

Statement of regulatory intent

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## Assessment of Aurizon Network's UT5 draft amending access undertaking

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May 2019

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# 1 INTRODUCTION

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## 1.1 Context

On 3 May 2019, the Queensland Competition Authority (QCA) received a draft amending access undertaking (UT5 DAAU) from Aurizon Network seeking to make amendments to Aurizon Network's approved 2017 Undertaking (UT5).

The QCA has commenced an investigation to decide whether or not to approve Aurizon Network's UT5 DAAU. The QCA has also published Aurizon Network's UT5 DAAU and invited stakeholder submissions by 3 July 2019.

## 1.2 Purpose of this document

The *Statement of Regulatory Intent* outlines the QCA's intended approach for information gathering processes, stakeholder consultation and assessment timeframes throughout our investigation.

It is not intended to be an exhaustive statement of the process by which the QCA will undertake its assessment of Aurizon Network's UT5 DAAU. This assessment will proceed in accordance with the requirements of the QCA Act.

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## 2 APPROACH TO CONSULTATION

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Public involvement is an important element of the regulatory process. Effective consultation with interested parties is integral to achieving a balanced and transparent regulatory process, as well as supporting accountability and confidence in our decision making.

We are outlining our intended approach to stakeholder consultation to communicate to stakeholders how, and at what stages of the investigation, they can contribute to the UT5 DAAU assessment process.

### 2.1 Legal requirements

The *Queensland Competition Authority Act 1997* (QCA Act) outlines various procedural requirements that we must comply with as part of our process for assessing Aurizon Network's UT5 DAAU.

In accordance with section 143(3) of the QCA Act, the QCA may only approve a DAAU if (among other things) it has published the DAAU, invited submissions on it and considered any submissions received within the time provided. Further, the QCA must comply with natural justice during an investigation (s. 173(1)(d)).

### 2.2 Consultation on Aurizon Network's UT5 DAAU

The QCA intends to implement a targeted consultation approach for our assessment of Aurizon Network's UT5 DAAU.

The QCA has provided stakeholders with eight weeks to make submissions on Aurizon Network's UT5 DAAU (submissions due by 3 July 2019).

Depending on the issues raised in stakeholder submissions, the QCA may release a position paper as an interim consultation document before proceeding to a final decision. In which case, the QCA may not release a draft decision.

Where we consider there is a benefit in obtaining stakeholder comments on specific matters prior to a final decision, targeted consultation papers may be released.

### 2.3 Obligations for stakeholders

Sections 230 to 233 of the QCA Act outlines a number of obligations and responsibilities when providing information to the QCA. Stakeholders should be aware that it is an offence to:

- provide information to the QCA that is false or misleading to the person's knowledge (s. 230)
- provide a document to the QCA that is false, misleading or incomplete to the person's knowledge and without notifying the QCA that it is false, misleading or incomplete (s. 231)
- obstruct QCA staff members from exercising the QCA's functions under the QCA Act (s. 232)
- intimidate another person that is providing evidence as part of an investigation (s. 233).

Stakeholders should be mindful of these obligations, particularly when submitting information or participating in the UT5 DAAU investigation.

## 2.4 Disclosure of information

Stakeholder involvement is a key element of our decision-making process. In the interests of transparency and to promote informed discussion, the QCA intends to publish the information received from stakeholders on our website. However, we will not disclose information that is considered to be confidential in accordance with the QCA Act (refer to section 4).

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## 3 LATE INFORMATION

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To promote the timely consideration and assessment of Aurizon Network's UT5 DAAU, all stakeholders are encouraged to provide information and submissions by the relevant due date.

While there may be legitimate reasons for late information, such as new information becoming available, stakeholder compliance with deadlines is important for timely decision making. Indeed, natural justice requires matters be processed in a timely way and does not permit an unending process of information provision, particularly when ample time has already been allowed.

### 3.1 Disregarding late information

In accordance with section 168B of the QCA Act, we may make a decision without taking into account late information—submissions or other information provided by stakeholders after the submission deadline provided—if doing so is reasonable.

In determining whether it is reasonable to disregard late information, the QCA Act (s. 168B(4)) requires us to take into account the following factors:

- whether the late information was available, or ought reasonably to have been available, to the person during the consultation timeframe provided
- the length, complexity and relevance of the late information
- how much time has elapsed since the timeframe provided for consultation ended
- how advanced the QCA's decision-making process is when the late information is received.

We intend to consider whether to take late information into account on a case-by-case basis, where it is reasonable to do so in accordance with the QCA Act. Where stakeholders provide late information, they should also consider providing a detailed explanation as to why it would be reasonable to have regard to the late information.

