being able to terminate may actually discourage investment and therefore be inconsistent with the object (s. 69E) of the QCA Act.

(c) We responded to issues raised by Aurizon Network in regard to definitions of the different study levels in section 12.3.5 above. We introduced some minor clarifications of the definition of feasibility study for the consolidated draft decision to allow for pre-feasibility options to be considered. However, we consider that the definition of a feasibility study is not fundamentally flawed as we would expect that expansion options would be identified at pre-feasibility stages for input to a feasibility study.

Overall, our proposed amendments address our view that study scope and deliverables need to be comprehensive and clearly defined, and that processes for step-in rights and termination

[741] Aurizon Network, sub. 82: 176.

arrangements need to promote timeliness and confidence in decision-making, and minimise disputes. As discussed, this ensures the 2014 DAU arrangements are effective and promote the objectives of the QCA Act.

We consider that for these reasons, our proposed amendments are in the interests of access holders, access seekers, train operators, relevant supply chain participants and prospective third party financers, as well as align with Aurizon Network's legitimate business interests (s. 138(2)(b), (e) and (h) of the QCA Act.

Consolidated draft decision 12.8

(1) After considering Aurizon Network's 2014 DAU proposal in respect of study funding arrangements in the expansion process, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is set out in our CDD amended DAU, including to:

- **(a) include a clear, comprehensive and precise definition of study scope and deliverables for concept, pre-feasibility and feasibility studies**
- **(b) enable step-in rights to be activated by access holders, access seekers or study funders if Aurizon Network delays execution of a SFA or release of a final report.**
  - **(i) SFA rights to audit study costs to confirm Aurizon Network has efficiently managed the costs of each study process**
  - **(ii) SFA rights to include termination clauses with the obligation on Aurizon Network to mitigate damages.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

I
Identifying study funders

Summary of the initial draft decision

We considered in our initial draft decision that the 2014 DAU must apply principles of objectivity transparency and accountability in the identification of study funders to fund a study process.

In particular, we considered decisions regarding provisional capacity allocation can have implications for competing mine projects. We were of the view that Aurizon Network should not be left with discretion to effectively choose between competing mine projects by reference to its own view on the maximisation of the allocation of CQCN capacity.

In the initial draft decision we amended the information requirements and allocation rules with the aim of removing Aurizon Network's discretion in the selection of study funders. We considered that our proposed allocation principles are sufficient to determine the eligibility of study funders. In the event that the allocation principles do not resolve study funding eligibility then the matter should be referred to us, with all parties given an opportunity to make a submission on their eligibility rights to fund a study.

We were of the view in the initial draft decision that an objective set of information requirements and allocation criteria is in the interests of access holders, access seekers, train

operators, relevant supply chain participants and aligns with the legitimate business interests of Aurizon Network (s. 138(2)(b), (d), (e) and (h) of the QCA Act). We also considered that a set of objective allocation criteria encourages efficient operation of the CQCN and provides potential upstream and downstream market entrants with greater assurance of equitable treatment. This meets the object of the third party access regime in the QCA Act (ss. 69E and 138(2)(a) of the QCA Act).

Overall, our initial draft decision was to refuse to approve Aurizon Network's 2014 DAU proposals regarding the allocation principles used to identify eligible study funders and to require the amendments as set out in the initial draft decision.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with the QCA's position in our initial draft decision in terms of it identifying eligible SFA funders with reference to objective allocation criteria.

Aurizon Network noted that the QCA had not made any amendment of substance to the principles governing the selection of potential pre-feasibility funders and, accordingly, it agreed with the QCA's position with respect to the allocation criteria for the pre-feasibility study.

However, it noted that the QCA had proposed material amendments to the more critical selection process for feasibility funders. Aurizon Network said that, where there is insufficient capacity to satisfy access seekers feasibility funders should be chosen on the basis of, among other things, the maximisation of the allocation of capacity and the maximisation of the duration of the expected access needs. Aurizon Network remained of the view that these two criteria are important in order to promote the economically efficient operation, use of, and investment in the CQCN in accordance with section 69E of the QCA Act. Aurizon Network cited a number of examples in support of its position.

Aurizon Network submitted that it was unreasonable for the QCA to imply that the two maximisation criteria that it has required to be deleted are not 'objective allocation criteria'. It further considered that these criteria are no less objective than other selection criteria that Aurizon Network proposed, which the QRC agreed with, and which the QCA did not amend.[742] Aurizon Network disagreed with the QCA's view that the retention of these two maximisation criteria would result in it having 'unfettered discretion', noting that the ability for a potential feasibility funder to refer a dispute is a fetter on Aurizon Network's discretion.[743]

The QRC supported the proposed criteria for selecting pre-feasibility funders, as potential funders who are not at an advanced stage of their project should not be precluded from providing funding.[744]

QCA analysis and consolidated draft decision

After having regard to the factors listed in section 138(2) of the QCA Act and reviewing submissions received on the initial draft decision, we refuse to approve Aurizon Network's proposals in respect of the allocation principles used to identify eligible study funders.

We note broad support for the proposed criteria for selecting pre-feasibility funders.

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[742] Namely, Aurizon Network's assessment of whether the potential feasibility funder's mine development is credible and whether the potential feasibility funder is diligently developing its mine in accordance with that program.

[743] Aurizon Network, 2014 DAU, sub. 82: 166–167.

[744] QRC, 2014 DAU, sub. 84: 73.

Aurizon Network's criteria, although relevant to allocating scarce capacity as set out in the 2014 DAU, would enable Aurizon Network to unfairly differentiate between access seekers. For example, Aurizon Network could use the additional criteria to unreasonably choose between competing mine projects or to favour a related entity. This potentially outweighs the benefits that may be gained by using such criteria. Accordingly, in light of the factors in section 138(2), we did not consider Aurizon Network's criteria appropriate.

We considered that a set of objective allocation criteria encourages efficient operation of the CQCN and provides potential upstream and downstream market entrants with greater assurance of equitable treatment. This meets the object of the third party access regime in the QCA Act (ss. 69E and 138(2)(a) of the QCA Act).

The way in which we consider it is appropriate to amend the 2014 DAU is set out in our CDD amended DAU. Our amendments reflect our initial draft decision as well as our responses to stakeholder comments. We consider the amendments are in the interests of access holders, access seekers, train operators, relevant supply chain participants and addresses the legitimate business interests of Aurizon Network (s. 138(2)(b), (d), (e) and (h) of the QCA Act).

Consolidated draft decision 12.9

(1) **After considering Aurizon Network's 2014 DAU proposal in respect of the allocation principles used to identify eligible study funders our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is set out in our CDD amended DAU:**

- **(a) Aurizon Network to identify eligible SFA funders with reference to objective allocation criteria.**
- **(b) The QCA dispute mechanism in Part 11 to be available for the querying of the application of allocation rules for determining eligible SFA funders.**

(3) **We consider it appropriate to make this consolidated draft decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

12.5 Funding an expansion and pre-approval

12.5.1 Aurizon Network's proposal

Aurizon Network has first right to fund an expansion project at the regulated rate of return. Where Aurizon Network decides not to fund on this basis, or is only willing to do so subject to commercial terms, then access seekers and customers are entitled to fund the cost of an expansion directly via user funding. If user funding is adopted, funding costs are allocated to each customer in proportion to the capacity sought (cls. 8.2.1(a)–(b), 8.8 of the 2014 DAU).

Under the 2014 DAU, Aurizon Network must notify access seekers and customers that it is willing to fund the expansion project at the regulated rate of return within 40 business days of a SFA becoming unconditional. Such a notice imposes an obligation on Aurizon Network to fund the relevant expansion project and is enforceable by the QCA. In the absence of a funding notice, Aurizon Network is taken to require commercial terms or user funding in order to construct or permit the construction of the expansion project.

This process does not preclude Aurizon Network from subsequently offering to fund the project at the regulated rate of return and neither does it prevent an access seeker or customer from exercising its right to fund the project (cl. 8.8(g) of the 2014 DAU).

Funding users are required to provide Aurizon Network with written notice of their intention to fund an expansion project. Upon receipt of this notice Aurizon Network will commence negotiations on a funding agreement, with any disputes being determined through a binding QCA dispute resolution process. A funding agreement must be in the form of the SUFA unless otherwise agreed by Aurizon Network and funding users (cl. 8.9.1 of the 2014 DAU).

The 2014 DAU provides that failure of Aurizon Network and funding users to negotiate a SUFA within 60 business days triggers a review of the SUFA documents. Aurizon Network will consult with industry stakeholders based on a set of principles developed by Aurizon Network. Following industry consultation, Aurizon Network will submit to the QCA on whether any SUFA amendments are required to improve the workability of the SUFA (cl. 8.9.9 of the 2014 DAU).

Aurizon Network and funding users will have access to the regulatory pre-approval of scope process to provide regulatory certainty on the inclusion of the expansion asset in the RAB. To trigger the process, funding users must request Aurizon Network to undertake the pre-approval process and funding users can lodge submissions in support of the application (cls 8.9.6 and 8.9.7 of the 2014 DAU).

Further, given an expansion may be funded by Aurizon Network and/or access seekers/customers, Aurizon Network is obliged to negotiate with all parties to an expansion on a non-discriminatory basis (cl. 8.2.1 of the 2014 DAU).

The QRC supported the funding provisions in the 2014 DAU pending the inclusion of any outcome from the UT3 SUFA DAAU. Anglo American said that where Aurizon Network is obliged to fund an expansion project, it should first negotiate with the project's feasibility and pre-feasibility funders before any new access seekers.[745] Asciano submitted that where an expansion is not fully funded and is not asset replacement or a shortfall capacity expansion, Aurizon Network should fund the expansion where the gap in funding is less than $400 million.[746]

The following sections deal with our initial draft decision in respect of:

- voluntary funding obligation
- efficient investment, users' and financiers' needs
- the scope of participation.

12.5.2 Voluntary funding obligation

Summary of the initial draft decision

Aurizon Network has not included a funding obligation in the 2014 DAU. Although stakeholders have expressed concern regarding the lack of a mandatory funding obligation, we concluded that a preferable outcome would be voluntary funding by Aurizon Network. This would be welcomed by stakeholders and would provide a signal of Aurizon Network's commitment to work collaboratively to promote the efficient investment in, and use of, the CQCN coal supply chain.

[745] Anglo American 2014 DAU Part 8(A), sub. 10: 35.
[746] Anglo American 2014 DAU Part 8(A), sub. 10: 35.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with the QCA's initial draft decision that it should make a voluntary funding commitment and queried the basis for the QCA's refusal to accept the 2014 DAU due to Aurizon Network's omission of a voluntary funding commitment.

Aurizon Network considered that it is appropriate that the QCA Act does not allow imposition of such an obligation as it considered that it is unreasonable to require any commercial enterprise to be prepared to make an investment regardless of its business case or the state of its finances. It submitted that it should be able to consider each investment opportunity on its merits when appropriate studies have been completed and should not be required to volunteer a funding obligation for projects of unknown size, timing and circumstances. It also noted that the DAU provides for an expansion of its network when it has chosen not to invest, so that expansion of the CQCR and wider supply chain would not be blocked.[747]

There was general support from other stakeholders for a funding obligation from Aurizon Network (see table below).

Table 49 Stakeholder views on need for a voluntary funding obligation

Submission	*Issue*
QRC	A funding obligation is necessary as SUFA will not be suitable for all projects.[748]
Asciano	Lack of funding obligation disadvantages smaller access seekers as they will require smaller access rights which may not meet initial demand requirements of an expansion project to commence, resulting in delays. While acknowledging the need for a QCA Act change, Asciano considered that this issue should be addressed.[749]
Anglo American	Until a SUFA model is tested and workable, Anglo American does not support removal of regulation of expansions from the access undertaking. Even then, there should be some form of expansion principles included for those scenarios that do not fit the SUFA model or which require a regulated outcome. A funding obligation is essential to ensuring that delivery of contracted capacity through the CQCN continues to improve. To ensure Aurizon Network does not hold up expansion of the CQCN it should be required to expand in certain specific and controlled situations, all of which were considered appropriate under UT3 and have proved an invaluable alternative to the ongoing lack of agreement on a workable SUFA.[750]

QCA analysis

We note general stakeholder agreement that a voluntary funding obligation would be of benefit to the industry. We also note that Aurizon Network provided such a voluntary obligation as part of UT3.

In our initial draft decision, we acknowledged that the QCA Act would need to be amended to facilitate our preferred position. We acknowledge that we may not have the power to require Aurizon Network to provide a voluntary funding obligation, and this was the reason that we made a recommendation in this respect rather than a decision. It therefore remains a matter at Aurizon Network's discretion and we have removed the initial draft decision.

[747] Aurizon Network, 204 DAU, sub. 82: 67–168.
[748] QRC, 2014 DAU, sub. 84: 76.
[749] Asciano, 2014 DAU, sub. 76: 20.
[750] Anglo American, 2014 DAU, sub. 95: 33.

12.5.3 Efficient investment, users' and financiers' needs, and scope for participation

Our decision dealt with the following:

- application of the expansion process
- application of SUFA
- SUFA and pre-approval
- SUFA and small/medium-sized expansions.

Application of the expansion process

Summary of the initial draft decision

Section 118 of the QCA Act requires Aurizon Network to give effect to its obligation to provide sufficient certainty and clarity around how expansions to the network can be implemented.

Our view in the initial draft decision was that this requires a robust and accountable investment stage-gate process to underpin all expansions to the CQCN. Unlike Aurizon Network's 2014 DAU proposals, this would include all Aurizon Network funded expansions. As Aurizon Network's access holders ultimately cover the cost of all CQCN expansions via access charges, it is not unreasonable for them to be assured that all expansions funded by Aurizon Network are subjected to the same investment stage-gate process as expansions funded by user funders.

We considered that this appropriately balanced the legitimate business interests of Aurizon Network with interests of access holders, access seekers, train operators and relevant supply chain participants (s. 138(2)(b), (e) and (h) of the QCA Act).

Overall our initial draft decision was to refuse to approve Aurizon Network's proposals in the 2014 DAU regarding the application of the expansion process and to require the amendments as set out in the initial draft decision.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with the QCA's position, subject to conditions.[751] Aurizon Network said that requiring them to extend or permit the extension of the CQCN is acceptable on the condition that this obligation is subject to the protection of its legitimate business interests.

Aurizon Network accepted the initial draft decision that all Aurizon Network funded expansions should be required to go through the same investment stage-gate process as user funded expansion projects, subject to the following conditions:

- Aurizon Network's position on study timelines/output requirements, as set out in its response to initial draft decision 12.4 (see Section 12.3.3 of this consolidated draft decision) is accepted.
- The scope of Part 8 is confined to expansions with the primary purpose of the creation of incremental below-rail capacity on any mainline, branch line or spur line, and does not extend to projects that have the primary purpose of replacing life-expired assets or obtaining better operational outcomes.

Aurizon Network considered that this type of expenditure is not of a nature for which user funding could apply, and the level of studies undertaken and governance processes for that expenditure are matters solely for Aurizon Network and should not be prescribed by UT4. It

[751] Aurizon Network, 2014 DAU, sub. 82: 168.

noted that, should it elect to commit to any such project, it would be taking the regulatory risk of inclusion of the associated costs in the RAB.

QCA analysis and consolidated draft decision

After having regard to the factors listed in section 138(2) of the QCA Act and reviewing submissions received on the initial draft decision, we refuse to approve Aurizon Network's proposals in respect of the application of the expansion process.

To avoid material unfair differentiation, expansions funded by Aurizon Network should be subjected to the same investment stage-gate process as expansions funded by user funders (s. 137(1A) of the QCA Act). Any variations could be expected to have an impact on the confidence of expansion funders, thereby affecting the efficient investment in the CQCN (s. 138(2)(a) of the QCA Act). For these reasons, we refuse to approve Aurizon Network's 2014 DAU provisions.

While we are to consider the 2014 DAU proposed by Aurizon Network, in respect of the issues raised by Aurizon Network following our initial draft decision, we note the following:

- As discussed above, we considered that Aurizon Network's proposed five-class system would add complexity and limits study levels to defined categories which may not suit study funders' requirements. Our preferred position is that the study levels should define a minimum standard and allow for upgrades, as distinct from Aurizon Network's class system which allows for reduction in standards. The existing stage gate process allows for flexibility built on minimum standards at each level, is consistent with engineering practice and is understood by the industry. For this reason, it is in the interests of access seekers while not detracting from the legitimate business interests of Aurizon Network (s. 138(2)(e) and (b) of the QCA Act).
- The definition of 'expansions' in Part 12 already excludes asset replacement and renewal expenditure. Expenditure to achieve better operational outcomes, with no increase in capacity, would also be excluded.

In response to Aurizon Network, we consider that an explicit requirement for the funding obligation to be subject to the legitimate business interests protection is not necessary, given that the undertaking has been developed having regard to Aurizon Network's interests under section 138(2)(b) of the QCA Act.

We refer to our initial draft decision recommendation, and conclude that our proposed amendments to the 2014 DAU are appropriate and in the interests of access holders, access seekers, train operators, relevant supply chain participants and aligns with the legitimate business interests of Aurizon Network (s. 138(2)(b), (e) and (h) of the QCA Act). It is also consistent with the object of the third party access regime in the QCA Act (ss. 69E and 138(2)(a) of the QCA Act).

Consolidated draft decision 12.10

(1) **After considering Aurizon Network's 2014 DAU proposal in respect of the application of the expansion process, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is set out in our CDD amended DAU:

(a) Aurizon Network should be required to extend or permit the extension of the CQCN.

(b) All Aurizon Network funded expansion projects should be required to go through the same investment stage-gate process as user funded expansion projects.

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

Application of the SUFA

Summary of the initial draft decision

A workable SUFA arrangement provides an alternative financing option to Aurizon Network's financing proposal for any applicable expansion. A credible choice between financing packages means the pricing of expansions provides less opportunity for monopoly behaviour. This assists in providing access to the CQCN on terms which reflect efficient cost, as envisaged by sections 168(A)(a) and 69E of the QCA Act.

Against this background, we considered that the SUFA documents being developed as part of the 2013 SUFA DAAU process provide a 'stand-alone' suite of legal documents that can be included in the 2014 DAU.[752] This in itself, however, does not create a credible, workable and bankable SUFA framework. To achieve that requires, as a minimum, the expansion process to operate effectively, providing timely study outputs of the quality needed to attract third party financing.

The effectiveness, or otherwise, of the SUFA can only be realised when it is practically tested—the actual use of the SUFA framework and a functioning expansion process may reveal areas that require further amendments to the SUFA framework and process.

Given this, we included provisions in our initial draft decision that allow Aurizon Network and stakeholders to return the SUFA structure back to us for further review and refinement.

We considered that this appropriately balances the interests of access holders, access seekers, train operators and prospective third party financiers with the legitimate business interests of Aurizon Network (s. 138(2)(b), (e) and (h) of the QCA Act).

Overall our initial draft decision was to refuse to accept Aurizon Network's proposals in the 2014 DAU regarding the application of the SUFA framework and to require the amendments as set out in the initial draft decision.

[752] For the avoidance of doubt the SUFA framework does not prohibit the participation of train operators as a funder.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with the QCA's initial draft decision to replace the SUFA agreements included in the 2014 DAU by those applicable to the 2013 SUFA DAAU process, subject to minor changes to align with UT4. Asciano supported the initial draft decision requirement for Aurizon Network to apply the suite of approved SUFA agreements in the access undertaking.[753]

Aurizon Network disagreed, however, with the inclusion of two additional triggers (cl. 8.8.4(a) of the IDD amended DAU). Aurizon Network's view was that the triggers agreed with the QRC and included in the 2014 DAU are sufficient and should not be broadened. It noted that this initial draft decision has MAR implications as any review of SUFA will entail substantial costs.[754] In respect of the two additional triggers:

- a general QCA provision for review of the SUFA model—Aurizon Network considered that this is an unreasonable requirement as it would allow the QCA to reopen a highly complex template transaction at any time for any reason and at an unknown cost.
- where the ATO requires amendments to SUFA, or indicates matters that should be amended, in order to obtain a desirable administratively binding advice—Aurizon Network considered that it is unworkable in its current form. It noted that a detailed review process would be required in this event, and that the QCA has provided no guidance as to how such a process should be managed to avoid unintended consequences, such as causing commercial changes that are inconsistent with section 138(2) of the QCA Act or changes to the template infrastructure lease from the State infrastructure lessors that are unacceptable to them. Aurizon Network stated that consideration should be given to the inclusion in UT4 of similar guidance to that provided in Schedule J of the 2010 AU, which gave clear guidance about the structuring constraints inherent in a SUFA transaction.[755]

The QRC was also broadly supportive of the QCA's proposed amendments for the QCA's review of SUFA (cl. 8.9.9 of the 2014 DAU, now cl. 8.8.4 of the CDD amended DAU), and approved the QCA's ability to develop amendments to SUFA to improve its workability in particular circumstances.[756]

QCA analysis and consolidated draft decision

After having regard to the factors listed in section 138(2) of the QCA Act and reviewing submissions received on the initial draft decision, we refuse to approve Aurizon Network's proposals in respect of the application of the SUFA framework.

In respect of the timing of the QCA's consolidated draft decision on SUFA, we note that:

- the 2013 SUFA DAAU raises a number of complex commercial, legal and tax-related issues. We have engaged in an extensive consultation with stakeholders, including publishing a position paper and initial draft decision for stakeholder comment
- we released two SUFA working papers on 10 August 2015 for stakeholder comment by 18 September 2015. The papers provided a stylised representation of how SUFA rents are determined and flow amongst parties under different hypothetical scenarios

[753] Asciano, 2014 DAU, sub. 76: 20.
[754] Aurizon Network, 2014 DAU, sub. 82: 34.
[755] Aurizon Network, 2014 DAU, sub. 82: 168–169.
[756] QRC, 2014 DAU, sub. 82: 76

- our stakeholder notice of 27 August 2015 advised the consolidated draft decision on the SUFA will be released after the 2014 DAU consolidated draft decision.

In deferring our consolidated draft decision on SUFA, we considered that the 2014 DAU consolidated draft decision and the new access undertaking should take priority over making a consolidated draft decision on SUFA. We recognised there is a need to make a comprehensive consolidated draft decision on SUFA that takes into account the process to date.

Consistent with the above, and as the 2010 AU is due to expire on 29 February 2016, there is a need to recognise that a consolidated draft decision on SUFA may occur under the new access undertaking (once approved). Allowing for this possibility reflects our view of the appropriate prioritisation and sequencing of our work.

Aurizon Network's proposed process for the SUFA framework was not appropriate as it did not include an acceptable and effective process for addressing shortcomings in the SUFA as they arise, putting the interests of affected parties at risk (s. 138(2)(e) and (h) of the QCA Act

While we are to consider the 2014 DAU, in response to Aurizon Network's comments on the two additional 'triggers' proposed in our amendments to the 2014 DAU:

- The option should remain for the QCA to request a review of SUFA once it has been practically tested. If the framework proposed has flaws, it should be revisited and corrected, this amendment is in the interests of Aurizon Network and stakeholders. A review would only trigger if it was justified in terms of benefits as compared to the costs. The ongoing workability and credibility of the SUFA process is an issue that is relevant to our consideration of whether to approve the 2014 DAU and therefore within the QCA's mandate (s. 138(2)(h) of the QCA Act).
- If the ATO required amendments to SUFA, such amendments would be difficult to avoid, and would be in the interests of all parties. If the ATO changes are minimal, there would be minimal cost and effort to change the documents. If the changes required are substantial, the framework may need revision or, even may need to be abandoned.

We refer to our initial draft decision, and conclude that our proposed process for Aurizon Network's DAU to be amended over time is appropriate as it is a cost effective way of ensuring that SUFA is workable, bankable and credible. This is in the interests of access holders, access seekers, train operators, and any relevant supply chain participants who may seek to undertake their own funding. By providing an effective user funding arrangement, and a process to keep it effective, we consider that there is a balance between the interests of user funders and the legitimate business interests of Aurizon Network (s. 138(2)(b), (e) and (h) of the QCA Act).

Consolidated draft decision 12.11

(1) After considering Aurizon Network's 2014 DAU proposal in respect of the application of the SUFA framework, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is set out in our CDD amended DAU:

- **(a) Replace the suite of SUFA agreements included in the 2014 DAU by those applicable to the 2013 SUFA DAAU process.**
- **(b) Include a QCA review process to amend the SUFA structure over time should specific concerns be raised with respect to its credibility, workability and bankability (section 8.8.4 of the CDD amended DAU).**

(3) **We consider it appropriate to make this consolidated draft decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

SUFA and regulatory pre-approval

Summary of the initial draft decision

In addition to a credible, workable and bankable SUFA framework and an effective expansion process, prospective funders of a CQCN expansion project require a reasonable degree of certainty regarding the likely range of their capital funding exposure and the regulatory return achievable over the life of the new assets.

Our initial draft decision considered that Aurizon Network and SUFA funders should have the benefit of accessing the regulatory pre-approval processes contained in Schedule E. Regulatory pre-approval can only be sought after receipt of the feasibility study report for the proposed expansion (whether a single project for a small increment of capacity or a package of expansion projects generating a large increment of capacity).

This issue was dealt with in Chapter 14 of the initial draft decision and included the regulatory pre-approval process for SUFA funders within our mark-up to Schedule E of the 2014 DAU. We therefore removed the regulatory pre-approval process from Part 8 of the 2014 DAU.

SUFA and small/medium sized expansions

The potential transaction costs involved with a SUFA transaction may mean that it can only be cost effective to use for large-scale expansions at least while the SUFA framework is being tested. Given this, SUFA's competitive financing benefits may not be available for small/medium sized expansions and there is no Aurizon Network funding obligation to cover these projects. From this perspective, Aurizon Network appears to have a monopoly position in the financing/pricing of expansion projects of this scale.

In part, we considered the removal of commercial terms from Part 8 of the 2014 DAU will partly alleviate this risk. However, in the absence of a voluntary funding obligation by Aurizon Network, the risk remains. In our initial draft decision we noted that this is a further reason why Aurizon Network providing a genuine voluntary funding obligation is beneficial to the CQCN coal supply chain. It would represent a tangible action on Aurizon Network's behalf to circumvent its own monopoly power, signalling a willingness to work with the CQCN coal supply chain for its collective economic benefit.

In the absence of a voluntary funding commitment we considered it appropriate for Aurizon Network to develop a range of tax efficient financing arrangements for user and third party financing of small/medium-sized expansions. Further, we noted that we will monitor financing developments with regard to small/medium rail expansions.

We considered that this appropriately balances the interests of access holders, access seekers and train operators with the legitimate business interests of Aurizon Network (s. 138(2)(b) (e) and (h) of the QCA Act).

Overall, our initial draft decision was to require that Aurizon Network include in the 2014 DAU a commitment to develop a range of tax efficient financing arrangements for user and third party financing for small/medium sized expansions in the CQCN.

Stakeholders' comments on the initial draft decision

Aurizon Network is supportive of tax law reform that would facilitate a simpler user funding outcome, but did not consider it appropriate for UT4 to impose obligations on it in respect of seeking a change at law. Aurizon Network's reasons were:[757]

- the current trust-based model was the only suitable structuring option identified during a rigorous process of investigating user funding options and developing a template transaction. Given this, it considered that there is little merit in continuing this work
- in response to comments that SUFA is too complex for lower-value transactions, it noted that SUFA was not intended to be complex but rather was the only structure identified that effectively manages the various matters. Any simpler structure can be considered in a future regulatory process
- the inclusion of this requirement would commit Aurizon Network and its stakeholders to making significant expenditure in pursuit of an outcome that has not been identified during a rigorous transaction development process. Given the likelihood of expansion projects occurring over the short to medium term, it considered that there is not a sound business case for this expenditure and, in the absence of any suggested workable alternative, this requirement is unreasonable and unwarranted.

Aurizon Network said that the initial draft decision has MAR implications as exploring a new suite of options requires substantial resources and cost. Aurizon Network did not quantify this cost.[758]

QRC supported the QCA's processes for seeking binding advice from the ATO.[759]

QCA analysis

After having regard to the factors listed in section 138(2) of the QCA Act and the submissions received, we refuse to approve Aurizon Network's proposals in respect of tax efficient financing options to be made available to access seekers and third party financiers for small/medium expansion projects.

The reason for refusal is that Aurizon Network's DAU does not provide an appropriate regulatory pre-approval process, after receipt of the feasibility study report for the proposed expansion. It also does not provide for tax efficient financing options for small and medium funders. Aurizon Network's approach in limiting the scope for competitive financing benefits,

[757] Aurizon Network, 2014 DAU, sub. 82: 169–170.
[758] Aurizon Network, 2014 DAU, sub. 82: 34.
[759] QRC, sub. 84: 76.

could unfairly differentiate between access seekers and could act as a disincentive to invest in the coal sector, which is contrary to objective of sections 138(2)(a) and (e), and section 137(1A) of the QCA Act.

The 2014 DAU did not provide sufficient certainty of tax treatment, and therefore did not appropriately protect the interests of access seekers and SUFA funders. A positive view from the ATO on the SUFA framework is a key aspect to ensuring the processes approved are workable, and this is a factor we have given weight to when considering whether to approve Aurizon Network's 2014 DAU.

Amending the DAU

We refer to our initial draft decision, adopt the amendments proposed in that decision and note the following.

Our IDD amended DAU required Aurizon Network to apply to the ATO for binding advice in regard to SUFA (cl. 8.8.3(b) of the IDD amended DAU). We also note this aligns with Aurizon Network's view in response to our 2013 SUFA DAAU position paper where it was prepared to seek, but not obtain an ABA.[760] In our initial draft decision on Aurizon Network's 2013 SUFA DAAU, we welcomed Aurizon Network and the QRC agreeing to seek an ABA on the final set of SUFA documents, noting that an ABA may not be able to be obtained. Of all the parties involved, we consider that Aurizon Network is best placed to seek this advice and should do so in the broader interests of promoting efficient investment in the CQCN (s. 69E object of the QCA Act).

In our view, as expressed in our initial draft decision on Aurizon Network's 2013 SUFA DAAU, the prudent and efficient costs of seeking such binding tax advice would be considered for inclusion in Aurizon Network's operating costs.

We also consider that amendments to the 2014 DAU proposing that Aurizon Network pursue an ABA is in line with the legitimate business interests of Aurizon Network (s. 138(2)(b) of the QCA Act)

Our proposed amendments address the interests of access holders, access seekers, and train operators and the legitimate business interests of Aurizon Network (s. 138(2)(b), (e) and (h) of the QCA Act). It is also particularly relevant in respect of encouraging efficient investment in the CQCN.

[760] QCA draft decision: Aurizon Network's 2013 SUFA DAAU, p. 77.

Consolidated draft decision 12.12

(1) After considering Aurizon Network's 2014 DAU, we consider it is appropriate that Aurizon Network amend its draft access undertaking to commit to developing a suite of tax-efficient financing options to be made available to access seekers and thirdparty financiers for small/medium-size expansion projects, as set out in our CDD amended DAU.

(2) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

12.6 Capacity commitments and contractual entitlements

12.6.1 Aurizon Network's proposal

Access rights for capacity created from an expansion are subject to a capacity review following the commissioning of an expansion. The capacity review, to be conducted within six months of commissioning, will identify the change in capacity arising as a result of the expansion. The outcome of this review will determine the translation of provisional access rights into contracted access rights (cl. 8.10 of the 2014 DAU).

Aurizon Network's 2014 DAU sets out how it will manage any optimisation risk[761] and capacity shortfall arising out of a commissioned expansion project. The regulatory principles underpinning the treatment of capacity shortfall from a commissioned expansion project are as follows:

- **Scenario 1**—expansion project funded by Aurizon Network at the regulatory rate of return (clause 8.10.2 (a)–(c) of the 2014 DAU:
    - (i) Where the expansion scope of works is pre-approved by the QCA, Aurizon Network is obliged to undertake a review to determine the reasoning why the scope of work failed to deliver the required capacity:
        - (1) If the approved scope of work was in accordance with the original scope recommended by Aurizon Network then Aurizon Network is obliged to fund the shortfall expansion following another pre-approval process.
        - (2) If the approved scope of work was amended by customers and the QCA, then Aurizon Network will identify the difference between the capacity shortfall that would have existed with its original scope compared to the revised scope. Aurizon Network is only obliged to fund the shortfall expansion to the extent a shortfall would have arisen from its original scope.
    - (ii) Where the scope of work is not pre-approved by the QCA, Aurizon Network has no obligation to fund shortfall capacity in the absence of user funding.

[761] Whilst Aurizon Network include a reference to optimisation risk in Part 8.10.2, the relevant section deals only with capacity shortfalls. We have maintained the reference in Aurizon Network's proposal to be consistent with its own sections.

- **Scenario 2**—the expansion project is funded by commercial terms or user funding (cl. 8.10.2(v)–(vii) of the 2014 DAU):

    (i) If funded by Aurizon Network and the shortfall is due to Aurizon Network[762], then Aurizon Network will fund the cost of any shortfall expansion.

    (ii) If partly funded by Aurizon Network, then Aurizon Network will bear the proportion of the shortfall that it funded.

    (iii) If partly funded by users, then funding users will bear the proportion of the shortfall they funded.

    (iv) If fully funded by users then funding users will bear the cost of a shortfall expansion.

Conditional access holders affected by the capacity shortfall will be given a priority allocation of capacity in a subsequent expansion project based on the same terms and conditions of the executed conditional access agreement (cl. 8.10(v) of the 2014 DAU).

In initial submissions, the QRC supported the capacity contracting provisions in the 2014 DAU. However, Anglo American said that changes to the scope should only be made with unanimous agreement of all funding customers and Aurizon Network must fund any capacity shortfall where it is the result of Aurizon Network Cause.[763]

12.6.2 Summary of our initial draft decision

Our view in the initial draft decision was that Aurizon Network's 2014 DAU expansion process proposals shifted the risks of investment appraisal and project financing for CQCN expansion to access seekers and prospective third party funders. Our view was that this meant the expansion process and SUFA framework must meet the needs of these parties.

As discussed previously we considered study outputs pivotal to this. They are the currency of the expansion process and have to be timely, of a high standard and cover the various expansion options available and permutations associated with these. Further, in its role as principal study consultant and study manager, Aurizon Network is responsible for delivering study outputs that meet these requirements.

Given the nature of the study outputs required, we considered it appropriate to provide a capacity guarantee with respect to an expansion and considered this a key element for pre-approval. In our view the core issue with respect to this relates to the development of a practical way of dealing with the uncertainty around a capital project's scope and cost, how this translates to the expected capacity it will deliver, and how this relates to the desired/contracted level of capacity that stakeholders may want delivered.

Study outputs allow an expansion to be considered as a set of various scopes that will deliver an expected capacity at different cost and reliability levels. These scopes represent a set of choices. The trade-off between specific project scopes, the reliability that scope will deliver, and the cost associated with that scope/reliability can be made explicit and transparent at the feasibility stage of the expansion process via the study outputs.

This allows those parties considering funding the expansion to make informed decisions regarding the expansion option they wish to take through to execution. The expected capacity

[762] Due to Aurizon Network default, negligent acts or omissions.
[763] Anglo American 2014 DAU, sub. 21: 5.

of the option chosen is guaranteed. Expected capacity depends on reliability which, in turn, is reflective of the scope and the cost of the expansion option chosen. An example of this is provided in Box 4.

The treatment of a capacity shortfall then becomes the joint responsibility of Aurizon Network, access seekers and financiers, and is dependent on the expansion selected to be taken through to execution, as follows:

- Aurizon Network will fund a shortfall expansion where it is required to bring the expansion to the agreed level of reliability; this occurs when actual capacity delivered is less than the capacity guarantee.
- Access seekers and financiers will fund a shortfall expansion where they wish to bring the expansion to a higher level of reliability; this can occur if the reliability option chosen by them is not sufficient to meet the capacity contracted as a result of the expansion.

As a general principle, we considered that compression in the event of a capacity shortfall must be proportionally applied across all provisional access holders relative to funding contribution. This does not prevent provisional access holders from agreeing to a different compression principle in their access agreements. However, if amending the compression principle in a provisional access agreement adversely impacts on the rights of another provisional access holder, the consent of the adversely affected provisional access holder must be obtained.

We were of the view in our initial draft decision that this approach appropriately balances the interests of access seekers, prospective third party funders and the legitimate business interests of Aurizon Network (s. 138(2)(b), (e) and (h) of the QCA Act).

We also considered that the provision of a capacity guarantee from Aurizon Network aligned with sections 138(2)(a) and 69E of the QCA Act that requires we have regard to promoting the economically efficient operation, use of, and investment in the CQCN. It provides certainty that a particular level of capacity will be delivered for a defined scope/reliability/cost combination, whilst also requiring access seekers and third party funders to make an explicit choice with respect to reliability.

Box 4: Capacity reliability versus cost options example

The desired/contracted capacity for a project is 100 mtpa. A project scope designed to deliver 100 mtpa with a 100 per cent capacity guarantee will cost $500 million (Scope A). If, however, there is a reluctance to incur a cost of $500 million, there are potentially two alternative options that have been assessed:

(a) Scope B: has a 90% reliability of providing 100 mtpa and can be built at a reduced cost of $300 million. This translates to a capacity guarantee of 90 mtpa.

(b) Scope C: has a 75% reliability of providing 100 mtpa and can be built at a reduced cost of $200 million. This translates to a capacity guarantee of 75 mtpa.

This provides a 'menu' of infrastructure configurations comprising a set of scopes/costs/capacity reliability levels. This does not mean that contracted capacity will not be delivered; it simply means that for certain scopes the reliability of achieving contracted capacity varies to some degree. Potential funders will then be offered a set of choices by Aurizon Network. For example:

Scope/Capacity trade-off matrix

Scope	*Contracted capacity*	*Capacity guarantee*	*Cost*
Scope A	100 mtpa	100%	$500 million
Scope B	100 mtpa	90%	$300 million
Scope C	100 mtpa	75%	$200 million

We consider scope and capacity reliability options can be defined in the feasibility study. We expect each option to be accompanied by relevant cost build-up information, scope and justification for the expected capacity reliability outcome. An independent assessment of options can be obtained if deemed necessary.

Funding parties are free to select and/or negotiate on the options. Once the preferred option is determined, Aurizon Network will guarantee the capacity reliability threshold selected by funders, but not necessarily guarantee 100 per cent of contracted capacity.

In this way, potential funders can make explicit and transparent decisions regarding the value of capacity certainty relative to the potential scope/cost infrastructure combination on offer. This process will place a value on the level of capacity uncertainty funders are prepared to accept in executing both funding and access agreements.

Under these circumstances, we consider it equitable Aurizon Network guarantees the capacity reliability of the expansion scope chosen. The following outcomes with respect to the actual resulting capacity would apply:

Outcome	*Approach*
Actual capacity = capacity guarantee	The project has delivered as required–no further action by Aurizon Network required
Capacity guarantee < contracted capacity	Funders are required to rectify any capacity shortfall between the capacity guarantee and contracted capacity. Funding of the capacity shortfall is on same terms and conditions as the original funding and access agreements.
Actual capacity < capacity guarantee	Aurizon Network is required to rectify/compensate any capacity shortfall below the capacity guarantee at its cost.
Actual capacity > capacity guarantee	Funding users have first call on any capacity delivered by the expansion which results in above contracted capacity.

Overall, our initial draft decision was to refuse to approve Aurizon Network's proposals in the 2014 DAU regarding the capacity shortfall process associated with an expansion and to require the amendments as set out in the initial draft decision.

12.6.3 Stakeholders' comments on the initial draft decision

Aurizon Network agreed with some of the QCA's positions on capacity shortfall, but disagreed with others.[764] Stakeholder comments and our responses are summarised by topic below.

Obligations to fund expansions to overcome capacity shortfalls

Aurizon Network's comments

Aurizon Network said that it agreed that it will fund a shortfall expansion where it is required to bring the expansion to the agreed level of reliability subject to conditions about the cause and remedy of that shortfall. Aurizon Network agrees to volunteer to fund further expansions to overcome any Aurizon Network shortfall, subject to:

- such further expansions satisfying the requirements under section 8.2.1, and in particular section 8.2.1(c) of the form of UT4 in the 2014 DAU (including the 'legitimate business interest' protection as discussed above)
- the Aurizon Network shortfall and any scope required to overcome that shortfall have been agreed or, where they are determined through dispute resolution, the capacity review element of that resolution has taken place in accordance with the capacity review parameters as proposed by Aurizon Network's response to initial draft decision 12.4(c))
- where the Aurizon Network shortfall is less than the capacity shortfall, the affected access holders have elected to fund an expansion to overcome that shortfall
- the expansion to be funded by Aurizon Network is pre-approved
- the assets that overcome the Aurizon Network shortfall will be included in the same pool of assets in the applicable coal system as the assets of the expansion to which the Aurizon Network shortfall relates.

Where Aurizon Network is replaced as the party undertaking the study it will have limited input into the determination of scope. If replaced during the feasibility study, then proposal of scope made by Aurizon Network at the start of the feasibility study can be used to determine Aurizon Network's proposal for the purpose of determining any Aurizon Network shortfall. If Aurizon Network is replaced during the pre-feasibility study, then it has insufficient involvement in the study process to be held accountable for any capacity shortfall outcome. In these circumstances, Aurizon Network considers it should have no obligation to fund any capacity shortfall.

Aurizon Network said that the new section 8.9.4(a)(ii)(A) in the IDD amended DAU addresses situations where Aurizon Network fails to deliver the agreed, determined or approved scope of work for a SUFA project. Aurizon Network noted that it has a contractual obligation to deliver contracted scope of work under a SUFA construction agreement and therefore sees no need to deal with a default of a contractual obligation as an Undertaking matter.

