

Aurizon Network's response to the QCA Final Decision: Aurizon Network Access Undertaking and Alternative Standard Access Agreements

Introduction

1. The QCA released the *Final Decision – Aurizon Network Alternative Standard Access Agreements* on 24 April 2013 (**Final Decision**).
2. Set out in Part A of this document is an explanation of Aurizon Network Pty Ltd's (**AN**) proposed amendments to the draft "End User Access Agreement (Coal)" between AN and [End User] (**EUAA**) which formed part of the Final Decision.
3. Set out in Part B of this document is an explanation of AN's proposed amendments to the draft "Train Operations Agreement (Coal)" between AN and [Operator] (**TOA**) which also formed part of the Final Decision.
4. Set out in Part C of this document is an explanation of AN's proposed amendments to the amended form of the 2010 Access Undertaking which also formed part of the Final Decision.

Part A - End User Access Agreement

Item	Clause Number	Amendment	Explanation
1.	2.3(g)(iii)	Clause 2.3(g)(iii) has been amended to include a reference to the variation of the Train Services from the Train Service Description.	This consequential amendment to clause 2.3(g)(iii) was made to reflect the insertion of clause 2.3(g)(ii) by the QCA in its Final Decision draft of the EUAA.
2.	3.8(c)(iii)	The cross-references to schedule 3 in clause 3.8(c)(iii) have been amended to refer to "[Part 5 of schedule 3 [of the EUAA]/Part 5 of schedule 3 [of the EUAA] and Part 5 of schedule 3 of each Train Operations Agreement]".	These minor amendments were made to clause 3.8(c)(iii) to correct the cross references to schedule 3 of the EUAA and TOA.
3.	Reference Schedule	A drafting note has been inserted at the end of item 5 of the Reference Schedule. The drafting note explains that the option selected in item 5 will depend on whether AN or the End User is paying the non-TOP	The drafting note was added at the end of item 5 of the Reference Schedule to explain to the parties preparing the agreement that paragraph (a) requires a selection of alternative wording based on whether or not the End User is paying all of the Access Charges. This

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		Access Charges.	is consistent with the approach taken in the body of the EUAA where similar drafting notes are included.
4.	Schedule 3	<p>The reference to “Access Charge” in item 3.1.1 of part 3 of schedule 3 has been reinstated.</p> <p>In the definition of “NTK” in the calculation of “ATL1” in part 5 of schedule 3, the cross reference to item 2.3 has been replaced with a cross reference to item 2.5.</p>	<p>The reference to “Access Charge” was reinstated in item 3.1.1 of part 3 of schedule 3 on the basis that the End User may pay either all of the Access Charges or the Take or Pay Charges only.</p> <p>In the definition of “NTK” in the calculation of “ATL1” in part 5 of schedule 3, the cross reference to item 2.3 has been changed to item 2.5 on the basis that item 2.5 concerns the calculation of “Ntk” (rather than “Gtk” as per item 2.3).</p>
5.	Various	<p>Typographical errors:</p> <p>a) Clause 1.1:</p> <p>Inserted a semicolon at the end of “Adjudicator”; “Aurizon Network Cause”, “Dispute Provisions”, “Like Train Service”, “System Rules” and “Weighbridge”. Inserted “; and” at the end of “Weighbridge”. Inserted a full stop at the end of “Year”.</p> <p>“Reduction Factor”: Deleted the bracket at the beginning of paragraph (a)(iv). Corrected the formatting of “then” between paragraphs (ii) and (iii).</p> <p>“Relinquishment Fee” inserted a colon at the end of paragraph (b).</p> <p>b) Clause 1.2(d)(xii): Inserted an “and” at the end of the paragraph.</p> <p>c) Clause 2.3(d)(iii): Deleted the extra space after “nomination”.</p> <p>d) Clause 2.3(e): Deleted the extra space after “Clause 2.3(b)” on line 2.</p>	<p>The amendments described in the opposite column have been made on the basis that they are corrections to minor typographical errors.</p>

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		<p>e) Clause 2.3(f)(i)(D): Inserted the word “or” at the end of clause 2.3(f)(i)(D).</p> <p>f) Clause 2.3(h): Replaced the full stop at the end of clause 2.3(h)(ii) with a comma. Deleted the double full stop at the end of clause 2.3(h).</p> <p>g) Clause 2.3(i): Deleted the extra full stop after the square bracket on the second last line.</p> <p>h) Clause 4.2(b)(ii): Replaced “; and” with a full stop.</p> <p>i) Clause 4.5(e): Corrected the formatting of “then” between paragraph (e)(ii) and (e)(iii).</p> <p>j) Clause 5(a): Inserted a colon after “Operator” on the first line.</p> <p>k) Clause 5(a)(i): Replaced “clauses” with “Clauses”.</p> <p>l) Clause 10.2(a)(ii): On line 7, inserted a space in “Parties[and]”.</p> <p>m) Clause 13.2: Corrected the typographical error on the second line. Deleted the extra full stop at the end of clause 13.2.</p> <p>n) Clause 17.9: Inserted an “or” at the end of the clause 17.9(c)(ii). Inserted a colon after “Facsimile” in clause 17.9(d)(i).</p> <p>o) Clause 17.22: Inserted paragraph number “(c)” at the beginning of the final paragraph.</p> <p>p) Schedule 3, Part 1, item 1.1: Removed the strike out from the subscript “2” in “AT2” and the subscript “3” in “AT3”.</p> <p>q) Schedule 3, Part 3, items 3.2.3 to 3.2.6: Reinstated optional cross references have been deleted.</p>	

