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Our ref:

10th October 2013

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Dear Sir

Re: Aurizon Network 2013 DAU – Request for Submissions (UT4)

Thank you for the opportunity to provide comments on the Aurizon Network DAU (UT4). Freightliner Australia is a subsidiary of Freightliner Group, an international rail freight business with its core operations in the UK, and with international operations in Central and Western Europe and Australia. Freightliner Australia is an accredited above rail operator in NSW, QLD, Western Australia and South Australia and has current operations servicing regional NSW (non coal) and the NSW Hunter Valley (coal).

Freightliner has been successful in both local and international operational jurisdictions, providing customer specific operating models that are designed and developed to provide the most efficient and cost effective solutions to each of our customers. Given our approach to assessing each of our mobilisations independently, with no preconceived asset or operational legacies, Freightliner is very well placed to assess every task on its merits with regards to the jurisdiction (network), equipment selection, asset management and assessment of true life cost of operations. As such, we welcome the opportunity to participate in the consultation process as QCA assesses the Aurizon Network 2013 DUA (UT4).

As noted, the object of Part 5 of the QCA Act is "*...to promote the economically efficient use of and investment in infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets*". As an accredited above rail operator in numerous Australian and international jurisdictions, Freightliner actively promotes the effective regulation and efficient management of below rail networks, allowing the obvious competitive interaction for those who wish to utilise this infrastructure to compete on fair terms and conditions for opportunities with producers and or shippers. Such an environment actively encourages efficient and effective use of key export supply chain infrastructure.

In opening it is relevant to note that Freightliner Australia has a number of concerns regarding UT4 weakening or reducing ANY protections afforded to competitors or producer access seekers via current appropriate regulation, including any weakening of ring-fencing arrangements given the vertical integration of Aurizon.

We also have serious concerns regarding any proposed reduction in regulation to be replaced by "*commercial negotiations*", given the competitive position of a monopoly asset owner in any such negotiation

Freightliner Australia strongly opposes the approval of UT4, primarily on the basis that we believe the proposal in its current form will hinder above rail competition in the Queensland market, especially for those operators looking to enter the QLD market via new mine developments i.e. market expansion opportunities.

Additional comments as follows;

Ring-fencing Arrangements and interests of Access Seekers

In the QCA's early deliberations on the CQCN (UT1 draft decision), the QCA considered the interests of access seekers could be well served by "*appropriate ring-fencing arrangements, an effective negotiating framework and ways to prevent the exploitation of the service providers monopoly position*" in below rail service provision. These key tenets should again form the basis of any fair assessment of the provisions in UT4, to ensure that Access Seekers (whether they be Producers or other rail operators) are not disadvantaged by any proposed changes to key provisions in the existing regulation.

The non-discriminative protections and ring-fencing provisions should be carefully assessed to ensure Aurizon Network (AN) does not take advantage of its vertical integration, irrelevant of whether the access seeker is a coal producer or a potential competitor of its above rail business. Whilst it is noted that there is "*an increasing shift in focus of access negotiations towards coal producers rather than operators*", the intentions of the ring fencing provisions need to be focused on the maintenance of any potentially competitive information **within** Aurizon Network.

Negotiation Arrangements and Standard Commercial Practice

The key function of any regulated access regime is to "*promote efficient and effective competition where an imbalance of power exists*". Under UT4, Aurizon seems to be actively promoting the reduction in regulation and suggesting that access seekers (irrelevant of whether they are producers OR direct competitors to their above rail business), enter into "*negotiations*" with Aurizon Network for access to the network. Whilst under a normal (competitively equal) supplier structures this would seem a more flexible and simple process, the underlying fact that the Aurizon network is a natural monopoly with no immediate alternate for users or producers will relegate this structure to being an ineffective mechanism. Under the existing ownership structure, there is an obvious imbalance of power in such a negotiation, leaving potential new access seekers in a substantially weakened position. Such a position may have many outcomes, but the obvious would seem to be potential delays in process of negotiations, leaving a new entrant in a position where they are unable to adequately respond to new opportunities purely due to an inability to acquire equitable and open access across the same corridor as a competitor in a timely fashion.

Our main concern in this regard is that the proposed fundamental shift in the regime relating to negotiating, is currently in favour of the owner of the infrastructure, irrelevant of the activities of the access seeker (producer or above rail operator). The natural monopoly that is the infrastructure creates an obvious inequality of power between itself & access seekers that will leave any "negotiations" for access, ineffectual for those seeking such.

We therefore believe that any reduction in regulation, and a move to an "open" process of negotiation would NOT achieve the outcomes that would be anticipated in a genuinely competitive market, as the balance of power in such a transaction is the owner of the monopoly infrastructure, and that this is not in the best interests of ANY access seeker or in the public interest.

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Forecast Volumes for basis of reference tariffs

The noted tariff increases have been advised as driven by "*forecast cost increases, coupled with lower volume forecasts over the regulatory period*". Given that the forecast volumes have already been noted to deviate from a third party assessment (Energy Economics) over the same period, questions must be raised regarding the adequacy and efficacy of the calculation of the tariff rates proposed by AN.

The forecast volume calculation (by site and corridor) plays a substantial part in the assessment of the charges. The document notes that the estimated charges are based on the "expected railings". Given the approximate 10% volume variation as assessed by Energy Economics, is there a potential further uplift in the charges based upon an overestimation of the volumes over the period by AN?

As such, it would be prudent that the QCA further assess the forward volume forecasts provided by Aurizon to ensure that any charges and operating assumptions used are a fair reflection of the efficient maintenance and operation of the network over the forecast period.

Maximum Allowable Revenue assessment

The return that Aurizon Network earns on its regulated asset base is covered by the principle promoting the recovery of 'efficient' costs. On the 4th October 2013, Aurizon Network Pty Ltd published its financial statements for the year ending 30th June 2013. We believe it would be prudent that the Authority compare key financial indicators in the published financial statements with those proposed in the DAU for transparency, fairness and reasonableness.

Freightliner Australia would actively promote a review of Aurizon's rationale behind the financial assumptions used in UT4, including but not limited to;

- Cost of debt assumptions (risk free rate and debt margin) compared to those terms afforded to the recent senior bank stand-alone debt facility noted in the financial statements;
- Depreciation policy assumptions compared to those depreciation policies in the financial statements;
- Operating expenditure assumptions (including overhead) compared to actual expenditure disclosed in the notes to the financial statements and the downward impact on assumed overhead following transfer of two noted operating divisions on 4th October 2013 to a related entity of Aurizon Network Pty Ltd;

I look forward to receiving further updates on the QCA's assessment of the UT4 submission, and would appreciate that any further correspondence or consultation documents be provided for our consideration.

Freightliner Australia confirms that this submission can be made public.

If you would like to discuss or need any additional information, please do not hesitate to contact me on 02 9449 6222.

Yours sincerely

[redacted]

PAULA KIRLAPPOS
Commercial Manager