### 3.2 Consideration of late information

Where we will have regard to information provided after the stated deadline, we intend to publish a stakeholder notice to disclose that such information has been provided. This is intended to provide for greater transparency.

We will consider, on a case-by-case basis, whether additional consultation is required to provide stakeholders with an opportunity to consider the late information. Where the late information has implications for consultation periods, and the overall timeframes of the assessment process, we will outline any necessary changes to timeframes in a stakeholder notice on our website.

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## 4 CONFIDENTIAL INFORMATION

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The QCA encourages submissions to be made publicly available wherever this is appropriate. However, a person making a submission may claim confidentiality in respect of the submission (or any part of the submission).

Information that is not confidential will be published on our website and made publicly available.

In accordance with the QCA Act, information will be considered confidential where the QCA considers that disclosure of the information would be likely to damage the person's commercial activities and would not be in the public interest.

If we consider information is confidential for the purposes of the QCA Act, we are required to take all reasonable steps to ensure the information is not, without the person's consent, disclosed to another person. However, stakeholders should be aware that we may still disclose confidential information without consent in particular circumstances set out in the QCA Act.<sup>1</sup>

### 4.1 Making a confidentiality claim

In making a confidentiality claim, a claimant should:

- clearly indicate the information that it considers should not be disclosed to another person
- inform us of their belief that disclosure of the information is likely to damage their commercial activities
- provide supporting justification for their belief and detail whether disclosure of the information would not be in the public interest.

To provide guidance on the type of information that would assist our assessment of a claim for confidentiality, we have developed a confidentiality claim template for stakeholders. We would appreciate stakeholders using this template when making confidentiality claims.

A copy of the confidentiality claim template is presented in **Appendix A** and will be available on the QCA's website.

### 4.2 Disclosure of non-confidential information

A transparent approach to stakeholder consultation supports accountability and confidence in our decision-making process. On this basis, information that is not confidential will be published on our website.

If we refuse a request for confidentiality, we will notify the relevant stakeholder in writing prior to the information being published.

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<sup>1</sup> For example, refer to section 187(3) of the QCA Act.

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## 5 STATUTORY ASSESSMENT TIMEFRAME

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### 5.1 Statutory timeframe for assessment of Aurizon Network's UT5 DAAU

In accordance with section 147A of the QCA Act, the QCA must use its best endeavours to make a decision on whether to approve, or refuse to approve, a DAAU within six months from the last day of the time for making submissions stated in the investigation notice.

The six-month period for assessment of Aurizon Network's UT5 DAAU will commence on 3 July 2019 and is scheduled to end on 3 January 2020. However, stakeholders should note the end date may be extended to account for any future periods of time that are excluded from the statutory timeframe in accordance with section 147A of the QCA Act, namely:

- stakeholders responding to notices given under section 185 of the QCA Act requiring information or documents to be provided
- further consultation periods
- other periods Aurizon Network agrees with the QCA should be excluded.

A notice of time periods for assessing Aurizon Network's UT5 DAAU has been published on the QCA's website and will be updated to reflect any changes to the timeframe, as necessary.

## APPENDIX A: CONFIDENTIALITY CLAIM TEMPLATE

Name of claimant: \_\_\_\_\_

Document associated with the claim: \_\_\_\_\_

<b>Page(s) &amp; Paragraphs</b>	<b>Category of confidentiality</b>	<b>Detail why the information is likely to damage your (or another party's) commercial activities if disclosed</b>	<b>Information as to why disclosure is not in the public interest</b>
<p><i>Outline the relevant pages and paragraphs associated with your claim.</i></p>	<p><i>Outline which category of confidentiality is associated with your claim:</i></p> <ul style="list-style-type: none"> <li><i>(a) Market sensitive cost inputs— cost information that would affect the stakeholder's ability to negotiate competitive bids or prices in the future.</i></li> <li><i>(b) Market or strategic knowledge— information that communicates the behaviour or performance of a firm, which may hinder its ability to negotiate in future transactions.</i></li> <li><i>(c) Intellectual property—valuable information that would unfairly benefit competitors if made public.</i></li> <li><i>(d) Personal information—information that reveals personal information and details about an individual.</i></li> <li><i>(e) Other—confidential information that is not within any of the above categories.</i></li> </ul>	<p><i>Provide an explanation as to why the information is likely to damage your (or another party's) commercial activities if disclosed.</i></p>	<p><i>Provide any supporting information as to why it is not in the public interest to disclose the relevant information.</i></p>