BMA
BHP Billiton Mitsubishi Alliance

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Mr John Hindmarsh
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Queensland Competition Authority
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Dear Mr Hindmarsh,

Aurizon Network's proposed short term transfer mechanism

BHP Billiton Mitsubishi Alliance (**BMA**) welcomes the opportunity to comment on the Queensland Competition Authority's (**QCA**) draft decision on Aurizon Network's proposed short term transfer mechanism discussion paper submitted on 30 April 2015.

The object of Part 5 of the Queensland Competition Act (**QCA Act**) is to promote the economically efficient use of rail infrastructure. This has implications on the demand for rail infrastructure and subsequent need for investment in rail infrastructure. BMA believes that a pre-approved short term capacity transfer mechanism would provide flexibility and certainty in the use of access rights in a timely manner. Such a provision will not only promote efficient use of infrastructure but potentially maximise system throughput.

Accordingly, BMA supports Aurizon Network's initiative to facilitate the movement of below rail access rights between access holders as it enables access holders to use their contracted train service entitlements (**TSEs**) that they may not have originally used.

However, the short term transfer mechanism proposed by Aurizon Network in its discussion paper had superficial restrictions preventing efficient utilisation of existing rail infrastructure. For any short term capacity transfer mechanism to be effective it is important that it is flexible and can be administered in a timely fashion with minimum administrative burden.

The QCA has removed majority of the restrictions proposed by Aurizon Network and BMA supports the amendments made by the QCA in its supplementary draft decision on Aurizon Network's 2014 Draft Access Undertaking (**DAU**). However, BMA believes that the QCA's proposed mechanism adds to the complexity as it is not clear how the proposed mechanisms will interact with those already existing in the undertaking. It is not clear how the pre-approved short term provision will apply going forwards in conjunction with the proposed provisions under system rules of the 2014 access undertaking (**UT4**).

The existing schedule G provision of the 2010 undertaking was designed to provide flexibility in the use and management of access rights. These provisions enable access holders to over and under order TSEs to manage any variability in demand. However, the shortcoming of the current provisions is that the flexibility provided to an access holder in the consumption of access right is not offset against the take or pay liability.

BMA is of the view that strengthening the existing provisions may be a better option that introducing a completely new restrictive and complex mechanism. BMA takes this opportunity to highlight the following issues with the proposed short term transfer mechanism:

Capacity transfers provisions

A pre-approved short term transfer provision should be designed to not only promote efficient use of infrastructure but also provide additional flexibility to existing access holders to manage the contracted TSE's. Accordingly, these mechanisms should be flexible and come at no additional costs. It is also important that the proposed short term mechanism effectively facilitate the transfer of TSEs not just between users but within a user's portfolio.

Currently the proposed rapid short term capacity transfer mechanism allows transfers on "origin-destination" pairs. This approach is very restrictive. BMA believes that to improve flexibility and improve the likelihood of short term transfers any capacity assessment should take into consideration other existing TSEs or "origin-destination" combinations of paths within an access holders portfolio. This approach could result in a transfer request to be classified as "as-of-right" transfer request rather than a transfer request that requires rapid or detailed capacity assessment.

Such a flexible approach will provide the needed flexibility for an access seeker who has a large portfolio without adversely affecting other existing access holders. In this instance, an access holder should also be able to freely manage its access rights across different generations of access agreements without any restrictions imposed by either the QCA or Aurizon Network. Aurizon Network should be indifferent as its revenue is preserved under a revenue cap mechanism. It should be the access holder's decision to manage the TSEs it wants to transfer to manage its requirements. Therefore, BMA is of the view that the QCA's prescriptive approach of how access rights are reduced and included in access agreements between a transferor and transferee is inflexible and unwarranted.

Another restriction that BMA believes renders the proposed short term transfer mechanism rather inflexible is the requirement for like to like train service types when approving transfer requests. BMA would greater clarity on this. A train service type is a combination of variables and can vary across different train operators. The requirement of identical train service types limits an access holder from choosing between different operators. Moreover, these variables are constantly chaining over the term of an access agreement and some of these variables do not adversely impact available capacity on the system. BMA sees no reason as to why the deviations from the like to like train service types cannot be relaxed as long as the variance between different train service types are immaterial.

For short term capacity transfers requiring rapid capacity assessment, it is important to have in place an approved baseline system capacity. In the absence of such a provision it will be difficult for users to assess if the results of the capacity assessments are meaningful or not.

BMA in prescribing amendments to the short term transfer provisions of UT4 has removed the customer initiated transfer provisions. BMA is not clear if this was an oversight or a deliberate decision.

Pricing, additional costs and liability

BMA supports zero transfer fees for short term transfer and disagrees with QCA's pricing approach. Transfer fee is defined as the loss of revenue which arises when a longer haul path is transferred to a shorter haul. According to the QCA's draft decision, irrespective of the point of origin, a transferee will in all circumstances pay access charges equivalent to the furthermost origin from the port or destination as per the transferor's access agreement.

In other words, this pricing approach effectively means that a transferee will be subject to the transferor's access charge even thought their path is of a shorter distance. In effect this acts a transfer fee for every path transferred.

A transfer within a portfolio does not adversely affect other users and therefore the notion of a transfer fee in such an instance may not lead to efficient outcomes. As long as the transferred paths are utilised, a short term transfer would not adversely affect other existing users in the system. Again, the pricing approach proposed by the QCA may not incentivise the take up of the short term transfer provision as the take or pay liability will always be less than the access charges payable.

Accordingly, BMA supports Aurizon Network's initial proposal of a zero transfer fees with any revenue differences amongst access holders being socialised within the coal system in which the transfer occurs.

BMA does not agree with the QCA's assessment that short term transfers create greater credit risk or commercial risk for Aurizon Network. The transfer provisions are only short term in nature and not permanent and therefore does not create any additional risk for Aurizon Network. Further, the revenue cap provisions ensure that Aurizon Network's revenue is maintained. The requirement for additional security is unwarranted. BMA does not agree with QCA's assessment that a short term transfer alters the liability or risk profile of Aurizon Network.

Implementation of transfers

BMA believes that the principle relating to short term transfer mechanism should be contained in Aurizon Network's access undertaking. If the principles of transfer are contained in the access undertaking it ensures that these can be equitably applied across all access holders. However, for the provisions to be applicable these need to be contained in an access holder's access agreement. However, a default application of the new provisions to existing agreements will materially alter the commercials originally agreed by the respective parties.

Conclusion

The proposed transfer provisions should be broad enough to cater to cross system transfers. As part of the annual review process BMA considers that the mechanism is extended to cross system traffic. This will ensure that throughput is maximised across the entire network as opposed to individual systems. An efficient short term capacity transfer mechanism relies on the baseline capacity of the system. BMA is not sure how the short term transfer mechanism will work in the absence of any established baseline system capacity or how the existing provisions in Aurizon Network's approved undertaking interact with the proposed mechanism. The provision once approved should not change the risk or commercial profile of existing agreements.

If you have any queries or require further information, please feel free to contact Ruchi Gupta on 07 3329 2348.

Yours sincerely

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