Any funding by Aurizon Network to rectify an Aurizon Network shortfall must relate to a 'stand-alone' project that rectifies solely that Aurizon Network shortfall. It considered it is not possible for a single shortfall rectification project, which addresses Aurizon Network shortfall in addition

[764] Aurizon Network, 2014 DAU, sub. 82: 148; 170–173.

to either any other shortfall or a further expansion (or both) to be funded by both Aurizon Network and access seekers on a 'hybrid funding' basis as it is not willing to provide funding on the basis of the SUFA template documents. Aurizon Network has therefore proposed a range of changes to the undertaking to remove any hybrid funding obligations.[765]

QCA analysis

The basis for our refusal to approve Aurizon Network's 2014 DAU proposals in respect of managing a shortfall in capacity following an expansion is discussed below (see 'Conclusion').

In proposing the way in which the 2014 DAU should be amended, we generally accept the approach proposed by Aurizon Network in the 2014 DAU, with amendments to clarify that Aurizon Network should meet wholly or partly the cost of the shortfall attributable to Aurizon Network Cause, that is, where it is caused by negligent acts or omissions of Aurizon Network. We acknowledge the original drafting provided by Aurizon Network.

In response to issues raised in Aurizon Network's submission:

(a) We agree that Aurizon Network should not be held accountable for any capacity shortfall unless it was involved at the feasibility study stage. However, we note that Aurizon Network to the extent it is involved is able to dispute the result of a study. Then, an expert would be engaged to determine the appropriate scope.

(b) The new section 8.9.4(a)(ii)(A) in the CDD amended DAU addresses situations where the failure to deliver the agreed scope of work is not excused under SUFA or access conditions.

(c) In regard to the potential for hybrid funding obligations, we consider that SUFA is likely to be workable for third party funders but may not be so for Aurizon Network to co-fund, due to tax implications. To manage this, Aurizon Network could fund parts of the expansion infrastructure outside of the SUFA arrangement. The terms of the SUFA to be entered by the expansion funders may require amendment to ensure Aurizon Network is no worse off in its tax or accounting position than if expansion funders funded the entire expansion.

(d) We do not consider that the standalone cost approach would be appropriate, and may in fact not be in Aurizon Network's legitimate business interests. For example, a pro-rata split of the capital costs between Aurizon Network and other funders may be a lesser amount for Aurizon Network.

Access seekers' and financiers' obligations to fund expansions to overcome capacity shortfalls

Aurizon Network's comments

Aurizon Network agreed that access seekers and financiers will fund a shortfall expansion where it wishes to bring the expansion to a higher level of reliability.

It agreed with the position that affected access holders may choose to remain compressed or choose to fund further expansions to overcome the shortfall. However, it is unclear why financiers are included in this obligation as it is expected that their role is simply to fund the agreed scope. Affected access holders would arrange for any additional funding required and this may, but does not necessarily, require the involvement of the initial funders. Aurizon

[765] Aurizon Network, sub. 82: 171–172.

Network considered this a commercial matter to be decided by the access seekers prior to entry into a SUFA transaction and does not need to be prescribed in the undertaking.[766]

QCA analysis

The basis for our refusal to approve Aurizon Network's 2014 DAU proposals in respect of managing a shortfall in capacity following an expansion is discussed below (see 'Conclusion').

In proposing the way in which the 2014 DAU should be amended, we considered that if access seekers want greater reliability and the project resulted in a capacity shortfall, then the access seekers/financiers would be liable to pay. Our initial draft decision amendments to the 2014 DAU were consistent with this. However, we would expect that an adjustment to reflect reliability should be accommodated in the scope of works in the first instance, so that capacity shortfalls can be made more transparent. This approach is necessary to address the interests of access seekers and the legitimate business interests of Aurizon Network (s. 138(2)(b) and (e)).

We agree with Aurizon Network's comment that financiers would be engaged by access seekers on a commercial basis and need not be specifically obligated.

Capacity reliability and cost options

Aurizon Network's comments

Aurizon Network agreed that any capacity shortfall attributable to Aurizon Cause will be funded by Aurizon Network subject to conditions about the remedy of that shortfall.

Aurizon Network considered that the adoption of capacity options as proposed by the QCA should not be a part of the project study process within UT4. Aurizon Network said that its submission was framed on the basis that capacity options will not be considered for any type of study under the expansion process.[767] Aurizon Network's approach was that it should be obliged to deliver on the scope linked to the access seekers' scope choice, but does not volunteer to provide a capacity guarantee. There would need to be a single scope choice for all access seekers even though they may have different risk appetites.[768]

QCA analysis

We consider that scope choices provide an opportunity for access seekers to collectively weigh up the cost/risk trade-off to determine the option that best suits their needs. This is in our view a reasonable approach to take, that is considered to be consistent with the interests of access seekers and should also promote investment. Clearly, should access seekers choose an option that results in a shortfall that exceeds the shortfall that would have occurred under a scope proposed by Aurizon Network, the cost should be to the account of access seekers.

Compression to be effected under access agreements

Aurizon Network submitted that the funding proportion would not be an appropriate allocation of compression between access seekers - a proportion based on train path ratios would be more appropriate.

Aurizon Network acknowledged that the redrafted undertaking provides for allocation of compression on a 'pro-rated' basis by reference to train paths rather than funding contribution, and Aurizon Network agreed with this. However, it disagreed with compression being effected

[766] Aurizon Network, sub. 82: 172.
[767] Aurizon Network, sub. 82: 172.
[768] Aurizon Network, response to QCA's draft decision on the 2013 SUFA DAAU.

under the Undertaking and considered rather that it should be done under applicable access agreements. Documentation of compression within access agreements would give access seekers certainty over their compression risk at an earlier point in project lifecycle than would apply if compression were documented in the undertaking.

QCA analysis

The basis for our refusal to approve Aurizon Network's 2014 DAU proposals in respect of managing a shortfall in capacity following an expansion is discussed below (see the 'Conclusion').

In proposing the way in which the 2014 DAU should be amended, we considered that compression was on the basis of share of train services (cl. 8.9.5 of our IDD amended DAU).

In respect of the inclusion of compression in the 2014 DAU rather than access agreements, we consider that compression of capacity shares would generally occur after construction and before access agreements are finalised. Therefore, it is best located in the 2014 DAU and we propose amendments to that effect. This best promotes predictability and certainty in the expansion processes, which are issues that we have regard to in considering whether to approve the 2014 DAU.

Capacity priority for affected access seekers

Aurizon Network noted the intention of the 2014 DAU was that access seekers that have experienced compression would have a priority allocation of capacity in an existing or future process for the scoping and funding of a related expansion - that is, they could 'jump the queue' when Aurizon Network is selecting pre-feasibility or feasibility funders.

Aurizon Network did not intend that any provisional capacity allocation made to a feasibility funder should be reallocated to these parties. Further, it noted it did not intend it would be required to reallocate to these parties capacity currently under construction at the expense of other access seekers who have contingent rights to use that capacity upon its creation. These intentions had been agreed with the QRC and were reflected in the 2014 DAU.

QCA has restructured the capacity priority arrangement, now providing that Aurizon Network should give affected access holders a priority allocation of capacity arising out of an expansion.

Aurizon Network considered the capacity priority arrangement provisions should be clarified to establish that there is no requirements (or right) for it to reprioritise provisional capacity allocations or capacity contracted in respect of expansions under construction.[769]

QCA analysis

If the access holders choose to fund an expansion to address any shortfall that exceeds the Aurizon Cause shortfall, they should have priority over the available allocations. In that regard, the 2014 DAU gave Aurizon Network an element of discretion in respect of such priority allocations, which was unreasonable as it failed to address of the interests of access holders and other access seekers (s. 138(2)(h) (e) of the QCA Act).

In proposing the way in which the 2014 DAU should be amended our initial draft decision proposed that Aurizon Network give an affected access holder a priority allocation in an existing or future process for a related expansion. A similar provision was included as clause 8.10.2(e) (v)

[769] Aurizon Network sub. 82: 173.

in Aurizon Network's 2014 DAU, which said that Aurizon Network 'can' give a priority allocation of capacity in an existing or future process for the scoping and funding of a related expansion.

Other stakeholders' comments

In terms of capacity shortfalls, the QRC made the following comments: [770]

- It broadly supported the QCA's approach in clause 8.9.3 of the IDD amended DAU with respect to conditional access rights of access holders and considered it appropriate that the deemed access application contemplated in this clause be taken to be on the same terms as the previous access application made by that conditional access holder for those conditional access rights.
- It noted an overlap between clauses 8.9.3 and 8.9.5 and that these should be rationalised to remove ambiguity.
- In terms of funding a shortfall expansion, it considered that clause 8.9.4(b) should be deleted on the basis that the breadth of the clause potentially allows Aurizon Network to avoid its obligations in relation to the funding of a capacity shortfall.[771]

Asciano also noted that it had no major concerns with deletion of clause 8.9.4(b).[772]

QCA analysis

In proposing the way in which the 2014 DAU should be amended, we consider clause 8.9.4(b), which was previously included in our IDD amended DAU, should be deleted.

While there is some overlap between clause 8.9.3 and 8.9.5, we consider they deal with different issues and warrant separate treatment. Clause 8.9.3 covers the process in the event of a capacity shortfall while clause 8.9.5 sets out the basis for the reduction in conditional access rights. Accordingly, no change is proposed.

Conclusion

After having regard to the factors listed in section 138(2) of the QCA Act and reviewing submissions received on the initial draft decision, we refuse to approve Aurizon Network's proposals in respect of managing a shortfall in capacity following an expansion.

The reasons for refusal are that in our view, Aurizon Network's proposals are not consistent with the level of risks that access seekers are expected to bear under the project funding arrangements. A performance guarantee would be consistent with the interests of access seekers.

In proposing the way in which the 2014 DAU should be amended, we adopt the changes proposed in our initial draft decision. We consider it is also appropriate to make further amendments to the 2014 DAU to address the stakeholder comments discussed above. Our changes address the interests of access seekers, prospective third party funders, access holders and the legitimate business interests of Aurizon Network (s. 138(2)(b), (e) and (h) of the QCA Act).

[770] QRC, 2014 DAU, sub. 84: 78.
[771] The QCA asked for advice from stakeholders in its initial draft decision on whether this clause should be deleted.
[772] Asciano, 2014 DAU, sub. 76: 20.

Consolidated draft decision 12.13

(1) **After considering Aurizon Network's 2014 DAU proposal in respect to managing a shortfall in capacity following an expansion, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we consider it is appropriate that Aurizon Network amend its draft access undertaking is in the manner we have indicated in our CDD amended DAU, as follows:**

(a) Aurizon Network to provide access holders with an expansion capacity guarantee. Any capacity shortfall attributable to Aurizon Cause will be funded by Aurizon Network. A new section 8.9.4(a)(ii)(A) in the CDD amended DAU addresses situations where the failure to deliver the agreed scope of work is not excused under SUFA or access conditions.

(b) Compression of provisional access rights to be proportional according to train services unless otherwise agreed in access agreements.

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

12.7 Other issues

A number of issues have been raised by stakeholders in relation to the initial draft decision that are not addressed elsewhere. These issues cover:

- matters arising from the QCA's proposed amendments to the 2014 DAU
- study funding agreement issues.

12.7.1 Matters arising from the QCA's proposed amendments to the 2014 DAU

Aurizon Network and other stakeholders identified a number of issues arising from the QCA's initial draft decision and our proposed amendments to the 2014 DAU that are not specifically addressed above.

These comments, our responses, and our consideration of the factors in section 138(2) of the QCA Act, are detailed in the table below.

Overall, in relation to the 2014 DAU and the matters discussed in the table below, our consolidated draft decision is that these aspects of Aurizon Network's expansion arrangements did not appropriately achieve the object of promoting the economically efficient investment in the infrastructure. It also did not appropriately address the interest of access seekers or potential access seekers and Aurizon Network's interests (s. 138(2)(a) and (e)). Accordingly, we refuse to approve these aspects of Aurizon Network's expansion arrangements.

Table 50 Additional matters—Part 8

Clause (IDD amended DAU)	*Stakeholders' comments*	*QCA response*
8.2.1(e)	Aurizon Network considered that there should be no Undertaking obligation requiring it to replace assets, rather this should only be a contractual obligation under access agreements. [773]	This clause provides for it to be either under the access agreement or the undertaking. We consider that an obligation under the undertaking is reasonable, in order to maintain assets in a 'fit-for-purpose' state. We consider this to be in the interests of access holders who have made their own investments, and it is also consistent with the section 69E object of Part 5 of the QCA Act to promote the economically efficient operation of, use of and investment in significant infrastructure. Capital expenditure remains subject to prudency and efficiency review under Schedule E.
8.2.1(i)(ii)	Both the QRC[774] and Anglo American[775] supported the requirement that construction of expansions must be by Aurizon Network although noting there may be circumstances when a party other than Aurizon Network constructs the expansion, namely where step-in rights are triggered. Anglo American considered that this would mean Aurizon Network will be best placed to manage any construction risk.	Support for the initial draft decision position is noted.
section 8.3.1(a)(ii) and 8.2.6 Concept studies	Aurizon Network did not consider that any party should have the right to require it to perform a concept study that is not justified by a demand assessment. [776]	The clause requires that the concept study be consistent with capacity identified under a relevant demand assessment. Should a concept study be requested by any person with or without a demand assessment, Aurizon Network can require that person meet the costs. We consider this to be in the interests of access seekers while not affecting the legitimate business interests of Aurizon Network.
section 8.3.2(a) and 8.3.3(a))	Aurizon Network was concerned that: (a) certainty of cost recovery—it did not understand the basis on which the QCA decided that Aurizon Network should be required, on the basis of a notice of intention, to commence a study, incur material costs and assume the risk these costs will not be recovered. (b) imprecise study scope—Aurizon Network is not in a position to commence a pre-feasibility study or feasibility study until	Under these clauses, we note that: (a) the funder(s) must give notice they will fund the study and enter into a SFA, provided all conditions of the SFA are satisfied, including recovery of costs. Aurizon Network's legitimate business interests are in our view protected. (b) In clause 8.3.3(b)(iii), the potential scope should be established as part of the pre-feasibility study and prior

[773] Aurizon Network, 2014 DAU, sub. 82: 173–174.
[774] QRC, 2014 DAU, sub. 84: 71.
[775] Anglo American, 2014 DAU, sub. 95: 32.
[776] Aurizon Network, 2014 DAU, sub. 82: 175.

Clause (IDD amended DAU)	*Stakeholders' comments*	*QCA response*
	study-specific details are agreed (or determined). It was concerned that it could incur costs that are subsequently deemed to be unreasonable. (c) in line with good commercial practice, its obligation to commence a pre-feasibility or feasibility study should only arise once the applicable study funding agreement has been entered into and become unconditional.[777]	to the feasibility study. We consider this provides an appropriate level of assurance to Aurizon Network's legitimate business interests. (c) We agree with the appropriate drafting change.
8.4.2(b)(ii))	Aurizon Network did not agree that any costs incurred by Aurizon Network in funding a pre-feasibility study should not be included in the RAB except to the extent the associated expansion is subsequently developed. While Aurizon Network did not agree with this 'only if expansion occurs' condition, QRC agreed with the initial draft decision[778]. Aurizon Network should be able to recover the pre-feasibility study costs from the feasibility study funders in the same way any other funders of a pre-feasibility study could do (eg as in section 8.4.4(a)(ii)) [779].	Should Aurizon Network agree to fund the pre-feasibility study, this decision is taken at Aurizon Network's risk, and the cost, if it does not subsequently proceed, should not be socialised and passed through to other customers. Aurizon Network should manage the risk through appropriate guarantees. If the expansion proceeds, the cost can be included in the RAB. We consider this approach is in the interests of access holders and access seekers as it provides an incentive for Aurizon Network to investigate bona fide feasibility studies.
section 8.4.4(a))	Aurizon Network does not volunteer to assume the risks that arise from underwriting the funding shortfall in a study's funding that arises from a study funder's default. Aurizon Network proposed that any funding shortfall in these circumstances should be funded by the other study funders if they wish the study to continue. All study funders be required to provide a bank guarantee in accordance with the SFA form.[780]	Aurizon Network is best placed to manage this risk as it would potentially ultimately recover the cost from users. The risk can be managed if Aurizon Network seeks relevant guarantees from study funders. Clause 8.4.4(b) provides that if there is more than one funder, Aurizon Network is responsible for checking that bank guarantees are in place or that the funder has the ability to meet its obligations under the SFA.
section 8.5(i))	Aurizon Network disagreed with this provision, which places an obligation on a replacement feasibility funder to refund the exiting feasibility funder all costs that it had incurred on that feasibility study. It should only be costs associated with their particular access requirements. The unviable feasibility funder should not be protected in this way as it has failed a test	The reason for our initial draft decision approach was that a replacement funder would only consider taking over the obligations if it was satisfied with the scope of the exiting funder's arrangements. This approach provides an incentive for the exiting funder (or the remaining funders) to find a replacement. We consider this to be in the interests of access seekers and does not affect the

[777] Aurizon Network, 2014 DAU, sub. 82: 176.
[778] QRC, sub. 84: 73.
[779] Aurizon Network, 2014 DAU, sub. 82: 174.
[780] Aurizon Network, 2014 DAU, sub. 82: 176.

Clause (IDD amended DAU)	*Stakeholders' comments*	*QCA response*
	under section 8.5(d). It is in the interests of viable feasibility funders that Aurizon Network is not overly constrained in its ability to replace the unviable funder.[781] QRC supported the QCA's initial draft decision.[782]	legitimate business interests of Aurizon Network.
Provisional capacity allocation Clause 8.5(d)	Aurizon Network disagreed with the QCA's modifications of these provisions governing withdrawal of provisional capacity allocation. Aurizon Network said clause 8.5(d) weakens the trigger events and clause 8.5(e)(i) increases the show cause period. The most appropriate course of action for other feasibility funders where one funder is not expected to be able to use its capacity in future is the timely replacement of the funder concerned by another bona fide access seeker. The proposed changes benefit some access seekers, but are against the interests of others.[783] QRC supported the right for feasibility funders to assign their rights to a replacement funder.[784]	We do not consider that the trigger events are weakened, as the clause 8.5(d)(i) allows withdrawal if the access seeker 'ceases to satisfy all of the requirements'. This could mean for example, Aurizon Network could withdraw if only one of the requirements is not met. We consider this is still consistent with Aurizon Network's legitimate business interests. The show cause period extended to 20 days allows the access seeker more time to explain why Aurizon Network should not exercise withdrawal. We consider this provides a balance in the relative interests of Aurizon Network, the incumbent access seeker and the potential access seeker. An extension to 20 days still allows for timely replacement in the context of expansion timelines.
section 8.7.1(a)	Aurizon Network considered that, where Aurizon Network elects to fund an expansion without commercial terms (pursuant to section 8.7.1(c)(ii)), that election should prevail and access seekers should not have the option of funding. However, if Aurizon Network elects to offer to fund an expansion with commercial terms, access seekers should be free to investigate funding alternatives and adopt the best option as they see fit. Aurizon Network queried the statutory basis and considered the QCA's position constituted a proposed expropriation of Aurizon Network's intrinsic property rights without just compensation. It would contravene section 119(2) of the QCA Act. Aurizon Network would incur an opportunity loss because it is constrained from undertaking investment it is willing to make.[785]	Aurizon Network's submission reflects its 2014 DAU approach. We consider that access seekers should have the option to apply a SUFA if this provides the most economical result for them. This places competitive pressure on Aurizon Network. In regard to section 119(2) of the QCA Act, we note that this applies to access determinations.
section 8.7.1(a)	The redrafted undertaking requires it to agree to an access seeker funding its portion of an	We have made an appropriate drafting change.

[781] Aurizon Network, 2014 DAU, sub. 82: 175.
[782] QRC, sub. 84: 75.
[783] Aurizon Network, 2014 DAU, sub. 82: 174–175.
[784] QRC, sub. 84: 75.
[785] Aurizon Network, sub. 82: 177.

Clause (IDD amended DAU)	*Stakeholders' comments*	*QCA response*
	expansion's costs even if Aurizon Network is obliged to fund the expansion. It submitted that, if Aurizon Network is obliged to fund the expansion itself, it is inconsistent for it to be obliged to allow an access seeker to fund its portion of the cost.	
section 8.7.1(a)	Aurizon Network submitted that one access seeker electing to fund its portion of the expansion cost should be of no relevance unless the access seekers as a whole agree to fund 100% of that cost.[786]	We generally acknowledge Aurizon Network's concern, as the scenario relates effectively to a hybrid arrangement. The SUFA is not designed to deal with hybrid funding. Tax issues are a barrier to resolution of this in SUFA. At this stage, this issue cannot be resolved until SUFA is further developed.
Section 8.7.2 (b) and (c)	Aurizon Network said that the decision of whether to seek a pre-approval of an expansion should rest solely with Aurizon Network, where it funds that expansion, or the access seekers, where the expansion is to be user funded, if that party (or parties) wishes to do so[787] Aurizon Network submitted that there is no need for section 8.7.2(b) as section 8.7.2(c) provides the obligation on Aurizon Network to seek pre-approval when requested by an 'expansion funder'. It submitted that section 8.7.2(c) should be modified so that the pre-approval request submitted to Aurizon Network is only effective when submitted by, or on behalf of, all relevant access seekers.	We consider that whether or not an expansion is to be user-funded, Aurizon Network is the party best placed to seek pre-approval, following a written request from an expansion funder. We note drafting comments. An expansion funder is defined in our drafting to be an access seeker, access holder or user. We note that only Aurizon Network can seek pre-approval, not access seekers.
8.7.2 Schedule E clause 2.1(d)	Aurizon Network considered that the RAB mechanism should be documented in one location, namely Schedule E of the undertaking. Aurizon Network did not agree with clause 2.1(d)(i) and (ii) of Schedule E, which allows access seekers, their customers and interested participants to require pre-approval of RAB inclusion of project costs. Only Aurizon Network (where it funds) or access seekers (where user funded) should have control over whether to seek pre-approval or not.	We note that clause 2.1(d) of Schedule E requires that Aurizon Network seek acceptance of capital expenditure into the RAB upon request by an access seeker expansion funder or interested participant. We consider this to be in the legitimate business interests of Aurizon Network while also being in the interests of access seekers.
8.7.2(f)	Aurizon Network submitted that section 8.7.2(f) should be deleted as it considered that this obligation is inappropriately included in two documents (SUFA and the expansion project agreement).	We consider that this clause (relating to an application to the QCA by Aurizon Network on behalf of an expansion funder) is best placed in the undertaking. At this point, the SUFA is not yet finalised.
Schedule E, clause 2.2(c)	Aurizon Network encouraged the QCA to make the pre-approval as unconditional as possible, noting that the greater the extent of conditions, the less benefit to be gained by	Our concern is that certain parameters may change after pre-approval and the QCA may therefore need to impose conditions on its pre-approval. This is

[786] Aurizon Network, sub. 82: 178.
[787] Aurizon Network, 2014 DAU, sub.. 82: 180–182.

Clause (IDD amended DAU)	*Stakeholders' comments*	*QCA response*
	pre-approval.	considered reasonable as the project eventually submitted for inclusion in the RAB may be different to that pre-approved.
Schedule E, clause 2.2(c)(i)	This implied that any excess above the amount pre-approved will not be included in the RAB if the cost to construct, time for completion or capacity outcomes of the expansion are not consistent with the assumptions tabled at the time of pre-approval. Issues are: (a) early or late completion may be due to factors beyond funders/construction contractor's control (e.g. wet weather) (b) it is unclear whether the QCA intends that, if delivered capacity is less than assumed capacity, not all of the costs of expansion will be included in the RAB. Aurizon Network did not support the introduction of an adverse consequence for user funders in the event of a capacity shortfall as it would erode the attractiveness of the role of being a user funder, making it more difficult to attract third party financing (c) it is unclear whether the QCA intends that, if delivered capacity exceeds assumed capacity, not all of the costs of the expansion will be included in the RAB. Given that project scope is set after a thorough study process and is either agreed between the parties or determined by the QCA, Aurizon Network considered it unreasonable for the user funder to be at risk should delivered capacity exceed assumed capacity.	Whatever the reason that costs, timings or capacity outcomes might change, it could reasonably affect the details that are ultimately considered for the RAB. Where contingency costs are unavoidably incurred, they may be included in the RAB, subject to the QCA's assessment. As noted in the clause 2.2(c), the QCA 'may' include these conditions. We note that clause 2.2(d) of Schedule E allows us to take account of reasonable information at the time the decision was made. This would seem reasonable as it would take into account circumstances that are beyond the control of Aurizon Network or the funders. We consider these arrangements are in the interests of access seekers and Aurizon Network, as they would encourage efficient outcomes in capex. We may allow into the RAB an amount that we consider prudent and efficient if we consider that the costs of the expansion are higher than they should be. This would be in the interests of access holders given that the cost of any excess capacity may be allocated to existing users. In relation to scenarios (b) and (c), the outcomes would be subject to the QCA's prudency and efficiency review, taking account of circumstances. Pre-approval should be interpreted as indicative.
section 8.8	The QRC considered that, to be an efficient negotiation process, it is necessary for Aurizon Network to provide relevant access seekers with sufficient information. Clause 8.8 should be amended to oblige Aurizon Network to provide all relevant scope and cost information.[788]	We consider it would be in Aurizon Network's interests to provide relevant non-confidential information as part of the negotiation process. However, we consider that an obligation of the nature proposed by the QRC would not be in the legitimate business interests of Aurizon Network as it could imply that confidential information is to be provided.
section 8.8.1	Aurizon Network proposed that UT4 should not establish under the expansion process any role or rights for 'expansion funders' - it should only negotiate with access seekers or customers.	In our drafting for the initial draft decision, an expansion funder is defined as an access seeker, access holder or user. We consider that the role of the funder cannot be overlooked in making access

[788] QRC, 2014 DAU, sub.. 84: 77.

Clause (IDD amended DAU)	*Stakeholders' comments*	*QCA response*
	Aurizon Network said it would be unreasonable if it was required to negotiate with user funders separately from access seekers, since their commercial interests are very different. A superior commercial arrangement is for the access seekers, which are the parties arranging the participation of third user funders to suit their commercial interests, to negotiate all user funding documentation.[789]	available. Hence the issue relates to access. We note that Aurizon Network can refer the funder to the SUFA should it wish to avert negotiation. We consider that this is consistent with meeting the interests of access seekers under section 138(2)(e) of the QCA Act.
	Aurizon Network noted that the QCA's SUFA draft decision included a detailed section on pre-approval, and that several pre-approval issues discussed in those documents are absent from the QCA's initial draft decision. Issues were: (a) whether the QCA required a report from an independent engineer/expert advisor to be provided by Aurizon Network and that it would be responsible solely to the QCA. (b) the status of the proposed contingency fund. It noted the need to address the risk of the pre-approved amount being insufficient to cover all project delivery costs (c) the QCA's position in regard to the requirement for an up-front capacity commitment in order to commit to pre-approval. Aurizon Network continues to oppose this.	We acknowledge that additional amendments are needed once the SUFA is finalised. Pre-approval matters are covered in respect of capital expenditure in section 2 of Schedule E of the CDD amended DAU.
Schedule E 2.3(d)(e)	The QCA changed from a 'must' to a 'may' obligation to provide a draft decision, including statement of reasons, when the QCA intends to refuse to approve RAB inclusion. Aurizon Network considered any QCA refusal to approve RAB inclusion is a very material risk.	Our drafting provides discretion for the QCA in respect of whether or not it gives a report to Aurizon Network.
section 8.8.3	Aurizon Network submitted that the tax ruling process should expressly permit it to withhold from other SUFA parties commercially sensitive or confidential information in respect of the group of companies of which Aurizon Network forms part.[790] The QRC supported the additional detail proposed by QCA around statutory severance of user funded expansion from land and processes associated with seeking binding tax advice from the ATO. However, it suggested that timeframes should apply in respect of Aurizon Network's obligation to seek statutory	We do not consider that we need to prescribe these requirements in the undertaking. There is nothing in the clause that requires Aurizon Network to provide commercially sensitive information. The QRC proposal is considered unreasonable, because timeframes may be in the hands of external parties such as the State Government.

[789] Aurizon Network, 2014 DAU, sub. 82: 178.
[790] Aurizon Network, 2014 DAU, sub. 82: 182.

Clause (IDD amended DAU)	*Stakeholders' comments*	*QCA response*
	severance in order to give stakeholders more certainty around when this will occur.[791]	
Section 8.9.1	QRC noted that, for the purposes of clause 8.9.1, the scope of work for an expansion may have been determined through resolution of a dispute in accordance with clause 11.1.	QRC's support is noted.
Clause 8.9.2(a)	QRC said that Aurizon Network should be required to notify all conditional access holders of its conclusions relating to assessment of a capacity change under clause 8.9.2(a) (and the basis for these conclusions) within a specific timeframe, e.g. within 5 business days of Aurizon Network reaching a conclusion.	We do not consider it necessary to provide timeframes for every activity.
8.9.2(a)	QRC said that it is inappropriate for Aurizon Network to have ability to defer an assessment of a capacity change until it considers the expansion is fully operational. QRC was strongly of the view that conditional access holders should be able to require Aurizon Network to assess capacity change within 6 months of commissioning. If it fails to do so, conditional access holders should be able to engage a third party expert, at cost of Aurizon Network, to undertake the assessment. [792]	In our view, Aurizon Network should undertake the assessment of the change in capacity within 6 months. We do not see a need to include any provisions for failure to comply with this. Such failures can be identified by the relevant parties.
Confidential information - disclosure regime	Aurizon Network considered that the expansion process in the QCA's redrafted undertaking can only be implemented if and to the extent that it has the right to make the disclosures contemplated by the Undertaking. It noted the following issues with disclosure requirements:793 (a) The development of and entry into a SFA will entail disclosure to each study funder of the access requirement of each other study funder for that study (as the study scope for a given study is the same in each of the bilateral SFAs between Aurizon Network and each study funder for that study). However, the ring-fencing obligations prohibit Aurizon Network from making such disclosures. Aurizon Network suggested that where there is a conflict between its ring-fencing and disclosure obligations, the disclosure obligations prevail. (b) The redrafted undertaking contemplates that, in the event of a dispute about proposed project specific schedules for a SFA or a user funding agreement, Aurizon Network will need to disclose to the	In relation to these comments: (a) We note that ring-fencing provisions relate to information flows and transfers between Aurizon Network and related entities. Disclosure of information related to access seekers may be subject to these arrangements if a related party is involved. Otherwise, third party funders would need to comply with ring-fencing as if they are Aurizon Network. (b) Disclosure of capacity analysis - We do not accept that Aurizon Network would be fettered by ring-fencing obligations. The disclosure of capacity analysis information would be treated as a confidentiality issue.

[791] QRC, 2014 DAU, sub. 84: 77.
[792] QRC, 2014 DAU, sub. 84: 77–78.
[793] Aurizon Network, 2014 DAU, sub. 82: 179–180.

Clause (IDD amended DAU)	*Stakeholders' comments*	*QCA response*
	external party tasked with resolving the dispute the capacity analysis that it has conducted. For certain required disclosure, Aurizon Network would be fettered by its ring-fencing obligations. Aurizon Network suggested QCA serving a valid notice on Aurizon Network that requires it to disclose all access information if and to the extent that is required or otherwise contemplated, in Aurizon Network's reasonable opinion, under the Undertaking. It proposed that this notice be of an indefinite term and should apply in respect of all Aurizon Network agreements and deeds that contain confidentiality obligations. It submitted that this formulation would enable it to provide information, such as capacity analysis, as part of a dispute resolution process.	

12.7.2 Study funding agreement issues

Aurizon Network's comments on the initial draft decision

Aurizon Network queried why the QCA had considered the QRC's submission of its form of the SFA submission for the purpose of the initial draft decision as it was not made as a response to the 2014 DAU, and the QRC did not comment on the form of the SFA in the 2014 DAU.

Aurizon Network disagreed with several aspects of the form of SFA in the QCA's draft decision. Aurizon Network's significant amendments are summarised in the table below.[794]

Our responses to Aurizon Network's queries, and our consideration of the factors in section 138(2) of the QCA Act, are set out in the table below. Our responses reflect our consolidated draft decision on the relevant matters and to the extent the matters covered in the table below led us to propose amendments to the 2014, these are set out in our CDD amended DAU.

Table 51 Aurizon Network comments on form of SFA in QCA's initial draft decision

Issue	*Aurizon Network comments on SFA (Clause references in IDD amended DAU SFA)*	*Response*
Consequential loss	Aurizon Network disagreed with QCA's change in the definition to substantially that in its SUFA Draft Decision. It does not volunteer to assume risk and costs that would arise from QCA's changes.	We have amended the definition as per the Access Agreements. This includes amendments so that Aurizon Network would only be liable for reasonable costs or expenses incurred.
Recovery of reasonable costs	As only entitled to recover reasonable costs (clause 11.1(a) of SFA), Aurizon Network would take risk that some costs would be deemed unreasonable after incurred, even if study has been completed within specified time and cost targets. It did not volunteer to	If the study is completed within time and cost targets, it would be considered to be reasonable. Aurizon Network should only be entitled to recover costs that are considered reasonable. We consider that costs would be reasonable if the study is completed within timeframes and cost

[794] Aurizon Network, 2014 DAU, sub. 82: 182–188.

Issue	*Aurizon Network comments on SFA (Clause references in IDD amended DAU SFA)*	*Response*
	assume this risk. SFA does not allow Aurizon Network to price this risk into the SFA's terms and conditions and it queried the QCA view that Aurizon Network's assumption of this risk without any associated compensation is appropriate.	targets. The risk is otherwise a risk that we consider Aurizon Network is in a position to manage - Aurizon Network can price in this risk in reasonable study costs. The main purpose of the change is to exclude unreasonable costs. This would be in the interests of access seekers and access holders.
Revision of study funder's study percentage for pre-feasibility studies	Aurizon Network disagreed with QCA's inclusion of 'hair trigger' termination mechanism of pre-feasibility study agreements (cl. 2.7(c) of SFA).	The mechanism only provides an option for the study funder to terminate. We consider they should be entitled to terminate if the change in percentage results in higher cost estimates. The study funder may choose to continue even if the study costs are greater than the amount in Schedule 3. Our approach takes account of the interests of access seekers.
Termination or default by study funder	QCA's inclusion of clause 2.7(c), allowing a study funder to terminate if its percentage increases, and clause 2.7(d), which requires Aurizon Network to then terminate all other SFAs, has the net effect that, if any one study funder for a PFS defaults in providing its bank guarantee, then all SFAs can terminate. This may occur even if percentage increase for each continuing funder is small. Termination of SFAs could lead to material delays in project development. Aurizon Network suggested an option agreed with QRC where the SFA would continue if the obligation increased by no more than 15% as a result of other study funders failing their bank guarantee.[795]	We consider that a set percentage is not appropriate in these circumstances. We consider the amendments proposed by Aurizon Network are not appropriate because they complicate the document and affect its function as a 'safe harbour'. The loss of one study funder could mean the scope of the project is changed, affecting the viability of the expansion project. Other study funders may consider it is not worth proceeding even if the study fund costs do not change significantly for the other study funders. We note that our approach gives the option to study funders regardless of the materiality of cost increases - the remaining study funders would meet to discuss their preferred approach, and are free to negotiate an outcome.
	Aurizon Network disagreed with new subclauses in clause 2.6 only applying to feasibility studies as it considered they should only apply to pre-feasibility studies, since the best response to a feasibility funder dropping out is to seek a replacement funder. It noted that new clauses 2.6(c)(i) and (d) provide for hair trigger termination in same circumstances as new clauses 2.7(c) and (d) (see above), and same comments apply.	We consider that there is no case to differentiate termination arrangements for feasibility studies as compared to pre-feasibility studies. As noted above, the remaining study funders can meet to decide if they wish to proceed.
Drawdown of study funder funding - Funding requirements	Aurizon Network disagreed with the position whereby Aurizon Network would be required to assume risk of actual study costs exceeding target study costs (clause 5.2(c)) and stated that it did not volunteer to accept that risk.	This is in our view a risk that Aurizon Network is best placed to manage. We also consider that it places the onus on Aurizon Network to manage the study funding process efficiently, in the interests

[795] Aurizon Network, sub. 82: 184.

Issue	*Aurizon Network comments on SFA (Clause references in IDD amended DAU SFA)*	*Response*
in excess of target study cost	Aurizon Network's 2014 DAU provided for a 125% margin for pre-feasibility studies and 115% for a feasibility study.	of access seekers. This may mean that Aurizon Network incorporates a contingency provision in the target cost. Aurizon Network would be entitled to recover costs reasonably incurred.
Study scope variation	Aurizon Network disagreed with QCA's changes to study scope variation mechanism (clauses 9 and 10). (a) a failure to agree a scope change should not be directed to dispute resolution but rather treated as a 'no change' event (b) as owner/operator of railway, and potential funder, Aurizon Network should have absolute discretion (cl. 9.7) over whether to initiate a discretionary scope change. There should be no discretionary scope change without its agreement. (c) however, where a scope change is agreed by parties to SFAs or a scope change event occurs and the parties do not agree associated variations to time and cost targets, those variations should be determined through dispute resolution.[796]	In response we note that: (a) As the study funders are funding the study, they should be able to dispute a proposed change in scope. This is in the interests of access seekers. Dispute resolution procedures were already in place in clause 10 (b) the study funder can request a change in scope - the discretion remains with Aurizon Network as per clause 9.1. We therefore agree with Aurizon Network, to the extent study funders are able to dispute the decision. (c) As noted above, we consider study funders should have the option of dispute resolution procedures.
Study scope variation	Aurizon Network said that: (a) it disagreed with change to deeming arrangement from no response being a deemed approval to being a deemed non-approval. There should be an incentive for study funders to actively participate so study is not delayed (b) there is no need for proposed meeting (cl. 9.4(c)) to consider how to continue the study when parties do not agree to a discretionary variation. If such a variation is not agreed, work continues on basis of current study scope. Accordingly, clause 9.5 is not required either. (c) no need for inclusion of clause 10.1(c). Where an Adjustment Event results in an increase in study cost to an amount less that total study commitment, then study will continue with funders providing in aggregate more funding than the target study cost, but less than the total study commitment. Where the increase is to an amount greater than the 'total study commitment', clause 5.3 sets out a suitable process, and so is no need for additional process in clause 10.1(c).[797]	We generally agree with Aurizon Network's comments. We accept that no response should be deemed approval. We also note that the proposed meeting under clause 9.4(c) would not be required because the parties have already decided against the variation. We also accept Aurizon Network's comments that clause 10.1(c) of the SFA is not needed. We propose amendments to the CDD amended DAU SFA.

[796] Aurizon Network, sub. 82: 185.
[797] Aurizon Network, sub. 82: 185.

Issue	*Aurizon Network comments on SFA (Clause references in IDD amended DAU SFA)*	*Response*
Termination for convenience	Aurizon Network disagreed with position that it must underwrite part of cost of completing a study if one/some, but not all parties to the associated SFAs elect to terminate for convenience (cl. 17.2) and that Aurizon Network must assume risk that any such study costs it is required to underwrite will not be included in the RAB. Aurizon Network disagreed with QCA view that it is a more appropriate allocation of risk that Aurizon Network must underwrite (and take RAB inclusion risk) part of costs of a PFS or FS without any compensation in order to allow a study funder to terminate its SFA for convenience. It considered that the risk a study funder will change its mind over participation in a study is a risk that is more appropriately allocated to that study funder It submitted that this flexibility provided by one funder's right to terminate for convenience needs to be balanced against adverse cost outcomes for other parties.[798]	Under clause 17.2 of the SFA, Aurizon Network may give a drawdown notice for the study funder's study percentage, including any termination fees for contractors. Hence, any party that seeks to terminate would need to meet the break-cost. If the study funders terminate for convenience, they should be refunded amounts not used for the study, but would not be entitled to any legitimate amounts used by Aurizon Network used towards the study, as the study funders agreed to fund it. To more broadly address Aurizon Networks' risk of underwriting the study, clause 7.9 has been inserted to allow for a reconciliation of costs incurred by Aurizon Network, and amounts loaned by the study funders. This reconciliation will apply in the case of termination for convenience, as well as completion of the study. However, remaining study funders may choose to proceed under different arrangements, subsequent to a meeting. This should offset some of the risk to Aurizon Network.
Termination for convenience	Aurizon Network proposed that QCA modify the termination for convenience right for a study funder so that it can only be exercised on a simultaneous basis by all study funders. However, if a unilateral termination right is to be retained, then the SFA should be modified so that either: (a) other study funders promptly commit to provide additional funding to overcome gap (and associated increase in bank guarantee); or (b) in absence of that funding commitment, Aurizon Network is entitled to terminate all other SFAs, with suitable rights to recover all costs of terminating the study from all funders	We continue to have the view that one party should be able to pull out of the SFA. If such an option was not available, prospective study funders may choose not to invest, thus hampering investment in the CQCN. However, we consider that an automatic process as suggested by Aurizon Network is not in the interests of access seekers and access holders. In our view, the other study funders should agree to commit to the study and provide the additional funding. If they do not agree to do so, Aurizon Network would then be able to terminate all other SFAs and be entitled to recover any costs from the study funders in respect of the termination.
Aurizon Network assignment	Aurizon Network disagreed with the QCA position to vary clause 19.2 to restrict Aurizon Network's ability to assign the SFA by requiring the study funders' consent. This would unreasonably fetter its ability to manage its commercial affairs. It noted its proposed clause in 2014 DAU included an obligation on	Under our approach Aurizon Network would need the consent of the study funder to assign or transfer rights and obligations under the SFA. However, the study funder cannot withhold consent if the assignee is

[798] Aurizon Network, sub.82: 185.

