

**Asciano Submission to the
QCA Regarding the Aurizon
Network November 2013
Response to Stakeholder
Submissions to the QCA in Relation
to the Aurizon Network 2013 Draft
Access Undertaking**

January 2014

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1 INTRODUCTION AND BACKGROUND

Asciano welcomes the opportunity to provide comments on the Aurizon Network 29 November 2013 submission to the Queensland Competition Authority (QCA) relating to October 2013 stakeholder submissions to the QCA on the Aurizon Network 2013 Draft access undertaking (DAU).

While Asciano welcomes many of the proposals put forward by Aurizon Network in its submission, there is nothing in the submission which has resulted in Asciano altering its position as set out in the Asciano submission of October 2013. Asciano will provide further comment on the Aurizon Network proposals put forward in its submission in the event that these proposals are further developed via the provision of detailed drafting relating to the proposals and an indication that this drafting will be part of a regulatory process which will formally amend the 2013 DAU currently before the QCA. Given this, Asciano is seeking clarity from Aurizon Network on the proposed changes in the annexures to its submissions, and in particular whether these changes are intended to be formally submitted to the QCA as amendments to the QCA.

Asciano welcomes the opportunity to work with Aurizon network, the QCA and other stakeholders to progress this issue.

This submission contains no confidential information and may be considered a public document.

2 GENERAL ASCIANO COMMENTS ON THE AURIZON NETWORK SUBMISSION

Purpose of the 2013 DAU

Asciano notes that Aurizon Network in its covering letter states that

The purpose of the 2013 DAU is to seek to promote the long-term competitiveness and performance of the Queensland coal network through ensuring the efficient and timely investment in the network, while maintaining a safe and reliable network that can deliver volume growth

and facilitating and strengthening our partnership with supply chain participants.

While these aims are laudable in themselves, the fundamental purpose of any access undertaking, including the 2013 DAU is to provide non-discriminatory third party access to regulated natural monopoly infrastructure at an efficient price. Asciano believes that issues of non-discriminatory access and efficient pricing need to be at the centre of any access undertaking process.

Changes between the 2013 DAU and the Current Undertaking

Aurizon Network states at numerous points in the submission that the core elements of the access undertaking remain unchanged between the current access undertaking and the 2013 DAU. There have been the numerous substantive changes between the current access undertaking and the 2013 DAU which have reduced Aurizon Network's obligations and shifted risks on to access holders. Given this Asciano believes that Aurizon Network's position that there has been no major change between the undertakings is not correct.

Status of the Changes Proposed by Aurizon Network

In its submission Aurizon Network proposes numerous amendments to the 2013 DAU (including amendments proposed in some detail in the annexures to the submission), but these proposed amendments do not appear to be submitted via a formal amendment process.

Asciano is concerned with this approach to amending the 2013 DAU. Currently the QCA has to make a decision on the 2013 DAU as submitted. However, by proposing amendments to the 2013 DAU without withdrawing the previously proposed 2013 DAU this Aurizon Network approach increases the potential for confusion and multiple streams of regulatory consultation and decision making, as there is now a formal Aurizon Network position and a later, informal Aurizon Network position.

Asciano believes that Aurizon Network should clarify if the proposed changes in the Aurizon Network submission annexures are intended to replace the relevant clauses in the 2013 DAU or whether a more detailed set of further, more formal amendments is to be lodged in the near future. Further to this, Aurizon Network should clarify whether it intends to withdraw the 2013 DAU and formally resubmit the 2013 DAU with the proposed amendments.

Nature of Aurizon Network's Business

Aurizon Network (page 3) states that it is not a regulated business, but is rather a business that sells a regulated service. Asciano queries this position as Aurizon Network Pty Ltd is a separate entity to Aurizon Holdings, and Aurizon Network Pty Ltd core business is providing, maintaining and managing its rail infrastructure and for providing and managing third party access to this rail infrastructure. All of these activities are regulated. Further to this issue there are a series of legislated requirements relating to the board of Aurizon Network. Given the nature of these legislative and regulatory requirements Asciano believes that in practice the Aurizon Network Pty Ltd business is a regulated business.

Asciano would have concerns if Aurizon Network Pty Ltd was actively seeking to include substantial unregulated business activities within its business as such an approach would result in potential problems for cost allocation, access pricing and access.

Nature of Aurizon Network Regulatory Framework

Aurizon Network (page 11) notes that the 2013 DAU is “a prescriptive, detailed and comprehensive regulatory framework, comprising nearly 2,000 pages of legal drafting”, implying that the size of the regulatory framework documentation acts as an indicator of the regulatory protections afforded to access holders. Asciano does not believe that the size of the regulatory framework documentation necessarily reflects the strength of the regulation or reflects the regulatory protections afforded to access holders and seekers.

On this issue, while Asciano believes that the size of the regulatory framework documentation does not necessarily reflect the strength of the regulation, it should be recognised that the bulk of this (1,600 pages) are multiple variations of standard forms of agreements (of which only one variation is likely to be used per access task) and standard user funding agreements (which will only be used in the event of an expansion). Thus for a standard haulage task it is likely that, say, only 500 of these pages will be relevant.

3 DETAILED ASCIANO COMMENTS ON THE AURIZON NETWORK SUBMISSION

Comment on Ringfencing

Aurizon Network (page 3) states:

Aurizon Network has not wound back any element of the ringfencing framework in UT4, but has updated the obligations to make them more workable and to reflect the fact that UT3 (which describes Queensland Rail's structure) was never amended to reflect the functional structure of the Aurizon Group.

