

File Ref: 610564

10 September 2013

Mr Michael Carter
Chief Executive Officer
Aurizon Network Pty Ltd
GPO Box 456
BRISBANE QLD 4001

Dear Mr Carter *Mike*

Aurizon Network's 2013 Draft Access Undertaking Assessment Process

Thank you for your letter of 28 August 2013 to Malcolm Roberts, Chairman, regarding the process for assessing the 2013 Draft Access Undertaking (UT4) and steps you suggest the Authority could adopt to assist stakeholders meet the goal of having a new access undertaking in place for 1 July 2014.

I welcome the constructive engagement from Aurizon Network during the UT4 process. The Authority is always willing to consider ways, consistent with our legal obligations, to improve engagement with stakeholders.

I appreciate your offer to provide greater access for Authority staff to Aurizon Network staff and advisers to allow the UT4 proposal to be more fully explained and/or substantiated. I note that Authority staff are attending Aurizon Network's briefing sessions with the coal industry and we have had a good dialogue with your staff on many matters, including modelling and maintenance costs. This engagement has been very helpful for the Authority.

I am happy to agree to an exploratory session between our respective staff to identify the technical issues which could be progressed through further explanation and substantiation. I will arrange for staff of the Authority to make contact with their Aurizon Network counterparts to arrange this session. At the same time, I would be keen to ensure that these discussions do not detract from considering the major issues with UT4.

I note your support for the Authority taking an active case management approach to the regulatory process. The Authority will continue to give appropriate guidance to parties on issues which merit attention. However, this is unlikely to extend to the full case management approach you have described in your letter.

As to the specific procedural suggestions you have put forward, I make the following comments:

- (a) in relation to directions to stakeholders on the form in which the Authority would prefer submissions to be made, I consider that the Authority's Consultation Paper provides sufficient guidance to stakeholders on the development of initial submissions. The Authority's draft decision, when released, will provide additional guidance on the development of further submissions. The Authority will not seek to constrain the content of stakeholders' submissions;
- (b) I see merit in your suggestion that Aurizon Network establish a data room to manage requests for information (RFIs) with access to both the Authority and industry, and suggest that the details of this

proposal should be discussed between Aurizon Network and Authority staff as part of the exploratory session referred to earlier;

- (c) I also see merit in staff of our respective organisations discussing the idea of a single revenue and tariff model with a view to improving common understanding of the modelling approaches, but with the understanding that it may be necessary at times to depart from the model to meet the Authority's needs;
- (d) I am open to further discussion regarding confidential information provided by Aurizon Network to the Authority and stakeholders. As you know, the Authority is obliged to consider confidentiality requests in accordance with the relevant provisions of the *Queensland Competition Authority Act 1997* (the QCA Act), including sections 187 and 239; and
- (e) I am open to considering the idea of a 'conferencing of experts' to test the probity of submissions. However, I believe that the practical value of this approach should be considered once submissions from stakeholders have been received by the Authority.

With regard to your suggestion that the Authority hold public hearings on major points of contention, Part 6 of the QCA Act allows the Authority to hold hearings, public seminars and workshops.

At the request of stakeholders, the Authority extended the due date for submissions on UT4 to 10 October 2013 to provide time for stakeholders to identify common ground before submissions are provided to the Authority.

With that process finishing soon, I consider that the best time for the Authority to consider conducting public hearings, or other similar public consultation fora, would be after the release of a draft decision. This timing would enable any further processes to be based on consideration of draft positions presented by the Authority, and would inform stakeholders' preparation of submissions on the draft decision.

While I welcome ongoing engagement between Aurizon Network and the Authority on UT4, I am uncomfortable with your characterisation of such engagement as a negotiation. The Authority's role is not to negotiate an outcome with Aurizon Network but, as previously advised by the Chairman, to consider the proposed UT4 in accordance with the QCA Act. This means that the Authority will weigh the arguments and information provided in the context of the statutory access regime in the QCA Act and, in particular, the criteria for review of access undertakings in section 138 of the QCA Act, in reaching its decision.

The Authority may have regard to positions that have been agreed or negotiated between stakeholders on particular matters, in order to inform its views on those matters, including the interests of Aurizon Network, end users and train operators (section 138(2)(b), (c) and (e) of the QCA Act), as well as the public interest (section 138(d)). However, agreed positions between certain stakeholders are not the only or determining factors to which the Authority will have regard in reaching its decision.

The Authority will remain mindful of the interests of all stakeholders, whether or not party to any agreements reached on particular matters, and the importance of ensuring the assessment process is appropriately transparent.

In the interests of transparency for all interested parties, I propose to publish both your letter and my response on the Authority's website, unless there are compelling reasons not to do so.

Should you wish to discuss this matter, please contact me on (07) 3222 0500.

Yours sincerely



Mark Gray
Chief Executive Officer