Issue	*Aurizon Network comments on SFA (Clause references in IDD amended DAU SFA)*	*Response*
	the assignee to covenant to be bound by and perform obligations under the SFA.[799]	considered to meet relevant conditions. We do not consider that this would fetter Aurizon Network's commercial activities - the study funder can only prevent assignment if the assignee is considered not suitable.
Capacity review process	Aurizon Network disagreed with QCA's position in clause 11.5(f), with the following significant concerns: (a) capacity reviewer should be required to comply with review parameters described in Aurizon Network's submission.. There needs to be a consistent approach towards the conduct of capacity reviews on matters such as required level of certainty and allowances for possessions (b) Aurizon Network considered that it is better placed to assess expected capacity outcomes than any external review and, as such, it is inappropriate to conclude that the external reviewer's assessment should automatically be superior if it differs to any extent and for any reason from Aurizon Network's assessment. It considered that should there be a divergence of views, the first step should be engagement between expert and Aurizon Network to seek to close the gap (c) Aurizon Network did not consider that a resubmission deadline of 10 business day if the reviewer concludes there is insufficient project scope is appropriate, even if project scope is to be removed. This is due to the practicalities of making such changes and the need to be consistent with good project investigation practice (d) if capacity reviewer considers project scope can be reduced in the study report and that change is made, Aurizon Network will not accept risk over any shortfall arising, to the extent of removed project scope. The reference point for any subsequent assessment of an 'AN Shortfall' would be the project scope proposed by Aurizon Network in its original study report, and not that included by Aurizon Network in the replacement study report (e) Aurizon Network was concerned that the capacity review process could result in material delays after issue of original study report. It considered that any	Clause 11.5(f) requires that if the capacity reviewer decides the capacity model is incorrect, Aurizon Network must within 10 days re-issue the rail study report on the basis of the correct capacity model. In response to comments: (a) We consider that parameters should be subject to review if required by the study funders. As noted above, we consider that our proposed study classes remain appropriate, as they are transparent and understood by the industry. We would have the view that Aurizon Network could otherwise exert market power by establishing parameters that could discriminate between access seekers. (b) the capacity reviewer is appointed by the study funders but must be approved by Aurizon Network. Therefore, Aurizon Network has some control over the expertise of the reviewer. The external reviewer's assessment may of course be open to further consultation with Aurizon Network and the study funders if there are concerns about the result. We consider this approach balances the interests appropriately. (c) we would consider that the model can be quickly adjusted on the basis of the reviewer's advice. We amended timing to 'promptly' to allow for different circumstances. (d) We note that there are provision in Part 8 (clause 8.9.3 of amended DAU) to accommodate capacity shortfalls. The reference point for the 'AN shortfall' is the scope 'previously proposed' by Aurizon Network (see cl. 8.9.3(c)). We consider this aligns with Aurizon Network's preferred position. (e) the capacity review process is reasonably expeditious given the potential scale and importance. It is noted that study funders 'may'

[799] Aurizon Network, sub no 82: 186

Issue	*Aurizon Network comments on SFA (Clause references in IDD amended DAU SFA)*	*Response*
	capacity review may be conducted well in advance of the completion of that report.[800]	instigate the capacity review, and must jointly meet the costs. Hence, a capacity review will likely only be initiated if there is a genuine concern about the rail study report.
Aurizon Network's proposed capacity review process	Aurizon Network proposed the following principles apply to the capacity review provisions (a) under each SFA Aurizon Network will issue an interim study report that provides a capacity analysis of proposed project scope that forms part of that SFA's study scope (b) following this, all study funders may elect to arrange the conduct of a capacity review. Under such a review, the following principles should apply: – nominated capacity reviewer must apply capacity review parameters similar to those set out in Aurizon Network's submissions – if the capacity review opines that the proposed project scope will result in a capacity outcome materially different from that expect by Aurizon Network in its interim report, the reviewer and Aurizon Network will engage at the technical expert level to reconcile the differences – to extent Aurizon Network agrees with the reviewer, it will revise its interim study report accordingly and issue that revised report to study funders. Aurizon Network will notify study funders of any change in scope as required (which will apply under SFAs from date of notification—i.e. dispute resolution will not apply). If Aurizon Network does not agree with reviewer, it will promptly inform study funders – following Aurizon Network's response to its initial review, the capacity reviewer shall issue a follow-up review that takes into account that response – if all study funders elect to modify the SFAs study scope in accordance with the follow-up review, Aurizon Network will accept that election (i.e. dispute resolution will not apply) – if the SFAs study scope is modified either by Aurizon Network in response to the initial review or by study funders following receipt of follow-up review,	Aurizon Network's approach includes some processes that we believe could promote its interest above those of other parties or act unfairly: (a) The capacity review parameters should be open for review. This is one area where Aurizon Network could potentially unfairly differentiate or exercise its power. (b) the engagement at technical expert level may also allow Aurizon Network an unreasonable level of influence on the outcome. In our view, Aurizon Network's approach is not appropriate because it is weighted in favour of its interests.

[800] Aurizon Network, sub no 82: 187

Issue	*Aurizon Network comments on SFA (Clause references in IDD amended DAU SFA)*	*Response*
	the SFA parties should negotiate suitable changes to the target cost and target date. If changes not agreed, SFA's dispute resolution mechanism would apply • capacity reviewer should provide Aurizon Network with a copy of each report it submits to its clients	
Modification of cost recovery arrangements to provide for contractor engagement	QCA's definition of feasibility study (which requires a project cost estimate within a ±10% margin) could require Aurizon Network to incur costs that cannot be recovered under the SFA in the initial draft decision. This is because project cost estimates to that level of precision can only be achieved following commercial and technical engagement with construction service providers, requiring 'early contractor involvement'. This incurs considerable expense, in particular, the need to compensate contractors should the project not proceed. SFA does not allow for this. Aurizon Network: (a) noted that while it did not agree with QCA that a feasibility study should always require a depth of study sufficient to prepare a project cost estimate ±10% margin, its proposal (outlined in Section 12.3.5 above) does allow for this. (b) proposed that SFA be modified so that it enables Aurizon Network to recover from study funders its costs in providing compensation to construction contractors as discussed above.	In our view, if the services of the construction contracts are legitimately provided for in the scope of the feasibility study, Aurizon Network should be able to recover the costs from study funders. The process implies that Aurizon Network would need to incur the costs reasonably. This would include compensation costs for contractors.
Costs and project management fees	Vale noted that a significant concern is the proposal to include a project management fee, margins on costs and additional costs within the study costs. It was concerned that this creates opportunity for recovery of costs more than once as these costs appear to overlap. It considered that the only costs that should form part of study costs are those that are reasonable and properly incurred as part of a study plus a project management fee. It thought there should be a mechanism to ensure there is no double counting of costs claimed within study costs and those already provided through the MAR. Vale did not support an allowance for a margin to be provided on the study costs as the study funders will be providing loans via a monthly drawdown to underwrite the study, and the study costs will incur a rate of return if included within the RAB.[801]	We acknowledge that a project management fee may reflect recovery of some costs that are already incurred in overhead costs of Aurizon Network and therefore in the MAR. We note that the audit process under clause 11.3 of the IDD amended DAU SFA includes provision for an audit of the project management fee.

[801] Vale, 2014 DAU, sub. 79: 7.

Alternative SFAs

Anglo American submitted a marked-up version of the SFA.[802] The QRC referred to its prior mark-up. We summarise the proposed amendments in the following tables. To the extent the matters covered in the tables led us to propose amendments to the 2014 DAU, these are set out in our CDD amended DAU.

The main issues raised by Anglo American are detailed below, with our responses.

Table 52 Anglo American comments on SFA drafting

Clause	*Anglo American drafting change*	*QCA response*
Bank guarantee	Deleted the definition	We maintain our position to retain the definition. A bank guarantee is required to provide support for Aurizon Network's legitimate business interests.
Force majeure event Clause 1.1 and 15	Amended the definition to be in line with 'legal standards'.	We do not agree with Anglo American's approach. It is not necessary to amend the definition to be more prescriptive as it is commercially reasonable.
Interest rate	Deleted the margin of 2%, leaving only the Corporate Overdraft Reference Rate	We see no reason to delete the 2% margin, given that it is industry standard to include such a margin
Railway network	Amended the definition to mean the Rail Infrastructure as defined by the AU	We considered this reasonable subject to how the term is used.
Scope change event	Amended the definition to an event that Aurizon Network can demonstrate was not reasonable foreseeable at the commencement of the Agreement.	This amendment is reasonable. If such an event was reasonably foreseeable to Aurizon Network, it should have been specified in the SFA as it may have negative consequences for the study funders. These consequences may include the target costs exceeding the committed amount as well as the target time, which may put the entire rail study at risk if the study funder's do not agree
Sensitive information	Deleted the definition	This definition should be covered under the definition of confidential information
Clause 2.2—waiver of conditions	Amended the clause so that Aurizon Network can only waive a Condition where that waiver will not adversely impact on the rights of Other Funding Users or Access Holders.	This amendment is fair and necessary in order to protect other funding users. Aurizon Network should not be entitled to waive a condition that would adversely affect the other Parties.
Clause 2.6 Termination of Other Funding Agreement where no Other Funding Agreement will remain	Inserted clause 2.6: If an Other Funding Agreement terminates under clause 2 of that agreement, and for the purposes of this Agreement there will not be any remaining Other Funding Agreements, the Study Funder has the unilateral right to terminate this Agreement	This clause is reasonable if the study funder does not agree to fund the study in its entirety or there are no other parties that would agree to being an Other Study Funder.

[802] Anglo American, sub. 95, Attachment A.

Clause	*Anglo American drafting change*	*QCA response*
Clause 2.7 Aurizon Network may vary Scope of Works, Target Study Cost and Estimated Total Study Costs if Other Funding Agreement terminates	Inserted additional condition—if those terminations have materially impacted the Study.	The amendment would make it unnecessarily difficult for Aurizon Network to potentially vary the scope, target and estimated costs if other funding agreements are terminated.
Clause 5.3(f) Total Study Commitment Reached	Amended clause: Where a Study Funder disputes the reasonableness of any consequential variation, it may refer that dispute for resolution under the terms of this Agreement within 5 Business Days of receiving a request to vary from Aurizon Network. Also suggested Continuing Study Funders being obliged to fund, in addition to their Initial Commitments, at least 100% (not 115%) of the Funding Shortfall	Whilst referring the dispute under the provisions of the SFA is reasonable, a time period of 10 days would be consistent with other provisions of the SFA. Also, the obligation to fund 115% of the funding shortfall is also consistent with other provisions under the SFA.
Clause 5.3 Total Study Commitment reached	Added clause: This clause 5.3 only applies where the Funding Shortfall is not due to an Aurizon Network Cause. Where the Funding Shortfall is due to an Aurizon Network Cause, Aurizon Network is required to provide the funds for the completion of the Study, and will not be entitled to reimbursement for those funds under this Agreement or the terms of the Access Undertaking	This subclause is not appropriate because clause 5.3 is in respect to the rail study. Aurizon Network Causes is in respect to making rail infrastructure available to train services. The rail study should not impact upon train services and the SFA is in respect to the funding of the rail study.
Clause 7.1 Conduct of Rail Study	Amended clause 7.1: (a) Aurizon Network must carry out, or procure the carrying out of, the Rail Study. (b) Aurizon Network will carry out, or procure the carrying out of, the Rail Study in accordance with Good Industry Practice, all relevant Laws, applicable Authority Approvals, the relevant Approved Work Plan, this Agreement and so as to deliver the Capacity required under the Rail Study.	This amendment is unnecessary and creates a higher contractual obligation on Aurizon Network. This obligation does not need to be expressly stated in the SFA. However, the amendment is a standard requirement in most service agreements (which the SFA is)
Clause 7.6 Intellectual Property Rights	Added in sub-clause 7.7(d): (iv)(d) Notwithstanding the provisions of this clause 7.7, Aurizon Network is obliged to assign the Intellectual Property Rights attached to the product of any Rail Study to the Study Funder and Other Study Funders in any instance where the Study Funder or Other Study Funders have successfully exercised their	Aurizon Network may grant a licence to the attached IP rights to the product or any rail study to the study funder and other study funders where they have successfully executed their step in rights. Aurizon Network should not assign because it would be transferring ownership of those IP rights. Granting a licence would simply provide the study funder or other study funder permission to use those IP rights on agreed

Clause	*Anglo American drafting change*	*QCA response*
	right of step-in under clause 10 of this Agreement, or the corresponding clause of an Other Study Funding Agreement	terms and conditions
Clause 7.8 No restriction on Aurizon Network's business activities	Deleted clause	This clause should not be deleted as that would unnecessarily restrict Aurizon Network's ability to continue its usual business activities, as owner or lessor of part of the network, so long as it does not negatively impact the other SFAs.
Clause 8.3 Study Funder Committee Rules	Deleted clause	Deletion of this clause is unjustified as the study funder committee is comprised of all the study funders and Aurizon Network is directed by that committee
Clause 9.2 Variation to Scope of Works due to Scope Change Event	Amended clause 8.2 The clause states that Aurizon Network may not vary the Scope of Works without the approval of the Study Funder Committee. If Aurizon Network does wish to vary the Scope of Works it must give notice containing specific details. The Study Funding Committee must reject or approve the variation requested.	We agree that the scope of works may not be varied without the approval of the study funder committee, as they have a vested interest in the study.
Consent of Study Funder	Deleted clause 8.4.	If this clause is deleted then a study funder's inaction will result in no consent. The clause required the study funder to take action if it did not want this to occur
Clause 11.5 Capacity Review	Amended clause 11.5	Subclause (a)—whilst Aurizon Network should not necessarily have the final say as to the appointment of a 'suitably skilled and experienced consultant' to avoid perceived biasness, Aurizon Network should still be part of the decision.
Clause 13.2 Dispute	Amended clause 13.2: that Aurizon Network has not provided reasonable details of the calculation of the Provisional Project Management Fee, Project Management Fee and Adjustment Amount (if any) as required under clause 13.1(b) for the Study Funder to satisfy itself, acting reasonably, that these figures are correct or that the Rail Study has been completed and no further Study Costs will be Incurred.	The amendment opens up the potential for unnecessary disputes to arise regarding the calculation of the amount rather than whether the amount itself is reasonable. If the study funder considers that the project management fee is acceptable, then it should not be able to raise concern over the calculation. If there is concern over the amount, then Aurizon Network may provide details as to the calculation.
Clause 16.9 Disputes involving Study Funders under Other Funding Agreements	Added in sub-clause 15.9(e): (d)(e) Notwithstanding any other provision of this clause, if a Study Funder Disputes being joined by Aurizon Network as a party under this clause 15.9, then it may refer that Dispute under clause 15.1. If the outcome of the Dispute is that the	Whilst this increases Aurizon Network's liability in respect to joining a party to a dispute, it is reasonable. If Aurizon Network joins a party to a dispute and it is found they were not meant to be joined, Aurizon Network should be liable. This would prevent Aurizon Network joining parties unnecessarily and without consequence.

Clause	*Anglo American drafting change*	*QCA response*
	Study Funder was wrongly joined to a Dispute, Aurizon Network will be liable to bear any costs incurred by that Study Funder defending or participating in the incorrect Dispute.	
Clause 17.4 No other rights of termination	Deleted clause	This clause should be retained as it confirms limited rights to terminate, which provides protection for other study funders.
Clause 17.6 Step-in rights	Deleted clause 16.5 and added in the entire clause 10: AN must give notice to the Study Funding Committee of any event or circumstance which adversely impacts AN's obligations in respect to the Rail Study. Under certain circumstances, the Study Funder Committee may issue a Step-in Notice.	The risk profile of Aurizon Network is significantly impacted by this provision as the Study Funder Committee can serve Aurizon Network with a step-in notice to rectify the delay and if it does not comply within the given time frame, the Study Funder Committee will step in into the role of Aurizon Network. It should not be the Study Funding Committee to deal with the step-in rights, but the access regulator, as originally drafted.
Clause 18.5 Claims against Aurizon Network	Amended clause to specify 10 business days for Aurizon Network to rectify.	Whilst specifying a number of days provides more certainty, it potentially reduces the timeframe for Aurizon Network to comply. A 'reasonable period' is appropriate.
Clause 19.2 Assignment	Deleted clause	Aurizon Network should be able to assign its rights and obligations under the SFA and not require the study funder's consent in order to assign, as it would unnecessarily restrict Aurizon Network's ability to continue its usual business activities.
Clause 20.2 Disclosure of confidential information	Amended clause Deleted sub-clauses	It is perfectly justifiable for consent not to be unreasonably withheld or delayed. It is also appropriate that certain conditions may be imposed on such disclosure. Otherwise, there is the risk that whilst disclosure is consented to, the extent of the disclosure should be able to be limited as necessary. We consider the proposed deletions are not appropriate.
Definitions	Amended some definitions	We considered some amendments to be reasonable.

Table 53 QRC comments of the SFA

Clause	*QRC drafting change*	*QCA response*
Study costs	Based on the components of the Study Costs (Internal Costs, Additional Costs, External Costs), it appears that Aurizon Network 's intention that Study Costs will extend to costs incurred by Aurizon Network before the SFA becomes effective Any cost incurred by Aurizon Network before the SFA becomes effective must not be included in the Study Costs unless the exact amount of those costs,	We consider that Aurizon Network should be entitled to recover all costs that are reasonably incurred and fit within the definition of Study Costs, whether they are incurred prior to when the SFA becomes effective or not. We agree with QRC's view that costs incurred before the SFA becomes effective need to be validated.

Clause	*QRC drafting change*	*QCA response*
	the category of those costs and the reason for incurring such costs is specified in an agreed schedule to the SFA which is included in the SFA at the date of execution.[803]	
Aurizon Network may vary Target Study Cost and Estimated Total Study Costs if Other Funding Agreement terminates	QRC said there was an inconsistency between the prescribed termination under clause 2.6(d) and the termination options in clause 5.3(d) of the IDD amended DAU.	There is no inconsistency between the two clauses. Clause 2.6(d) relates to when the other study funders terminate their SFA because of being unable to fund the excess amount (or their proportion), then they are no longer a study funder and all study funding agreements are terminated. Clause 5.3(d) relates to when the study funder terminates their SFA as they do not agree to continue funding the study and: (a) if the other study funders agree to continue then only the study funder's SFA is terminated; or (b) if the other study funders also do not agree to continue, then all SFA's are terminated.
Funding commitment	The QRC would like to understand: (a) the tax drivers for structuring the SFA and whether there are any simpler arrangements that could be put in place; and (b) how a Study Funder's liability for its share of Pre-feasibility study costs under a SFA or a Feasibility Study will be determined if the Study Funder has already loaned amounts to AN under the SFA for the Pre-feasibility Study.[804]	Tax issues would need to be resolved according to study funders' circumstances. We would anticipate that loaned amounts would be taken into account. This is a matter between Aurizon Network and the study funder and we would prefer not to be prescriptive.
Total study commitment reached	The SFA should include an express acknowledgement that: (a) under no circumstances will the Study Funder's Study Commitment be varied without the express written consent of the Study Funder; and (b) the Study Funder is not liable to Aurizon Network under the SFA, and Aurizon Network has no claim against the Study Funder, for any amount that exceeds the Study Funder's Study Commitment Clarify whether: (a) in the circumstances described in clause 5.3(d)(i), the Other Funding Agreements of the Other Study Funders who have agreed to be	In relation to the issues raised: (a) We consider that this amendment is reasonable because they are actually funding the study and should not be required to commit an amount which they do not agree with (b) the actual cost may exceed the amount committed. In the event this occurs and the study funder agrees to continue, then they should be liable for the amount that exceeds their commitment. If they do not want to be liable, then the study funder should terminate their SFA We consider that the process where a study funder's agreement is terminated, and other funders choose to continue, is reasonably clear. The allocation of liabilities is a matter for the

[803] QRC, sub. 84: 175.
[804] QRC, sub. 84: 175.

Clause	*QRC drafting change*	*QCA response*
	Continuing Study Funders will continue (despite the termination of the SFA); and (b) if less than all Study Funders agree to be Continuing Study Funders, will the Continuing Study Funder's liability for 115% of the Funding Shortfall be determined pro-rata basis in accordance with their Study Percentages (similar to the process in clause 2.7) or will the liability be agreed pursuant to the meeting referred to in clauses 5.3(b) and 5.3(c) A notification process should be included to clarify the new Study Percentage and the date from which the new Study Percentage applies.[805]	study funders to jointly agree upon. We prefer not to be prescriptive on this outcome. We further consider a notification process to be overly prescriptive.
Total study commitment reached	The Study Funder should have the option of having its obligations either suspended or terminated for the relevant time, rather than automatic termination. The suspension would allow the Study Funder to recommence funding at a time when it was financially able to do so.[806]	We consider that it would not be in the interests of other study funders or Aurizon Network for a study funder to suspend for a period, as this increases uncertainty on the project.
Repayment if feasibility study	The IDD amended DAU includes a corresponding provision to clause 6.1 of the SFA in clause 8.4.4(a)(ii)(A), however, the test is different. The DAU requires the SFA for the Feasibility Study to have become unconditional. The test in the DAU should be reflected in the SFA The concept of Expansion needs to be broader so that if the nature of Expansion changes between the Pre-Feasibility Study and the Feasibility Study, then the Feasibility Study will still be taken to be in respect of the same Expansion AN should be required to: (a) use best endeavours to ensure the Study Funding Agreement becomes unconditionally binding; and (b) ensure that it is granted permission under the relevant Study Funding Agreement to apply funds paid under that Agreement in repayment of loans made by the Study Funder for the Pre-feasibility Study	In our view, the tests are the same. Clause 8.4.4(a)(iii)(A) of the amended DAU requires the SFA for the feasibility study to have become unconditional. We agree with broadening the concept of expansion. In regard to the proposed requirements on Aurizon Network, we do not see a justification for holding Aurizon Network to a higher standard than that already provided for.

[805] QRC, sub. 84: 176.
[806] QRC, sub. 84: 176.

Clause	*QRC drafting change*	*QCA response*
	Aurizon Network should be obliged to take all steps reasonably required to ensure the costs of performing the Pre-feasibility Study are included in the RAB.[807]	
Repayment if project agreement	QRC made corresponding comments to those above.	Our responses are as above.
Monthly progress report	AN should be required to provide a Scope of Work Plan for the Study Funder Committee's approval that includes, in reasonable detail: (a) the scope of the Expansion to be investigated to achieve the capacity increase; and (b) a schedule and budget for the Scope of Work The SFA should specify a procedure for agreeing variations to the Scope of Work Plan The monthly Progress Report which is submitted by Aurizon Network under clause 7.3 must include details which described Aurizon Network's progress against the Scope of Work Plan.[808]	The requirement to provide a scope of work plan is unjustified as Aurizon Network is already required to provide a monthly update. The requirement is also too similar to the requirements for the pre-feasibility study. The additional plan would place an unnecessary burden on Aurizon Network.
Provision of rail study report	The inconsistency between clause 7.4 of the SFA, the definition of Rail Study Report in the SFA and the description of these reports in the AU must be addressed. The Rail Study Report should be defined in the SFA as a report that complies with the requirements specified in the AU for such a report.[809]	The definition of the rail study report should refer to clause 7.4 of the SAF. We agree that the SFA and the DAU should be the same.
Intellectual property rights	QRC sought clarification of whether clause 7.5(d)/7.6(c) is intended to only apply where the SFA is for a Pre-feasibility Study. If it is intended to apply where the SFA is for a Feasibility Study, the licence to use information in relation to the Feasibility Study will expire when the Loaned Amount for the Pre-feasibility Study is repaid, which does not seem appropriate. If it is only intended to only apply where the Study Funding Agreement is for a Pre-feasibility Study, it is not acceptable that the licence to use the Pre-feasibility Rail Study Report will expire on the date the Loaned Amount for the Pre-feasibility Study is repaid to	It is appropriate that the licence expires when the loaned amount is repaid because then if they do not fund a feasibilty study, they are no longer a funder and should not have rights to Aurizon Network's IP.

[807] QRC, sub. 84: 177.
[808] QRC, sub. 84: 181.
[809] QRC, sub. 84: 182.

Clause	*QRC drafting change*	*QCA response*
	the Study Funder. Nor is it acceptable for a licence to use a Feasibility Study to expire on the date the Loaned Amount for the Feasibility Study is repaid to the Study Funder.[810]	
Variation to scope of works due to scope change event	QRC said that the third element of the Scope of Change Event should exclude any event or circumstance that is caused or contributed to by AN.[811]	We consider the scope of change event should not exclude any event or circumstance that is caused or contributed to by Aurizon Network. Aurizon Network could potentially 'cause or contribute' to an event that they could not reasonably foresee and acted reasonably in the circumstances.
Variation to scope of works requested by study funder	If a request for variation is put to Aurizon Network under clause 9.7(a) and the request is agreed by the Study Funders Committee, then the Study Funder Committee Should be entitled to direct AN to vary the Scope of Works Aurizon Network should be required to promptly implement the variation unless to do so would require Aurizon Network to breach a law or the AU.[812]	The decision to make a variation should be made by Aurizon Network and the study funders, it should not solely be the decision of the Study Funding Committee.
Disputes about drawdown amounts	The Study Funder should be given at least 20 Business Days to consider the Auditor's report and to issue a dispute notice in relation to a relevant Drawdown Amount.[813]	We consider 10 business days to be appropriate and consistent with other provisions of the SFA.
Capacity review	The QRC would like to understand why the Capacity Model can only be reviewed after the Rail Study Report is issued. If the monthly Progress Report indicates that there are problems with the Capacity Model then the Study Funders should be able to request a review.[814]	If the capacity review indicates that the model is incorrect, Aurizon Network should be required to revise the report accordingly.
Bank guarantee	QRC said that the following options in the AU must be reflected in the SFA: Under clause 8.4.4(b) of the AU provides that if a Pre-feasibility Study or Feasibility Study for an Expansion is funded by more than one Pre-feasibility Funder or Feasibility Funder under the SFA, then Aurizon Network must ensure that each Pre-feasibility Funder or Feasibility Funder: (a) Provides a bank guarantee for the amount required in the relevant Study Funding Agreement as a	We consider specific forms of bank guarantees need not be described in the SFA.

[810] QRC, sub. 84: 182–83.
[811] QRC, sub. 84: 183.
[812] QRC, sub. 84: 184.
[813] QRC, sub. 84: 186.
[814] QRC, sub. 84: 186.

Clause	*QRC drafting change*	*QCA response*
	condition precedent to that relevant SFA; or (b) Has the ability to meet its financial obligations under the relevant Study Funding Agreement.	
Bank guarantee	QRC also said that if the Study Funder is required to provide security then the Study Funder should have the option of providing: (a) a bank guarantee; (b) a parent company guarantee (for financial obligations only) from an investment grade entity; or (c) company guarantee (for financial obligations only) from a company that is of sufficient financial standing It is not reasonable for AN to require a bank guarantee for the entire amount of the Study Funder's Study Commitment at commencement. Only a proportionate amount should be required at commencement. The period of delay in returning the Bank Guarantee is also questionable.[815]	We consider specific forms of bank guarantees need not be described in the SFA. The bank guarantee can be negotiated at the time. The provision provides a safe harbour and is in the legitimate business interests of Aurizon Network as well as access holders over the rest of the network. We consider that a partial bank guarantee would not be in the interests of Aurizon Network. As the process continues, it would need to continually be adjusted. We consider a commitment warrants the full bank guarantee.
Recourse to bank guarantee	Aurizon Network should only be allowed to have recourse to a Bank Guarantee where the Study Funder fails to pay an amount payable by the Study Funder to Aurizon Network under the Agreement: (a) If the amount is payable by a specified date, by the due date for payment; (b) If the amount is not payable by a specified date, within a reasonable period of not less than 20 Business Days after AN has requested payment; and (c) If the amount is subject of a Dispute, in accordance with the relevant provision.[816]	We would prefer not to be overly prescriptive about the criteria for invoking a bank guarantee. We consider clause 12 to be sufficiently clear.
Project management fee	Aurizon Network should be required to cause an audit to be conducted if AN gives a notice to a Study Funder setting out the Provisional Project Management Fee, the Project Management Fee and the Adjustment Amount.	As the audit process involves verifying the study costs are reasonable, it should also verify the reasonableness of the project management fees. We consider that the addition of a range of percentages is overly prescriptive and would create the potential for additional disputes.

[815] QRC, sub. 84: 187.
[816] QRC, sub. 84: 188.

Clause	*QRC drafting change*	*QCA response*
	A standard range of percentages should be specified for paragraph (d) of the definition of Study Costs which may be used in default of agreement between the parties. A standard range of percentages are specified for the Final Time Measure and Final Cost Measure in item 3 of Schedule 6 which may be used in default of agreement between the parties.[817]	
Dispute	The Study Funder should be given at least 20 Business Days to consider the Auditor's report and to issue a Dispute notice in relation to the amount of the Provisional Project Management Fee, the Project Management Fee and/or the Adjustment Amount.[818]	The 10 business days timeframe is appropriate because it is consistent with other similar provisions under the SFA.
Force majeure	Drafting clarification is required because the definition of Adjustment Event is drafted similarly to the definition of Force Majeure Event and overlaps in some respects, however, there is no contractual connection between the two provisions. There should be a right to terminate for an extended Force Majeure Event.[819]	While the definitions for adjustment event and force majeure are substantially similar, there is a clear differentiation between the two. adjustment event is specifically in relation to events that affect study costs. Force majeure will apply in completely different circumstances. Therefore, it is not necessary to amend the definition to be more prescriptive as it is commercially reasonable. We agree that there should be a provision which allows for termination where there is an extended force majeure Event, for example, over 6 months.
Time bar	A 12 month period is not practical given that issues are only likely to arise later in an expansion project. The need of the 12 month limitation is not justified given that Aurizon Network's liability is already limited. The time bar acts as an additional significant limitation of liability.[820]	Despite the fact the 12 month time bar limits Aurizon Network's liability, only if it is likely that a party could become aware after 12 months, then it may be necessary to extend the time bar, otherwise, it is unnecessary to do so.
Termination for convenience by all study funders	Clause 17.1(b)(ii)(B)(2) – Aurizon Network should only be entitled to include in Study Costs those costs that arise as a 'direct' consequence of the cessation of the Rail Study. Clause 17.1(b)(iii) – this clause refers to the licence granted under clause 7.5(d) becoming an 'irrevocable licence'	Even if some costs are an indirect consequence, if they would not have been incurred otherwise and are linked to the study, Aurizon Network should be entitled to recover them. We agree that the provisions of the AU and SFA need to be reconciled in regard to licences.

[817] QRC, sub. 84: 188–189.
[818] QRC, sub. 84: 189.
[819] QRC, sub. 84: 189.
[820] QRC, sub. 84: 190.

Clause	*QRC drafting change*	*QCA response*
	however clause 7.5(d) describes the licence as an 'irrevocable licence'.[821] QRC made the same comments in regard to termination by other study funders.	
Step-in rights	The step-in arrangements in the SFA need to be reconciled with the step-in arrangements in the AU.[822]	We agree that the step-in provisions in the SFA and the AU should be reconciled
Limitations of Aurizon Network's liability	This clause (18.2 of IDD amended DAU) imposes an unreasonable limitation on the liability of Aurizon Network under the Agreement. It is appropriate for AN to acknowledge: (a) Monetary damages alone would not be adequate compensation to the Study Funder for Aurizon Network's breach of its obligation to undertake the Rail Study; and (b) Specific performance of that obligation is an appropriate remedy.[823]	For the purposes of the SFA, we consider the liability provisions go far enough. If a study funder seeks more than monetary recompense, then it would be a matter between the study funder and Aurizon Network.
Claims against Aurizon Network	QRC said the clause 18.4 should be reciprocal.[824]	The clause should not be reciprocal because Aurizon Network is reliant on the study funders to fund the study as agreed and comply with their obligations under the SFA for the relevant study to be completed.
Assignment by Aurizon Network	The restriction under clause 19.3 that the Study Funder is not entitled to Assign the Agreement if it is in breach of any of its obligations under the Agreement, should also apply under clause 19.2 to assignments by AN.[825]	We agree that Aurizon Network should not be entitled to sign if they too are in breach.
Definitions—external costs	Aurizon Network should be prohibited from claiming costs incurred before the date of the Agreement unless those costs are agreed and the exact amounts are specified in a schedule to the Agreement as at the date of the Agreement 'Study Contractors' should be replaced with 'Study Consultants'.[826]	Aurizon Network should be entitled to recover all costs that are reasonably incurred and fit within the definition of 'external costs', whether they are incurred prior to when the SFA becomes effective or not.
Definitions—additional costs	The margins, which are in addition to the Project Management Fee, do not seem commensurate with the level of risk that AN is taking under the SFA The margin of 8% is not acceptable	Aurizon Network should be compensated for assuming additional risk that they assume under the SFA. It is industry standard to apply a margin of this nature. We agree that the margin appears high. We

[821] QRC, sub. 84: 190.
[822] QRC, sub. 84: 191.
[823] QRC, sub. 84: 192.
[824] QRC, sub. 84: 192.
[825] QRC, sub. 84: 193.
[826] QRC, sub. 84: 193.

Clause	*QRC drafting change*	*QCA response*
	unless the scope of Additional Costs is significantly narrower and limited to direct costs of Aurizon Network. The margin should cover a number of costs which are intended to be reimbursed as Additional Costs or Internal Costs.[827]	propose to reduce the margin to zero. The project management fee should be structured to incorporate any allowance for risk.
Definitions - personnel costs	The scope of personnel costs is too broad.[828]	If the employees and internal contractors are incurring the costs listed under subparagraph (c), in respect to the rail study and would not have otherwise incurred these costs, it is reasonable that they are reimbursed.

Amending the DAU

In addition to those amendments discussed in this section 12.7.2, the way in which we consider it is appropriate to amend the 2014 DAU is set out in the CDD amended DAU.

[827] QRC, sub. 84: 175.
[828] QRC, sub. 84: 194.

13 NETWORK MANAGEMENT PRINCIPLES

The network management principles (NMPs) are a set of train-planning and train-control rules which impact on TSEs and therefore on access rights. A TSE is the fundamental service that Aurizon Network provides to access holders, which is the right to a monthly number of train paths.

Clear and transparent NMP can assist in optimising the use of available capacity and improving productivity. They promote informed decision-making, improved information symmetry among access holders and an increase in Aurizon Network's accountability.

Our initial draft decision refused to approve Aurizon Network's proposed NMP and required amendments to clause 7.6 and Schedule G of the 2014 DAU to:

- *increase transparency and availability of train plans and TSE reconciliation reports*
- *provide additional detail in the content of train plans and TSE reconciliation reports*
- *set timelines for Aurizon Network to submit train plans, aggregate TSE reconciliation reports and initial system rules*
- *subject all system rules to our approval*
- *ensure system rules are reviewed at least once per year.*

Our consolidated draft decision has retained most positions in our initial draft decision. Our changes relate to increasing certainty and clarity, while preserving Aurizon Network's legitimate business interests. The detailed drafting of clause 7A.2 (previously clause 7.6 in the 2014 DAU) and Schedule G attached to this consolidated draft decision is consistent with our approach and shows the amendments we consider necessary to approve the 2014 DAU.

13.1 Introduction

The NMP are a set of train-planning and train-control rules Aurizon Network must abide by to fulfil its duties as the CQCN's below-rail network manager. The NMP also set out the process for developing and maintaining more specific system rules:

- Clause 7.6 of the 2014 DAU outlines the governance arrangements for applying the NMP and developing system rules.
- The NMP in Schedule G of the 2014 DAU set out the purpose and form of the train plans Aurizon Network uses to schedule CQCN train services and maintenance activities. They establish the rules for scheduling and managing traffic, altering or cancelling train services once scheduled and deciding which access holder might get a specific path in the event of a contest.

The NMP affect how Aurizon Network delivers the capacity it has contracted. They establish how Aurizon Network will share capacity information and how it will plan, schedule and manage CQCN train services. Clear NMP allow access seekers and access holders to understand their access rights and determine if their access rights have been delivered.[829]

[829] The QCA Act provides that Aurizon Network must not engage in conduct for the purpose of preventing or hindering a user's access to the declared service under an access agreement (s. 104(1)).

System rules provide additional detail to the NMP on how Aurizon Network will manage its rail infrastructure. However, the system rules, where approved, may not override or contradict the NMP.

13.2 Overview

13.2.1 Aurizon Network's proposal

The proposed NMP in the 2014 DAU retain many elements of the 2010 AU's NMP but also include the following changes:

- system rules, where they do not already exist, are to be developed by Aurizon Network if requested by at least 60 per cent of access holders (in terms of relevant train paths)
- a review process for system rules
- a clause limiting the provision of information (to access holders or on the website)
- a new Strategic Train Plan (STP) to provide more transparency and accountability on Aurizon Network's ability to deliver contracted access entitlements, with the indication of anticipated capacity for a one- to two-year period
- a monthly TSE notice to report on TSE consumption, including causes for non-performance.

In initial submissions, stakeholders acknowledged there had been some positive changes between the 2013 DAU and 2014 DAU but did not support Aurizon Network's proposed NMP as some of the changes did not go far enough or achieve what stakeholders had proposed during the consultation process.[830] For example, stakeholders wanted:

- Aurizon Network to be obliged to develop the initial system rules for each system[831]
- the QCA to oversee the review and amendment processes for system rules[832]
- greater information and prescription around the information to be featured in the STP.[833]

There were specific areas of the NMP where stakeholders did not accept the overall position of Aurizon Network, including the:

- discretionary power the NMP provided Aurizon Network[834]
- limitations on the provision of information[835]
- provisions[836] which limited Aurizon Network's liability, provided it had used 'reasonable endeavours' to comply with the relevant provisions of Schedule G[837]
- lack of clarity in relation to the pooling of TSEs.[838]

[830] Anglo American, 2014 DAU sub. 7: 50.
[831] QRC, 2014 DAU, sub. 42: 32; Anglo American, 2014 DAU, sub. 7: 51.
[832] QRC, 2014 DAU, sub.. 42: 32–33; Anglo American, 2014 DAU, sub. 7: 52; Asciano, 2014 DAU, sub.22: 38.
[833] Asciano, 2014 DAU, sub. 22: 50–51.
[834] QRC, 2014 DAU, sub. 42: 36.
[835] QRC, 2014 DAU, sub. 42: 35.
[836] Clause 7.4(b)(iv) of Schedule G.
[837] QRC, 2014 DAU, sub. 42: 36; Asciano, 2014 DAU, sub. 22: 51.
[838] Asciano, 2014 DAU, sub. 22: 51.

13.2.2 Legislative framework and QCA assessment approach

Legislative framework

In assessing Aurizon Network's proposed NMP, we had regard to all the factors in section 138(2) of the QCA Act, as set out in Chapter 2. In doing so, we applied a weighting to each factor we considered appropriate based on the relevance of that factor.

Against this background, we consider that, in our assessment of Aurizon Network's NMP:

- sections 138(2)(a), (b), (d), (e) and (h) should be given more weight
- sections 138(2)(c), (f) and (g) should be given less weight, as they are less relevant to our assessment.

Section 138(2)(a)

Sections 69E and 138(2)(a) require us to have regard to the object of Part 5 of the QCA Act, namely to promote the economically efficient operation of, use of, and investment in, the CQCN. Section 138(2)(d) of the QCA Act requires us to have regard to the public interest.

Train plans being made available to be viewed by access holders, access seekers and end users would be critical to the efficient allocation of the CQCN's capacity. This in turn promotes more efficient operation of, use of, and investment in the CQCN, which then allows CQCN users to use the network in a more cost-effective way.

Section 138(2)(b)

Section 138(2)(b) of the QCA Act requires we have regard to Aurizon Network's legitimate business interests. The NMP affect the way in which Aurizon Network delivers its TSEs to access holders, which is one of Aurizon Network's legitimate business interests. We considered transparent train plans to be consistent with Aurizon Network's legitimate business interests as transparency increases accountability of other supply chain participants.

Section 138(2)(d)

Section 138(2)(d) requires us to have regard to the public interest, including promoting competition. We considered this be given more weight because the NMP can contribute to effective supply chain coordination, which is in the public interest (see section 2.7). Transparent NMP can also promote competition in above-rail markets because access holders/seekers would be willing to contract with non-Aurizon above-rail operators if they are confident Aurizon Network will not unfairly prioritise its related party above-rail operator.

Sections 138(2)(e) and (h)

Section 138(2)(e) relates to the interests of access seekers while section 138(2)(h) allows us to have regard to any other issues considered relevant. We consider the interests of access holders and infrastructure service providers are relevant under section 138(2)(h). We apply more weight to these factors because the NMP affect the ability of access seekers and access holders to use their access rights, which is critical to their commercial interests. We considered the objectives under sections 138(2) (h) are also best met where access holders and end users benefit from effective TSE reconciliation reporting and transparent TSE calculation.

Other factors

Because the NMP do not affect pricing matters directly, sections 138(2)(f) and 138(2)(g) have little relevance to the assessment of the 2014 DAU's proposed NMP and are, accordingly, given low weight.

QCA assessment approach

Our approach to assessing Aurizon Network's proposed NMP use the criteria of transparency and accountability, clarity and confidence about access entitlements and governance. We consider that, taken as a whole, this assessment approach allows us to have regard to an appropriate weighing of factors set out in section 138(2) of the QCA Act. For the purpose of the consolidated draft decision, we consider the NMP must provide a consultative process to develop and modify the four train plans:

- STP—a long-term high-level train plan (i.e. between one and two years)
- Master Train Plan (MTP)—a medium-term train plan (i.e. up to three months)
- Intermediate Train Plan (ITP)—a one-week train plan (or another period, as set out in the any approved system rules)
- Daily Train Plan (DTP)—the plan for trains to follow in a given day of operation.