Aurizon Network's statement is misleading, as the elements of an already inadequate ringfencing regime in the 2010 Access Undertaking have been further diluted by the 2013 DAU. Asciano believes that a strong ringfencing regime is absolutely central to facilitating third party access to Aurizon Network's regulated monopoly assets and as such the regime should not be diluted to reflect Aurizon's corporate structure but rather Aurizon's corporate structure should be required to comply with an effective ringfencing regime.

Comment on Tariff Increases

The Aurizon Network submission (page 8) argues that the proposed electric tariffs are declining by 18%. Asciano understands that this calculation was based on the electric tariff proposal that was before the QCA being approved.

Since the submission of the Aurizon Network submission the electric tariff proposal that was before the QCA has been withdrawn. Given this Asciano believes that Aurizon Network's position on the proposed electric tariffs should be revised.

Comment on Associated Services

Aurizon Network (page 15) discusses associated services, stating that these services make up less than 1% of their annual revenue. Regardless of the magnitude of the revenues from these services the revenue impact of these services still should be captured. While these services may have a small impact on revenue they typically use infrastructure included in the regulated asset base and as such the revenue from these services should be subject to regulatory scrutiny.

Comment on Expansions

Aurizon Network has proposed a new draft of the expansion process (Pages 25-26 and Annexure C). Asciano remains concerned that rail operators are excluded from both the process of negotiating this new process and from the expansion process itself.

There is nothing in the Aurizon Network submission which has resulted in Asciano altering its concerns, as set out in previous Asciano submissions on this process.

In particular Asciano remains concerned that Aurizon Network (page 25) is considering an approach where when an expansion results in benefits accruing to existing customers it will allocate some of the costs of the expansion to those customers. Asciano believes that such an approach should be even-handed and when an expansion results in a negative impact on existing customers these customers should be compensated. (An example of this may be the Goonyella-Abbot Point Expansion negatively impacting existing Goonyella customers).

Comment on Capacity Allocation

Aurizon Network (page 28) proposes to clarify the capacity allocation mechanism but the details of the mechanism are not outlined in any detail. Asciano remains concerned that a non-transparent capacity allocation mechanism based on subjective criteria will be implemented by Aurizon Network.

Comment on the Flexibility of Managing Access Rights

The Aurizon Network submission (pages 28 and 29) highlights that they will consider introducing a process that allows capacity swaps outside of an access holder's portfolio of train service entitlements. Asciano welcomes this proposal, but believes that any capacity swap process should not be overly restrictive as this will reduce any benefit which arises from the process. As outlined in its October 2013 submission, Asciano believes that a more flexible approach to managing access rights is required: such an approach would allow access holders to freely utilise their access rights based on their portfolio of total access rights rather than individual 'origin-destination' pairings. The proposed capacity swaps are a step in moving towards such flexibility.

The status of such swaps in the context of take or pay obligations should be clarified. Asciano believes that a train service entitlement used by another party should be treated as consumed against the original train service entitlement. Furthermore, train service entitlements should also be able to be swapped to any origin-destination, regardless of whether they are apart of a users existing portfolio of train service entitlements.

While Asciano supports mechanisms to increase flexibility in access rights (such as a swapping mechanism) Asciano believes that the details of such mechanisms should be included in the access undertaking (for example in the Network Management Principles) where they are subject to QCA oversight. Asciano would not support mechanisms to increase flexibility in access rights where such mechanisms are not subject to regulatory oversight. For example they should not be included in the System Rules.

Comment on Train Service Type

The Aurizon Network submission (pages 36 and 37) seeks to justify the introduction of the concept of a Train Service Type into the 2013 DAU by raising concerns that numerous undertaking provisions do not currently address the potential for the existence of multiple train service types.

Asciano believes that this justification is weak and does not explain the need for the twenty parameters used in defining train service types.

The issues with undertaking provisions raised by Aurizon Network may be better addressed by amending the definition of “Train Services” rather than adding an additional layer of complexity.

The use of the concept of train service types is an exemplar of the Aurizon Network approach to addressing regulatory issues whereby they typically seek to address such issues by drafting increasingly complex and prescriptive rules for access holders, access seekers and train operators. Such rules may ultimately act as barriers to entry.

4 CONCLUSION

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Asciano is concerned with this approach to amending the 2013 DAU. Currently the QCA has to make a decision on the 2013 DAU as submitted. However, by proposing amendments to the 2013 DAU without withdrawing the previously proposed 2013 DAU this Aurizon Network approach increases the potential for confusion as there is now a formal Aurizon Network position and an informal Aurizon Network position.

Asciano believes that Aurizon Network should clarify if more formal amendments are to be lodged in the near future.

While Asciano welcomes some of the positions taken in the Aurizon Network submission, until the amendments discussed in the submission are submitted via a process which formally amends the 2013 DAU there is nothing in the Aurizon Network submission which would result in Asciano altering its current position as set out in the Asciano submission of October 2013. In the event that Aurizon Network formally submits amendments to the 2013 DAU Asciano will provide further comment at that time.

In its submission Aurizon Network states at numerous points that the core elements of the undertaking remain unchanged between the current access undertaking and the 2013 DAU. Given the numerous substantive changes between the current access undertaking and the 2013 DAU Asciano believes that this Aurizon Network position that there has been no major change between the undertakings is not correct.