



Response to Queensland Competition Authority Draft Decision on the Queensland Rail 2015 Draft Access Undertaking

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Table of Contents

Executive Summary.....	5
FY2014 and FY2015 Adjustment Charge	11
Pricing Principles and Western System reference tariffs.....	18
Queensland Rail's obligations to maintain and provide a service consistency	25
Promoting above rail productivity gains	31
Maintaining the tripartite agreement.....	37
Reducing the level of prescription regarding access agreements to allow commercial and contractual innovation.....	38
Detailed comments on the Standard Access Agreement	42
Improving operational and fiscal discipline on the Access Provider through greater transparency and accountability	53
Attachment 1: Redrafted Insurance clause for Standard Access Agreement.....	56

1

Executive Summary

Aurizon Operations welcomes the opportunity to respond to the Queensland Competition Authority's (QCA) Draft Decision on Queensland Rail's 2015 Draft Access Undertaking (2015DAU).

The QCA published its Draft Decision on the 2015DAU on 8 October 2015, seeking responses from interested parties by 24 December 2015.

Aurizon Operations is committed to working with its customers, Access Providers and regulators to assist in delivering sustainable growth of mining, agriculture and freight haulage throughout Australia. Regulation should encourage and promote these objectives through a sustainable and reliable regulatory framework that promotes the efficient use of, and investment in, relevant infrastructure and promotes productivity and efficiency initiatives.

In seeking to achieve these objectives, Aurizon Operation's business is focused on a number of key areas, including safety, service and innovation. Aurizon Operations is currently undertaking major transformation initiatives to drive greater productivity and efficiency, particularly through technology – and, hence, supports having a regulatory framework for all Access Providers that provides a stable, transparent platform from which to manage access rights for rail networks that, at the same time, recognises the need for sufficient flexibility to facilitate commercial and contractual innovation, as well as operational efficiencies.

Structural separation is typically an outcome of policy intervention designed to promote competition in potentially contestable markets. However it is widely recognised that there are material differences and implications for separation of railways as the provision of rail transport services necessarily involves the joint provision of above and below rail functions. This can be contrasted with other industries, such as water and electricity, which are linear supply lines and structural separation occurs along that supply chain.

The implications of structural separation of railways is that many of the efficiencies of coordination and alignment of incentives are eroded - and are often replaced by rigidities and lack of commercial responsiveness. This can produce a tendency for some stakeholders to pursue increasing levels of prescription within the access arrangements as parties seek to impose arrangements they perceive are unattainable from commercial negotiation (particularly with the Access Provider), with the result that the scope for negotiation is reduced.

Aurizon Operations considers increasing levels of prescription which restricts the ability of an Access Seeker and an Access Holder to negotiate commercial arrangements which would facilitate commercial innovation and operational improvements to be counter to the objective of seeking to replicate the inherent efficiencies associated with vertical integrated railways. For this reason Aurizon Operations submits that the proposed access arrangements should contemplate or envisage the cooperative engagement necessary to improve the competitiveness of the Queensland Rail industry against competing modes of transport and improve supply chain competitiveness to promote regional and economic growth and, thus, overall community welfare in Queensland.

Aurizon Operation's preference remains that the Queensland Rail 2015DAU provides a framework that promotes and strengthens the effectiveness of the negotiate–arbitrate model as intended through the 2006 Competition Principles Agreement– see especially Paragraphs 2.2 and 2.4 (b) (ii) and (iv) - but is designed to improve the effectiveness of this process.

Aurizon Operations submits that the ability to improve the efficiency and productivity of the rail sector requires replication of, to the greatest extent possible, the conditions which are present in vertically integrated railways, including:

- > Appropriate access to information regarding asset condition, performance and costs to assist in the identification of optimisation opportunities;
- > Constructive planning and continuous improvement initiatives to drive innovation and service quality and to improve the achievement of dynamic efficiency and technological change required to improve productivity in the rail sector;
- > The ability to optimise train schedules and rail operations during the term of an access agreement to improve the industry cost structure and promote increased demand for rail transport; and
- > The pursuit of operational and infrastructure configuration changes in a way which ensures neither the Access Holder nor the Access Provider is financially disadvantaged, while preserving the incentives to pursue those changes.

On the whole, the QCA's Draft Decision has aimed to address the majority of these issues, through decisions that provide a greater level of prescription to the process ascribed to Access Seekers. The QCA has addressed these issues by providing positive decisions on the following matters:

- > Coal services in the Western System will remain subject to a price cap form of regulation;
- > Take or Pay for those services is to be capped at the target revenue;
- > Acknowledgement of the over-recovery of revenue by Queensland Rail in FY2014 and FY2015;
- > Introduction of a requirement for Access Seekers to agree service level obligations and performance metrics for which Queensland Rail has contractual obligations to fulfil;
- > An increase in transparency through the disclosure of information by Queensland Rail on its performance levels, costs and financial metrics; and
- > Support in the development of a tripartite agreement for reference train services in the West Moreton Corridor.