Key issues for consideration

This chapter deals with the following key issues for the NMP:

- Transparency of train plans (i.e. STP, MTP, ITP and DTP)—Section 13.3
- Confidentiality and ring-fencing matters—Section 13.4
- STP—Section 13.5
- MTP—Section 13.6
- ITP—Section 13.7
- TSE reconciliation reports—Section 13.8
- System rules governance–Section 13.9
- Other matters in our IDD amended DAU—Section 13.10.

We have also proposed drafting amendments that are not discussed in detail in this chapter, but are nonetheless consistent with our broad approach and meet our assessment criteria. These include amendments to improve the undertaking's clarity and certainty, transparency and accountability, and readability. Our more detailed considerations are reflected in clause 7A.2 of our CDD amended DAU.

13.3 Transparency of train plans

13.3.1 Aurizon Network's proposal

The 2014 DAU provided for four train plans (Schedule G) as well as processes to modify them. Aurizon Network said it had simplified the drafting from the 2010 AU and had made its obligations clearer in relation to consultation.[839]

13.3.2 Summary of our initial draft decision

We proposed amendments to the 2014 DAU to improve transparency and accountability, and to increase the information available to improve supply chain coordination. These changes sought to address the key themes raised by stakeholders that more information more frequently was

[839] Aurizon Network, 2013 DAU, sub. 2: 297.

required to aid decision making and provide increased certainty around the planning for the delivery of entitlements.[840] If these amendments were made, it would allow us to accept that aspect of Aurizon Network's NMP.

We proposed amendments to increase transparency and accountability to all four train plans. We considered attaining these outcomes should take precedence over preserving commercially sensitive operational/tonnage information of individual access holders (if any). Any confidentiality agreement modelled in UT1, UT2 or UT3 standard agreements already permit such disclosures.[841] In any event, with regard to the ITP and the DTP, we considered the commercial downside of sharing the identity and train service number with all other access holders to be minimal.

We considered these amendments would promote the economically efficient operation and use of the network. The additional information and transparency is in the public, access seekers' and access holders' interests, as well as in Aurizon Network's legitimate business interests (s. 138(2)(b), (d), (e), and (h) of the QCA Act).

13.3.3 Stakeholders' comments on the initial draft decision

Aurizon Network

Aurizon Network supported our proposed objective of applying the NMP transparently.[842] It also agreed in principle with providing un-redacted train plans to all relevant access holders. However, Aurizon Network had some concerns with the workability of the QCA's proposal, particularly the use of confidential information (See Section 13.4 of this decision for a discussion on those issues).[843]

Whilst Aurizon Network acknowledged any confidentiality agreement modelled in UT1, UT2 or UT3 standard access agreements may permit the level of transparency proposed by the QCA, it questioned whether access holders would have anticipated the level of transparency the QCA is seeking. Aurizon Network said it expected access holders to have concerns with the proposal.[844]

Aurizon Network rejected our proposal to identify available train paths on all four levels of train plans. Aurizon Network said that while it could make assumptions about the potential demand that might arise, it questioned the value of this exercise for potential access seekers as it may not correspond with the particular service they wish to operate. Aurizon Network noted the best way for access seekers to understand whether there was available capacity was to submit an access request via the Part 4 process.[845]

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[840] Asciano, 2014 DAU, sub. 22: 50–51; QRC, 2014 DAU, sub. 42: 36; QRC, 2014 DAU sub. 46 Sch. G mark-up: 2 and 9; Anglo American, 2014 DAU sub. 15: 17, 318, 321–22 and 326–327; Peabody, 2013 DAU, sub. 7: 4.

[841] Our drafting requires Aurizon Network to provide complete and transparent train plans, unless there is an absolute confidentiality obligation owed by Aurizon Network to a third party that it cannot disclose this information. The Confidentiality Deeds under previous undertakings permit confidential information to be disclosed by Aurizon Network if required by the undertaking. Most confidentiality agreements and clauses will be modelled upon this standard form. There is a similar provision in the new standard access agreements proposed by Aurizon Network in the 2014 DAU. Therefore, we consider the requirements under UT4 obliging Aurizon Network to provide train plans containing confidential information outweigh the confidentiality obligations Aurizon Network owes to an access holder.

[842] Aurizon Network, 2015, sub. 82: 17.

[843] Aurizon Network, 2015, sub. 82: 191.

[844] Aurizon Network, 2015, sub. 82: 191.

[845] Aurizon Network, 2015, sub. 82: 191.

Other stakeholders

The QRC and Asciano broadly supported our proposal to specify the disclosure requirements for Aurizon Network.[846] They also generally supported our amendments to expressly limit Aurizon Network's ability to rely on confidentiality obligations to avoid disclosing the plans and schedules.[847]

The QRC and Asciano also proposed the following drafting/procedural amendments:

- The prohibition on Aurizon Network should be more clearly linked to the information which Aurizon Network must disclose.[848]
- Some examples should be included of when it may be acceptable for Aurizon Network to agree to confidentiality obligations.[849]
- The process of public posting should be monitored in its initial stages, so it does not breach any confidentiality requirements or unfairly impact any access holder or access seeker.[850]

Aurizon Operations[851] noted the access undertaking should not include provisions which circumvent Aurizon's legitimate commercial interests or preclude Aurizon Network from entering into arrangements which allow Aurizon to protect its confidential information or permit the disclosure of information without the owner's consent.

13.3.4 QCA analysis

After having regard to the section 138(2) matters and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of the extent of transparency of Aurizon Network's train plans. In particular, we consider the 2014 DAU is not sufficiently clear about what information Aurizon Network will provide in its train plans. We consider this lack of clarity and certainty is unlikely to:

- be in access seekers' interests because it does not provide an opportunity for access seekers and holders to identify spare train paths that they can use on a long-term basis, or an opportunity for them to adjust their operations to fit into Aurizon Network's schedule more efficiently (s. 138(2)(e) and (h) of the QCA Act)
- promote the object of Part 5 of the QCA Act and the public interest because access seekers and holders are not given sufficient pathing arrangements to promote effective supply chain coordination (s. 138(2)(a) and (d) of QCA Act) (See Section 2.7 of this consolidated draft decision, which explains why we consider effective supply chain coordination to be in the public interest).

Accordingly, we have formed the view that the lack of prescription does not appropriately balance the section 138(2) factors in the QCA Act.

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[846] Both QRC and Asciano supported the disclosure requirements relating to MTP. QRC was also supportive of the disclosure requirements for STP, ITP and DTP. (QRC, 2015, sub. 84 :67; Asciano, 2015, sub. 76: 24).
[847] QRC, 2015, sub. 84: 67, Asciano, 2015, sub. 76: 24.
[848] For example, clause 2(b) and (c) should be clearly interlinked so that those clauses work together. QRC, 2015, sub. 84:63.
[849] QRC, 2015, sub. 84: 63.
[850] Asciano, 2015, sub. 76: 24.
[851] Aurizon Operations, 2015, sub. 93: 19–20.

Amending the 2014 DAU

Our overarching premise is that the benefits arising from making train plans transparent will outweigh the value that access holders and seekers may ascribe to keeping their train-path-related information confidential. This is necessary to show Aurizon Network is managing capacity appropriately and is not unfairly favouring its related party above-rail operator over third parties. The amendments in our initial draft decision reflected this view, and have been retained, for the most part, in this CDD amended DAU. It is against this backdrop we have addressed stakeholders' concerns.

Aurizon Network said it expected stakeholders to have concerns on the extent of transparency our initial draft decision requires. However, we note:

- the QRC is proposing that the transparency provisions need to be better targeted to the information Aurizon Network should (or should not) provide
- Asciano has a minor concern with confidentiality of information in providing the first MTP drafts, so that the disclosure of any information does not unfairly impact any access holder or seeker (see above).

Aurizon Operations appears to be the only stakeholder to raise concerns regarding potential disclosures of confidential information.

On the QRC's issue, we note that there are many things an access holder or seeker can claim as confidential. Some information may not be considered sensitive (e.g. train numbers and length), while other information may be commercially important not to disclose (e.g. wagon design, choice of braking technology, and number of train paths contracted).

To produce transparent train plans, only some of that information will be relevant. For example, trains lengths and effectiveness of braking systems can influence the section running times for an above-rail operator. By being prescriptive about which confidential information should or should not be excluded (which the QRC has suggested), Aurizon Network loses the flexibility to exercise judgement on what can be disclosed in seeking to make the train plans transparent. In this context, we do not accept the QRC's view.

In responding to Asciano's concern, we consider the only commercially sensitive information that can be inferred from a transparent MTP is the:

- monthly number of train paths for each access holder, including the mine–port combination associated with those train paths
- performance of rollingstock (i.e. a transparent MTP can reveal which trains can stop and start faster than others, and which trains can travel faster)
- crew change and on-track maintenance efficiencies, which could be a competitive cycle-time-related advantage for above-rail operators that have shorter dwell times than others.

While there may be other information that can be inferred, a key observation on the above list is that the information is not truly confidential. A train's movements (including speeds), dwells and origin-destination information can be assessed (albeit difficult) without having transparent train plans. For example, the ability to observe a train's movements and measure its speeds is not excludable to the general public. Accordingly, we do not support Asciano's position that the initial process for publishing a transparent MTP needs to be monitored in its initial stages.

Finally, we disagree with Aurizon Operations' view that the undertaking should not preclude Aurizon Network from entering into arrangements which allow access holders to protect its confidential information or permit the disclosure of information without the owner's consent.

As set out in Chapter 2, having decided to refuse to approve Aurizon Network's proposed access undertaking, the QCA Act provides us the power to decide how we consider it would be appropriate for an access undertaking to operate or be drafted to promote the objects of Part 5.

To meet that objective, we consider it necessary to prevent Aurizon Network from entering into confidentiality obligations that limit transparency of train plans at the detriment of effective supply chain coordination, above-rail competition, and Aurizon Network's accountability in delivering TSEs. In addition, we note this requirement only applies to confidentiality agreements that are negotiated after UT4 commences; it does not extend to existing agreements. (See Section 13.4 for a complete discussion on this).

We consider our approach appropriately balances the interests of Aurizon Network, access seekers and holders, and promotes the object of Part 5 of the QCA Act. The amendments to the DAU that we consider appropriate to achieve transparency is dealt with more specifically in the following sections.

13.4 Confidentiality and ring-fencing matters

13.4.1 Aurizon Network's proposal

The 2014 DAU proposed carve-outs for Aurizon Network's obligations to provide information to access holders or to publish information on its website under the NMP. In particular, the 2014 DAU proposed Aurizon Network would only provide or publish that information if doing so does not cause or contribute to a breach of its:

- ring-fencing obligation in Part 3 of the undertaking
- access agreements
- relevant confidentiality agreements (Sch. G, cl. 2(a)).

The 2014 DAU also proposed Aurizon Network would provide capacity information to access seekers in a way that does not breach the conditions described above (Sch. A, cl. 3(a)). The DAU defines capacity information to include, among other things, the MTP and DTP (Sch. A, cls. 3(b)–(d)).

13.4.2 Summary of our initial draft decision

We required greater transparency for Aurizon Network's train plans. We considered it was appropriate for Aurizon Network to:

- provide complete and transparent train plans to us on an unredacted basis
- supply, to the greatest extent permitted by the undertaking and relevant access agreements, complete and transparent train plans to access holders and, where relevant, access seekers. Where disclosure is not required by the undertaking and relevant access agreements, we proposed Aurizon Network must:
  - use reasonable endeavours to obtain consent from third parties to disclose information relevant for developing complete and transparent train plans
  - aggregate the confidential information in a way that enhances the transparency of train plans but that does not reveal the confidential information for which disclosure is not permitted

- not agree to any confidentiality obligations which prevent the disclosure of the information contained in the train plans or that does not permit disclosure of information that the undertaking requires.

We also extended this requirement to Aurizon Network's proposed TSE reconciliation reports (and our proposed monthly TSE notices).

13.4.3 Stakeholders' comments

Aurizon Network raised issues around confidentiality and ring-fencing for our proposals relating to the STP, MTP, ITP, DTP and TSE reconciliation reports.

Aurizon Network supported the QCA's position on transparency of the relevant train plans. However, Aurizon Network noted it should not be responsible for ensuring access holders agree to the disclosure of their confidential information to other access holders and seekers. Aurizon Network also said it wanted to ensure providing these documents did not violate the ring-fencing provisions in Part 3 of the DAU.[852] Aurizon Network also noted the process for ensuring access holders agree to the disclosure of their confidential information to other parties would be very time-consuming.[853]

Aurizon Network supported our proposal to provide all access holders and their customers with the monthly TSE notice and TSE reconciliation report. However, Aurizon Network did not believe it should be responsible for procuring access holders' agreement on disclosing their confidential information to other access holders (and their customers). Aurizon Network also wanted to ensure its ring-fencing obligations were met.

13.4.4 QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of the extent of Aurizon Network's proposed approach for managing confidentiality and ring-fencing issues when providing NMP-related documentation to access holders and seekers.

We consider the 2014 DAU's proposal will result in train plans that are not meaningful for supply chain participants' use and reliance. This is:

- unlikely to be in access seekers' interests because there is no clarity on what the extent of redactions on the train plans will be (s. 138(2)(e) and (h) of the QCA Act)
- unlikely to promote the object of Part 5 of the QCA Act and the public interest because the lack of certainty on the train plans' contents can compromise the efficient use of the CQCN and effective supply chain coordination (ss. 138(2)(a) and (d) of QCA Act)

On the other hand, we consider Aurizon Network's proposal:

- is consistent with its legitimate business interests in honouring its confidentiality obligations (s. 138(2)(b) of QCA Act)
- is consistent with the interests of access holders that value their confidential information being protected over having non-redacted train plans (s. 138(2)(h) of the QCA Act).

In weighting these observations, however, we do not consider Aurizon Network's proposal appropriately balances the section 138(2) factors in the QCA Act.

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[852] Aurizon Network, 2015, sub. 82:.193.
[853] Aurizon Network, 2015, sub. 82:.17.

Amending the 2014 DAU

We consider it appropriate to retain our initial draft decision's position on confidentiality and ring-fencing matters applying to NMP-related information. Our explanation below, based on our initial draft decision, deals with the following matters:

- STP
- MTP, ITP and DTP
- TSE reconciliation reports.

STP

We note Aurizon Network does not dispute the usefulness of a transparent STP; it disputes that it should be responsible for seeking permission from access holders. However, Aurizon Network has not nominated an alternative party to fulfil that role.

For the QCA to fulfil that role would be at odds with our economic-regulation purpose. In this instance, that purpose is to promote the transparency of the STP to meet the object of Part 5 of the QCA Act. Our role does not cover being responsible for implementing the STP. Moreover, we do not have regular operational dealings with relevant access holders. We consider that, in these circumstances, Aurizon Network is the more appropriate party to seek permission from access holders.

In any event, and as noted in our initial draft decision, due to the manner in which we have made amendments to the CDD amended DAU, it will rarely be necessary for Aurizon Network to seek consent from stakeholders. This is because any access or confidentiality agreements modelled under the standard agreements contained in UT1, UT2 or UT3 already permit disclosures required by an access undertaking.

We note Aurizon Network's position that providing the STP to access holders and seekers should be consistent with its ring-fencing obligations. This is a valid concern.

However, we do not envisage that ring-fencing will be an issue for the STP because the intention is for all access holders and seekers in a coal system to get the same STP for that coal system. Therefore, given Aurizon Network would provide the same STP to third parties and related parties, ring-fencing issues should not arise.

MTP, ITP and DTP

Consistent with our position on Aurizon Network's STP, we consider Aurizon Network should be responsible in its MTP development process for ensuring access holders agree to the disclosure of their confidential information to other access holders and seekers. In addition, we do not agree that Aurizon Network's disclosure of the MTP would create ring-fencing concerns because related parties and third parties would receive the same MTP. In our view, the same argument applies to Aurizon Network's ITPs and DTPs.

TSE reconciliation reports

Aurizon Network has said it need not be responsible, during its TSE reconciliation reporting processes, for ensuring access holders agree to the disclosure of their confidential information to other access holders and seekers. We have approached this issue by considering what a TSE reconciliation report contains.

A TSE reconciliation report is origin–destination specific (cl. 8.2 of our IDD amended DAU). And, as we understand Aurizon Network would only send that information to the access holder

having the rights to access that origin-destination pairing, there is no need for other access holders to get that information.

There does not, therefore, appear to be any issues around confidentiality or ring-fencing. This argument also applies to monthly TSE notices, which are access-holder-specific (cl. 7.6(a) of our IDD amended DAU). For these reasons, we do not accept Aurizon Network's underlying concern that confidential-information issues exist with the TSE reconciliation reporting. Accordingly, we have retained our drafting from the initial draft decision.

The amendments to the DAU that we consider appropriate to achieve this are dealt with more specifically in the following sections and in the CDD amended DAU.

Consolidated draft decision 13.1

(1) **After considering Aurizon Network's NMP included in Schedule G of the 2014 DAU, our consolidated draft decision is to refuse to approve Aurizon Network's proposa**l.

(2) **The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is to amend the NMP to increase transparency and availability of train plans as set out in Schedule G of our CDD amended DAU.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

13.5 Strategic Train Plan

13.5.1 Aurizon Network's proposal

For the first time, Aurizon Network included an STP in its 2014 DAU, which it said would be an output from its annual capacity reviews.[854]

The 2014 DAU proposed the STP would indicate the existing capacity that Aurizon Network expects will be necessary to meet its TSE obligations for at least one year (but no more than two years) of operations (Sch. G, cl. 4(b)).

The 2014 DAU also proposed Aurizon Network may (acting reasonably) make assumptions in developing the STP, and that the STP would set out the material assumptions that Aurizon Network has made in preparing it (Sch. G, cl. 4(e))

13.5.2 Summary of our initial draft decision

We considered the STP formed part of the baseline capacity assessment Aurizon Network would undertake as part of its provision of a capacity guarantee and would be a strategic planning tool for supply chain coordination. However, we considered Aurizon Network's STP proposal required amendment to increase certainty and clarity about the STP's contents, its frequency of publication and availability to stakeholders.

Furthermore, we considered Aurizon Network should develop a useful and effective STP for each coal system and for the CQCN in aggregate. We also said the first STP should be produced no later than three months after the 2014 DAU's approval. To be effective, we considered the

[854] Document presented by Aurizon Network to QCA in meeting on 14 August 2014 entitled 'Capacity Verification Process—Routine' commercial-in-confidence.

STP must be available in full to all access holders and us, as well as to access seekers who request it.

We considered the methodology used to develop the STP should be subject to expert review and audit, to provide stakeholders with certainty of independent verification. Following expert review, the STP could be amended to adopt the expert's recommendation if necessary. This would increase Aurizon Network's accountability in developing a robust STP, and enable it to become a tool for capacity planning.

We believed these amendments would promote the economically efficient operation and use of the network (s. 69E and 138(2)(a) of the QCA Act). The additional information and transparency is in the public, the access seekers and the access holders interests, as well as in Aurizon Network's legitimate business interests (s. 138(2)(b), (d), (e) and (h) of the QCA Act).

13.5.3 Stakeholders' comments on the initial draft decision

Aurizon Network

Aurizon Network agreed with the:

- requirement to develop an initial STP. However, Aurizon Network said given the STP is an output of a capacity assessment, the proposed timeframe to submit the initial STP should align with the obligation to undertake a baseline capacity assessment (i.e. six months).[855]
- obligation to prepare the STP by coal system and in aggregate annually.[856]

While Aurizon Network agreed there are benefits from clearly specifying the STP's contents, it said it was unwilling to adopt particular aspects of our initial draft decision for two reasons. Firstly, Aurizon Network said it did not see the benefit of including an estimate of available capacity.[857] Secondly, Aurizon Network said the obligation to outline the material assumptions made in preparing the STP seemed to duplicate the process of customer consultation and publishing the SOPs (which are generally used in developing the STP) on its website.[858]

While Aurizon Network supported the idea of having an independent party review the STP, it rejected the obligation to be bound by the independent expert's recommendations because it amounted to an uncompensated risk for Aurizon Network. Aurizon Network was also concerned if the reason for there being a capacity deficit is not within its control.[859] Aurizon Network noted the obligation to audit the STP would trigger additional consultancy and audit expenses. [860]

Aurizon Network said the QCA should not have the power to audit the STP, when it has already been reviewed by an independent expert, as it is an inefficient use of resources and will add additional costs to the business.[861] Aurizon Network also noted its proposed obligations for an external reviewer (chapter 10 of the initial draft decision) should apply to a review of the STP.[862]

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[855] Aurizon Network, 2015, sub. 82: 191.
[856] Aurizon Network, 2015, sub. 82: 192.
[857] In developing the STP, to determine whether there will be sufficient capacity to meet TSEs for the period, Aurizon Network will need to make an allowance for operational constraints using assumptions based on past operating experience. This allowance is a modelling adjustment which accounts for random events which cannot be known in advance (e.g. speed restrictions). See Aurizon Network, 2015, sub. 82: 192.
[858] Aurizon Network, 2015, sub. 82: 192.
[859] Aurizon Network, 2015, sub.. 82: 192.
[860] Aurizon Network, 2015, sub. 82: 34.
[861] Aurizon Network, 2015, sub. 82: 192.
[862] Aurizon Network, 2015, sub. 82: 126–127 and 192.

Other stakeholders

Asciano supported introducing a more defined STP, noting it was a positive step towards ensuring Aurizon Network was able to meet its obligations to provide TSEs.[863]

The QRC supported the QCA's proposal to require a STP be independently audited.[864] However, it noted the requirement to make the STP available on request[865] should be extended to customers.[866]

13.5.4 QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of Aurizon Network's proposal for STPs.

We consider Aurizon Network's drafting:

- does not identify the purpose of the STP
- provides for access holders, but not access seekers to receive the STP
- lacks prescription on what the information the STP will contain (e.g. Will the number of TSEs and associated train paths be provided? Will Aurizon Network consider operational constraints other than track maintenance?)

Given these, we do not consider Aurizon Network's proposal:

- is likely to promote the efficient operation and use of the CQCN infrastructure because it does not explain what the STP's purpose is in that context (s. 138(2)(a) of QCA Act)
- is consistent with the public interest, as the lack of prescription on the STP and not providing this document to access seekers can hamper effective supply chain coordination. Further reasoning is set out in Chapter 2.7 (s. 138(2)(d) of QCA Act)
- is consistent with the interests of access seekers, who would value having the STP to inform any access applications they may make (s. 138(2)(e) of QCA Act)
- is consistent with the interest of access holders, who may value understanding the STP's purpose and having a strong indication of what the STP will include (s. 138(2)(h) of QCA Act)
- provides sufficient clarity and certainty, which we consider is relevant for access arrangements to operate effectively (s. 138(2)(h) of QCA Act).

Amending the 2014 DAU

While we do not accept the 2014 DAU's STP proposal, we consider Aurizon Network has raised valid concerns on the STP requirements proposed in our initial draft decision.

We accept Aurizon Network's proposal that the STP should be published immediately after the outputs of the baseline capacity assessment are generated, and not within three months of the undertaking's approval date. It would not make sense to publish an STP that does not reflect completed capacity assessments, as that it would mean the STP could reflect missing or outdated information. Therefore, we have amended Schedule G of our CDD amended DAU to

[863] Asciano,2015, sub. 76: 24.
[864] QRC, 2015, sub.. 84: 67.
[865] Schedule G, clause 2(a)(ii).
[866] QRC, 2015, sub. 84: 67.

require Aurizon Network to submit its STP at the same time it completes its baseline capacity assessment (cl. 2(c)(i)).

We disagree with Aurizon Network's view that the STP need not document capacity. We note Aurizon Network proposed in the 2014 DAU that it would provide an indication of existing capacity (Schedule G, cl. 4(b)). However, Aurizon Network appears to have altered this position, by saying that it does not see the benefit of the STP including an estimate of available capacity. Aurizon Network has not revealed the reason for this position change.

We consider the STP reflects outputs emerging from the baseline (and subsequent) capacity assessments, and should therefore contain an estimate of available capacity. This is consistent with our IDD amended DAU on what the baseline capacity assessment's outcomes will include, namely waterfall analysis of capacity, existing capacity, committed capacity and available capacity (see cl. 7A.4.1(iv)(E)). While we have retained this position in our consolidated draft decision, we have sought to strengthen our Schedule G drafting on it by including the purpose of the STP. To that end, we have introduced new clauses—that is, clauses 2(a) and (b)—which say:

> *The purpose of the STP for each Coal System is to demonstrate that Aurizon Network has sufficient capacity to deliver existing Train Service Entitlements in the relevant Coal System and the Customer Specific Branch Lines in each Coal System. The STP must be developed for and be considered as part of the baseline capacity assessment Aurizon Network will undertake under clause 7A.4.1 of the Undertaking.*

We note the MTP, ITP and DTP clauses also have the purposes of those documents upfront. We consider including a purpose for the STP will increase clarity and certainty, which is an issue we consider relevant (s. 138(2)(h) of QCA Act).

We note Aurizon Network's position that the obligation to outline the material assumptions made in preparing the STP could duplicate the customer-consultation process when publishing the SOPs (which are generally used in developing the STP) on its website. We do not consider duplication costs would arise, given all Aurizon Network would do is provide the assumptions, for which a document would already exist, as a supporting attachment to the STP. In any case, we note the 2014 DAU had already said the STP would include material assumptions that Aurizon Network has made in preparing it (Schedule G, cl. 4(e)).

We note Aurizon Network does not support our initial draft decision that it is appropriate for Aurizon Network:

(1) to be bound by the independent expert's recommendations on revising the STP, as it is an uncompensated risk for Aurizon Network.

    We consider there is no uncompensated risk for Aurizon Network in adopting the expert's recommendations. Our initial draft decision said 'the STP is one medium to demonstrate Aurizon Network provides the capacity to deliver existing access entitlements, in addition to static and dynamic simulation modelling'. Our consolidated draft decision (Chapter 10) requires Aurizon Network to address capacity deficits, which would be revealed via capacity assessments rather than via the STP. Accordingly, we do not accept Aurizon Network's position.

(2) to be audited by us, when an independent expert has already reviewed the STP.

    We do not support Aurizon Network's position. We consider the purpose of an STP audit can be different from engaging an independent expert for STP reviews.

For example, our audit process might focus on how Aurizon Network consulted with access holders and seekers, to assess if Aurizon Network unfairly differentiated between those parties in a manner inconsistent with sections 168(1)(C) and 100(2) of the QCA Act. By contrast, the independent experts may focus on quality assuring the STP's assumptions in the STP.

Consistent with the above reasoning, we have retained our initial draft decision's position regarding our ability to audit Aurizon Network's STP. We recognise Aurizon Network may incur additional operating costs in relation those processes, and note it is open for Aurizon Network to seek additional efficient costs via a DAAU.

We support the QRC's position for Aurizon Network to provide the STP to customers if they request it. In the interests of promoting transparency, it is reasonable for access holders' customers (coal miners are not always access holders) to also receive the STP. We consider this can promote effective supply chain coordination and below-rail efficiency, without negatively affecting Aurizon Network.

We have retained other aspects of our initial draft decision, which are reflected in our CDD amended DAU.

We consider our proposal sufficiently balances the section 138(2) factors because:

- the greater prescription on the STP's contents is consistent with access seekers' and holders' interests, and can promote effective supply chain coordination, which is in the public interest (s. 138(2)(d), (e) and (h) of QCA Act)
- it identifies the STP's purpose, which can promote the efficient use and operation of the CQCN infrastructure (s. 138(2)(a) of the QCA Act)
- it is not inconsistent with Aurizon Network's legitimate business interests (s. 138(2)(b) of QCA Act), as it aligns with Aurizon Network's proposed STP timelines and recognises that Aurizon Network can seek, via a DAAU, to recover additional operating costs (provided they are efficient) in managing our proposal's requirements.

Consolidated draft decision 13.2

(1) **After considering Aurizon Network's NMP included in Schedule G of the 2014 DAU, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is to, among other things:**

- **(a) include its purpose, consistent with the provisions for the MTP, ITP and DTP**
- **(b) include a deadline to submit initial STP, conditional on Aurizon Network first submitting its baseline capacity assessment(s) to us within six months of the 2014 DAU's approval**
- **(c) specify to whom the STP will be submitted each year**
- **(d) include additional details on the contents of the STP**
- **(e) include an obligation for an annual preparation of the STP by coal system and in aggregate**
- **(f) to provide for the QCA to require the STP be reviewed by an independent expert and audited by us,**

as set out in the marked changes in our CDD amended DAU.

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

13.6 Master Train Plan

13.6.1 Aurizon Network's proposal

The 2014 DAU proposed that the purpose of the MTP is to demonstrate how Aurizon Network plans to deliver its TSEs in each coal system, having regard to possessions, existing capacity and other relevant characteristics of that system (Sch. G, cl. 5.1(a)).

The 2014 DAU also proposed the MTP would be published in table form and cover up to three months (Sch. G, cl. 5.1(b)).

Aurizon Network's proposal for the MTP was similar to the UT3 arrangements, in that it limited access to the MTP to access holders who requested it.

13.6.2 Summary of our initial draft decision

We refused to approve Aurizon Network's proposal as we considered the MTP process needed to be more rigorous to assist with operations planning and supply chain coordination.

We considered Aurizon Network needed to:

- disclose the assumptions it had used to generate the MTP, to make it accountable
- account for a broader range of activities in developing the MTP, including having regard to the SOPs, expansions and other supply chain participants' planned system outages
- identify the system paths which remained available after scheduling all contracted services on the MTP
- consult with access holders when amending the MTP (regardless of the circumstance) and only amend the MTP with written agreement from those parties.

We believed these amendments would promote the economically efficient operation and use of the CQCN (ss. 69E and 138(2)(a) of the QCA Act). The additional information and transparency are in the public interest, access seekers' and access holders' interests, as well as in Aurizon Network's legitimate business interests (s. 138(2)(b), (d), (e) and (h) of the QCA Act).

13.6.3 Stakeholders' comments on the initial draft decision

Aurizon Network

Aurizon Network supported the proposal that the MTP cover a period of at least one month[867] and that Aurizon Network should set out the assumptions made in preparing the MTP.[868] However, Aurizon Network said the obligation to set out the assumptions used to develop the MTP would result in increased workload and delay delivery.[869]

Aurizon Network did not support the proposal to give consideration to any planned system outages.[870] It said the proposal is in conflict with the purpose of the MTP[871] and beyond what Aurizon Network may know at the time of preparing the MTP.[872]

There was in-principle support for the obligation to specify all types of traffics and train paths. However, Aurizon Network did not see any benefit in including system paths which remained available after scheduling all contracted services on the MTP.[873] Aurizon Network reserved its comments on the MTP's form[874], noting it was unclear at this stage what the timetable would include.[875]

Aurizon Network said the QCA appeared to have removed the ability to change the MTP[876] to reflect amendments to contractual entitlements without consulting all other parties, even where there was no impact on those parties. Aurizon Network believed this amendment diverged from the objective of promoting efficient network operations.

Aurizon Network considered the proposal for MTP changes to be agreed by all parties in writing would be an additional administrative burden and increase scheduling costs.[877]

Other stakeholders

Asciano supported our proposal to extend the MTP obligations to branch lines as that would identify any potential capacity deficiency in the supply chain. Asciano added these measures will also assist access holders with planning and decision-making ahead of finalising the ITP.[878]

The QRC supported our proposal to:

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[867] Aurizon Network, 2015, sub. 82: 192.
[868] Aurizon Network, 2015, sub. 82: 193.
[869] Aurizon Network, 2015, sub. 82: 34.
[870] Schedule G, clause 3.1 (C)(ii).
[871] The purpose of the MTP is to 'demonstrate how Aurizon Network plans to deliver TSEs in each coal system'
[872] While in practice Aurizon Network does consider supply chain matters, including outages for loading and unloading terminals, their inclusion should not be governed by the Access Undertaking. (Aurizon Network, 2015, sub. 82: 193).
[873] Aurizon Network, 2015, sub. 82: 193.
[874] Aurizon Network, 2015, sub. 82: 193.
[875] In response to Aurizon Network's Request for Information on the QCA's Policy draft decision, the QCA noted it would welcome stakeholder comments on what should be contained in a timetable.
[876] To reflect amendments to contractual entitlements without consultation with all other parties, even where there is no impact on parties.
[877] Aurizon Network, 2015, sub. 82: 198.
[878] Asciano, 2015, sub. 76: 24.

- require Aurizon Network to consider certain factors in preparing the MTP and to specify the material assumptions made in preparing the plan[879]
- prevent Aurizon Network making unilateral MTP amendments.[880]

The QRC proposed amendments to Schedule G, Clause 3.2 as set out in the table below.[881]

Table 54 QRC's drafting amendments

Clause	*Comments*
3.2 (a)(v) and (b)	Where Aurizon Network seeks to modify a MTP, it should also consult with the affected customers.
3.2 (c)	The phrase 'Aurizon Network considers' should be deleted, so that whether an infrastructure service provider or railway manager may be affected by any modifications to the MTP is an objective rather than subjective test.

13.6.4 QCA analysis

We have divided our analysis into:

- the MTP's purpose, content and transparency
- notification and consultation.

We discuss each of these in turn.

MTP's purpose, content and transparency

After having regard to the section 138(2) matters and stakeholder submissions, we consider it not appropriate to approve the 2014 DAU in respect of Aurizon Network's proposal for the MTP's purpose and content. This is because the proposal is not sufficiently robust to generate a usable MTP. It does not appropriately balance the section 138(2) matters because it is unlikely to:

(a) promote the efficient operation and use of the CQCN infrastructure (s. 138(2)(a) of QCA Act)

(b) promote effective supply chain coordination, which is in the public interest (s. 138(2)(d) of QCA Act). See Section 2.7 on our reasoning for why we consider effective supply chain coordination to be in the public interest

(c) provide certainty and clarity on pathing arrangements, which is important for access seekers' and holders' interests in using their access rights (ss. 138(2)(e) and (h) of QCA Act).

Amending the 2014 DAU

We recently released a position paper on Aurizon Network's draft Northern Bowen Basin system rules. Among other things, it discussed our position on the MTP's purpose, content and transparency. In arriving at a consolidated draft decision, we have had regard to matters raised in this position paper.

[879] QRC, 2015, sub. 84: 67.
[880] QRC, 2015, sub. 84: 68.
[881] QRC, 2015, sub. 84: 68.

The MTP is an output of Aurizon Network's master train planning process. This process involves planning documents other than the MTP (e.g. the critical asset alignment calendar, critical asset constraint summaries and four-week pathing availability plans).

We consider the master-train-planning process fulfils two separate but related functions:

- practical—forecasting maintenance and other planned outages over the medium to long term so all supply chain participants can coordinate their activities
- theoretical—demonstrating capacity, so access holders/seekers (and their customers) know capacity is sufficient and has been allocated equitably.

Aurizon Network's critical asset alignment calendar, which guides the MTP's development, would fulfil the practical role of forecasting maintenance and other planned outages over the medium to long term. This would support supply chain participants in coordinating their activities with Aurizon Network's. We said the MTP would fulfil the theoretical role, namely to focus on demonstrating capacity, so access holders/seekers (and their customers) know capacity is sufficient and has been allocated equitably.

Our position paper considered a theoretical MTP could demonstrate capacity. In particular, we said:

> *... the MTP should include a theoretical allowance for planned possessions. Aurizon Network should detail the assumptions and data used to calculate this allowance, and how the assumptions were derived.*

In this context, we agree with Aurizon Network's position that it need not consider planned system outages of other supply chain participants (which is a practical consideration) in preparing the MTP. However, some system outages may be driven by Aurizon Network for non-maintenance-related reasons. Accordingly, we have amended the provision to make it clear the outages relates to Aurizon Network's (not other supply chain participants') activities by including a specific references to 'Planned Possessions'.

Our position paper on Aurizon Network's draft Northern Bowen Basin system rules[882] considered the theoretical MTP should:

- include a theoretical allowance for planned possessions, including the assumptions and data used to calculate that allowance
- allocate train paths to all access holders reflecting their actual TSEs, which we considered would be equitable
- cover a minimum one-month period
- be presented in tabular format
- identify, in number of paths and million tonnes per annum, the total capacity of each coal system.

We note Aurizon Network does not support our initial draft decision for the MTP to include system paths which remain available after scheduling all contracted services. We agree with this

[882] QCA's position paper on Aurizon Network's draft Northern Bowen Basin system rules: 37–44.

position because the MTP's purpose is to show there is sufficient capacity, not identify how available capacity might be used. We have amended our drafting to reflect this.[883]

On the form the MTP should take, our position paper said that:

> *We consider tabular form to satisfy the 2010 AU requirement for the MTP to indicate the time/distance (location) relationship of the train services and other activities on the rail infrastructure (2010 AU, Sch. G, Part A, cl. 2(a)). [...]*
>
> *We consider stakeholders will be able to build train diagrams from the tabular form provided by Aurizon Network. We consider our preliminary position appropriately balances the legitimate business interests of Aurizon Network with the interests of access holders and seekers (ss. 138(2)(b), (e) and (h)).*[884]

Accordingly, our consolidated draft decision considers it appropriate for Aurizon Network to publish its MTP in tabular form. However, we have amended the drafting to make it clear it is open for Aurizon Network to publish the MTP in additional time/distance (location) formats if preferred (CDD amended DAU, cl. 3.1(b)). In that sense, publishing the document in tabular form is the minimum requirement.

Notification and consultation

After having regard to the section 138(2) factors and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of Aurizon Network's proposal for the MTP's notification and consultation requirements. Aurizon Network's proposal does not appropriately balance the section 138(2) factors because it does not:

- seek to keep access holders and seekers sufficiently informed about MTP amendments that could affect their access rights, conditional access rights or proposed access rights. This is inconsistent with promoting the efficient use of the CQCN infrastructure and can hamper effective supply chain coordination, which is in the public interest (s. 138(2)(a) and (d) of QCA Act)
- make the MTP freely available to access holders and does not provide for access seekers to have it, which does not have sufficient regard to the interests of access holders and seekers (s. 138(2)(e) and (h) of QCA Act).
- seek written approval from access holders when making MTP amendments, which is not consistent with those parties' interests (s. 138(2)(h) of QCA Act).

Amending the 2014 DAU

We do not accept Aurizon Network's position that it should be allowed to make MTP amendments without consultation or notification if there is no effect on access holders' train services. There may be situations where MTP amendments could lead to a non-transient freeing up of capacity. While these may not affect access holders' train services, we consider access holders and seekers may wish to be privy to the positive capacity impact of those amendments. We note this is a divergence from the 2010 AU, but consider it is a necessary change to appropriately balance the section 138(2) factors. The end of this subsection sets out our consideration of the section 138(2) factors in detail.

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[883] We have amended clause 3.1(d)(i)(A), Schedule G in our IDD amended DAU to remove the words 'and the System Paths that remain available to Cyclic Traffic after the scheduling of each Access Holder's Train Service Entitlements'.

[884] QCA's position paper on Aurizon Network's draft Northern Bowen Basin system rules: 39.

We note Aurizon Network's position that requiring written acknowledgement from access holders on MTP amendments will increase its administrative costs. MTP changes can happen under a wide range of circumstances, including when:

- a planned possession is cancelled
- access holders seek a long-term change in their train services
- access holders have negotiated new or additional train services
- Aurizon Network is allowed to alter an access holder's TSE in accordance with the terms of the relevant access agreement
- major periodic maintenance is about to occur.

Given MTP variations can occur for numerous reasons, we consider it reasonable for Aurizon Network to seek written acknowledgement from access holders. In addition, we do not consider this requirement onerous or costly. In a commercial environment, having a paper trail to provide evidence that a decision is supported by relevant parties is critical.

If there is written evidence from access holders agreeing to an MTP amendment, then Aurizon Network has proof that it acted in accordance with Schedule G requirements. It also reduces the likelihood of disputes on MTP amendments, given the paper trail's existence. We consider this practice can lead to the avoidance of costs that could emerge from disputes, which can be very large. Accordingly, we have retained our position to require Aurizon Network to secure written evidence from access holders on their agreement to MTP amendments.

The QRC has asked that Aurizon Network extend its consultation requirements to customers affected by MTP amendments. We consider Aurizon Network need only consult with the parties it has access agreements with. This means consulting with access holders and the parties (where relevant) that access holders have nominated to discharge their access rights. Where the access holder is an:

- above-rail operator, Aurizon Network need only inform that above-rail operator
- end user, Aurizon Network need inform the end user and its nominated train operator(s).

Aurizon Network thus need not consult with end users that are not access holders (referred to as 'Customers' in the undertaking). We consider this reasonable because we recognise Aurizon Network's commercial relationships are with access holders. 'Customers' are already involved in many other capacity processes, including the baseline capacity assessments, SOP reviews and NDP consultation. We do not consider this need extend to the MTP process.

To give effect to our position, we propose amending clause 3.2 (a)(v) and (b) of Schedule G to say that Aurizon Network must consult with access holders and where relevant, train operators.

We agree with the QRC's view that clause 3.2 (c) of Schedule G in our IDD amended DAU is more subjective than objective, in that the threshold relates to an 'Aurizon Network considers' requirement. To address this, we propose removing the wording 'Aurizon Network considers'. We note this is consistent with other clauses in Schedule G.