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		<p>Schedule 3, Part 5, item 5.1:</p> <ul style="list-style-type: none"> r) In the calculation of “ET” and “EE” inserted a semicolon at the end of “eGTK”. s) Deleted the “and” at the end of the paragraph above “TR” in the calculation of ATP2. t) Inserted a semicolon at the end of the definition of “RNTY” in the calculation of ATPY. u) Corrected the formatting in the definition of “TC” and “ATP2”. v) Deleted the “and” after “AurizonNetworkGtKY”. w) Deleted the “and” after “AurizonNetworkNTY”. x) Inserted an “and” after “NTY”. y) Inserted a semicolon at the end of “RNTY”. z) Schedule 7: Deleted the insertion of “this undertaking” in line 3. 	

Part B - Train Operations Agreement

Item	Clause Number	Amendment	Explanation
1.	6.6	The square brackets around “Base Access Charges” in clauses 6.6(d) and 6.6(e)(iv) have been reinstated.	The square brackets around “Base Access Charges” in clauses 6.6(d) and 6.6(e)(iv) have been reinstated because the definition of “Base Access Charges” and all references to “Base Access Charges” will be removed from the TOA where the End User is paying all of the Access Charges.
2.	9	The square brackets around “Base Access Charges” in clauses 9.1(e) and 9.1(h) have been reinstated.	The square brackets around “Base Access Charges” in clauses 9.1(e) and 9.1(h) have been reinstated because the definition of “Base Access Charges” and all references to “Base Access Charges” will be removed from the TOA where the End User is paying all of the Access Charges.
3.	Schedule 6 Part 3, item G	The references to “Aurizon Network Code of Practice for Rail Noise Management” and “Code of Practice for Rail Noise Management” have been replaced with “QR Code of Practice for Rail Noise Management”.	We have replaced “Aurizon Network Code of Practice for Rail Noise Management” and “Code of Practice for Rail Noise Management” with “QR Code of Practice: Rail Noise Management” because this is the correct title of the document. The QR Code of Practice: Rail Noise Management is a document that was negotiated between the then Queensland Rail and DTMR and whilst AN is responsible for the day to day management of this code, it remains a document that is created under the guidance of DTMR and not solely owned and controlled by AN.
4.	Various	Typographical errors: a) Reference Schedule: Deleted the extra full stop after item 3. b) Clause 1.1: Inserted a semicolon at the end of “Access Charges” (both options), “Aurizon Network Cause”, “End User” and “Like	The amendments described in the opposite column have been made on the basis that they are corrections to non-controversial typographical errors.

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		<p>Train Service”.</p> <p>c) Clause 1.2(d)(xiii): Inserted an “and” at the end of the paragraph.</p> <p>d) Clause 6.1(c)(iii): Inserted a comma at the end of the paragraph.</p> <p>e) Clause 13.1(a): Replaced the cross-reference to Clause 7 in the first line of clause 13.1(a).</p> <p>f) Clause 20.1(b): Inserted “the” before End User.</p> <p>g) Clause 20.2: Corrected the typographical error in line 2. Inserted a space between “Networkmust”. Deleted the double full stop at the end of the clause.</p> <p>h) Clause 21.1: Inserted “the” before End User in line 2.</p> <p>i) Clause 22.2(e)(iv): Corrected the formatting.</p> <p>j) Clause 24.2(b)(ii): Corrected the lead-in words to paragraphs (A) to (D).</p> <p>k) Clause 24.9(c)(ii): Inserted an “or” at the end of the paragraph.</p> <p>l) Clause 24.18: Corrected the formatting of the paragraph between (b) and (c).</p> <p>m) Schedule 3, Part 5, item 5.1: In the calculation of “ET” and “EE” inserted a semicolon at the end of “eGTK”.</p> <p>n) Schedule 10: Inserted a semicolon at the end of “Committed Capacity”.</p> <p>o) Schedule 10, Appendix 1: Inserted a semicolon at the end of paragraph (b).</p> <p>p) Schedule 13: In line 1 replaced “End user” with “End User”.</p>	

Part C – Access Undertaking

Item	Clause	Amendment
1.	Clause 4.1(f)	It is unclear why "Railway Operator" has been used in place of the original drafting of "Access Seeker". We have reinstated the original drafting of the Undertaking.
2.	Clause 4.5.2	Amendment addresses concerns that the drafting proposed by the QCA could be interpreted to mean that, if the Access Seeker is an EU Access Seeker, the Operating Plan, IRA and EIRMR do not need to be produced, when in fact AN would expect them to be provided by the TOA Access Seeker.
3.	Clause 6.5.4	The QCA had not included the words "(excluding any TOA Access Seekers)" at relevant points in clause 6.5.4(a) for consistency with clause 6.5.4(a)(iii).
4.	Clause 7.3.1	Amendment addresses concerns that the QCA drafting did not make absolutely clear that a TOA Access Seekers is not to be treated as Access Seekers for the purposes of clause 7.3.1.
5.	Clause 12.1 Definitions of: "Renewal Application" "Replacement Mine"	Amendments made to make absolutely clear that, for the purposes of each of these definitions, an Access Holder will never include a TOA Access Holder.
6.	Schedule B1	The QCA had not reflected the drafting at clause 3.4(e) of the Undertaking. Amendments made to the deed of confidentiality to reflect the carve-outs at clause 3.4(e).