We consider our consolidated draft decision appropriately balances the section 138(2) factors because it:

- seeks to keep access holders and seekers sufficiently informed about MTP amendments that could affect their access (or proposed access) rights. This is consistent with promoting the efficient use and operation of the CQCN infrastructure and fostering effective supply chain coordination, which is in the public interest (s. 138(2)(a) and (d) of QCA Act)

- makes the MTP freely available to access holders and access seekers, which is consistent with having regard to their interests (s. 138(2)(e) and (h) of QCA Act).
- is not inconsistent with Aurizon Network's legitimate business interests (s. 138(2)(b) of QCA Act).

Consolidated draft decision 13.3

(1) **After considering Aurizon Network's NMP included in Schedule G of the 2014 DAU, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is to, among other things:**

- **(a) require the MTP to cover a period of at least one month**
- **(b) include the factors considered in preparing the MTP**
- **(c) specify all types of traffics and train paths to be identified on the MTP**
- **(d) set out the material assumptions made in preparing the MTP**
- **(e) publish the MTP in tabular form on Aurizon's website every month. Aurizon Network can provide additional time/distance (location) formats for the MTP,**

as set out in the marked changes in this consolidated draft decision.

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

13.7 Intermediate Train Plan

13.7.1 Aurizon Network's proposal

The 2014 DAU proposed that Aurizon Network's ITP would be the intermediate scheduling step in progressing from the MTP to DTP. The 2014 DAU proposed that Aurizon Network, in developing the ITP, would consider planned possessions, train paths and system paths in the MTP, TSEs and train orders (Sch. G, cl. 6(a)).

The 2014 DAU also proposed the ITP's scheduling horizon and timings for train-order submissions would be consistent with any relevant system rules (Sch. G, cls. 6(b)–(c)).

13.7.2 Summary of our initial draft decision

We did not consider Aurizon Network's proposed ITP clearly set out what information would be provided and what access holders would see when being 'notified' of the ITP. To address this, we made amendments to 2014 DAU to specify the train paths to the ITP should identify and to whom copies should be provided and when. We considered this was necessary to:

- allow for informed decision-making
- reveal if there is spare capacity which can be used, thus promoting a more efficient use of the network
- improve information symmetry among access holders and stimulate competition in above-rail markets
- provide sufficient information to assist with supply chain coordination

- enable communication between above-rail operators to find optimal solutions
- allow above-rail operators to identify ad hoc opportunities to run extra train services, shunt a train on part of a train path or check with Aurizon Network if the maintenance crew may be able to let a train service run by.

13.7.3 Stakeholders' comments on the initial draft decision

As noted in Section 13.3.4, Aurizon Network did not support our proposal to require that the ITP identify all available system paths. In this context, Aurizon Network noted that available mainline paths connected to an unloading terminal slot are displayed, which allows access holders to negotiate the scheduling of additional train services.[885]

The QRC proposed amendments to Schedule G of our IDD amended DAU, as set out in the table below.[886]

Table 55 Rationale for amendments to train plans

Clause	*Comments*
4	The clause should be amended to clarify the timeframe that the ITP is intended to cover.
4(f)	The clause should be amended to clarify that Aurizon Network is required to issue the ITP by '1600 hours on each Thursday during the Term before the commencement of the next ITP period'.

13.7.4 QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of Aurizon Network's proposal for ITPs.

Aurizon Network's proposal does not indicate what train path will be laid in the ITP. This does not promote the efficient use of the CQCN infrastructure, effective supply chain coordination, and certainty and clarity (s. 138(2)(a), (d) and (h) of the QCA Act). We consider that access seekers and holders value clarity on what the ITP will contain (s. 138(2)(e) and (h) of QCA Act).

Amending the 2014 DAU

We have considered Aurizon Network's position that available mainline paths connecting to an unloading terminal slot are sufficient for access holders to negotiate additional train services. We do not agree with this position because it does not account for the availability of capacity on branchlines, which multiple customers can use. The North Goonyella branch line, for example, has several mines along it and is a single-line track. While there may be spare capacity along the Goonyella system's mainline (which we note is duplicated), congestion on the North Goonyella single-line track might not enable the relevant mines to exploit the available mainline paths. For this reason, we consider the ITP should show available system paths.

We note the QRC wishes to clarify the timeframe to which the ITP covers. The ITP has to cover the 'relevant period' (cl. 4(a), Schedule G). This is defined as 'the relevant seven day period commencing at 12:00 am on Monday and immediately prior to 12:00 am on the following Sunday or such other period as expressly specified in the relevant System Rules'.[887] We consider

[885] Aurizon Network, 2015, sub. 82: 193.
[886] QRC, 2015, sub. 84: 68.
[887] IDD amended DAU: 253–254.

the drafting in Schedule G makes it clear an ITP covers one week (Monday to Sunday), unless otherwise stated in any approved system rules.

However, we agree with the QRC that our drafting of clause 4(f) in Schedule G does not make it clear which ITP (i.e. the one for next week or the one established in the previous week) Aurizon Network must issue to access holders by 1600 hours, Thursday. While relevant parties, acting reasonably, would know it relates to the ITP for next week, we support drafting amendments that improve certainty and clarity and have proposed amendments to clause 4(f) in this regard.

We consider our consolidated draft decision on Aurizon Network's ITP appropriately balances the section 138(2) factors because:

- it provides for system paths to be shown on the plan. As discussed above, this provides greater visibility of spare train paths to access holders to negotiate additional train services with Aurizon Network as the day of operation approaches. This is consistent with promoting the efficient use of the CQCN infrastructure and with the interest of access holders (s. 138(2)(a) and (h) of QCA Act). Access seekers would also value that visibility (s. 138(2)(e) of the QCA Act
- a transparent ITP can promote effective supply chain coordination, which is consistent with the public interest (s. 138(2)(d) of QCA Act). See Section 2.7 of this consolidated draft decision on why we consider effective supply chain coordination to be in the public interest.
- it is consistent with Aurizon Network's legitimate business interests.

Consolidated draft decision 13.4

(1) **After considering Aurizon Network's NMP included in Schedule G of the 2014 DAU, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is to, among other things, revise the ITP to specify the train paths to be identified and to whom copies should be provided. These amendments are set out in the marked changes in our CDD amended DAU.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

13.8 TSE reconciliation reports

Aurizon Network produces TSE reconciliation reports to track the delivery of an access holder's access rights on a monthly and year-to-date basis. For each origin–destination pair, the TSE reconciliation reports indicate the contracted amount of train paths, the number of train cancellations (and their cause) and the number of trains which arrived at the destination.

Tracking TSE consumption is important for Aurizon Network to:

- assist with measuring an access holder's take-or-pay obligations
- determine train scheduling priorities (via the contested train path decision-making process).

13.8.1 Aurizon Network's proposal

Aurizon Network said its weekly TSE reconciliation reports assisted in establishing priority in the planning and scheduling of train orders for the contested train path decision-making process in Schedule G. It said the reports did not affect or apply to take-or-pay calculations.

The 2014 DAU specifies TSEs for the same types of traffic will be defined using consistent terminology and expressed in terms that can be interpreted for the development of a STP, MTP, ITP (where necessary) and DTP (Schedule G, cl. 3). In response to stakeholder submissions on the 2013 DAU[888], Aurizon Network proposed in its 2014 DAU to provide a monthly TSE notice to each access holder at each calendar month's conclusion.

The 2014 DAU includes arrangements for Aurizon Network to provide a report to each access holder at the end of the 'relevant period' on its TSE consumption (Schedule G, cl. 10.2). The 'relevant period' is defined as the:

> *... seven day period commencing at 12:00 am on Monday and immediately prior to 12:00 am on the following Sunday or such other period as expressly specified in the relevant System Rules.*[889]

It also details the calculation of TSE consumption for the purposes of train planning.

13.8.2 Summary of our initial draft decision

Our initial draft decision was to refuse to approve the 2014 DAU's proposed reporting arrangements for TSEs. We did this because we considered the 2014 DAU's proposal did not provide sufficiently effective and useful TSE reconciliation reports to access holders and end users. We also considered the NMP should clearly set out the principles to calculate TSEs and their consumption.

Accordingly, we proposed amendments to the 2014 DAU's NMP to increase transparency and accountability of TSE reconciliation reports. This addressed stakeholders' submissions on the 2014 DAU identifying the need for increased transparent reporting.[890]

We generally accepted Aurizon Network's approach to TSE reconciliation, noting it provided more information to access holders relative to UT3. However, we considered providing more information in those reports and distributing them more broadly would be beneficial. We also proposed a number of amendments to improve transparency and accountability.

We considered that effective TSE reconciliation reports will promote economically efficient operation and use of the network and be in all access holders' interests (s. 69E and 138(2)(a) of the QCA Act). In addition, we considered those reports would not be inconsistent with Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act).

13.8.3 Stakeholders' comments on the initial draft decision

Aurizon Network said it had proposed the monthly TSE notice to improve transparency for access holders with regard to TSE use against plan. While our proposed amendments refer to this information, Aurizon Network noted its support for the drafting contained in the

[888] Aurizon Network, 2013 DAU, sub. 77: 89.
[889] Clause 12.1 of the 2014 DAU.
[890] BMA, 2014 DAU, sub. 23: 3–4; BMA, 2013: 2; Anglo American, 2013 DAU, sub. 39: 19; Asciano, 2014 DAU, sub. 2: 51; Anglo American, 2013 DAU, sub. 39: 19; Anglo American, 2014 DAU, sub. 15: 314.

undertaking (as opposed to the initial draft decision) because it identified the appropriate vehicle for this information.[891]

Aurizon Network questioned how our proposed obligation to require monthly reporting on each TSE's planned services in the ITP and DTP would benefit access holders. Aurizon Network also said preparing this report (for the DTP in particular) would be resource-intensive and may require changing IT systems to facilitate the report's compilation.[892] However, Aurizon Network said it was willing to do this if its MAR can recognise the additional resource requirements.[893]

To better align the TSE reconciliation report with the content of the various train plans (i.e. MTP, ITP and DTP), Aurizon Network proposed that rather than reporting on the number of train paths, this report would refer to the number of system paths for all the measures included in the report.[894]

Aurizon Network supported our decision to include the number of cancellations (and associated reasons) in the monthly TSE reconciliation report.[895] Aurizon Network said this information will be included in the monthly TSE notice, provided the timeframe required to distribute the notice to customers allows for the consultation process at month end to be finalised prior to issuing the notice.[896]

Currently, the monthly TSE position is provided to access holders via a number of different channels. To address the QCA's proposal, providing a projection to the year's end will require the provision of sufficient information from the access holder regarding its forecast railings to year end. Without this information, Aurizon Network will have to make assumptions about how it considers the access holder will use its TSEs in the future. Aurizon Network said this would be a speculative exercise. It questioned the benefit of providing this forecast information, given the access holder is better positioned to determine this for themselves.[897]

Aurizon Network argued the concept of pooled entitlements should be reinstated. If not, Aurizon Network said the TSE reconciliation report's contents should be amended to remove the pooled entitlement calculations.[898] However, if the QCA is minded to retain this, and the provisions in the TSE reconciliation report apply, Aurizon Network disagreed with the proposal to remove references to coal systems and mainline paths.

While Aurizon Network agrees there should be flexibility for access holders to use their TSEs, it said this process needed to be done in a way that considers the network's ability to deliver that flexibility. It said the coal system and mainline paths concepts ensure there are no negative capacity impacts on the below rail network.[899]

The QRC noted the reference under clause 7.6(a) to 'End User' should be updated to 'Customer'.[900]

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[891] Aurizon Network, 2015, sub. 82: 196.
[892] Aurizon Network, 2015, sub. 82: 196.
[893] Aurizon Network, 2015, sub. 82: 196.
[894] Aurizon Network, 2015, sub. 82: 196.
[895] This information is already shared with access holders based on an iterative consultative process.
[896] Aurizon Network, 2015, sub. 82: 196.
[897] Aurizon Network, 2015, sub. 82: 197.
[898] Clause 8.2(c)(iii)
[899] Aurizon Network, 2015, sub. 82: 197.
[900] QRC, 2015, sub. 84: 69.

13.8.4 QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we consider it not appropriate to approve the 2014 DAU in respect of Aurizon Network's proposal for TSE reconciliation reports. We do not consider the proposal results in sufficient information being provided to access holders. We consider this is:

- unlikely to promote the interests of access holders and access seekers (who may become holders) (s. 138(2)(e) and (h) of QCA Act)
- unlikely to promote the object of Part 5 (s. 138(2)(a) of QCA Act) and effective supply chain coordination, which is in the public interest (s. 138(2)(d) of QCA Act)

Amending the 2014 DAU

Aurizon Network has questioned how our proposed obligation to require monthly reporting on each TSE's planned services in the ITP and DTP would benefit access holders (our IDD amended DAU, Schedule G, clause 7.6(a)(ii)). In isolation, we agree that reporting the number of planned train services in the ITP and DTP would not be that beneficial without some indication of the number of train services actually delivered.

By complementing the number of planned services with the number of cancelled train services, access holders can have a better understanding on which periods in a given month 'compromised' their access rights. Accordingly, we propose that clause 7.6(a)(ii) in Schedule G be amended to require the monthly TSE notice to identify cancelled train paths in the ITP and DTP. However, Aurizon Network need not identify the reasons for those cancellations, as that requirement is already fulfilled by one of the other provisions (i.e. cl. 7.6(a)(iv)).

In addition, we note there is nothing that prevents Aurizon Network from claiming efficient costs (e.g. via a DAAU) of having to produce monthly reporting on each TSE's planned services in the ITP and DTP. This applies to the extent those costs are not already covered by Aurizon Network's MAR.

Aurizon Network has said the proposed TSE reconciliation reports should include the number of system paths rather than train paths. We accept Aurizon Network's suggestion, as it better aligns the various train plans' contents with TSE reconciliation reports. In practice, an access holder would have the same number of train paths as system paths. We thus note the proposed amendment provides greater clarity on drafting, but does not change the information access holders get.

Aurizon Network has challenged our position on the need to provide TSE projections to the end of the relevant operating year. Aurizon Network has said making these forecasts would be speculative on its part, and that access holders are better placed to make those forecasts. In the Capricornia system rules, Aurizon Network noted, access holders could voluntarily provide monthly TSE forecasts; there was no reference to TSE forecasts for longer periods. [901] The draft Northern Bowen Basin system rules contain a similar provision.

In this context, submitting TSE forecasts for longer periods may not necessarily be helpful for the monthly TSE notices. We also agree with Aurizon Network that the access holder is better placed to determine the most appropriate TSE projections for itself. We have thus amended clause 7.6(a)(vi) in our CDD amended DAU to remove the need for Aurizon Network to provide the TSE projection to the relevant year's end.

[901] Aurizon Network's Capricornia system rules: 10, 12.

Aurizon Network and QRC have identified two drafting inconsistencies in our IDD amended DAU. In response:

- We accept Aurizon Network's position that clause 8.2(c)(iii) (previously cl. 10.2 on pooled entitlements) should be deleted, as we have not accepted Aurizon Network's pooling proposal.
- We partially accept the QRC's proposed amendment that clause 7.6(a) should say 'Customer' rather than 'End User'. This was an inadvertent drafting error on our part, and we consider it should say each 'Access Holder' and its 'Customer' or 'Train Operator', as applicable..

We consider our overall position appropriately balances the section 138(2) factors because:

- the increased transparency around TSE use and consumption, including information on cancellation:
  - is consistent with having regard to access seekers' and holders' interests (ss. 138(2)(e) and (h) of QCA Act)
  - can assist with access holders (and customers) better managing their access rights, which can lead to more effective supply chain coordination and the efficient operation and use of the CQCN infrastructure (ss. 138(2)(d) and (a) of QCA Act)
- it is not inconsistent with Aurizon Network's legitimate business interests (s. 138(2)(b) of QCA Act).

Consolidated draft decision 13.5

(1) **After considering Aurizon Network's NMP included in Schedule G of the 2014 DAU, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is set out in the marked changes attached in our CDD amended DAU.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

13.9 System rules governance

System rules provide additional detail on how Aurizon Network and will manage its below-rail infrastructure and provide flexibility to allow for different arrangements to apply in different circumstances arising in specific systems over time.

13.9.1 Aurizon Network's proposal

Under UT3, Aurizon Network had an obligation to develop system rules for the Goonyella coal system and the option of doing so for other coal systems.[902]

In the 2014 DAU, Aurizon Network maintained this obligation but provided a more detailed governance process for the system rules' approval, review and amendment as set out below.

[902] The Capricornia system rules were approved on 21 May 2014. Aurizon Network submitted the draft Northern Bowen Basin system rules on 5 August 2013. They are under consideration.

Table 56 Summary of clause 7.6 related to system rules governance

Issue	*Aurizon Network Proposal*
Initial system rules (cl.7.6.3 (a))	Each system (or combination of systems) will have system rules developed where at least 60% of access holders for a coal system (based on train paths) have requested them be developed.
Approval process for system rules (cl. 7.6.3)	Aurizon Network will submit the draft system rules to the QCA for approval, having regard to consultation with stakeholders, equitable operation, NMP, the undertaking and access agreements. Subclauses (c) to (g) describe the process for submission, consultation, resubmission and approval of system rules.
Annual review of system rules (cl.7.6.4(a) and (b))	Aurizon Network will review the system rules: • at least annually; or • if at least 60% of access holders for a coal system (based on train paths) has requested a review.
Proposed amendments to system rules (cl.7.6.4)	The 2014 DAU sets out a process to amend the system rules following a review: • If Aurizon Network wishes to amend system rules it will notify affected parties of its intention and provide proposed amendments to parties involved (including QCA and stakeholders) • provides for parties to make a submission on the amendments (dealing with equitable operation, consistency with the undertaking) • provides for the amendments to be undertaken if no submissions are made • refers the amendments to the QCA if submissions are received (including the information Aurizon Network will provide) • sets out how the QCA will consider the proposed amendments (including decision) • makes the QCA decision (but also provides for Aurizon Network to seek subsequent amendments even if the QCA has previously rejected) • replacing or removing system rules is considered an amendment.

13.9.2 Summary of our initial draft decision

Our consolidated draft decision on Aurizon Network's draft Capricornia system rules highlighted the need for a clear and defined governance process on how system rules are submitted, approved, subsequently reviewed and amended over time.

In addressing stakeholder comments,[903] our interim position was to refuse to approve Aurizon Network's 2014 DAU proposal on the governance of system rules because it did not provide a clear and certain process for the development, approval, review and amendment of system rules (cl. 7.6). We considered it important to have:

- a consultative process for developing the initial system rules and subsequent amendments– we agreed with stakeholders that a consultative process would lead to a better outcome
- a uniform approval process for all system rules, whether initial or amended
- at least an annual review of system rules with the resulting amendments taking into consideration stakeholders' views

[903] Asciano, 2014 DAU, sub. 22: 37–38; RTCA, 2013 DAU, sub. 73: 65; QRC, 2014 DAU, sub. 39: 13; Anglo American, 2014 DAU, sub. 9: 13–14, 33, 51–53; Peabody, 2013 DAU, sub. 37: 4.

- certainty that Aurizon Network promptly implement the system rules after the approval date and to provide that they remain in place at all times.

Amendments we made included:

- mandatory development of initial system rules with timeframes—to increase certainty that agreed system rules are in effect at all time
- a process for the QCA's approval of initial, amended, varied and replacement system rules—to increase transparency of the process and the certainty that agreed system rules are in effect
- obligation to review system rules at least annually or when some system triggers are met—to lead to continual improvement of system rules
- obligation to notify access holders and the QCA of the review outcomes and mandatory amendments—to make Aurizon Network more accountable.

We considered our proposed amendments would lead to consultative and dynamic system rules, ultimately promoting the CQCN's economically efficient operation and use. We considered a clear and defined governance process for system rules was in the public interest, in access seekers' and holders' interests, and ultimately to be in Aurizon Network's legitimate business interests (s. 138(2)(b), (d), (e) and (h) of the QCA Act).

13.9.3 Stakeholders' comments on the initial draft decision

Aurizon Network

Aurizon Network said the system rules provide greater flexibility for the NMP to suit the relevant supply chain. Aurizon Network reasoned that part of this flexibility relates to an ability to update the system rules in a timely manner to reflect changes in coal system operations.[904]

Aurizon Network said the proposal to have all system rule documents approved by the QCA will remove some of the flexibility and responsiveness that was anticipated by having these processes external to the access undertaking. Aurizon Network also argued the duration of the QCA's decision-making process would represent additional risks (uncertainty and regulatory) to its operations. Aurizon Network said its operating allowances may need to be adjusted to account for these costs.[905]

Aurizon Network understood and supported stakeholders' desire to have the QCA oversee these processes. However, Aurizon Network believed a better way to achieve this objective was to delete the provisions contained in 2014 DAU (clause 7A.2) and amend Schedule G to contain the information out of the system rules. Aurizon Network said these amendments will[906]:

- deliver one source of truth for scheduling and operation of train services
- provide regulatory oversight of the NMP and scheduling processes
- remove the possibility for conflicts between the NMP and system rules
- enable use of the DAAU process to manage NMP changes.

Aurizon Network believed the exception included in clause 7A.2.1 of the IDD amended DAU, relating to NMP disputes, is unworkable and will create considerable confusion for both Aurizon

[904] Aurizon Network, 2015, sub. 82: 197.
[905] Aurizon Network, 2015, sub. 82: 198.
[906] Aurizon Network, 2015, sub. 82: 198.

Network and access holders.[907] To give effect to the principles regarding dispute resolution, which are currently contained in the approved Capricornia system rules, Aurizon Network proposed it would ensure specific dispute principles are included in Schedule G to resolve any specific scheduling concerns.[908]

Other stakeholders

Anglo American supported our amendments on making the initial system rules for a coal system. It also welcomed our proposal for draft system rules to be submitted within two months of the approval date, given the UT3 decision and consultation process has been extensive and is yet to be resolved.[909]

The QRC, however, argued the provisions adopted in our initial draft decision (cls 7A.2.3, 7A.2.4 and 7A.2.5) were unnecessarily complex. The QRC said the process for approving the initial system rules and any proposed amendments appeared to be repetitive and may be more time-consuming than is necessary. The QRC noted these clauses could be simplified to provide that:[910]

- Aurizon Network must ensure an approved set of system rules is in place at all times for each coal system (or a collection of coal systems). If system rules do not exist at the time of the undertaking's approval, Aurizon Network must ensure system rules are put in place within three months of the approval date
- Aurizon Network must review the approved system rules at least annually
- any proposed amendments (or lack thereof) following a review must be approved by the QCA (following public consultation)
- Aurizon Network must adopt any amendments approved or recommended by the QCA.

The QRC said simplifying the approval and review process will promote greater clarity and transparency. It also said doing this will would be less resource intensive and result in more timely outcomes.

13.9.4 QCA analysis

Aurizon Network's system rules can affect the operations of the parties involved in the coal supply chain. Any governance process for system rules must sufficiently balance the section 138(2) matters. We consider this to mean that the process for submitting, approving and amending the system rules should promote efficient CQCN operations and effective supply chain coordination, while balancing Aurizon Network's, access holders' and access seekers' interests.

After having regard to the section 138(2) factors and stakeholder submissions, we consider it not appropriate to approve the 2014 DAU in respect of Aurizon Network's proposal for governing its system rules. This is because the governance process:

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[907] Aurizon Network, 2015, sub. 82: 40.
[908] Aurizon Network, 2015, sub. 82: 198.
[909] Anglo American, 2015, sub. 95: 27
[910] The QRC's proposed drafting is contained in clauses 7.6.2 and 7.6.3 of the marked-up document titled 'Part 7—Available capacity allocation and management' in the QRC's October 2014 submission. However, the drafting will need to be updated to account for circumstances in which system rules do not exist in relation to a particular system at the time of the approval of the undertaking. QRC, 2015, sub.84: 60.

- does not take sufficient account of access seekers' and holders' interests in wishing to raise disputes on grounds other than equity-related reasons (s. 138(2)(e) and (h) of QCA Act)
- gives substantial discretion to Aurizon Network to make amendments, even where they are unreasonable, which can hamper effective supply chain coordination. We consider that to be inconsistent with the public interest (s. 138(2)(d) of QCA Act). The lack of effective supply chain coordination might also negatively affect the CQCN's efficiency (s. 138(2)(a) of QCA Act).

Amending the 2014 DAU

We consider that a set of system rules that can appropriately balance the section 138(2) matters will:

- empower Aurizon Network to make amendments, or accept proposed amendments from supply chain participants, to the system rules that promote below-rail efficiency and supply chain coordination, while preserving Aurizon Network's legitimate business interests
- prevent Aurizon Network from making unreasonable changes that disproportionately affect access seekers' and holders' interests in favour of Aurizon Network's legitimate business interests.

Our position paper on the draft Northern Bowen Basin system rules:[911]

- required Aurizon Network amend the rules to include the automatic review/amendment in the event of significant capacity increases and connections to new coal basins (as per Aurizon Network's July 2014 submission response on Indec's report)
- required Aurizon Network consult with all supply chain stakeholders other than the QCA regarding the proposed amendments
- suggested Aurizon Network should receive and consider written submissions from all supply chain stakeholders on the review and amendment of system rules.

While Aurizon Network said our proposed system-rules processes would reduce the flexibility and responsiveness anticipated by having these processes external to the access undertaking, it did not expressly oppose our proposal. Aurizon Network, however, said its operating allowances may need to be updated to reflect the additional administrative requirements. We note it is open for Aurizon Network to claim additional costs by adjusting its MAR during the regulatory process (e.g. via a DAAU), provided those costs are efficient.

Aurizon Network has questioned if the system-rules provisions in clause 7A.2 of our IDD amended DAU should be moved to Schedule G. We note this would consolidate the locations where the NMP and its processes, as well as processes of system rules, are described, which could make for an easier reference point for these matters. However, we do not consider it appropriate to do so because NMP and its processes fulfil different purposes.

The NMP is a mechanical document that explains how Aurizon Network will plan, schedule and coordinate train services, including the use of system rules. It also establishes some specific reporting requirements. However, Aurizon Network's overarching obligations in relation to the NMP and system-rules processes relate the purpose of those documents and the process for amending them. Given these difference, we have kept them in separate sections.

[911] QCA's position paper on Aurizon Network's draft Northern Bowen Basin system rules: 93– 96.

We note the QRC has said our provisions are overly onerous. However, having reviewed the stakeholder submissions on 2014 DAU (and the various decisions on system rules), it is clear access holders and seekers wish for the QCA to have a stronger role in managing the system rules.

We consider the level of rigour we have proposed (see Section 13.9.2) is necessary to:

- protect the interests of access seekers and holders (s. 138(2)(e) and (h))
- ensure Aurizon Network's system rules processes are sufficiently transparent to promote effective supply chain coordination, which, in turn, can lead to increased below-rail efficiency (s. 138(2)(d) and (a) of QCA Act)

We accept there may be situations where a shorter administrative process can apply. For example, this would be appropriate where a final decision on system rules required minor amendments from a draft decision. However, we do not consider it appropriate to amend our IDD amended DAU to address this.

This is because the existing provisions in our IDD amended DAU already empower us to expedite the approval process where the amendments to the system rules are minor and insignificant.

Consolidated draft decision 13.6

(1) After considering clause 7.6 of the 2014 DAU, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is set out in clause 7A.2 of our CDD amended DAU.

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

13.10 Other matters in our IDD amended DAU

13.10.1 Daily Train Plan

Aurizon Network's proposal

The 2014 DAU proposed circumstances under which Aurizon Network could amend its DTP without consultation with access holders (Sch. G, cl. 7.4(c)).

Summary of our initial draft decision

Our IDD amended DAU required amendments to the DTP provisions, which sought to clarify the consultation requirements and increase accountability (Sch. G, cl. 5).

Stakeholders' comments on the initial draft decision

Aurizon Network raised a query about our amendments to the provisions relating to varying the DTP after it has been scheduled. In particular, Aurizon Network questioned why we had removed the provision that allowed it to make DTP variations without consulting access holders where those variations do not impact access holders (2014 DAU, Sch. G, cl. 7.4(c)).

Aurizon Network said this long-standing provision provides both Aurizon Network and access holders with additional flexibility to amend train services prior to the actual commencement of

the service. Aurizon Network said our proposal constrained its capacity to deliver efficient network operations. Aurizon Network requested the previous provision be reinstated.[912]

The QRC identified a number of amendments/issues on:

- consistency of the DTP with the ITP
- notification requirements for the DTP
- interaction between the system rules and Schedule G.

We address these in our analysis below.

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of Aurizon Network's proposal for the DTP.

Amending the 2014 DAU

Stakeholder concerns mainly relate to drafting considerations. The primary concern is that Aurizon Network wishes to retain the flexibility it has under the 2010 AU to make DTP variations where they do not impact access holders, while the QRC seeks more rigour and clarity on the DTP provisions. We discuss these issues in turn.

Aurizon Network has questioned our deletion of a provision[913] that allowed Aurizon Network to make DTP variations without consulting access holders where those variations do not impact access holders. When considering the equivalent issue for the MTP (see Section 13.6), we noted that access holders (and seekers) valued the opportunity to know about amendments that could lead to the freeing up of capacity.

We considered the MTP-related provision allowed Aurizon Network to make amendments under that circumstance without having to inform access holders. For this reason, we did not support Aurizon Network's request to reinstate the relevant provision.

However, the purpose of the DTP is different from that of the MTP. The DTP is a reference document for network controllers in the day of operation. Unlike the MTP, the DTP is not a tool that seeks to demonstrate capacity. Given this, Aurizon Network should have significant flexibility to amend its DTP (for whatever reason) without consulting access holders—where doing so does not result in:

- those access holders' scheduled train services not being met
- any possession not being met.

However, where those access holders' train services are affected, Aurizon Network must procure those access holders' agreement. We propose amendments to address our positions above (Sch. G, cl. 5.5(a)).

We emphasise, however, that these changes do not remove Aurizon Network's obligation to notify access holders of any DTP variation (Sch. G, cl. 5.5(b)(i)).

We address QRC's concerns in the table below.

[912] Aurizon Network, 2015, sub. 82: 195.
[913] Clause 7.4(c) of the 2014 DAU.

Table 57: QCA position to responses to QRC's concerns[914] on the DTP provisions

Issue	*Comment*	*QCA consolidated draft decision*
DTP consistent with the ITP (cl. 5.2)	Aurizon Network should be required to schedule the DTP consistent with the ITP, except to the extent that it is permitted to schedule the DTP in variation to the ITP in accordance with clause 5.4. This obligation should be expressly stated in clause 5.2.	We do not consider the overarching premise is for the DTP to be consistent with the ITP. Encouraging a flexible supply chain means there should be flexibility for the DTP to be significantly different from the ITP. This is consistent with the stakeholder submissions we received on the draft Capricornia and Northern Bowen Basin system rules, which sought additional scheduling flexibility in the lead up to the day of operation.
Scheduling and notification of a DTP (cl. 5.2(a), (b))	Aurizon Network is required to schedule a DTP at least 24 hours in advance but is only required to provide a copy of the DTP to all access holders and infrastructure providers by 1400 hours on the day before the day of operation. The QRC questions whether different timeframes are required in this regard. The time at which the 'Day of Operation' commences should be clearly specified in clause 5.2(a).	In the Capricornia system rules, Aurizon Network says it will provide the DTP to all access holders and infrastructure providers by 1400 hours on the day of operation.[915] However, the rules do not say Aurizon Network prepares the DTP 24 hours in advance. For reasons of consistency between the DTP and approved system rules, we have not accepted the QRC's concern. However, we accept QRC's view that clarifying the definition of 'Day of Operation' is important. We consider the 'Day of Operation' can be specified as 00:00 on the day of operation's start to 23:59 at its conclusion.
Requirements for a request or notice to schedule the DTP in variation to the ITP (cl. 5.4(b))	Aurizon Network is required to notify access holders of the requirements for any request or notice to schedule the DTP in variation to the ITP from time to time. It would be reasonable for Aurizon Network to include in the undertaking its requirements as at the 'Approval Date'.	We accept that the QRC's proposed amendment promotes further certainty and clarity. We have amended our drafting accordingly.
Interaction between the system rules and obligations under Schedule G (cl. 5.4(c))	The system rules should not allow Aurizon Network to avoid any obligations which exist under Schedule G. For example, the system rules should not permit the submission of requests for ad hoc train services less than 48 hours prior to the day of operation.	Schedule G (e.g. cl. 5.5(b)(ii)) of our IDD amended DAU already allows access holders to submit orders for ad hoc train services at any point. This clause empowers Aurizon Network to schedule that service as long as it does not affect Aurizon Network's possessions and other access holders' scheduled train services. Accordingly, we disagree with the QRC's position.
Timing of DTP scheduling (cl. 5.4, 5.5)	Aurizon Network should be prevented from scheduling the DTP a specified number of days prior to the day of operation. As once the DTP is scheduled, access holders lose the ability to require the DTP to be	We do not agree with the QRC's position. Once the DTP is scheduled (even if more than 24 hours before the day of operation), the focus would be on whether Aurizon Network can vary it in accordance with the provisions in clause 5.5. Consistency with the ITP is not a consideration under clause 5.5. We also note it is highly unlikely Aurizon Network

[914] QRC, 2015, sub. 85: 68–69.
[915] Capricornia system rules: 23.

Issue	*Comment*	*QCA consolidated draft decision*
	scheduled in variation to the ITP.	would want to schedule the DTP too far out from 24 hours before the day of operation, as this may encourage many DTP variation requests prior to the day of operation. Managing numerous requests to amend the DTP is unlikely to be in Aurizon Network's legitimate business interests.

In summary, we have refined our initial draft decision to clarify the definition of 'day of operation' and the drafting for requirements related to a request or notice to schedule the DTP in variation to the ITP. We consider our position appropriately balances the section 138(2) matters because it has:

- accounted for Aurizon Network's legitimate business interests in promoting efficient below-rail operations (s. 138(2)(a) and (b) of QCA Act)
- improved the certainty and clarity around what the DTP should show, which is consistent with having regard to access holders' and seekers' interests (s. 138(2)(h) and (e) of QCA Act)
- provided greater transparency on the DTP's content, which can improve supply chain coordination (s. 138(2)(d) of QCA Act).

13.10.2 Network control principles and traffic management

Aurizon Network's proposal

The 2014 DAU proposed that Aurizon Network, access holders and network controllers would abide by some general principles to facilitate the safe running of trains and the punctuality of maintenance activities (Sch. G, cls. 9.1 and 9.3).

The 2014 DAU proposed that Aurizon Network could diverge from the traffic management decision-making matrix (TMMDM) when there are occurrences of network incidents or force majeure events that materially affect Aurizon Network’s ability to achieve the DTP. However, the 2014 DAU said Aurizon Network must use reasonable endeavours to revert to normal network control procedures as soon as practicable following those occurrences (Sch. G, cl. 9.4(c)).

Summary of our initial draft decision

Our IDD amended DAU introduced additional principles for supply chain participant's consideration. Among other things, it proposed that Aurizon Network, access holders and network controllers should refer despatch-priority decisions to the relevant unloading terminal about reordering of a sequence of a train's arrival at an unloader (Sch G, cl. 7.3(iv)).

Our IDD amended DAU supported Aurizon Network's ability to diverge from the TMDMM. However, it required that Aurizon Network must revert to normal network control procedures no later than 24 hours after the TMDMM departure (Sch G, cl. 7.4(c)(iv)).

Stakeholders' comments on the initial draft decision

Aurizon Network did not support our proposal to involve unloading terminals in determining scheduling priority. Aurizon Network said this would reduce its flexibility to efficiently manage its operations for the benefit of all access holders.

Aurizon Network said that when determining train sequencing, it consults with the unloading terminal and considers the terminal's requirements for the sequencing of trains. Aurizon Network said it also takes into account a number of other considerations, for example[916]:

- rail operators may be resource constrained and not able to adjust a train's running to meet a terminal's preferred sequencing
- re-sequencing a train may cause additional congestion on the network and result in flow-on impacts of the supply chain's upstream components
- current procedures in the day of operation to manage 'out of course' running and recover the DTP are sufficient to allow for the unloading facility to be involved in decision making
- regular hook ups between all operators and attending ports, to consider the requirements of each participant in addition to any other unloading terminals.[917]

Aurizon Network therefore believed this new clause[918] should be removed or amended, so the requirement from the unloading facility is a direction rather than consideration.[919]

Aurizon Network did no support our proposal to place a time limit of 24 hours on the departure from the TMDMM. [920] Aurizon Network said the timeframe was arbitrary and not in the best interests of the supply chain. It said the timeframe for recovery needs to be considered on a case-by-case basis.

In some instances, Aurizon Network said it may not be able to commence network recovery within the 24-hour period as it needs to wait for railway operators to carry out actions prior to it being able to continue. Aurizon Network said given it already has obligations to recover the network as soon as reasonably practicable, this proposal constitutes an unnecessary and inflexible burden. Accordingly, Aurizon Network requested we remove the timeframe.[921]

Asciano said it considered that 24 hours was a reasonable maximum timeframe from which to depart from the TMDMM in the circumstances outlined.[922]

QCA analysis

After having regard to the section 138(2) matters and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of Aurizon Network's proposal for the network control principles.

We consider Aurizon Network's role is to efficiently coordinate train services operating on its below-rail infrastructure in the day of operation, with the purpose of creating the most beneficial outcome for the supply chain where there are departures from the DTP's schedule during that day (Schedule G, clause 9, Rules 6–8).

In that sense, we accept that Aurizon Network should have regard to a port's direction. We note our IDD amended DAU requires Aurizon Network to refer decisions about the re-sequencing of train arrival times at a terminal to the relevant terminal operator, to determine priority

[916] Aurizon Network, 2015, sub. 82: 195.
[917] For example, Hay Point and DBCT share the same network capacity to meet their preferred sequencing. Accepting direction from one terminal on sequencing may affect another unload terminal.
[918] Schedule G, clause 7.3(a)(v).
[919] Aurizon Network, 2015, sub. 82: 195.
[920] Schedule G, clause 7.4(c)(iv)(B).
[921] Aurizon Network, 2015, sub. 82: 196.
[922] Asciano 2015, sub. 76: 24.

(Schedule G, cl. 7.3(a)(v)). This is one of the several general principles we required Aurizon Network, network controllers and above-rail operators to abide by.

However, our intention was that the above only be a principle, not a binding consideration that overrides Aurizon Network's ability to make decisions on coordinating train services. We accept Aurizon Network cannot fulfil a port's direction if the relevant mine and/or above-rail service provider is unable to accommodate that direction. We do not consider our drafting precludes Aurizon Network from exercising that judgement. We have therefore retained our position on this matter.

The DTP covers a 24-hour period. The TMDMM can therefore only operate up to 24 hours at each point. The TMDMM cannot apply beyond 24 hours because a new DTP would have already come into effect. We consider our initial draft decision did not correctly address this matter. Our consolidated draft decision proposes that Aurizon Network seek to minimise the length of its departure from the TMDMM, subject to having to act reasonably and adhering to the TMDMM's rules.

13.10.3 Contested Train Paths

Aurizon Network's proposal

The 2014 DAU proposed principles to guide Aurizon Network's contested train path decision making process (Sch. G, cl. 10.3).

Summary of our initial draft decision

Our IDD amended DAU made amendments to the contested train path decision making process to reflect our position on operator-capping arrangements and the increased relevance of supply chain groups in Aurizon Network's processes (Sch. G, cl. 8.3).

Stakeholders' comments on the initial draft decision

Aurizon Network said we had proposed removing the ability of an access holder to 'pool' TSEs within a coal system. This arrangement enables an access holder to manage variability in railings from week to week. Without this, Aurizon Network said it would have to treat extra services as ad hoc and give them a lower level of priority in the scheduling process. Under this arrangement, as long as the train orders requested by the access holder fall within the total TSE, by pooling they are able to schedule services as required by customers and not be disadvantaged.

Aurizon Network said the concept of pooling was introduced through the system rules consultation process conducted with customers, specifically those in the Goonyella System. Aurizon Network also noted Asciano supported this concept and the benefits it has for access holders. Aurizon Network therefore questioned why we had proposed to remove this arrangement; Aurizon Network requested the provision be reinstated.[923]

The QCA has proposed a new step in allocating contested train paths, where if a supply chain group has been established to manage or oversee supply chain logistics for multiple access holders, Aurizon Network should allocate the train path in accordance with the direction of the supply chain group. Aurizon Network does not support this proposal because:

[923] Aurizon Network, 2015, sub. 82: 194.

- the supply chain group will not look after all access holders' interests, which would result in an unfair bias to access holders who are members of that supply chain group[924]
- in the event there are multiple supply chain groups within a coal system, which have competing objectives, it is not clear how Aurizon Network would prioritise between the competing supply chain group directives
- Aurizon Network may be held liable under an access agreement with an access holder for not making sufficient train paths available during the month[925]
- Aurizon Network has no contractual arrangements with a supply chain group. If the supply chain group acts in a discriminatory way, an access holder could then lodge a dispute with Aurizon Network and it could be liable under the Ultimate Company Holding Deed.

Aurizon Network rejected the QCA's proposal, saying it constrained its capacity to meet its responsibility for efficient operation of the network, and requested this obligation be removed.[926]

Stakeholders other than Aurizon Network did not raise any issues on this matter.

QCA analysis

After having regard to the section 138(2) factors and stakeholder submissions, we consider it not appropriate to approve the 2014 DAU in respect of Aurizon Network's proposal for the contested train path decision-making process. We consider Aurizon Network's proposal does not sufficiently account for the involvement of supply chain groups in allocating contested train paths. This is unlikely to promote:

- effective supply chain coordination (which we consider to be in the public interest), which in turn can promote increased below-rail efficiency (s. 138(2)(d) and (a) of QCA Act)
- the interest of access seekers and holders that are part of the supply chain groups (s. 138(2)(e) and (h) of QCA Act).

Amending the 2014 DAU

In our initial draft decision, we did not consider it appropriate to approve Aurizon Network's operator-capping arrangements in the take-or-pay arrangements (IDD amended DAU, Schedule F, cl. 2.4(m)). We considered this would compromise above-rail competition. Accordingly, we did not endorse any proposal that would be linked to such an arrangement.

We understand one of those proposals related to the contested train path decision making process, namely the provision relating to an access holder's pool of mainline paths. As we have retained our position from the initial draft decision, we do not support re-instating it. That said, we note we have addressed any flexibility-related issues in our position on short-term transfers, which addresses how access holders may wish to mitigate take-or-pay concerns when swapping origins or destination while retaining the same mainline paths in doing so (see Chapter 11 of this decision).

Separately, we consider the involvement of supply chain groups in allocating contested train paths is reasonable. However, Aurizon Network has identified what it considers to be many

[924] For example, Goonyella may have a supply chain group for DBCT that is not active for train services which travel to Hay Point Services coal terminal.
[925] When Aurizon Network is not in control of the allocation of train paths to access holders it should not then be held liable for the non-provision of access.
[926] Aurizon Network, 2015, sub. 82: 194–195.

deficiencies in empowering a supply chain group to dictate how to allocate a contested train path. We respond to Aurizon Network's specific concerns in the table below.

Table 58: QCA position on the contested train path decision-making process

Issue	*QCA position*
The supply chain group will not look after all access holders' interests, which would result in an unfair bias to access holders who are members of that supply chain group.	We accept that this can occur.
In the event there are multiple supply chain groups within a coal system, which have competing objectives, it is not clear how Aurizon Network would prioritise between the competing supply chain group directives.	We accept this concern. In the Goonyella coal chain, there are likely to be many supply chain groups and there are no criteria currently drafted for Aurizon Network to abide by to manage this.
Aurizon Network may be held liable under an access agreement with an access holder for not making sufficient train paths available during the month.	Under the 2010 AU's arrangement, that can still happen. We do not consider this argument valid.
Aurizon Network has no contractual arrangements with a supply chain group. If the supply chain group acts in a discriminatory way, an access holder could then lodge a dispute with Aurizon Network and it could be liable under the Ultimate Company Holding Deed.	Aurizon Network could withdraw from the supply chain group if it was concerned about discriminatory behaviour. We are not aware of what form such discriminatory behaviour could take.

Our premise is that a supply chain group normally acts in the best interests of parties as a whole. While this may be true for capacity-related matters, as these are longer term focuses, it is unclear whether this will work well in the context of awarding a contested train path, which has a short-term anchor. This means access holders in the supply chain group may focus on prioritising their own interests above those of the supply chain in the ITP contests (which happen from week-to-week in some coal systems).

To address this, we consider moving this clause to a later step in the contested train path decision making process to be more appropriate. In particular, we have moved the positioning of clause 8.3(a)(iii), including some amendments, to just before clause 8.3(a)(vii). The ability for any supply chain participant to act in its interests above other access holders, or in a discriminatory way is therefore a lower-risk occurrence.

Consolidated draft decision 13.7

(1) After considering Aurizon Network's NMP included in Schedule G of the 2014 DAU, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) We would approve the NMP (and relevant parts of the 2014 DAU) with, among other things, the following proposed amendments, as set out in the marked changes in our CDD amended DAU:

- **(a) Define the 'day of operation' as 00:00 on the day of operation's start to 23:59 at its conclusion.**
- **(b) Aurizon Network must notify access holders of the requirements, at the approval date, for any request or notice to schedule the DTP in variation to the ITP from time to time.**
- **(c) Aurizon Network, acting reasonably and adhering to the TMDMM's rules, must minimise the length of its departure from the TMDMM.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

14 REGULATORY ASSET BASE AND CUSTOMER VOTING

The return on and return of capital relating to the RAB is a significant component of the reference tariffs for each system in the CQCN. It is important for Aurizon Network to have confidence it will be able to generate expected revenue that is at least enough to meet the efficient costs of providing access to the CQCN, including a return on investment commensurate with the regulatory and commercial risks involved. It is also important for access seekers and access holders to have confidence that prices reflect efficient costs and that the costs of capital expenditure projects are efficient and have been prudently incurred.

Our consolidated draft decision is to refuse to accept Aurizon Network's 2014 DAU proposals for the RAB and customer voting process. We are of the view that Aurizon Network's proposals do not adequately account for the fact that any prudent and efficient capital project encompasses a trade-off across scope, standard and cost. The existing process does not provide sufficient certainty that only prudent and efficient capital expenditure will be included in the RAB.

We propose to simplify the capital expenditure approval process. This would include a clearer course for regulatory pre-approval of projects, which we consider will improve regulatory confidence for Aurizon Network, as well as future expansion funders and financiers.

We accept Aurizon Network's proposal that equity raising costs should be recognised and included in the RAB, but propose to require Aurizon Network to show that its equity raising costs are efficient and necessary to support investment in the CQCN.

For customer voting, we propose customers should vote on a package of measures (i.e. scope, standard, and cost), not simply scope (as has been the case previously). Our proposed amendments include the requirement for a limit on the period the vote remains valid. Also, a new vote would be required if key project factors changed.

14.1 Introduction

The RAB reflects the asset value of the CQCN infrastructure used when calculating maximum allowable revenue (MAR) under the building block methodology. Aurizon Network recovers, through time, the value of the RAB (as indexed and adjusted) through the payment of access charges, including payments pursuant to take-or-pay obligations. The revenue cap approach adopted for the CQCN provides Aurizon Network with a degree of certainty that the asset value of the RAB should ultimately be recovered and a reasonable commercial return achieved, consistent with the approved WACC. Further, the RAB is often used by investors to assess the value of a regulated business, taking account of the likely future revenue stream.

14.2 Background

Schedule E of the 2014 DAU sets out the provisions regarding maintenance of the RAB and the assessment and approval of capital expenditure for inclusion into the RAB.[927] Also relevant to matters in Schedule E is the customer voting process for capital expenditure, which Aurizon included in Part 8 of the 2014 DAU.

[927] We note that the publishing of the RAB roll-forward following the inclusion of approved capital expenditure for each year is discussed in Chapter 10 (Reporting).

Aurizon Network said it streamlined and improved the drafting of these arrangements compared with the similar arrangements in the 2010 AU (Schedule A). In doing so, it identified key issues it sought to address concerning both the process for maintaining the RAB and the capital expenditure assessment and approval processes. Also, Aurizon Network said it expanded and improved the current customer voting process contained in the 2010 AU.[928]

Initial stakeholder submissions raised a number of concerns with the capital expenditure prudency assessment, adjusting the value of the RAB and asset maintenance–related matters. Stakeholders also considered the provisions should be extended to the SUFA assets/funders.[929] Stakeholders also proposed a number of amendments to improve the accountability and transparency of the customer voting process.

14.2.1 Legislative framework and QCA assessment approach

Legislative framework

We are required to assess Aurizon Network's proposals, having regard to the criteria in section 138(2) of the QCA Act which does not prescribe weightings for each matter and permits the QCA to have regard to any other issue(s) it considers relevant. Against this background, we considered:

- section 138(2)(a), (b), (d), (e), (f), (g) and (h) should be given more weight
- of section 138(2)(g) (which relates to the pricing principles in s. 168A), sections 168A(a) and 168A(d) should be given more weight[930]
- sections 138(2)(c), 168A(b) and 168A(c) should be given less weight, as they are less practically relevant to our assessment.

Any expansion of the CQCN should meet the object of the QCA Act (s. 138(2)(a) to promote the economically efficient operation of, use of, and investment in, infrastructure by which services are provided, with the effect of promoting competition in upstream and downstream markets (s. 69E of the QCA Act). Consistent with our MAR draft decision[931], this context leads us to consider that the RAB should only include the capital costs associated with prudent and efficient investment.

Section 138(2)(b) of the QCA Act requires that we have regard to the legitimate business interests of Aurizon Network. This would include ensuring that it is able to recover the appropriate regulatory return on prudent and efficient assets. Establishing an efficient RAB is a key input to determining the return on assets—any return on sub-optimal assets would not in our view be a legitimate business interest.

Section 138(2)(c) of the QCA Act requires us to have regard to, if the owner and operator of the service are different entities—the legitimate business interests of the operator of the service are protected. This factor is not considered relevant as Aurizon Network is both the owner and operator of the declared service.

Section 138(2)(d) of the QCA Act requires us to have regard to the public interest, including having competition in markets. We consider it in the public interest that Aurizon Network's RAB

[928] Aurizon Network, 2013 DAU, sub. 2: 279.
[929] The SUFA is a suite of standard pro-forma agreements designed to facilitate alternative options to Aurizon Network funding rail infrastructure expansions on the CQCN. See QCA, 2014(c) and QCA, 2014(i) for details.
[930] Section 138(2)(g) refers to the pricing principles mentioned in section 168A.
[931] QCA, 2014 (h).

is maintained and carried forward in an effective, transparent and cost effective manner. Transparency will promote the fair treatment between access seekers and access holders and will increase the ability of stakeholders to identify inefficiencies. Asset valuations should reflect competitive benchmarks, in order to provide appropriate pricing signals regarding rail transportation costs in the CQCN. This can act to promote effective competition in upstream and downstream markets. We consider this is in the public interest and that of Queensland's economy (s. 138(d) of the QCA Act).

Section 138(2)(e) of the QCA Act requires us to have regard to the interests of access seekers. We consider it in the access seeker's interest for the value of the approved regulatory asset base to be clear and transparent including, if necessary, to a level of detail sufficient for parties to reconcile with the calculation of the applicable access charges. It is also in the access seeker's interest to have confidence that the process for adjusting the RAB is fair and promotes transparency and certainty and that at any point in time, the RAB reflects only those costs associated with the below-rail service. Such a framework will promote legitimacy and inspire confidence in the users of the system, including giving parties confidence they are competing on equal terms with entities related to Aurizon Network.

Section 138(2)(f) requires us to have regard to the effect of excluding existing assets for pricing purposes. It is important that material adjustments to the established RAB are only made when completely necessary. For the avoidance of doubt, this does not preclude excluding assets from the RAB where it would be consistent with competitive benchmarks.

Section 138(2)(h) of the QCA Act allows the QCA to have regard to any other issues we consider relevant. We consider the interests of existing access holders, train operators, terminal operators and supply chain groups are relevant to the extent they are not already 'access seekers' under section 138(2)(e). Adjustments to the RAB, or failure to adjust RAB when it is appropriate, could have significant implications for existing users in terms of pricing and service quality.

We are also of the view that the interests of prospective third party financiers are relevant under section 138(2)(h) of the QCA Act, particularly as their involvement is critical in promoting efficient investment in the CQCN consistent with the object of Part 5 of the QCA Act as set out in section 69E.

Sections 138(2)(g) and 168A of the QCA Act require that we have regard to certain pricing principles, including that the price of access to the declared services should generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service, including a return on investment commensurate with the regulatory and commercial risks involved. The RAB is a major parameter in establishing efficient costs—any changes would necessarily reflect changes in the risk profile.

In our view this approach provides balance between the need to have regard for the effect of excluding assets for pricing purposes (s. 138(2)(f) of the QCA Act), with the pricing requirements under section 168A of the QCA Act and maintaining Queensland's competitive position in the global coal market (s. 138(2)(d) of the QCA Act).

QCA assessment approach

Having considered all the matters outlined above, we consider that Schedule E and the customer voting process of the 2014 DAU should:

- provide sufficient oversight to ensure the value of the RAB is accurately maintained in accordance with regulatory roll-forward principles

- provide a transparent and accountable process for regulatory assessment of the prudency and efficiency of all capital expenditure eligible for inclusion in the RAB
- provide all potential investors in the CQCN with an appropriate level of confidence that they will receive any prudent and efficient investment back through time
- provide that the exclusion of imprudent and inefficient capital expenditure from the RAB is perceived as a credible, evidence-based regulatory outcome for all participants and investors in the CQCN
- account for the fact that capital projects are a trade-off across scope, standard, cost and time to complete, and also have implications for capacity.

14.3 Maintenance of the RAB

14.3.1 Aurizon Network's proposal

Aurizon Network's 2014 DAU contains arrangements for maintaining the RAB (Part 1, Schedule E). This covers the ongoing maintenance and updating of the RAB, including the circumstances under which the value of the RAB can be increased or reduced.

Aurizon Network said its 2014 DAU largely streamlines the current 2010 AU provisions and improves the drafting. For example, it has proposed to annually roll-forward the asset values in its RAB, applying set principles for each component, including depreciation and indexation.

Aurizon Network said the 2010 AU provisions for determining the 'value of asset disposals and transfers' from the RAB were unclear, particularly on what the value is assumed to represent. As such, it proposed a new mechanism in Schedule E to address this and incentivise it to maximise the proceeds for any assets disposed of. Under the new mechanism, Aurizon Network will subtract an amount from the RAB based on the value of any proceeds from the disposed of assets—that is, if the net proceeds for the disposal is:

(1) less than or equal to the value in the RAB—the net proceeds of the disposal will be subtracted from the remaining RAB value

(2) more than the value in the RAB, and

  (a) no user funding agreement is in place—the value of the disposed asset will be deducted from the RAB, but 50 per cent of the difference between the net proceeds of the disposal and the value in the RAB will be retained by Aurizon Network (cl. 1.1(a)(iii)(B))

  (b) a user funding agreement is in place—the value of the asset in the RAB will be deducted (cl. 1.1(c)(iii)(C)).

While scenario (1) is most likely, Aurizon Network said the arrangements should incentivise it to maximise the sale proceeds.[932] As such, it included scenario (2) to reflect this. Scenario (2) allows Aurizon Network to retain some benefit where net proceeds were greater than the disposed asset's RAB value, with the balance of the gain shared with users.[933]

[932] Aurizon Network, 2013 DAU, sub. 2: 280.
[933] Aurizon Network, 2013 DAU, sub. 2: 280.

Adjusting the value of assets in the RAB

Aurizon Network's 2014 DAU includes provisions for adjusting the value of the RAB. Under the arrangements, the QCA will not require the value of assets in the RAB to be reduced unless capital expenditure has been accepted into the RAB based on false or misleading information Aurizon Network provided and has a material effect.[934]

While the 2010 AU contains additional factors for reducing the RAB, Aurizon Network did not include these in the 2014 DAU. It said these matters—that is, accounting for demand deterioration and the possibility of bypass—are more appropriately addressed through pricing mechanisms. In its view, linking the RAB value to the outcome of the condition based assessment was not sustainable and exposes Aurizon Network to an unacceptable level of regulatory risk.[935]

Aurizon Network included provisions in Schedule E for increasing the RAB to account for:

- new infrastructure—that is, intangible assets that were not included in the initial valuation of assets contained in the RAB or the DORC value of additional rail infrastructure incorporated into the CQCN (cl. 1.2 (a))
- equity raising costs—that is, costs for assets accepted by the QCA and costs which the QCA must accept if they have been calculated in accordance with the methodology set out cl. 1.5 of Schedule E (cl. 1.2(b)). [936]

Under these provisions, where Aurizon Network increases the RAB and provides the QCA with notification of this, the QCA must notify Aurizon Network if it accepts the proposed increase. If the QCA does not respond in 40 business days, the request is deemed to be accepted; or if the QCA refuses to accept the increase, Aurizon Network must be provided with a notice and reasons for the non-acceptance.[937]

Reports

Clauses 1.3 and 1.4 of Schedule E respectively contain requirements for reporting the capital expenditure and RAB roll-forward to the QCA. The following arrangements apply:

- The capital expenditure report is to be provided no later than six months after the end of the year with details of capital expenditure Aurizon Network is claiming to be included in the RAB, including the name, location and amount of the capital expenditure. Information may include, where applicable, evidence of the voting process to the extent customer acceptance on the scope of capital expenditure has been received (cl. 1.3).
- Following the QCA's acceptance of capital expenditure, Aurizon Network will provide a RAB roll-forward report to the QCA, including details of the opening and closing value, indexation and depreciation, disposals and asset transfers for each coal system and separately where there is a reference tariff or user funded expansion (cl. 1.4).

Aurizon Network required the information in both reports to be kept confidential and not published, unless Aurizon Network agrees otherwise (Schedule E, cls. 1.3(c), and 1.4(b)).

[934] Aurizon Network, 2013 DAU, sub. 2: 236–237.
[935] Aurizon Network, 2013 DAU, sub 2: 281.
[936] Clause 1.2, Schedule E of the 2014 DAU.
[937] Clause 1.2 (e) and (f), Schedule E of the 2014 DAU.

Equity raising costs

Aurizon Network proposed we approve future equity raising costs, with these costs to be included in the RAB at the end of a regulatory period. Aurizon Network demonstrated the need for equity raising costs via cash flow analysis, applying the pecking order theory (where internal reserves and debt funding assumed at the benchmark gearing level are insufficient to meet the capital requirements).[938] Aurizon Network said this approach has been applied by the AER[939] and, based on this, Aurizon Network proposed the following assumptions be used to determine equity raising costs:

- dividend reinvestment of 30 per cent
- dividend reinvestment plan cost of 1 per cent of the total dividends reinvested
- dividend imputation payout ratio of 70 per cent
- seasoned equity raising costs of 3 per cent of total external equity requirements.[940]

Provided it could clearly demonstrate it has calculated a claim for equity raising costs on this basis, Aurizon Network said these costs should be included in the RAB, in addition to the relevant project capital expenditure.[941]

14.3.2 Summary of our initial draft decision

Maintaining the RAB

We accepted Aurizon Network's proposal to annually maintain the RAB, including rolling it forward based on set principles, including for indexation, depreciation and capital expenditure approved by the QCA.

We did not accept Aurizon Network's proposal for asset disposals and considered if an asset is disposed of, its value should be removed from the RAB. However, in proposing amendments to the 2014 DAU, we proposed a process for Aurizon Network to seek approval from us for applying its approach on a case-by-case basis, including if it believes the full remaining value of a disposed asset should not be removed from the RAB.

Adjusting the RAB value

We accepted some, but not all of Aurizon Network's proposed arrangements for adjustment of the value of the RAB.

We accepted Aurizon Network's proposal to remove the threat of actual bypass as a reason for reducing the RAB, but did not accept removing the ability to reduce the RAB for deterioration in demand. We did not consider the annual tariff review mechanisms were appropriate to deal with a long-term sustained fall in demand.

In addition, we considered it appropriate that the results of the condition based assessment continue to be linked to the value of the RAB so that Aurizon Network is held accountable for the condition of its network.

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[938] Aurizon Network, 2013 DAU, sub. 2: 282–283.
[939] AER, 2012:107–108.
[940] Aurizon Network, 2013 DAU, sub. 2: 282–283.
[941] Aurizon Network, 2013 DAU, sub. 2: 282–283.

We accepted Aurizon Network's proposal to increase the RAB to account for equity raising costs (discussed further below), but not its proposal for intangible assets or the DORC value of rail infrastructure to be included in the RAB.

Also, we did not accept Aurizon Network's proposal that an increase in the RAB would be 'deemed' as approved if we did not notify Aurizon Network within the specified timeframe. As such, we removed this provision from the 2014 DAU.

New processes

Our initial draft decision included a new consultation process for adjustments made to the RAB and a process for resetting of the RAB so that:

- Aurizon Network can seek to reverse (or essentially increase) the value of the RAB if it has previously been adjusted to account for a deterioration in demand
- if we are considering adjustments that
  - increase the RAB value, we may consult, seek submissions or request further information to inform our decision
  - decrease the RAB value, we must consult or seek submissions to inform our consideration and may request additional information. We must also have regard to the relevant criteria in the QCA Act in making our decision.

In addition, we included a requirement, if we are considering reducing the value of the RAB, for us to provide Aurizon Network with a draft of our decision (including reasons) to allow Aurizon Network to respond and provide further information for us to consider before making a decision to reduce the RAB.[942]

Reports

We streamlined the capital expenditure and RAB roll-forward requirements by combining Aurizon Network's proposed clauses into one—providing these reports is now required under clause 1.3 (combining cls. 1.3 and 1.4 of Aurizon Network's proposed Schedule E).

We further streamlined the capital expenditure report provisions, requiring Aurizon Network to provide sufficient supporting information to allow us to determine the prudency and efficiency of the capital expenditure, including:

- any business case or feasibility study
- evidence of actual expenditure commissioned
- capacity modelling undertaken as part of the business case or feasibility study.

We required Aurizon Network to provide its capital expenditure claim to us within four months after the end of each year (not six months as it had proposed), in line with current arrangements under the 2010 AU.

While we accepted Aurizon Network's proposed requirements for reporting of the RAB, including the information to be included in the report, for both the capital expenditure report and the RAB report we removed the requirements for us to keep the information confidential and not publish it, unless Aurizon Network agreed otherwise. This information, particularly high-level capital expenditure and detailed RAB roll-forward information, has been provided to

[942] Clause 1.2(c), Schedule E of our IDD amended DAU.

stakeholders in the past for transparency on key inputs used to determine the access charges. It was not clear why this information should no longer be provided; Aurizon Network had not justified why it was no longer required.

Equity-raising costs

We did not accept Aurizon Network's proposed arrangements for equity-raising costs. Rather than setting out benchmark provisions for calculating these costs, we required Aurizon Network to seek approval of such costs on a case-by-case basis. We considered it important that Aurizon Network be required to show its equity-raising costs were efficient and necessary to support investment in the CQCN.

14.3.3 Stakeholder comments on our initial draft decision

The QRC largely supported our initial draft decision in relation to maintaining and adjusting the RAB, including to:

- retain the provision for removing assets from the RAB that are no longer in use, including our approach to deal with disposed assets and proceeds (subject to some comments below)
- allow us to reduce the RAB value:
  - for a deterioration in demand. It suggested the issue of whether a decline in demand is 'long term and sustained' would be best assessed on a forward-looking basis—that is, optimisation should not be deferred until the demand reduction has actually been experienced on a long-term and sustained basis[943]
  - where a condition based assessment shows a deterioration of the rail infrastructure which is greater than should occur under prudent management. It considered this necessary to provide incentives to undertake maintenance and asset replacement.[944]
- allow for consultation on proposed RAB adjustments[945]
- streamline reporting requirements for capital expenditure and RAB roll-forward[946]
- simplify the provisions for equity-raising costs, including clarifying that it forms part of the capital cost of the relevant projects, and is not recoverable as an operating cost.[947]

However, it considered our approach to asset disposals required clarification around how we would be satisfied that a lesser amount (than the remaining asset value) should be removed from the RAB. Its preferred approach, which protects Aurizon Network from losses but ensures it does not receive windfall gains, would be to:

- retain the QCA's proposed approach to removal of disposed asset values from the RAB
- require Aurizon Network to report annually on gains and losses arising on the disposal of assets (i.e. sale proceeds less RAB value)
- adjust Aurizon Network's MAR in a future period (such as the following undertaking period) to reflect gains and losses.[948]

[943] QRC, 2014 DAU, sub. 84: 123.
[944] QRC, 2014 DAU, sub. 84: 123.
[945] QRC, 2014 DAU, sub. 84: 123.
[946] QRC, 2014 DAU, sub 84: 123.
[947] QRC, 2014 DAU, sub. 84: 123–124.

If we do remove less than the full value of the asset from the RAB (where sale proceeds fall short of the RAB value), the QRC said a reciprocal arrangement is required to account for windfall gains (where an asset is sold at a price in excess of the RAB value).

Aurizon Network accepted some, but not all, of our proposals for maintaining and adjusting the RAB. In particular, it supported or was prepared to accept our initial draft decision in relation to:

- maintaining the RAB and, in particular, asset disposals. However, it said tracking of individual asset disposals would require additional IT costs[949]
- linking the outcome of the condition based assessment to the value of the RAB. This, in conjunction with having one condition based assessment at the end of each term and allowing it to submit an asset management plan for us to approve, sufficiently reduces the uncertainty around the RAB reduction.[950]
- equity-raising costs, subject to clarifying:
  - details of how we intend to assess equity raising costs on a case-by- case basis (rather than accepting its proposal of the automatic inclusion of equity-raising costs based on a pre-determined benchmark)
  - how equity-raising costs are apportioned—that is, it assumes 'capital expenditure incurred' means the capital expenditure approved by the QCA for the relevant period to use in determining the apportionment of equity raising costs. Aurizon Network also required clarification whether this approach would apply to SUFA funded expenditure.[951]

However, Aurizon Network did not accept including provisions for reducing the RAB based on deterioration in demand; neither did it accept the process we included for resetting the RAB after such a reduction.

It said our process creates unnecessary complexity and violates the regulatory principle that assets will only be optimised once when entering the RAB. It also considered it unreasonable to have this without considering compensation to Aurizon Network for the approach (either through the WACC or cash flows).[952] It remained of the view an efficient process already exists to deal with these circumstances (i.e. reference tariff mechanisms). If we reaffirm this position in our consolidated draft decision, Aurizon Network requested clarification on:

- the number of years that would be considered 'long term and sustained'
- the extent of demand deterioration that would trigger a RAB reduction
- where demand deteriorates on a branch but port capacity for the affected miner(s) on that system is reallocated to one or more miners in another location
- where demand deteriorates in one system but the port capacity for the affected miners in that system is reallocated to miners in another system
- where demand deteriorates in a system with Aurizon Network and SUFA assets, particularly where the cause of the relevant event is skewed towards an existing or an expansion customer

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[948] QRC, 2014 DAU, sub. 84: 122–123.
[949] Aurizon Network, 2014 DAU, sub. 82: 35.
[950] Aurizon Network, 2014 DAU, sub. 82: 206.
[951] Aurizon Network, 2014 DAU, sub. 82: 207–208.
[952] Aurizon Network, 2014 DAU, sub. 82: 204–205.

- where rolling stock is re-deployed such that one system obtains an operating or price advantage at the expense of another.

It suggested inserting an 'objects clause' that sets out a clear process for reducing and resetting the RAB which would in turn provide greater clarity on mitigations for stranding risk for Aurizon Network's assets and SUFA assets.[953]

Aurizon Network said that stranding risks are incurred by infrastructure funders in the CQCN and that these risks have become more prevalent in recent times (resulting from significant reductions in the spot prices of thermal and metallurgical coal).

While supporting ex ante options available to reduce asset stranding risk (such as implementing accelerated depreciation, take-or-pay arrangements and long-term contracts), Aurizon Network considered that asset standing risks should be mitigated via the ex post socialisation of allowable revenues. Aurizon Network said that the socialisation of stranded asset should be viewed as the 'last resort' for asset stranding risk, noting there are implementation issues associated with this approach—including the equity issue of socialisation, the extent to which the costs can be socialised across systems and the timing of socialisation.[954]

14.3.4 QCA analysis

Maintaining the RAB

We note Aurizon Network has largely proposed to retain the 2010 AU arrangements for maintaining the RAB, including for the annual RAB roll-forward to be prepared in accordance with specified principles.

It is important for all parties to have clarity and certainty on the process for maintaining the RAB, as well as the calculations required, as it is a key input into the calculation of access charges. Although we broadly accept Aurizon Network's proposal to retain this mechanism in its 2014 DAU, we refuse to approve Aurizon Network's specific proposal for maintaining the RAB as it does not appropriately address the s. 138(2) factors.

The principle to use for asset disposals was an issue raised by Aurizon Network and commented on by stakeholders, with no general consensus on the most appropriate principle to use to account for proceeds from an asset sale when maintaining the RAB.

Our consolidated draft decision is to maintain our initial draft decision that, if Aurizon Network disposes of an asset, the default position should require the removal of the remaining value of the asset from the RAB. Any variation from this position to consider asset disposals and RAB value adjustments would be on a case-by-case basis. Given Aurizon Network's view that disposals are not frequent and or material in nature, we can consider this when and if it occurs. This approach provides a balance between the legitimate business interests of Aurizon Network and access seekers and access holders under section 138(2) of the QCA Act.

We have also included consultation as part of the arrangements for adjusting the RAB (discussed further below), which will enable us to assess and consult with affected stakeholders if necessary. This process ensures any decision on treatment of disposed assets is based on full consideration and information provided. Stakeholder views can also be taken into account when Aurizon Network maintains its capital expenditure carry-over account, which is the

[953] Aurizon Network, 2014 DAU, sub. 82: 205–206.
[954] Aurizon Network, 2014 DAU, sub. 82: Appendix 5.

appropriate mechanism to deal with under-/over-recoveries in relation to capital expenditure revenues.

RAB adjustments

We have maintained our initial draft decision (section 14.7 of the initial draft decision) in relation to arrangements for adjusting the RAB. In particular, under our proposed amendments to Schedule E of the 2014 DAU, the RAB can be:

(a) increased—to account for

  (i) resetting a prior deduction (for a deterioration in demand) (cl. 1.2(a)(i))

  (ii) equity-raising costs (cl. cl. 1.2(a)(i))

(b) reduced—to account for

  (i) inaccurate information (cl. 1.2(b)(i))

  (ii) a deterioration in demand (cl. 1.2(b)(ii))

  (iii) the results of a condition based assessment (cl. 1.2(b)(iii)).

We have also proposed that consultation form part of the process for adjustments to the RAB and, for reductions in the RAB, this step must be undertaken. This ensures an evidence based process is used to adjust the value of the RAB in an appropriate and transparent way and, particularly where the RAB is being reduced, stakeholders can provide information and input into the decision-making process.

In making our decision, we took into account stakeholders' comments, noting Aurizon Network concerns with adjusting the RAB for deterioration in demand, including the process for resetting the RAB. We also note the QRC's suggestion to clarify what is meant by a deterioration in demand that is 'long term and sustained'—it suggests it should be assessed on a forward-looking basis.

We do not agree that reducing the RAB in the circumstances of deteriorating demand goes against the optimisation principle or that the annual reset is an appropriate mechanism for making an adjustment. Unlike the optimisation arrangements, there is a scope for any asset reduction in this instance to be re-included in the RAB should they be required to meet future needs. Therefore, it is not so much optimising the asset, but reducing it to address demand issues, with a view to resetting at a later date when the circumstances permit.

While we note Aurizon Network's preference for dealing with such adjustments via the annual tariff mechanism, we do not consider it appropriate. The annual tariff mechanisms are designed to deal with short-term issues and are designed to be fairly mechanical. This generally allows non-controversial changes to be passed through to access charges in a fairly straightforward manner. This process is not sufficient to deal with a long-term sustained fall in demand. It is also not appropriate for such a mechanism to be a proxy for RAB adjustments. These adjustments affect access charges and should be done in a way that is transparent and accountable.

On this matter, we have considered Aurizon Network's request for clarification, but have not proposed to included prescriptive rules and procedures for adjusting or resetting the RAB after it has been adjusted. These adjustments are likely to be in response to specific events and, as such, we consider it preferable to review these on a case-by-case basis in light of the relevant circumstances at the time. While we acknowledge that this creates some uncertainty, we

consider that to be prescriptive could be misleading as the circumstances of each case would be different and cannot be predicted.

However, we agree with the QRC that determining what is 'long term and sustained' demand deterioration should be done on a forward-looking basis, noting this will require cooperation from stakeholders, as forecasting future demand prospects may require market-sensitive and some speculative information to be assessed and published to validate information and data before any decision is made.

With respect to asset stranding risk issues raised by Aurizon Network, we are not of the view that an ex post mechanism is the appropriate way to deal with this risk. Providing infrastructure funders with such a mechanism has the potential to reduce the incentive for infrastructure funders to fully take account of the asset stranding risk associated with an investment project. We consider that this does not promote the economically efficient investment in infrastructure, and thus does not align with the object of Part 5 of the QCA Act.

There are various ways to address asset stranding ex post (such as adjusting the value of assets in the RAB). One approach is to socialise the stranded asset with an existing system. While it is possible that this may be the most appropriate approach for dealing with a stranded asset, this may have significant cost implications for existing users. We therefore do not consider that stating our preference for dealing with asset stranding is appropriate. We consider that the issue of stranded assets should be considered on a case-by-case basis and following consultation with affected access holders.

Reports

We have maintained our initial draft decision position in relation to the reporting arrangements for capital expenditure and RAB, including:

- streamlining the provisions—the capital expenditure and RAB report for providing the reports by combining the capital expenditure and RAB reporting requirements (cls. 1.3 and 1.4 of Aurizon Network's proposed Schedule E)
- provision of reports—Aurizon Network must provide its capital expenditure claim (report) within four months of the end of the year. Following the approval of the capital expenditure, Aurizon Network must provide a RAB roll-forward report to the QCA
- information in the reports—to include and, where necessary calculate, relevant information of the type and detail set out in the provisions.

These arrangements do not reflect significant changes to the 2014 DAU, but provide greater clarity by simplifying arrangements and ensuring information is provided in a timely manner.

We have also maintained our view it is not appropriate for information in these reports to be kept confidential. This information is currently provided to stakeholders for transparency on key inputs used to determine the access charges and, further, Aurizon Network did not provide justification on why restrictions were now required.

In addition, we have amended the reporting arrangements so that when providing the RAB roll-forward report to us, Aurizon Network must also seek approval of the information contained in it—that is, the calculation of the roll-forward itself. This has occurred under the 2010 AU and has proven to be a useful tool. It ensures regular reconciliations of the RAB occur throughout the regulatory period as approved capital expenditure is incorporated into the RAB, limiting the potential for issues to emerge in future (i.e. at regulatory resets).

Equity-raising costs

Aurizon Network's approach of including a pre-defined allowance for equity raising costs does not allow assessment of the merit of equity raising costs, or whether the costs represent a prudent and efficient way of financing investment in the CQCN. Aurizon Network's approach would potentially allow Aurizon Network to pass through costs that are not necessarily efficient, which would not be in the interests of access seekers.

We remain of the view the equity raising costs relating to capital expenditure should be assessed at the end of a regulatory period, on a case-by-case basis. We have considered Aurizon Network's request for further clarification on this, but have not proposed to include a prescription around assessing these costs. Equity-raising costs should reflect the genuine costs relating to financing particular projects, and so this assessment should occur based on the circumstances and supporting information provided for such projects.

Accordingly, we have maintained our initial draft decision position and included a process for Aurizon Network to seek the approval of including equity-raising costs into the RAB at the end of the regulatory period.

We note stakeholders, including Aurizon Network, largely accepted this approach as set out in the initial draft decision, although Aurizon Network requested clarification of how the case-by-case approach would work.

Under this approach, we would expect a claim for equity raising costs would include information that demonstrates equity-raising costs:

- were incurred as up-front costs, with little or no ongoing costs over the life of the assets
- are prudent and efficient for investment in the CQCN.

Provided these information requirements are met, we would approve equity-raising costs in relation to capital expenditure for inclusion in the RAB.

We confirm Aurizon Network's view that any equity-raising costs included into the RAB will be allocated amongst coal systems on a pro rated basis by reference to the approved capital expenditure over the regulatory period. These costs will be recovered via reference tariffs in the next regulatory period and apply consistently across all projects, regardless of how they are funded.

We consider this approach is in the interests of all parties as it ensures the value of the RAB is maintained and only includes prudent and efficient equity raising costs.

Consolidated draft decision 14.1

(1) After considering Aurizon Network's proposal for maintaining and adjusting the RAB, reporting on capital expenditure and the RAB roll-forward and equity raising costs, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.

(2) The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is for Aurizon Network to be required to:

- **(a) for asset disposals:**
  - **(i) remove the value of the asset from the RAB**
  - **(ii) be able to seek our approval for any alternate approach to account for asset disposals**
- **(b) for adjusting the RAB:**
  - **(i) reinstate demand deterioration as a reason for reducing the RAB, only where we determine that demand deterioration is long-term and sustained and include a process to reset (increase) the RAB if it can demonstrate demand has increased sufficiently to justify it**
  - **(ii) reinstate the link to condition based assessment as a reason for reducing the RAB in certain circumstances**
  - **(iii) include a QCA consultation process where we are considering adjusting the value of the RAB**
- **(c) for the capital expenditure and RAB reports:**
  - **(i) combine the requirements for reporting into one**
  - **(ii) include a process for us to approve RAB roll-forwards as part of the reporting requirements**
  - **(iii) include timeframes for providing reports and information to be contained in them**
  - **(iv) remove provisions for keeping information in these reports confidential**
- **(d) for equity-raising costs—seek inclusion of costs into the RAB on a case by case basis,**

as set out in our CDD amended DAU.

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

14.4 Capital expenditure assessment and approval process

14.4.1 Aurizon Network's proposal

The following table contains a high-level summary of Aurizon Network's proposed capital expenditure and assessment process.

Table 59 Aurizon Network's capital expenditure process

Topic	*Aurizon Network 2014 DAU proposal*
Overarching QCA approval process for capital expenditure	Aurizon Network may seek approval of capital expenditure (prudency of scope, standard and/or cost) at any time, including pre-approval.[955] The proposal also provides for Aurizon Network to seek QCA approval of a procurement strategy. If we approve the procurement strategy, Aurizon Network could also request our acceptance of the costs as being prudent - if the procurement strategy was complied with.[956]
Voting and the scope of an infrastructure project	Two options are available for obtaining approval of project scope: (a) a customer vote on scope by interested participants (b) directly seeking our assessment and acceptance of the scope, standard and cost of a capital expenditure project. If a customer vote is successful, we must accept the outcome of that vote.[957]
Seeking submissions from stakeholders	We may consult and seek submissions from persons to assist us in our assessment of the prudency of scope, standard and cost, but not under circumstances where the scope has been accepted as prudent by customers and an audit certificate has been obtained (on the conduct of the vote).[958]
Pre-approval of expansion projects	If Aurizon Network is funding all or part of the cost of an expansion, then, following the determination on scope and standard of work, it would seek our pre-approval of the scope, standard and proposed cost.[959] Where pre-approved, the actual cost of the expansion up to the total of the pre-approval amount would be included in the RAB. If greater than pre-approved cost, then the difference would require our approval.[960]
Deemed approvals	Timeframes to be imposed on us for our consideration of capital expenditure. If not met, we would be deemed to have approved the project.[961] The cost, scope and standard of a project be deemed to be accepted as prudent where there was a dispute determined by an expert and that determination involved a determination of scope, standard or cost of a capital expenditure project.[962]

14.4.2 Summary of our initial draft decision

We considered the amendments Aurizon Network proposed in the 2014 DAU build upon the existing 2010 AU capital expenditure approval process in a manner that:

- widens the potential options available to Aurizon Network to obtain acceptance of the scope of a capital project—without reference to efficient cost

[955] Aurizon Network, 2014 DAU, Schedule E, cls. 3.1(b), 4.1(b), 5.1(b).
[956] Aurizon Network, 2014 DAU, Schedule E, cl. 6.
[957] Aurizon Network, 2014 DAU, Schedule E, cl. 2.1(c).
[958] Aurizon Network, 2014 DAU, Schedule E, cl. 2.2(c)(iv).
[959] Aurizon Network, 2014 DAU, Part 8, cl. 8.10.2.
[960] Aurizon Network, 2014 DAU, Part 8, cl. 8.10.2.
[961] See, for example, Aurizon Network, 2014 DAU, cl. 1.2(e).
[962] Aurizon Network, 2014 DAU, Schedule E, cl. 2.4.

- unduly constrains the regulatory process for assessing whether capital expenditure should be included in the RAB.

We considered the capital expenditure approval process required simplification and greater emphasis on assessing standard, scope, cost, and the capacity implications of any capital project, as a whole. This would allow prudency of scope and efficiency of cost to be considered together. We refused to approve Aurizon Network's proposal and required:

- a single process for assessing prudency and efficiency of capital projects, regardless of type
- all capital projects to be viewed holistically as a set of trade-offs between scope, standard and cost, which taken together have implications for CQCN capacity
- the language and provisions regarding the regulatory assessment process for scope, standard and cost to be simplified
- the removal of the provisions with respect to procurement strategies.

We considered our proposed approach addressed stakeholder concerns regarding prudency, clarity and timeframes[963] and provided greater assurance to all parties that the RAB only included the capital costs associated with efficient investment.

14.4.3 Stakeholders' comments on the initial draft decision

Aurizon Network considered some guidance on the alternative 'holistic' framework is appropriate. In view of this, it accepted our initial draft decision but said it would work with us to develop a new review process but, until then, would continue to prepare its annual capital expenditure claim to address the UT3 prudency tests.[964]

Other stakeholders broadly supported our proposed amendments to the capital expenditure process. A summary is provided in the table below, together with our responses where appropriate.

Table 60 Stakeholder comments on capital expenditure review process and QCA response

Issue	*Comments*	*QCA response*
Review process	BMA supported our amendments and said the requirement to vote on a broader package of project measures (scope, standard and cost) will enable customers to better assess the merits of the project. This removes the regulatory uncertainty for Aurizon Network, financiers and existing and future users[965] Asciano supported our amendments to Schedule E and said they broadly address most of the concerns it outlined in previous submissions.[966]	We note general support for the proposed process.
Transparency	BMA reiterated its view there should be complete transparency in the allocation of capital expenditure or project costs and the corresponding benefits between systems. It noted that, under the current process, it was difficult to verify if the value of the assets actually included in the RAB is consistent with reports.	Our proposed drafting would allow for simplification of the language and provisions regarding the regulatory assessment process for scope, standard and cost. As well,

[963] Asciano, 2014 DAU, sub.22: 47–48 and 143; Asciano, 2013 DAU, sub. 44: 42–44; QRC, 2013 DAU, sub. 84: 64–65; QRC, 2013 DAU, sub. 62: 9; QRC, 2013 DAU, sub. 85: 66; QRC, 2014 DAU, sub.42: 62.
[964] Aurizon Network, 2014 DAU, sub. 82: 199, 204.
[965] BMA, 2014 DAU, sub. 78: 6.
[966] Asciano, 2014 DAU, sub. 76: 23.

Issue	*Comments*	*QCA response*
	To improve transparency and to provide confidence in the regulatory process, BMA considered it would be useful if: (a) the annual approval process specified which system each asset would be capitalised in, how much construction finance interest was included in the published estimate and when it was assumed that the assets would be capitalised into the RAB (b) the asset roll-forward at the end of each regulatory period included a direct link between the approved amounts in the final capital expenditure figure (c) the timing of the cash flow for each project was made public in a spreadsheet along with the calculation of construction finance interest.[967]	greater emphasis and responsibility are placed on those participating in the capital project to justify their proposals as they have the expertise, knowledge and information. The QCA's capital expenditure reports provide details of the specific items rolled forward into the RAB, and these can be identified according to coal system if necessary. Details are also provided of interest during construction amounts included in the RAB, in the QCA reports.
Fit-for-purpose network	The QRC reiterated its previous request to reinstate the UT3 obligation for Aurizon Network to maintain the network in a fit-for-purpose state.[968]	Aurizon Network proposed to remove this clause (formerly Schedule A, cl. 1.5 of the 2010 undertaking), as it is already included in the standard access agreements. We accept this position.
Notice requirements	The QRC suggested Aurizon Network be subject to the following additional notification obligations: • that at clause 2.1(d) Aurizon Network be required to give the necessary notice to the QCA that it is seeking a vote and of the vote outcome in writing and, in respect of the notice relating to the vote outcome, that the notice specify the number of: – total votes – 'no' votes – actual 'yes' votes – in the event the QRC's comments in relation to the deemed votes of interested parties who do not respond or do not respond clearly are not adopted, the number of deemed yes votes, and • that at clauses 4.4(e) and 4.6(e)(iii) Aurizon Network be required to give the necessary notice of the results of a vote to the interested participants in writing, specifying those details the QCA has suggested in relation to clause 2.1(d).[969]	Under clause 12.3 of the CDD amended DAU, all forms of notification as set out in the undertaking are in writing. Aurizon Network is required to notify the QCA of the outcome of the customer vote. This outcome would generally include details of the yes and no votes, and deemed votes. We do not consider it necessary to prescribe the content of the report to the QCA in Schedule E.
Drafting amendments	• the QRC suggested minor drafting amendments to aspects of clauses 2 and 4 of Schedule E. For example, it suggested that at clause 2.1(d) it should be clarified to specifically require that acceptance of the relevant capital expenditure project must be sought from the QCA.[970]	We have made clarifications in the drafting where we consider it appropriate.

[967] BMA, 2014 DAU, sub. 78: 6.
[968] QRC, 2014 DAU, sub. 84: 124.
[969] QRC, 2014 DAU, sub. 84: 126.
[970] QRC, 2014 DAU, sub. 84: 126.

14.4.4 QCA analysis

After having regard to the section 138(2) matters, and stakeholder submissions, we do not consider it appropriate to approve the 2014 DAU in respect of the capital approval process.

There is general consensus amongst stakeholders to accept the initial draft decision amendments. As noted above in the table, the main issues raised in submissions relate to clarifications and transparency concerns.

We agree with stakeholders that a 'fit-for-purpose' state for assets is part of Aurizon Network's broader obligation to access holders. We note this obligation was contained in the 2010 AU and is contained in the access agreements.

However, we consider the replication of this clause in the undertaking is not required. In reality, other factors will provide stakeholders with greater certainty that Aurizon Network is maintaining its network appropriately, including condition-based assessments of assets. This more appropriately demonstrates the outcome of this obligation by reference to reviewing the current state of assets. It also has a direct impact on the value of assets.

Amending the 2014 DAU

The way we consider it appropriate to amend the undertaking is set out in our CDD amended DAU and Schedule E. We maintain our view that capital costs proposed for inclusion in the RAB should be considered holistically—that is, allowing for prudency of scope and efficiency of cost to be assessed together, along with the capacity implications the project has for the CQCN. This provides a more robust framework in which to consider capital expenditure, with a view to encompassing broader matters (e.g. the implications for capital investment and trade-off decisions).

That said, we agree with stakeholders that the process could be made clearer in areas. For this reason, we have made drafting amendments as appropriate.

Separately, we have included a process to ensure the RAB roll-forward is approved by us following the approval of capital expenditure. We consider this a necessary step in providing transparency and confidence in the maintenance of the RAB (discussed in the previous section above).

Overall, we consider our approach provides greater assurance the RAB only includes capital costs associated with efficient investment and (consistent with the object of Part 5 of the QCA Act (ss. 69E and 138(2)(a)) and allows Aurizon Network to recover costs contemplated by the QCA Act (ss. 138(2)(b) and 168(a)).

We are also of the view that our approach is in the interests of access seekers, access holders and train operators, as well as accounting for the interests of potential financiers (s. 138(2)(e) and (h) of the QCA Act). This is because financiers should recover efficient investment costs, while access seekers, access holders and train operators should be subject to reference tariffs that only cover efficient investment costs.

Consolidated draft decision 14.2

(1) **After considering Aurizon Network's proposed capital expenditure approval process in the 2014 DAU, our consolidated draft decision is to refuse to approve Aurizon Network's proposal.**

(2) **The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is as indicated in our CDD amended DAU and consistent with our proposed approach to capital expenditure approvals as detailed in our initial draft decision, and in Schedule E of our CDD amended DAU.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

14.5 Asset Management Plan (AMP)

14.5.1 Background

Aurizon Network said it should have the discretion to submit an AMP to us for approval[971], which sets out the standards Aurizon Network will apply in determining whether to incur capital expenditure by replacing assets within the RAB, rather than maintaining those assets.

Where an AMP has been submitted to us for approval, and we have accepted it, Aurizon Network proposed we would be required to accept the scopes and standards of asset replacements or renewals as prudent, if consistent with the AMP.

In response, stakeholders commented:

- Aurizon Network should be required to submit an AMP[972]
- prior to approval of an AMP, stakeholders should be given the opportunity to comment on it[973]
- the AMP is a high-level document and therefore not sufficiently detailed to determine whether the scope and standard of capital expenditure was prudent[974]
- the QCA should not be required to automatically accept the scope and standard of asset replacement and renewal as prudent.[975]

14.5.2 Summary of our initial draft decision

Our initial draft decision was to refuse to approve Aurizon Network's AMP proposals.

Although stakeholders[976] said Aurizon Network should be obligated to submit an AMP, we were of the view that it should be at Aurizon Network's discretion whether it provided an AMP to us. We also considered Aurizon Network could request our acceptance of the capital expenditure for asset replacement and renewal included in the AMP as prudent and efficient. However, any

[971] Aurizon Network, 2014 DAU, Schedule E, cl. 2.5.
[972] QRC, 2013 DAU, sub. 85: 67; Asciano, 2013 DAU, sub. 44: 44.
[973] Asciano, 2013 DAU, sub. 44: 44.
[974] QRC, 2013 DAU, sub. 46: 85.
[975] Asciano, 2013 DAU, sub. 44: 44; QRC, 2014 DAU, sub. 42:62.
[976] QRC, 2013 DAU, sub. 85: 67; Asciano, 2013 DAU, sub. 44: 44.

submission provided would be subject to the capital expenditure approval process discussed earlier in the chapter.

This results in all capital expenditure proposals being subject to the same level of scrutiny and seeks to ensure that only the costs associated with efficient and prudent capital expenditure will be included in RAB and, in turn, reflected in access charges.

14.5.3 Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with our initial draft decision, noting that it proposed to submit an AMP to the QCA for approval as soon as possible after the 2014 DAU is approved. However, it was concerned the proposed drafting provides no guidance with regard to the review process of the submitted AMP, nor allows for minor adjustments to the AMP following QCA approval.

While Aurizon Network disagreed with the initial draft decision, it was prepared to accept the QCA's proposals if its concerns can be addressed.[977]

The QRC considered that the provisions at clause 3 relating to the AMP operate ineffectively and the utility of clause 3 is low, as:

- Aurizon Network may, but is not obliged, to prepare an AMP for approval by the QCA
- the intended content of the AMP is vague and insufficiently prescriptive
- the language relating to 'prudent and efficient' in clause 3(b) is not adequately linked to clause 2.2 of Schedule E.

The QRC suggested that Aurizon Network should be required to commit to prepare an AMP for approval by the QCA and to periodically update the plan. It also suggested that the requirements and approval process for this plan be substantially expanded.[978]

14.5.4 QCA analysis

After having regard to the section 138(2) matters, and taking into account stakeholders' submissions, we do not consider it appropriate to approve the 2014 DAU in respect of the process for asset management plans.

The reason for our position is that we consider that the approach needs to be consistent with the scrutiny of the prudency and efficiency of all capital expenditure projects.

While stakeholders disagreed on the effectiveness of the wording of amendments we proposed in our initial draft decision, there was general agreement on allowing minor adjustments to periodically update the AMP.

As expressed in our initial draft decision, we are of the view that Aurizon Network can, at its discretion, provide an AMP to us. It can also request our acceptance of the capital expenditure for asset replacement and renewal included in the AMP as prudent and efficient. However, any submission provided will be subject to the capital expenditure approval process. We believe this links the AMP to the prudent and efficient requirement as set out in Schedule E, clause 2.2 and should provide some clarity for stakeholders that the AMP and capital expenditure proposals are subject to the same level of scrutiny.

We see the AMP as a baseline plan for the management of assets. Establishing an AMP for approval does not preclude minor adjustment such as changes to capital expenditure and asset

[977] Aurizon Network, 2014 DAU, sub. 82: 206–207.
[978] QRC, 2014 DAU, sub. 84: 125–126.

renewal programs. Were this to occur, and where adjustments are required of the AMP after it is approved, we believe this can be reflected as part of the annual capital expenditure reviews.

In regard to the QRC's comments, we consider it appropriate for Aurizon Network to have discretion as to whether it submits an AMP to the QCA. To be any more prescriptive would require us to also set out criteria for when an AMP can be submitted, which we consider is not appropriate. We also do not consider it appropriate that the content be prescribed—this may depend on the nature of the asset replacements and renewals and should be at the discretion of Aurizon Network. We note that the AMP would be submitted to the QCA for approval—therefore any deficiencies can be addressed. As regards to prudency and efficiency, we consider that these terms have the same meaning throughout Schedule E.

Overall, the approach allows for an appropriate level of oversight and scrutiny of AMPs and associated asset replacement and renewals, without imposing prescriptive regulatory constraints on Aurizon Network. Therefore, we consider that this approach appropriately balances the interests of access seekers, access holders and train operators, with the legitimate business interests of Aurizon Network (s. 138(2)(b),(e) and (h) of the QCA Act). We are also of the view that it aligns with the object of the third-party access regime in the QCA Act (ss. 69E and 138(2)(a) of the QCA Act).

Consolidated draft decision 14.3

(1) Our consolidated draft decision is to refuse to approve Aurizon Network's AMP proposals in the 2014 DAU.

(2) The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is, as we have indicated in our CDD amended DAU, to allow Aurizon Network to:

- **(a) provide the QCA with an AMP**
- **(b) request that the QCA accept the capital expenditure for asset replacement and renewal in the AMP as prudent and efficient. Any such request will be subject to the capital expenditure approval process set out in the undertaking.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

14.6 Customer voting process

The following table contains a high-level description of each element of Aurizon Network's customer voting process.

Table 61 Aurizon Network's customer voting process

Element	*Description*
Purpose and application	• Voting should relate to the scope of works and be part of a voting proposal. • An unsuccessful vote does not prevent Aurizon Network from seeking QCA's acceptance in the future. • Aurizon Network is not obliged to fund or construct a capital expenditure project as a result of seeking or obtaining customer acceptance of the project.[979]
Identification and voting rights of interested participants	• Only interested participants can vote for a given proposal. • The number of votes attributable to each interested participant is based on the number of affected train paths. • An affected train path is a train path where the reference tariff for a train service using that path would be affected by including the relevant capital expenditure of the capital project into the RAB.[980]
Voting and acceptance process	• If at least 60 per cent of the eligible votes are favourable, interested participants are to have deemed to have accepted the proposal. • Aurizon Network may determine: – a vote is not eligible if the vote does not accord with its acceptance criteria for a 'no' vote[981] – a vote is a 'yes' vote if it is not clear whether the vote was 'yes' or 'no'.[982] • If a proposal is deemed to have been accepted by interested participants, the 2014 DAU proposed the QCA should deem the scope prudent.[983]
Information provided to interested participants	• robust and detailed information on projects must be provided to ensure interested participants are sufficiently informed to make decisions on capacity expansions consistent with their best interests.[984] • Aurizon Network will provide interested participants that have been asked to vote on the scope of project with a working paper developed from the feasibility study for the project:[985] • if the scope being voted upon is for a general expansion capital expenditure project[986], Aurizon Network will use reasonable endeavours to cooperate with a consultant appointed by interested participants to conduct a peer review of Aurizon Network's capacity planning inputs, processes and modelling outputs in relation to the project. The 2014 DAU also commits Aurizon Network to run a range of scenarios in the capacity model used, as requested by the consultant (acting reasonably).[987]
Compliance and audit provisions	A number of compliance and audit processes with respect to the voting process which addressed the key areas of interested participant concerns and the audit process.

Stakeholders were concerned the proposed treatment of votes did not provide sufficient protection to voters or appropriately balance the interests of the relevant parties. Stakeholders

[979] Aurizon Network, 2014 DAU, cl. 8.13.2(d), Part 8.
[980] Aurizon Network, 2014 DAU, cl. 8.13.3(a), Part 8.
[981] Aurizon Network, 2014 DAU, cl. 8.13.5(g), Part 8.
[982] Aurizon Network, 2014 DAU, cl. 8.13.5(e), Part 8.
[983] Aurizon Network, 2014 DAU, cl. 2.2(a)(i)(A)(1), Schedule E.
[984] Aurizon Network, 2013 DAU, sub. 2: 153.
[985] Aurizon Network, 2014 DAU, cl. 8.13.6(d), Part 8.
[986] Such an expansion will be utilised by more than one customer or access holder.
[987] Aurizon Network, 2014 DAU, cl. 8.13.6, Part 8.

provided a number of suggestions to improve the process, including the identification of 'no' votes, provision of information for voting and the role of the QCA.[988] RTCA suggested votes must cover all of project scope, standard and cost allocation, and include Rail Capacity Groups' (RCGs')[989] involvement, while others considered voting should be on 'scope' only, because of concerns over insufficient information.[990]

There was also a view that train operators should be part of the voting process and that the QCA should determine whether a person was an 'interested participant'.[991] Stakeholders were not convinced the auditing process was truly transparent or independent.[992]

14.6.1 Purpose and application of the customer vote

Summary of our initial draft decision

We refused to approve Aurizon Network's proposed approach with respect to the purpose and application of the customer voting process.

As discussed for the capital expenditure approval process, we did not consider it appropriate to review the project scope in isolation of other factors when assessing a capital project. Rather, we considered standard, scope, cost and the capacity implications of any capital project should be reviewed as a package.

This approach ensures a consistent approach is used to assess the available options. Given this, we considered any voting proposal that Aurizon Network puts to interested participants must be in relation to either:

- the prudency and efficiency of the scope, standard and cost, and identify the capacity implications of the capital project
- a material change to scope, standard, cost or capacity implications of a capital project previously accepted by interested participants.

For a customer vote to be meaningful it must be based on robust information—that is, a feasibility study on the capital project. This information is to be provided to the QCA and interested participants. We also considered it appropriate that Aurizon Network should inform us when it seeks a customer vote and the outcome of that vote.

Further, while Aurizon Network should not be obliged to undertake a customer vote, we were of the view that for any capital project for which a feasibility study has been completed, an access seeker (or its customer), an expansion funder or an interested participant should be able

[988] QRC, 2013 DAU, sub. 85: 117; QRC, 2014 DAU, sub. 42: 49; Anglo American, 2013 DAU, sub. 78: 36; Anglo American, 2014 DAU, sub. 10: 20; Anglo American, 2014 DAU, sub. 10: 9; QRC, 2013 DAU, sub. 46: 70; RTCA, 2013 DAU, sub. 73: 16–17; Asciano, 2013 DAU, sub. 44: 33.

[989] RCGs for each coal system, would comprise coal producers using the system, and with Aurizon Network and rail operators in observer roles. RCGs can then perform the critical 'transparency' role that has been missing under the Queensland regime to date, of developing and approving capacity and demand assumptions, undertaking customer votes and reviewing and endorsing annual maintenance plans and spending (RTCA, 2013 DAU sub. 73: 37).

[990] QRC said information through the CRIMP process (as in UT3) failed to ensure the provision of sufficient information to allow users to make informed decisions. The QRC, in its submission on the 2013 DAU said it supported the concept of providing users with working papers to address specific criteria (QRC, 2013 DAU, sub. 46: 70).

[991] Asciano, 2013 DAU, sub. 43: 123, Asciano, 2013 DAU, sub. 44: 21–22; QRC, 2013 DAU, sub. 85: 54; Asciano, 2014 DAU, sub. 22: 124; Anglo American, 2014 DAU, sub. 10: 15, 17.

[992] QRC, 2013 DAU, sub. 46: 71.

to require Aurizon Network to undertake a voting process. We considered this provided an appropriate balance because customer votes are not solely at the discretion of Aurizon Network.

If interested participants accept a voting proposal we saw no reason why Aurizon Network should not promptly seek our approval to include the capital expenditure into the RAB. We were of the view that this is particularly pertinent in an environment where the option of user funding and/or third party financing for capital projects is present.

It was unclear to us how the customer voting process could be interpreted as providing Aurizon Network with an obligation to construct or fund a capital project. As such we removed clause 8.13.2(d) of the 2014 DAU.

Stakeholder comments on the initial draft decision

Aurizon Network disagreed for the most part with the QCA's initial draft decision on the basis that there should be flexibility in the voting process. Aurizon Network's response to this draft decision, with our responses, is summarised below:[993]

Table 62 Application of customer voting process

Decision	*Aurizon Network comment*	*QCA response*
Process to encompass scope, standard, cost and capacity	Aurizon Network disagreed with this position. Its view was that there should be flexibility to undertake voting on scope alone. Aurizon Network also noted that extending the voting process to include scope, standard, cost and capacity as proposed by the QCA will have implications for the MAR as it will increase the resources required to undertake the voting process.	We remain of the view that standard, scope, cost and the capacity implications of any capital project should be reviewed as a package. This allows prudency of scope and efficiency of cost to be considered together. We do not consider it appropriate to review project scope in isolation of other factors when assessing a capital project. Voting on scope alone implies that not all relevant information may be available to the customers to assist them in determining their vote. This is not in the interests of access seekers or access holders. Aurizon Network has not provided details of the estimated impacts on MAR. We consider that the costs would not be material.
Voting proposal to relate to either prudency of scope, standard, cost and capacity implications or a material change in scope, standard and cost or capacity implications.	Aurizon Network disagreed with this position, and reiterated view that there should be the flexibility to undertake voting on scope alone.	Consistent with the above, any voting proposal that Aurizon Network puts to interested participants must be in relation to either; the prudency and efficiency of the scope, standard and cost, and identify the capacity implications of the capital project; or a material change to scope, standard, cost or capacity implications of a capital project previously accepted by interested participants. This is similar with our view that a customer vote consider these elements

[993] Aurizon Network, 2014 DAU, sub. 82: 200–201, 208–210, 35.

Decision	*Aurizon Network comment*	*QCA response*
		as a package, and ensures consistency of approach with the other options available for assessing whether capital expenditure should be included in the RAB. This is considered to be consistent with the interests of access seekers and access holders.
Voting to take place only after feasibility study completed	Aurizon Network disagreed with this position, arguing that there should be flexibility to undertake the vote earlier. It considered that a later vote had the potential to delay projects or weaken the benefit of a vote. Aurizon Network believed it would be more efficient for the undertaking to provide flexibility around the process, allowing votes earlier than the point of completion of the feasibility study and also allowing for votes of scope, standard and costs separately or together. As a vote can only be undertaken after a feasibility study is completed, Aurizon Network considered there is an advantage in addressing as much of the approval process in advance of this period to reduce time between the end of the feasibility study and unconditional commitment to the expansion. It submitted that this can be facilitated by: (a) seeking approval of scope in advance of cost. Exact access rights and scope are known at the time of entry into the feasibility study, allowing this approval to be progressed in parallel with the feasibility study (b) considering approval of standard at the same time as scope (c) As the pre-approval of cost is best informed by the feasibility study (which provides the best estimate), Aurizon Network said it is better done separately from standard and scope approvals.	While we understand Aurizon Network's belief that it would be more efficient where there is flexibility around the process, either allowing votes earlier than the point of completion of the feasibility study or allowing for votes of scope, standard and costs separately, we believe this flexibility comes at the expense of efficiency and effectiveness. This is because we consider that for customer vote to be meaningful, it has to be based on robust information. Accordingly, we consider Aurizon Network should only be able to seek a vote on a capital project where a feasibility study has been completed for that capital project and the results of the feasibility study have been provided to us and interested participants. This is in the interests of access seekers because it enables them to make timely decisions based on the best available information, and allows them to appropriately take account of project risks. Allowing votes on scope, standard and cost to be done separately could also allow key aspects of an expansion to be locked in, without consideration of other factors (e.g. locking in scope without consideration of costs). This is not ideal.
Obligation to notify the QCA of a vote	Aurizon Network supported this position	We note support for this position.
Persons who may require Aurizon Network to undertake a vote	Aurizon Network disagreed with the QCA's position allowing access seekers, expansion funders or interested participants the ability to require a vote. It said: (a) the voting and pre-approval process provides comfort for the party funding an asset that it will be included in the RAB on completion. It should therefore be solely at the election of the funder whether or	Aurizon Network should not be obliged to undertake a customer vote. However, for any capital project for which a feasibility study has been completed, we are of the view that an access seeker (or its customer), an expansion funder or an interested participant should be able to require Aurizon Network to undertake a voting process. This provides an appropriate balance because customer votes are

Decision	*Aurizon Network comment*	*QCA response*
	not to seek a vote or pre-approval (b) other interested parties have the benefit of QCA approval process, which will allow them input if appropriate (c) there is no reason for an interested participant who is not an access seeker in relation to the expansion to have any right to force a vote where the funder does not require it.	not solely at the discretion of Aurizon Network.
Aurizon Network to seek QCA pre-approval after vote	Aurizon Network disagreed with this position, arguing that there should be flexibility as to whether to seek pre-approval or not.	Where interested participants accept a voting proposal based an assessment of the scope, standard, cost, and capacity implications of a capital project for which a feasibility study exists, we see no reason why Aurizon Network should not promptly seek our pre-approval of that capital expenditure. These measures ensure customer voting takes place when capital projects have reached an appropriate stage in their development and provides us with transparency regarding the effectiveness of the customer voting process.
Aurizon Network to delete clause 8.13.2(d) of 2014 DAU	Aurizon Network disagreed with this position as it considered there was still benefit in clarifying that a 'yes' vote does not create an obligation for it to construct the infrastructure. It submitted that, in its experience, stakeholders do get confused about this issue and, accordingly, there is benefit in retaining it for clarification.	We agree with Aurizon Network's comments and consider this clause should remain for clarity.

Vale believed the pre-approval process should include a time limit in which Aurizon Network is then required to commence a project after receiving a vote supporting the capital project. It expressed the view that the pre-approval process in the past has provided Aurizon Network with the opportunity to seek a vote and then either delay or not proceed with the expansion. It considered that, to improve efficiency and transparency, a mechanism should be established to remove any favourable pre-approval vote if the capital project does not proceed within a specified time, or if it is materially adjusted.[994]

The QRC also considered that any approval of a capital expenditure project (whether by the QCA or a vote) should be subject to expiry after a certain period of time, after which Aurizon Network would need to seek a new vote or seek QCA approval again. It nominated two years as an appropriate timeframe.

[994] Vale, 2014 DAU, sub. 79: 8.

QCA's analysis and consolidated draft decision

After having regard to the section 138(2) factors, and stakeholder submissions, we refuse to approve Aurizon Network's proposed approach with respect to the purpose and application of the customer voting process in the 2014 DAU.

As we noted in our initial draft decision, the key reason for our position is that we consider that voting should be based on as much detailed information as possible, and that an effective vote cannot be based on the project scope in isolation of other factors when assessing a capital project. Rather, standard, scope, cost and the capacity implications of any capital project should be considered in a vote.

In relation to Vale's comment above, we consider there is merit in providing some comfort to stakeholders regarding timing of the vote and completion of the project. We consider placing a time limit on commencing construction of infrastructure after a vote may be too prescriptive. However, we acknowledge a customer vote outcome will depreciate over time, as market conditions and customer circumstances change and there is merit in this being reflected in the process.

To address this, we have proposed the customer vote be valid for the duration of a timeframe that is actually specified by Aurizon Network at the time that it seeks a vote under clause 4.1. If the timeframe is exceeded by Aurizon Network, a new vote will be required.

In our response to submissions as noted above, we indicated that our proposed approach responds to the interests of access seekers, access holders and train operators, as well as accounting for the interests of potential financiers (s.138(2)(e) and (h) of the QCA Act), because it provides them with better information with which to make an informed customer vote. As well, they can have more confidence in the efficacy of the voting system. This is particularly pertinent in an environment where the option of user funding and/or third party financing for capital projects is present. To this extent, it addresses those issues with Aurizon Network's approach that are unduly weighted in favour of Aurizon Network. At the same time, our proposals do not detract from Aurizon Network's legitimate business interests as they allow for the recovery of its efficient investment costs (s. 138(2)(b) of the QCA Act).

Consolidated draft decision 14.4

(1) After reviewing Aurizon Network's proposed approach with respect to the purpose and application of the customer voting process in the 2014 DAU, our consolidated draft decision is to refuse to approve the proposal.

(2) The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is as we have indicated in our CDD amended DAU, as follows:

- **(a) Aurizon Network must include a process that encompasses standard, scope, cost and the capacity implications of any capital project, rather than just scope.**
- **(b) The voting proposal must be in relation to either:**
  - **(i) the prudency and efficiency of the scope, standard and cost, and identify the capacity implications of the capital project**
  - **(ii) a material change to scope, standard, cost or capacity implications of a capital project previously accepted by interested participants.**
- **(c) There should be a requirement that a customer vote can only take place for a capital project for which there is a completed feasibility study, the results of which have been provided to the QCA and interested participants.**
- **(d) Aurizon Network should promptly notify the QCA if it is seeking a vote and inform the QCA of the outcome of that vote.**
- **(e) An access seeker (or its customer), an expansion funder or interested participant should have the ability to require Aurizon Network to undertake a vote for a capital project for which a feasibility study exists.**
- **(f) If interested participants accept a voting proposal, Aurizon Network should promptly seek QCA pre-approval of the relevant capital expenditure.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

14.6.2 Interested participants

Identification of interested participants

In our initial draft decision, we did not share stakeholders' view that an RCG needed to be formally involved in the customer voting process as a number of industry groups already exist[995] to maximise coal throughput. It is likely such industry groups can make their views known to interested participants. We considered, however, some amendments were required to Aurizon Network's proposal.

We considered the definition of interested participants should be widened, as it is reasonable for any person[996] to be an interested participant. This accords with our proposal that capital

[995] Examples include the Gladstone Coal Exporters Executive, DBCT Users Group, BMA Coal Chain, Integrated Logistics Company, Abbot Point Users Group.

[996] An 'interested participant' should include customers, access holders and access seekers without customers for whom the proposed capital project will impact on their contracted capacity or train paths.

projects should be treated as a package of measures and a customer vote undertaken for a capital project for which a feasibility study exists.

We were also of the view that persons who believe they are entitled to be an interested participant for a given customer vote but have not been classified as such should notify us, as well as Aurizon Network. Further, Aurizon Network should promptly notify each party and us as to whether or not the persons will be treated as an interested participant. We considered this would provide us with an appropriate level of transparency in relation to the identification of interested participants. This is beneficial if Aurizon Network uses the outcome of a customer vote to support a proposal for the inclusion of capital expenditure into the RAB.

Stakeholders' comments on the initial draft decision

Aurizon Network supported the notification requirements in the initial draft decision, but disagreed with our decision to define interested participants to include customers, access holders and access seekers without customers where the proposed capital expenditure will impact on the person's contracted capacity or train paths. It submitted that expanding the network does not impact on any existing contract or the capacity included in those contracts. Aurizon Network's views on this issue are summarised in the table below.[997]

Table 63 Identification of interested parties

Issue	*Stakeholders' comments*	*QCA response*
Capacity	Aurizon Network said that: (a) constructing an expansion and including the value in the RAB does not impact any existing access agreements and there is no change to an existing agreement in respect of contracted capacity or train paths. Hence, according to Aurizon Network, there is no need to include clause 4.2(a)(ii) (Schedule E). Aurizon Network has sought clarification of how contracted capacity or train paths can be impacted after construction is completed (b) the compression mechanism in conditional access agreements in the 2014 DAU ensures that, where insufficient capacity is created by an expansion, the existing access holder (or their customer) will not be disadvantaged. Therefore, even in respect of the practical ability to deliver capacity, Aurizon Network did not support the requirement to include existing access holders (or their customers) in the list of Interested Participants.	We agree with Aurizon Network that there are should not be an impact on capacity or train paths after an expansion. However, this does not mean that, in reality, this does not occur. Clearly a customer's contracted capacity is locked in, but a customers' ability to use its contracted entitlements may be impacted due to network performance factors. E.g. access to the network, cancellations or speed restrictions. This is particularly the case with the integrated nature of expansions and it not feasible for to presume the addition of expansion infrastructure and traffic will have no impact or effect on existing customers. As such, it we consider it reasonable to allow for the possibility of such impacts, positive or negative, particularly in terms of the level of service and robustness. It would only apply if there is an external impact on existing users. We maintain the view that existing access holders are relevant stakeholders, even if they are insulated from compression mechanisms.
Access charges	Aurizon Network acknowledged an existing access holder (or their customer) can be impacted through their access charges being varied due to the operation of reference tariffs, however, it	We note parties would be interested participants where they are affected by including the capital expenditure into

[997] Aurizon Network, 2014 DAU, sub. 82: 35, 201, 210–212.

Issue	*Stakeholders' comments*	*QCA response*
	considered the potential detrimental impact of this to be either nil or nominal. This is because existing access holders will benefit if there is a reduction in access charges and, where there is an increase, socialisation will mean that the existing access holder is either not impacted or only nominally so. Given this, Aurizon Network considered there was no reason why existing access holders (or their customers) should be afforded a vote.	the RAB (clause 4.2(a)). If they are not affected, they would not be classed as interested participants.
Access seekers	Aurizon Network saidin addition to access seekers (or their customers) who hold provisional capacity allocations dependent on the expansion (who Aurizon Network considered should be included), Schedule E also includes: (a) access seekers (or their customers) who are at an earlier stage of their expansion studies and sit behind the conditional access holders in priority for capacity, or (b) access seekers who have provisional capacity allocation but have yet to gain unconditional access rights (i.e. who are at a later stage in their expansion but are yet to be access holders). Aurizon Network noted this could include a substantial number of access seekers at pre-feasibility stage and mine developers at early stages of development who potentially have contradictory interests in respect of timing of the conditional access holder's expansion. It therefore did not support the requirement to include these access seekers (or their customers) in the list of interested participants.	Our definition of an access seeker is an entity that has completed an access application and, as such, would have a relevant interest in the outcome of a customer vote in respect of an expansion. We consider our position to be generally in the interests of access seekers under section 138(2) of the QCA Act, and would also serve to promote investment in the CQCN.
Weighting	Aurizon Network believed that conditional access holders (or their customers) have the most interest in whether the expansion: (a) goes ahead (their mining project depends on it) (b) provides sufficient capacity (they are subject to compression if it does not), and (c) is prudent in scope, standard and cost as their access charges (including whether or not they will be socialised) are directly linked to this. Given this, Aurizon Network considered that conditional access holders (or their customers) are best placed to balance the inherent conflicts between those drivers. (a) it noted that other potential participants (ie. other access holders, access seekers or their customers) are only influenced by some or none of these issues. Further, it believed that these other potential participants may have an incentive to hinder the development of competing coal supplies to influence a related market (b) Aurizon Network believed that the initial draft decision appeared to place greater	We agree that interested participants closer to actually using their access rights would have the most interest in whether an expansion proceeds. We note that Schedule E also allows for voting rights to be determined by Aurizon Network, acting reasonably, taking account of the status of the access agreement and commitment to the expansion. We consider the broadening of eligibility for customer voting, subject to the level of commitment, would be in the interests of access seekers. Excluding potential access seekers could jeopardise an expansion and affect the outcome for all access seekers. While it is true that gaming behaviour could occur to hinder competing mine developments, this risk is considered outweighed by the need to promote investment and to safeguard the interests of access seekers at all stages of the expansion process.

Issue	*Stakeholders' comments*	*QCA response*
	emphasis on the interests of existing mining participants over new incoming mining participants. It considered that this could constrain the economically efficient investment in the rail network (refer s. 69E of the QCA Act). It submitted that the undertaking should not act to fetter competition in other markets.	We do not consider we have placed greater emphasis on the interests of existing mines over new mines. In fact, our approach, by extending the voting process wider, encompasses new participants more equitably.
Cost	Aurizon Network noted that broadening the range of interested parties in the voting process will have MAR implications as it will cost it more to consult more widely.	Aurizon Network has not quantified such costs. However, we would not envisage that consultation costs would be significant. We would expect Aurizon Network to be consulting with such participants in any case.
Previous processes	Anglo American expressed the view that previous voting processes have not been successful and have not necessarily involved all users whose throughput, access rights and reference tariffs were going to be affected by the outcome of the voting process.	Our proposed amendments (and broader coverage) should address these concerns.
Existing users	Anglo American cited the Goonyella to Abbot Point Expansion process as an example of where existing users encountered capacity degradation or increased reference tariffs because of decisions made by expanding users without the input of existing users. It believed that this does not allow existing users the ability to protect access rights in which they have made significant investments. Anglo American believed that any instance where an existing user faces compression or a price increase because of decisions in which they had no involvement is inappropriate. As such, its view was that existing users should be entitled to vote and/or make submissions on any proposed expansion in their system.[998]	We agree that existing users, where they are affected, should have voting rights.
Effect on pricing	The QRC expressed a concern that the 'interested participant' test (cl. 4.2) may not work effectively in the context of incremental pricing for expansion tariffs. Specifically, when dealing with incremental pricing, the timing of determining whether access charges will be affected by including the amount of capital expenditure for a capital project into the RAB may be such that it is determined after a relevant vote takes place.[999]	We agree and consider it imperative that broader participation and upfront discussion of relevant matters should occur as part of any effective consultation process on expansions, particularly where it is envisaged that expansion costs will be socialised. Under our proposed approach to expansion pricing (see Chapter 12), it is not possible to explicitly define who the interested participants are. As such, leaving this provision broader is more appropriate.

[998] Anglo American, 2014 DAU, sub. 95: 5–36.
[999] QRC, 2014 DAU, sub. 84: 125.

QCA's analysis and consolidated draft decision

After having regard to the section 138(2) matters, and stakeholder submissions, we refuse to approve Aurizon Network's proposed approach with respect to the identification of interested participants in the 2014 DAU.

Our reasons remain unchanged from our initial draft decision[1000] and relate to providing greater certainty and transparency for interested participants, and lowering barriers for participation, thus providing an appropriate balance between the interests of Aurizon Network and access seekers.

We acknowledge stakeholders' concerns with broadening the list of interested participants (as set out above). However, we remain of the view that, as drafted, the arrangements:

- provide parties (including us) with an appropriate level of transparency in relation to the identification of interested participants
- encourage those with genuine interest in the voting process to make their views known.

As set out in our initial draft decision, a process is available to follow for persons who believe they are entitled to be an interested participant for a given customer vote (but have not been classified as such). This is beneficial for all parties involved in the outcome of a customer vote, particularly to support a proposal for the inclusion of capital expenditure into the RAB.

Consistent with our initial draft decision we are of the view it is reasonable for any such person to be an Interested Participant, which accords with our proposal that capital projects should be treated as a package of measures encompassing standard, scope, cost and the capacity implications of the capital project. It also reflects the fact that we consider a customer vote should only be undertaken for a capital project for which a feasibility study exists. As a matter of best practice, any robust, objective feasibility study should identify the impact that a capital project may have on existing contractual rights and be able to identify any affected persons.

We consider that these measures appropriately balance Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act), with the interests of access seekers, access holders and train operators (s. 138(2)(e) and (h) of the QCA Act).

Our consolidated draft decision is to refuse to approve Aurizon Network's proposed approach to the identification of interested participants.

[1000] QCA draft decision, section 14.8.3.

Consolidated draft decision 14.5

(1) After reviewing Aurizon Network's proposed approach to the identification of Interested Participants in the 2014 DAU, our consolidated draft decision is to refuse to approve the proposal.

(2) The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is to:

- **(a) include in the definition of 'interested participants' customers, access holders and access seekers without customers where the proposed capital expenditure will impact on the person's contracted capacity or train paths**
- **(b) require any person who believes they are entitled to be an interested participant but has not been classified as such, to notify the QCA as well as Aurizon Network**
- **(c) require Aurizon Network to promptly notify the person and the QCA as to whether or not they will be treated as an interested participant.**

(3) The detailed drafting to reflect our positions is provided in the CDD amended DAU attached to this consolidated draft decision.

(4) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

14.6.3 Voting rights of interested participants

In our initial draft decision, we noted some stakeholders suggested voting rights should be determined by reference to tonnes rather than affected train paths. We were not convinced this was necessary and accepted Aurizon Network's approach of using affected train paths was reasonable approach given train paths are a proxy for the service provided.

We also made some minor amendments to the drafting for clarity.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with this initial draft decision.[1001] There were no other stakeholder comments.

QCA analysis

Our consolidated draft decision is to accept Aurizon Network's proposed approach to the identification of interested participants' voting rights, subject to minor amendments.

[1001] Aurizon Network, 2014 DAU, sub. 82: 201.

Consolidated draft decision 14.6

(1) **Our consolidated draft decision is to accept Aurizon Network's proposed approach to the identification of interested participants voting rights, subject to minor amendments.**

14.6.4 Voting and acceptance process

Our initial draft decision was to refuse to approve Aurizon Network's proposed approach to the voting acceptance process.

We were of the view the 2014 DAU provided Aurizon Network with the potential to exclude 'no' votes and the potential to discriminate between participants. We considered such a process as inappropriate and not in the interests of interested participants and required its removal.

We said that interested participants who vote 'no' should provide sufficient detail of their position to ensure the rationale for their decision is understood.

We did, however, agree with Aurizon Network's view that if an interested participant does not respond within the voting period, they should be deemed to have voted 'yes'. In our view, if abstaining was deemed a 'no' vote, an interested participant who did not want the capital project to go ahead but did not want to provide reasons would simply abstain. We considered this would severely limit the value of the customer voting process because the ability to gain an understanding of why interested participants were voting 'no' would be undermined.

Finally, we considered that Aurizon Network should adopt a 'best endeavours' approach when providing information, conducting forums and engaging in discussions with interested participants in relation to a voting proposal at the request of interested participants. This would give all interested participants greater assurance of an equitable, effective response from Aurizon Network with regard to any questions they may have regarding the capital project they are voting on.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with our initial draft decision requiring participants who vote 'no' to provide sufficiently detailed reasons. However, it did not support our initial draft decision to delete clauses 8.13.5(d)(f) and (g) of the 2014 DAU as it considered there should be clarity around how votes with insufficient detail or inappropriate reasons are dealt with. It also did not support our initial draft decision requiring Aurizon Network to use 'best endeavours' when engaging with participants in relation to a voting proposal as it believed it should not be required to do whatever is sought regardless of cost.

Aurizon Network submitted that:

- a 'no' vote without sufficient reason should not be allowed to stand. It considered that to allow such a vote fostered anti-competitive outcomes
- it would prefer retention of its original clauses, as it would obviate the potential for this risk to arise, and
- it would accept a mechanism where the QCA must consider whether sufficient good reason has been provided and then should exclude votes where this has not been provided.

It also disagreed with the 'best endeavours' approach required by us when providing information, conducting forums and engaging in discussions. It considered that the QCA had not

indicated the different behaviour they were seeking from Aurizon Network under a 'best endeavours' approach compared to the 'reasonable endeavours' approach it had proposed.

Further, Aurizon Network was concerned that such an obligation may extend to it doing all things possible, regardless of cost or other constraints or to subordinate its interests to those of interested participants. It considered that 'reasonable endeavours' was more likely to allow a balancing of interests, consistent with the requirements of section 138(2) of the QCA Act.

Aurizon Network also noted that this obligation had MAR implications as it meant that it must spend whatever is required rather than whatever is reasonable in the process.[1002]

No other stakeholder comments were received on this draft decision.

QCA analysis

After having regard to the section 138(2) matters, and stakeholder submissions, we refuse to approve Aurizon Network's proposed approach with respect to voting acceptance process in the 2014 DAU.

We were of the view the 2014 DAU provided Aurizon Network with the potential to exclude 'no' votes and the potential to discriminate between participants. We considered such a process as inappropriate and not in the interests of interested participants; we required its removal.

We believe that the legitimacy and effectiveness of the voting process is served when voting intentions are clear. Our proposed drafting of the acceptance process for a 'yes' or a 'no' vote would provide this clarity. We disagree with Aurizon Network that there would be 'inappropriate reasons' for a 'no' vote, requiring far greater scrutiny before the vote counts.

In our drafting we required that 'no' votes be accompanied by sufficient detailed reasons so that the QCA can understand these reasons. We would not accept a 'no' vote where we considered there were insufficient reasons. Where we might deem insufficient details were provided for a no vote, a straight-forward clarification with the relevant voter should suffice. Finding enough justification for a 'no' vote would necessarily subject this to more stringent requirement than those afforded a 'yes' vote. Our decision ensures consistency overall, and ensures the value of the voting process remains. It also is in the interests of access seekers under section 138(2)(e) of the QCA Act, as it allows the QCA to verify the 'no' vote positions.

We consider that as an approach to the voting process, best endeavours provide all interested participants with assurance that Aurizon Network would not unfairly differentiate between participants in a materially adverse manner. For example, Aurizon Network has an incentive to respond to a related party in a manner consistent with best endeavours but it does not have the same incentive to do so with other parties. We consider that 'best endeavours' provides a higher threshold, which is appropriate in circumstances where Aurizon Network could unfairly differentiate.

We are of the view that these measures appropriately balance Aurizon Network's legitimate business interests (s. 138 (2)(b) of the QCA Act), with the interests of access seekers, access holders and train operators (s. 138(2)(e) and (h) of the QCA Act).

[1002] Aurizon Network, 2014 DAU, sub. 82: 35, 201, 212.

Consolidated draft decision 14.7

(1) After reviewing Aurizon Network's proposed approach to the voting acceptance process in the 2014 DAU, our consolidated draft decision is to refuse to approve the proposal.

(2) The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is as we have indicated in our CDD amended DAU to:

- **(a) delete clauses 8.13.5(d),(f) and (g) of the 2014 DAU**
- **(b) require that if an interested participant votes 'no' they must provide reasons for that vote in sufficient detail that the QCA may understand their reasons**
- **(c) require Aurizon Network, when providing information, conducting forums and engaging in discussions with interested participants in relation to a voting proposal at the request of interested participants, to adopt a 'best endeavours' approach.**

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.**

14.6.5 Information provided to interested participants

In our initial draft decision, we refused to approve Aurizon Network's proposed approach on information provision to interested participants. In our view, if interested participants are expected to vote on whether they consider a capital project should go ahead, they should be able to access the information necessary to undertake that task. Moreover, there are likely to be different information demands depending on the capital project being voted upon, the circumstances prevailing at the time and the composition of the interested participants.

As we will have to take into account a voting proposal accepted by interested participants when considering whether to include the relevant capital expenditure into the RAB, it will be necessary for us to have confidence that information used by interested participants is robust and complete. Given this, we considered it was appropriate for us to have access to the information.

We noted this approach will, in some instances, require interested participants to sign a confidentiality agreement prior to Aurizon Network providing certain information.

Stakeholders' comments on the initial draft decision

Aurizon Network disagreed with our initial draft decision requiring it to make available to interested participants and the QCA information on the relevant capital expenditure project, including the report prepared as a result of the feasibility study for the project. As discussed above, Aurizon Network is of the view that there should be flexibility to seek a vote on scope earlier than the end of the feasibility study. It proposed that the level of information be flexible and not prescribed to allow flexibility in timing.

In regard to our initial draft decision that Aurizon Network may require an interested participant to sign a confidentiality agreement prior to providing information in relation to a customer vote, it noted that other interested participants are likely to be coal producers in competition with the customers of the conditional access seekers. It noted that, as these are the parties to whom coal producers do not wish to expose their confidential information on the proposed

developments, an obligation not to pass it on to others is unlikely to overcome their concerns.[1003]

There were no other stakeholder comments on this draft decision.

QCA analysis

After having regard to the section 138(2) matters, and stakeholder submissions, we refuse to approve Aurizon Network's proposed approach with respect to information provision for customer voting in the 2014 DAU.

We consider that Aurizon Network's proposal was inappropriate because it did not provide a level of information that is necessary for interested participants to vote on whether a capital project should go ahead. If details, such as the outcome of the feasibility study, are not provided to the customer vote, and the parameters of the capital expenditure subsequently change, then the outcome of the customer vote may not be indicative of customers' views. Participants need to be as informed as possible about the proposed capital expenditure project and any scope changes could in fact change the list of interested participants considered eligible to vote.

We acknowledge our approach requires more information to be collected before the customer vote proceeds. However, we consider the cost is exceeded by the benefit of greater certainty and credibility in the voting process.

We consider this approach to be in the interests of access seekers and access holders under section 138(2)(e) and (h) of the QCA Act. It is also in the interest of Aurizon Network, as its legitimate business interests could be affected if the information provided to interested participants becomes outdated and the changes have an impact on Aurizon Network's ability to earn a return on the investment.

We maintain a view that the option should be available for confidential information to be provided to Aurizon Network subject to a confidentiality agreement. We note that this remains an option only. In order to protect individual miners' information in the voting process, Aurizon Network can aggregate information so as not to reveal individual details. As previously noted, we believe that such an approach will, in some instances, will require interested participants to sign a confidentiality agreement prior to Aurizon Network providing certain information.

We consider that an effective level of information is required to enable interested participants to make an informed vote. This provides an appropriate balance between Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act), and the interests of access seekers, access holders and train operators (s. 138(2)(e) and (h) of the QCA Act).

[1003] Aurizon Network, 2014 DAU, sub. 82: 202, 213.

Consolidated draft decision 14.8

(1) **After considering Aurizon Network's proposed approach to information provision for Interested Participants in the 2014 DAU, our consolidated draft decision is to refuse to approve the proposal.**

(2) **The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU is as we have indicated in our CDD amended DAU:**

(a) Aurizon Network must make available to interested participants and the QCA information on the relevant capital expenditure project, including the report prepared as a result of the feasibility study for the relevant capital expenditure project

(b) Aurizon Network may require an interested participant to sign a confidentiality agreement substantially in the form set out in Schedule I prior to providing information in relation to a customer vote on a voting proposal.

(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

14.6.6 Compliance and audit provisions

Our initial draft decision was to refuse to approve Aurizon Network's proposed approach and we proposed a number of amendments.

In our view it was within Aurizon Network's control to comply with the customer voting process and there should be an overarching expectation of compliance. Furthermore, Aurizon Network would be required to take whatever action is reasonably required to comply with the customer voting process. Against this background we did not agree with the concept of 'substantive compliance' and sought its removal.

We also proposed that an interested participant notify the QCA in writing, of its concerns. As it ensured there was a record of any concerns notified to Aurizon Network, in the event a customer vote is used by Aurizon Network to support the inclusion of capital expenditure into the RAB.

We were also of the view that if the auditor identified a flaw in a vote of interested participants, Aurizon Network must redo the voting process.

In order to avoid doubt, we clarified that an accepted voting proposal that successfully passes an audit, forms part of the information we use when considering whether to accept the prudency and efficiency of a capital expenditure project. It does not infer our 'acceptance' that the capital expenditure project is prudent and efficient.

Stakeholders' comments on the initial draft decision

Aurizon Network agreed with the QCA's draft decisions providing for:

- removal of clauses relating to 'substantial compliance' with the voting process (cls. 8.13.7(b), (f) and (g))
- notification requirements for interested participants regarding non-compliance concerns
- Aurizon Network to take whatever action reasonably required to comply in response to concerns.

However, Aurizon Network disagreed with our initial draft decision requiring it to redo a voting process if the auditor identifies a flaw. It also noted that this would have MAR implications as it will unduly increase voting costs, even if the identified flaw is minor and does not affect the outcome.

It also disagreed with the QCA's position that an accepted voting proposal is not automatically approved as prudent (initial draft decision 14.15(e)). It considered that this devalues the voting process as, if the QCA is not obliged to accept its outcome, then the pre-approval process is expected to be the preferred course of action.

On this issue, Aurizon Network noted that the 2010 AU provided that the QCA accepts scope as prudent where there is a positive customer vote. It noted that the QCA had not given any reason why this position is changed in the initial draft decision, and considered that this approach is not in the interests of the funder, access holders, access seekers or Aurizon Network.

Aurizon Network also highlighted that there are discrepancies in some provisions in Schedule E (cl. 2.2(e)(ii) and (f)(iii)), with one indicating the QCA 'may' take the vote into account when approving whether the capital expenditure is prudent and efficient and the other saying it 'must'. Aurizon Network submitted that the 2010 AU is much clearer, and it believed that the QCA must continue to take the vote into account.

Aurizon Network believed that the key benefit of the vote to a funder of a project was that it provided an option to fast track the acceptance of prudency. It considered that, with this option removed, the voting process is of little value to feasibility funders and, given time pressures at this stage of a project, it would be expected that they would want Aurizon Network to bypass the voting process and seek QCA approval under Schedule E.[1004]

The QRC supported the proposal that Aurizon Network be required to seek the QCA's acceptance for a capital expenditure project following acceptance of a voting proposal under clause 4 subject to the following concerns, namely that:[1005]

- Aurizon Network should be required to act reasonably at all times in carrying out the voting process and to provide comprehensive information throughout, rather than to use best endeavours to provide information if requested, or to only make information available when Aurizon Network considered it relevant to do so. The QRC considered the general obligation on Aurizon Network to provide information (cl. 4.5(b)) was not sufficient
- any restriction on Aurizon Network's obligation to provide information which are based on confidentiality obligations should be removed as the QRC considered such caveats to be unnecessary and to undermine the transparency of the voting process, and
- it should be clearly set out that any vote which does not substantially comply with the voting process (based on an objective assessment) is invalid and ineffective.

QCA analysis

After having regard to the section 138(2) matters, and stakeholder submissions, we refuse to approve Aurizon Network's proposed approach with respect to information provision for customer voting in the 2014 DAU.

[1004] Aurizon Network, 2014 DAU, sub. 82: 35, 202, 213.
[1005] QRC, 2014 DAU, sub. 84: 124–125.

We consider the 2014 DAU approach was not appropriate because it did not enable the required transparent and effective audit and compliance process to provide access seekers and access holders with sufficient confidence that their interests are protected.

In response to Aurizon Network's comments:

(a) We maintain the view that if the auditor reveals a flaw in the voting process, the vote should be re-conducted. Otherwise, there is no consequence to the audit, and there would be a risk that Aurizon Network could unfairly differentiate in a material way.

(b) We also believe that an accepted voting proposal should not automatically be approved as prudent. While we accept that this adds an element of uncertainty, we also consider that it allows the QCA an opportunity to analyse the voting outcomes, including any reasons given by the interested participants. We note that an appropriately conducted customer vote would provide strong evidence of prudency and this would be taken into account in the QCA's assessment.

In regard to QRC's comments:

(a) We would prefer not to include the strict obligations and restrictions on Aurizon Network in respect of the voting arrangements. We consider the QRC's proposals to be overly prescriptive, and potentially not in the interests of access seekers and access holders because they could hinder the process.

(b) We do not consider that a set expiry period is necessary. There may be long lead times for a particular project. Hence, after two years have elapsed, there may be no need to hold another vote unless there are changes in scope or other parameters that could affect the voting outcome.

Amending the DAU

We do not agree with the use of the concept 'substantial compliance' in relation to the customer voting process in the 2014 DAU. In our view it is within Aurizon Network's control to ensure that it complies with the customer voting process and there should be an overarching expectation of compliance. We therefore removed clauses 8.13.7(b),(f) and (g) from the 2014 DAU.

Aurizon Network would be required to take whatever action is reasonably required to comply with the customer voting process in response to concerns regarding possible non-compliance, received in writing, from interested participants.

We have also stipulated that an interested participant also notifies us, in writing, of its concerns. We consider that this provides transparency and that we have a record of any concerns notified to Aurizon Network, in the event that the customer vote is used by Aurizon Network to support the inclusion of capital expenditure into the RAB.

Finally, our view remains that requiring a redo of voting process if the auditor identifies a flaw (rather than just an option), provides rigour in the voting process and gives Interested Parties confidence in that process. We consider that where auditor identifies flaws in the voting process which requires a redo of voting, the magnitude of this finding would supersede concerns regarding voting costs, were it to become an issue.

Taken together, we consider that the process suggested by Aurizon Network in the 2014 DAU potentially allows Aurizon Network to unfairly differentiate in favour of a related entity. By improving transparency and providing an effective audit and compliance process, access seekers and access holders can have greater confidence that their interests are protected. We

therefore consider that our approach provides an appropriate balance between Aurizon Network's legitimate business interests (s. 138(2)(b) of the QCA Act), and the interests of access seekers, access holders and train operators (s. 138(2)(e) and (h) of the QCA Act).

Consolidated draft decision 14.9

(1) **After considering Aurizon Network's proposed approach for compliance with, and audit of, the customer voting process in the 2014 DAU, we refuse to approve the proposal.**

(2) **The way in which we consider it appropriate for Aurizon Network to amend the 2014 DAU, is in the manner we have indicated in our IDD amended DAU; that is, to provide for:**

- **(a) removal of clauses 8.13.7(b),(f) and (g) from the 2014 DAU**
- **(b) a requirement for interested participants to notify Aurizon Network and the QCA , in writing, of any concerns regarding non-compliance with the voting process including providing reasons or other information in support of those concerns prior to the end of the voting period**
- **(c) a requirement for Aurizon Network to take whatever action is reasonably required to comply with the customer voting process in response to such concerns**
- **(d) a requirement for Aurizon Network to redo the voting process if the auditor identifies a flaw in the voting process**
- **(e) clarification that an accepted voting proposal that successfully passes an audit does not infer QCA 'acceptance' that a capital expenditure project is prudent and efficient.**

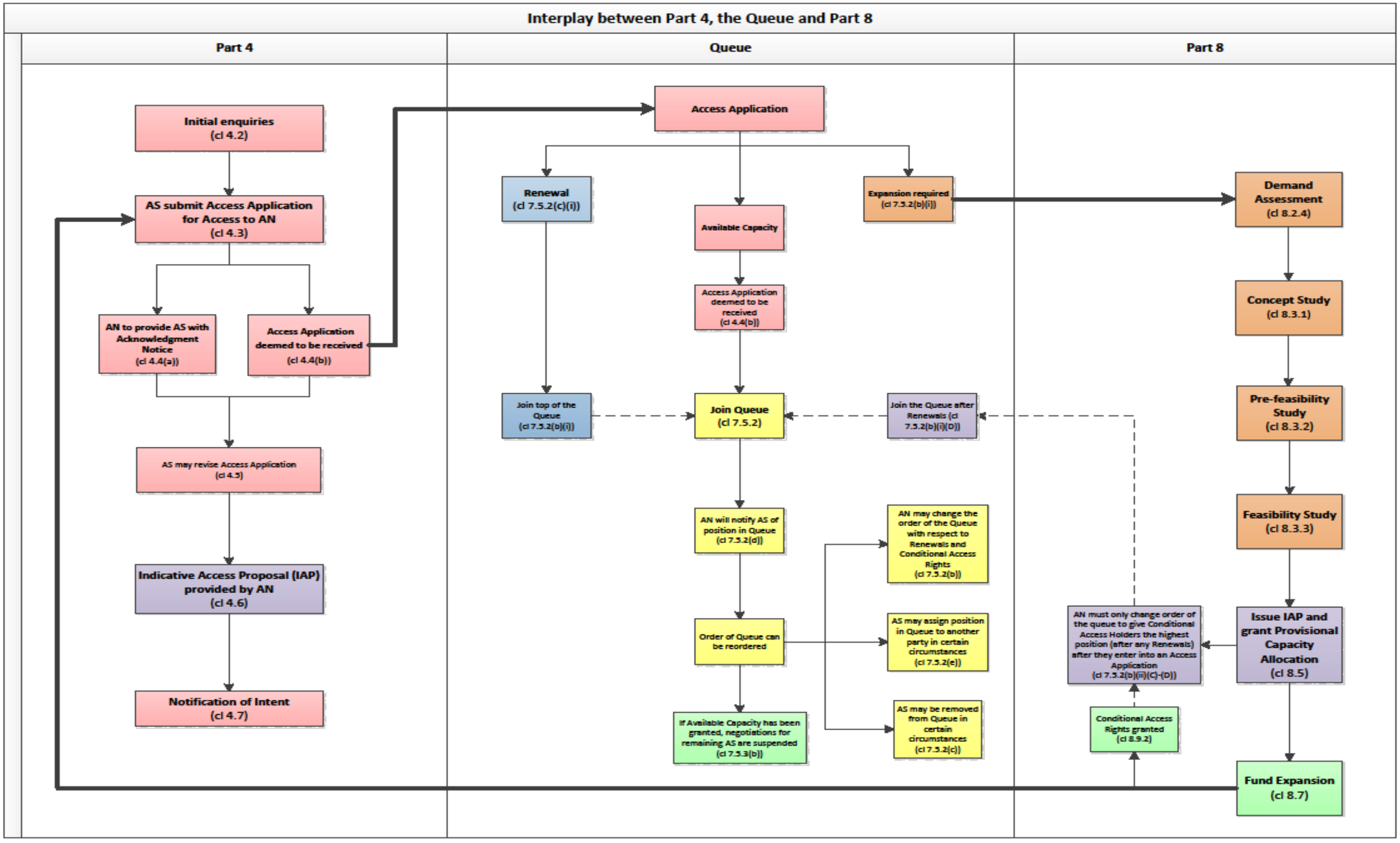
(3) **We consider it appropriate to make this decision having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above**.

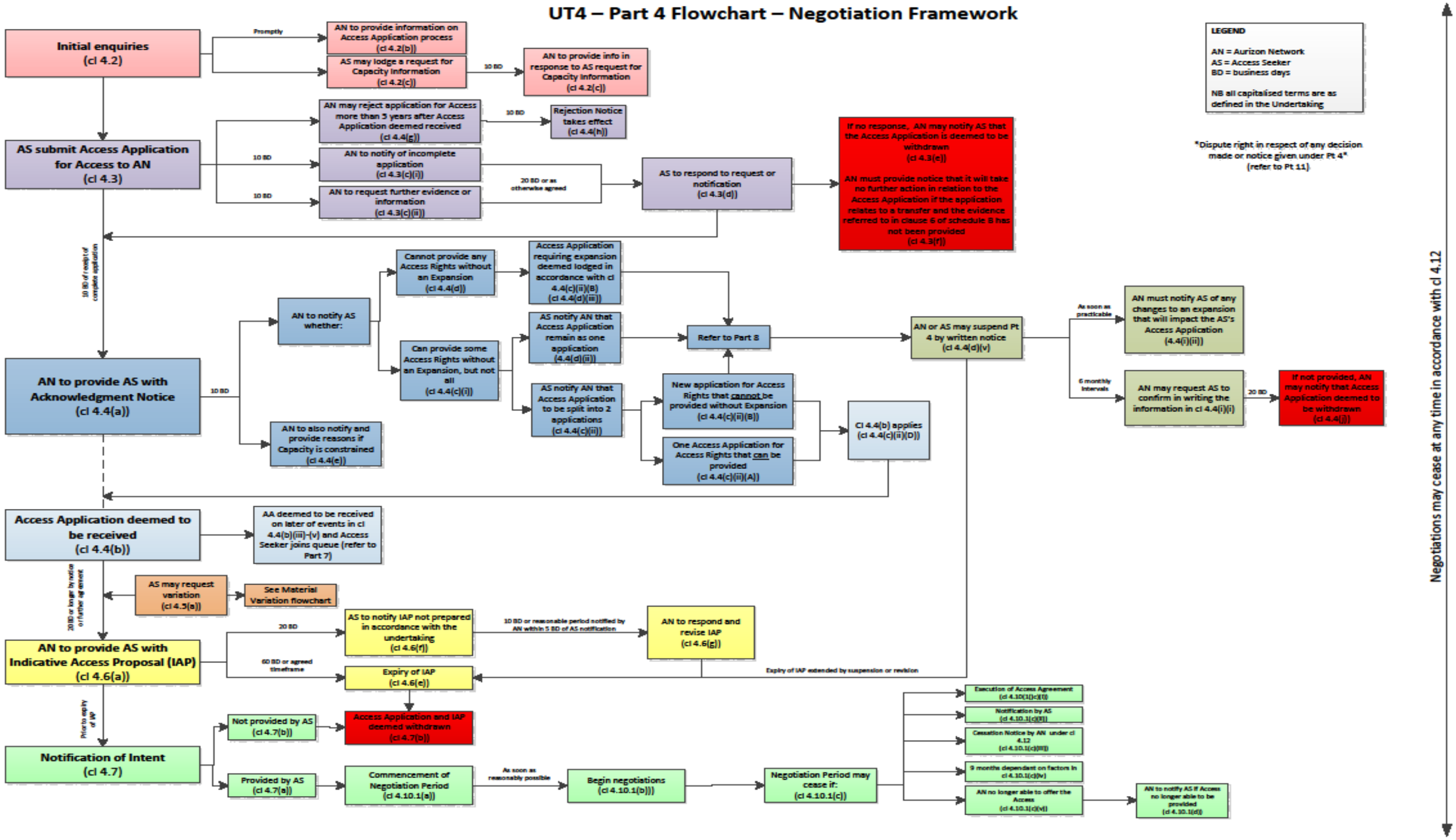
APPENDIX A: OVERVIEW OF PROCESSES IN PARTS 4, 7 AND 8

The following flowcharts provide an overview of: the processes in Part 4 (negotiation framework), the queue in Part 7 (available capacity allocation) and the processes in Part 8 (network development and expansions), and the interplay between the parts.

The flowcharts reflect the processes and clause references in the CDD amended DAU:

- Flowchart 1: Interplay between Part 4, Part 7 and Part 8
- Flowchart 2: Part 4—Negotiation Framework
- Flowchart 3: Part 4— Material variations
- Flowchart 4: Part 7— Queue
- Flowchart 5: Part 8— Network Development and Expansions.


Interplay between Part 4, the Queue and Part 8
Part 4
Queue
Part 8
Initial enquiries (cl 4.2)
AS submit Access Application for Access to AN (cl 4.3)
AN to provide AS with Acknowledgment Notice (cl 4.4(a))
Access Application deemed to be received (cl 4.4(b))
AS may revise Access Application (cl 4.5)
Indicative Access Proposal (IAP) provided by AN (cl 4.6)
Notification of Intent (cl 4.7)
Access Application
Renewal (cl 7.5.2(c)(i))
Available Capacity
Expansion required (cl 7.5.2(b)(i))
Access Application deemed to be received (cl 4.4(b))
Join top of the Queue (cl 7.5.2(b)(i))
Join Queue (cl 7.5.2)
Join the Queue after Renewals (cl 7.5.2(b)(i)(D))
AN will notify AS of position in Queue (cl 7.5.2(d))
AN may change the order of the Queue with respect to Renewals and Conditional Access Rights (cl 7.5.2(b))
Order of Queue can be reordered
AS may assign position in Queue to another party in certain circumstances (cl 7.5.2(e))
If Available Capacity has been granted, negotiations for remaining AS are suspended (cl 7.5.3(b))
AS may be removed from Queue in certain circumstances (cl 7.5.2(c))
Demand Assessment (cl 8.2.4)
Concept Study (cl 8.3.1)
Pre-feasibility Study (cl 8.3.2)
Feasibility Study (cl 8.3.3)
Issue IAP and grant Provisional Capacity Allocation (cl 8.5)
AN must only change order of the queue to give Conditional Access Holders the highest position (after any Renewals) after they enter into an Access Application (cl 7.5.2(b)(ii)(C)-(D))
Conditional Access Rights granted (cl 8.9.2)
Fund Expansion (cl 8.7)


UT4 – Part 4 Flowchart – Negotiation Framework
LEGEND
AN = Aurizon Network
AS = Access Seeker
BD = business days
NB all capitalised terms are as defined in the Undertaking
Dispute right in respect of any decision made or notice given under Pt 4 (refer to Pt 11)
Initial enquiries (cl 4.2)
Promptly
AN to provide information on Access Application process (cl 4.2(b))
AS may lodge a request for Capacity Information (cl 4.2(c))
10 BD
AN to provide info in response to AS request for Capacity Information (cl 4.2(c))
AS submit Access Application for Access to AN (cl 4.3)
AN may reject application for Access more than 3 years after Access Application deemed received (cl 4.4(g))
10 BD
Rejection Notice takes effect (cl 4.4(h))
10 BD
AN to notify of incomplete application (cl 4.3(c)(i))
10 BD
AN to request further evidence or information (cl 4.3(c)(ii))
20 BD or as otherwise agreed
AS to respond to request or notification (cl 4.3(d))
If no response, AN may notify AS that the Access Application is deemed to be withdrawn (cl 4.3(e))
AN must provide notice that it will take no further action in relation to the Access Application if the application relates to a transfer and the evidence referred to in clause 6 of schedule 8 has not been provided (cl 4.3(f))
10 BD of receipt of complete application
AN to provide AS with Acknowledgment Notice (cl 4.4(a))
10 BD
AN to notify AS whether:
Cannot provide any Access Rights without an Expansion (cl 4.4(d))
Access Application requiring expansion deemed lodged in accordance with cl 4.4(c)(ii)(B) (cl 4.4(d)(iii))
Can provide some Access Rights without an Expansion, but not all (cl 4.4(c)(i))
AS notify AN that Access Application remain as one application (4.4(d)(ii))
AS notify AN that Access Application to be split into 2 applications (cl 4.4(c)(ii))
Refer to Part 8
New application for Access Rights that cannot be provided without Expansion (cl 4.4(c)(ii)(B))
One Access Application for Access Rights that can be provided (cl 4.4(c)(ii)(A))
Cl 4.4(b) applies (cl 4.4(c)(ii)(D))
AN to also notify and provide reasons if Capacity is constrained (cl 4.4(e))
AN or AS may suspend Pt 4 by written notice (cl 4.4(d)(v))
As soon as practicable
AN must notify AS of any changes to an expansion that will impact the AS's Access Application (4.4(i)(ii))
6 monthly intervals
AN may request AS to confirm in writing the information in cl 4.4(i)(i)
20 BD
If not provided, AN may notify that Access Application deemed to be withdrawn (cl 4.4(j))
Access Application deemed to be received (cl 4.4(b))
AA deemed to be received on later of events in cl 4.4(b)(iii)-(v) and Access Seeker joins queue (refer to Part 7)
20 BD or longer by notice or further agreement
AS may request variation (cl 4.5(a))
See Material Variation flowchart
AN to provide AS with Indicative Access Proposal (IAP) (cl 4.6(a))
20 BD
60 BD or agreed timeframe
AS to notify IAP not prepared in accordance with the undertaking (cl 4.6(f))
10 BD or reasonable period notified by AN within 5 BD of AS notification
AN to respond and revise IAP (cl 4.6(g))
Expiry of IAP (cl 4.6(e))
Expiry of IAP extended by suspension or revision
Prior to expiry of IAP
Notification of Intent (cl 4.7)
Not provided by AS (cl 4.7(b))
Access Application and IAP deemed withdrawn (cl 4.7(b))
Provided by AS (cl 4.7(a))
Commencement of Negotiation Period (cl 4.10.1(a))
As soon as reasonably possible
Begin negotiations (cl 4.10.1(b)))
Negotiation Period may cease if: (cl 4.10.1(c))
Execution of Access Agreement (cl 4.10.1(c)(i))
Notification by AS (cl 4.10.1(c)(ii))
Cessation Notice by AN under cl 4.12 (cl 4.10.1(c)(iii))
9 months dependant on factors in cl 4.10.1(c)(iv)
AN no longer able to offer the Access (cl 4.10.1(c)(v))
AN to notify AS if Access no longer able to be provided (cl 4.10.1(d))
Negotiations may cease at any time in accordance with cl 4.12

UT4 – Part 4 Flowchart – Material Variations

The negotiation process under Pt 4 is suspended from the time the AS request the material Variation until request for Material Variation is deemed to be withdrawn or following the issue of an IAP or revised IAP (cl 4.5(l))

LEGEND

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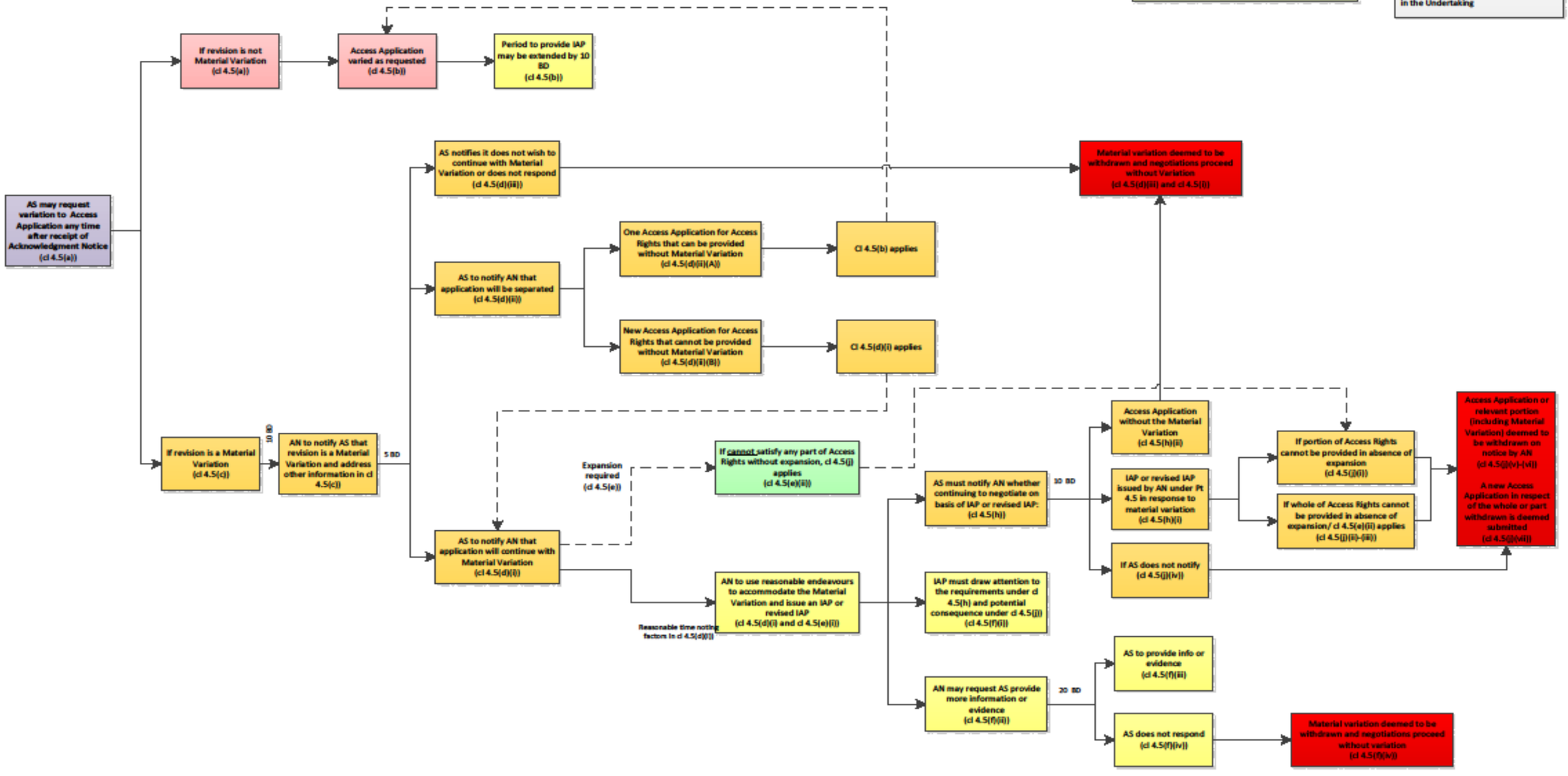
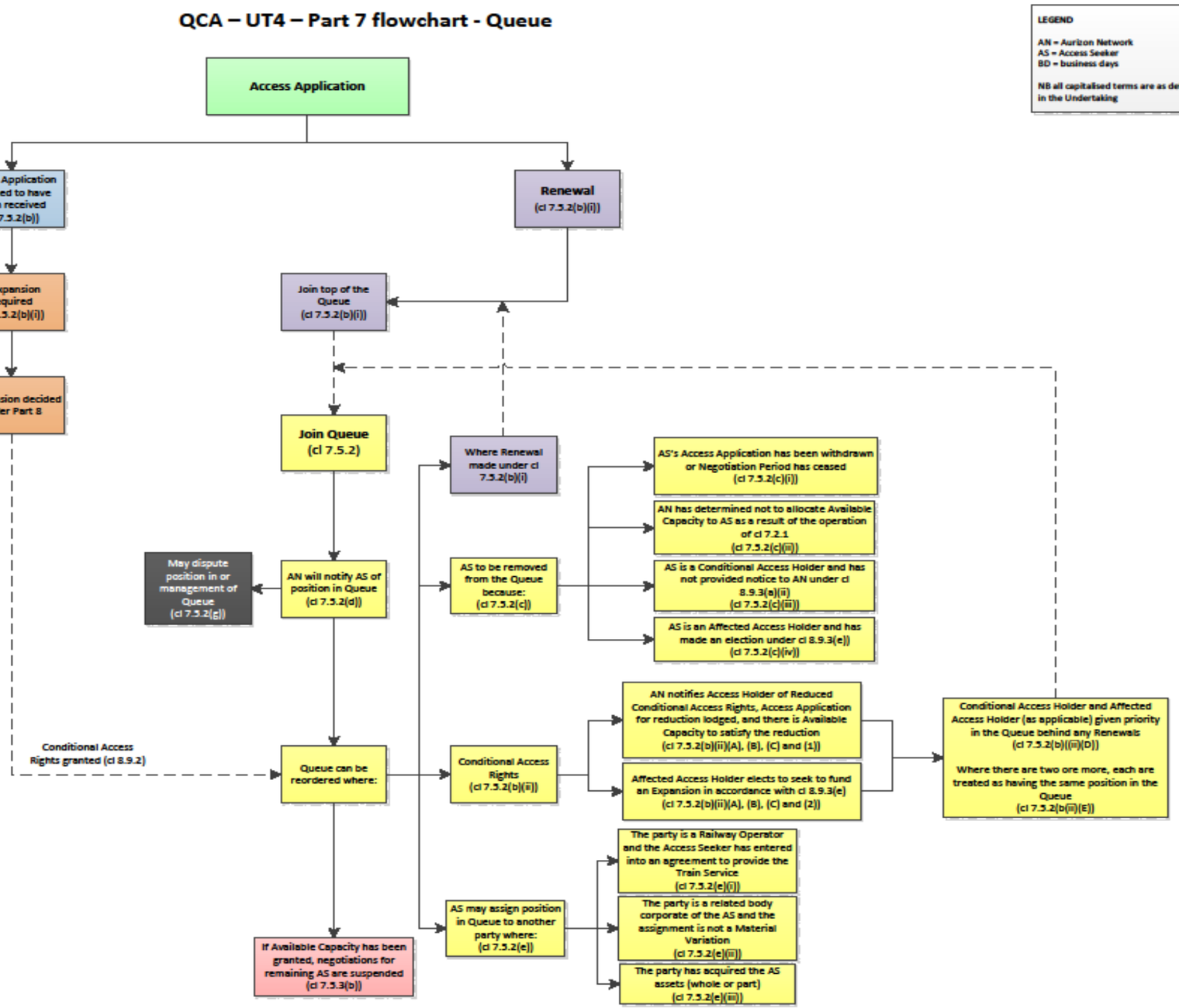
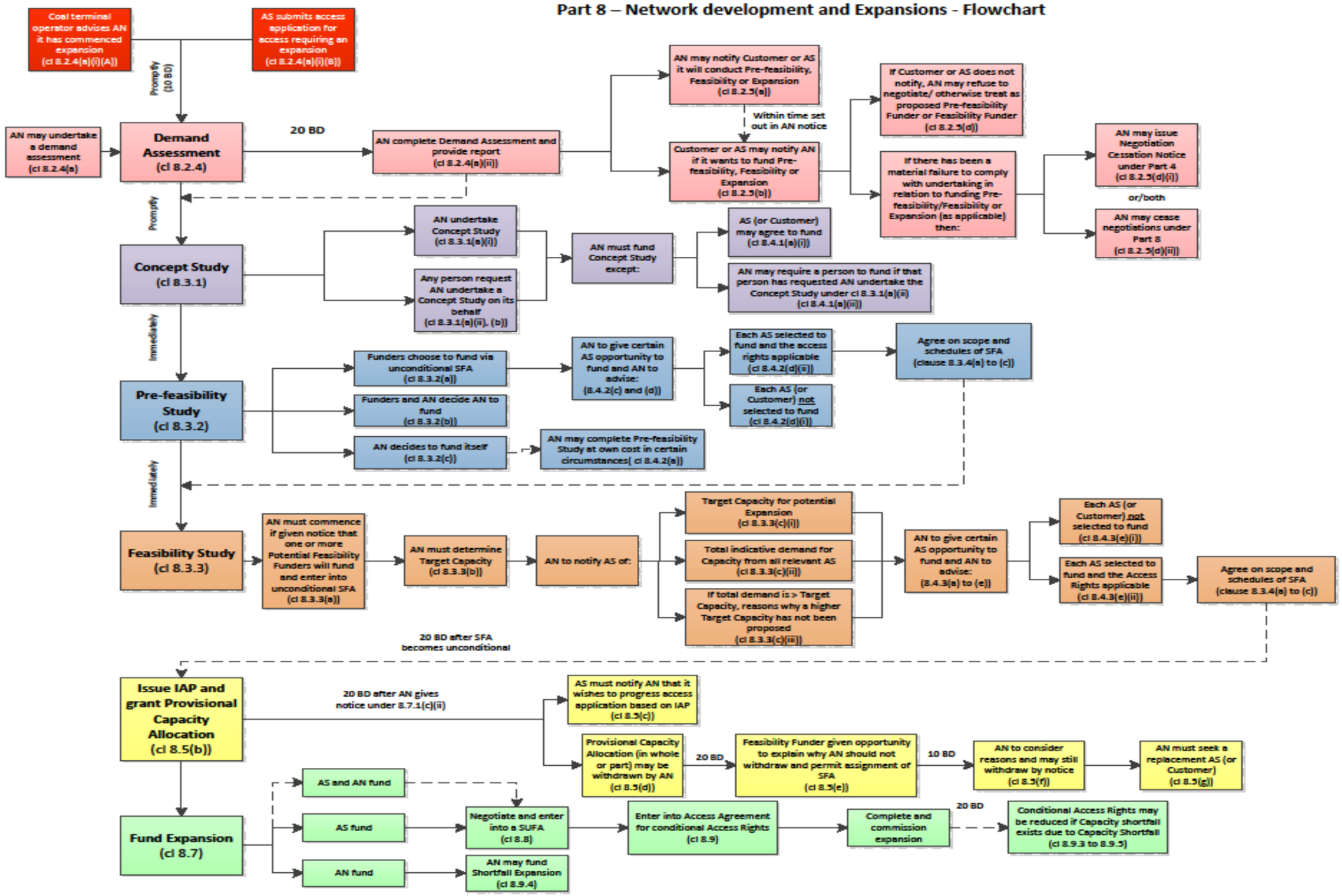



QCA – UT4 – Part 7 flowchart - Queue
LEGEND
AN = Aurizon Network
AS = Access Seeker
BD = business days
NB all capitalised terms are as defined in the Undertaking
Access Application
Access Application deemed to have been received (cl 7.5.2(b))
Renewal (cl 7.5.2(b)(i))
If Expansion required (cl 7.5.2(b)(i))
Join top of the Queue (cl 7.5.2(b)(i))
If Expansion decided under Part 8
Join Queue (cl 7.5.2)
Where Renewal made under cl 7.5.2(b)(i)
AS's Access Application has been withdrawn or Negotiation Period has ceased (cl 7.5.2(c)(i))
AN has determined not to allocate Available Capacity to AS as a result of the operation of cl 7.2.1 (cl 7.5.2(c)(ii))
AS is a Conditional Access Holder and has not provided notice to AN under cl 8.9.3(a)(ii) (cl 7.5.2(c)(iii))
AS is an Affected Access Holder and has made an election under cl 8.9.3(e)) (cl 7.5.2(c)(iv))
May dispute position in or management of Queue (cl 7.5.2(g))
AN will notify AS of position in Queue (cl 7.5.2(d))
AS to be removed from the Queue because: (cl 7.5.2(c))
Conditional Access Rights granted (cl 8.9.2)
Queue can be reordered where:
Conditional Access Rights (cl 7.5.2(b)(ii))
AN notifies Access Holder of Reduced Conditional Access Rights, Access Application for reduction lodged, and there is Available Capacity to satisfy the reduction (cl 7.5.2(b)(ii)(A), (B), (C) and (1))
Affected Access Holder elects to seek to fund an Expansion in accordance with cl 8.9.3(e) (cl 7.5.2(b)(ii)(A), (B), (C) and (2))
Conditional Access Holder and Affected Access Holder (as applicable) given priority in the Queue behind any Renewals (cl 7.5.2(b)(iii)(D))
Where there are two ore more, each are treated as having the same position in the Queue (cl 7.5.2(b(iii)(E))
If Available Capacity has been granted, negotiations for remaining AS are suspended (cl 7.5.3(b))
AS may assign position in Queue to another party where: (cl 7.5.2(e))
The party is a Railway Operator and the Access Seeker has entered into an agreement to provide the Train Service (cl 7.5.2(e)(i))
The party is a related body corporate of the AS and the assignment is not a Material Variation (cl 7.5.2(e)(ii))
The party has acquired the AS assets (whole or part) (cl 7.5.2(e)(iii))

Part 8 – Network development and Expansions - Flowchart



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Note: QCA step-in rights where AN fails into SFA or performance delay (cl 8.6)