However, Aurizon Operations believes the QCA has not fully addressed some matters raised by Aurizon Operations that are integral to the efficient operation of the coal network and that some decisions should be amended accordingly. Of importance to Aurizon Operations is:

- > The correct mechanism in which the FY2014 and FY2015 over-recovery should be dealt with, considering the change in ownership of the coal mining entities within the Western System;
- > Increasing the clarity regarding Queensland Rail's obligations to maintain and provide a service consistent with the Access Seeker's expected service quality over the life of the access agreement and to reduce the Access Provider's ability to reduce service quality through changes to interface standards and network management principles without appropriate consultation and agreement;
- > Improving the ability to vary train service entitlements and/or train configurations to improve the efficient utilisation of the existing infrastructure subject to Queensland Rail not being financially disadvantaged;
- > In all circumstances the tripartite agreement should be limited to only one operator;
- > The proposed standard access agreement should only be applicable for reference train services. This would allow for a reduced level of prescription for non-coal services to allow commercial and contractual innovation; and
- > Improving operational and fiscal discipline on the Access Provider through greater transparency and accountability.

As a result, the primary focus of this submission are these 6 matters detailed above. The submission also addresses a number of pricing and reference tariff matters that have been introduced in the Draft Decision.

Additionally Aurizon Operations strongly believes that an access agreement should, consistent with the negotiation-arbitrate framework, include the following principles:

- > Allow for Access Holders and operators to move forward and grow/change operations in future as new technology and engineering advancements become available; and
- > Focus on unlocking value, implementing operational changes, improvements and transformation, which may mean a trade-off across above rail and below rail costs and savings to result in a neutral position for Queensland Rail.

FY2014 and FY2015 adjustment charge

Aurizon Operations is supportive of the QCA's Draft Decision which seeks to give effect to the principle of retrospectivity of the Western System reference tariff. However, the approach to discounting future reference tariffs is potentially inefficient and inequitable given it:

- > involves the transfer between current and previous Access Holders in a way which is disproportionate to the individual parties' respective contributions to any determined adjustment amounts; and
- > is inefficient as it establishes a reference tariff which is not reflective of forward looking efficient costs and may create perverse incentives.

Aurizon Operations considers that the QCA is not precluded from determining reference tariffs that would have applied had those tariffs commenced from 1 July 2013. This would form the basis of calculating Adjustment Charges as provided for in both the 2008 Access Undertaking and the 2015DAU. Where the QCA is unable to retrospectively apply a reference tariff, then it should seek to replicate forward looking Adjustment Charges which approximate, to the extent possible, the outcomes which would have prevailed had the reference tariff and take or pay capping commenced from 1 July 2013.

The Adjustment Charges should be then levied on the basis of fixed payments which are unrelated to the usage charges in a manner consistent with Queensland Rail's recovery of \$13.8 million in Adjustment Charges in 2010.

Pricing Principles and Western System reference tariffs

The Draft Decision proposes various changes to the pricing principles. While these changes appear reasonable, Aurizon Operations is of the view that the changes could have unintended consequences and may be inconsistent with other aspects of the undertaking. Details of these issues are identified for the QCA's consideration in section 3 of the submission.

Aurizon Operations supports the retention of the price cap form of regulation and notes the strong financial incentives this provides for Queensland Rail to promote productivity and utilisation of the existing capacity. The Draft Decision on the proposed Western System reference tariff is predominantly influenced by the lower volumes. The reference tariff review mechanism proposed in the Draft Decision provides incentives for Access Holders to contract for additional capacity to obtain lower access charges. However, there may be constraints, such as not being first in the queue, which prevent Access Seekers being able to contract for this capacity and those constraints should be removed.

Furthermore, the take or pay obligation should be less than the proposed 100% in order to reflect the avoidable costs associated with not operating the train service. Similarly the target system revenue should be adjusted to reflect the incremental costs of additional volume. Aurizon Operations considers the avoidable and incremental costs should be symmetrical and estimated upfront.

Queensland Rail's obligations to maintain and provide service consistency

Aurizon Operations would like to see a greater obligation on Queensland Rail to ensure that the network is maintained to an agreed standard for the duration of contracted access rights. When entering into an access agreement, the operator makes an assessment of required above rail resources to deliver a service to the end customer taking into account the current system operating parameters for the below rail infrastructure. This includes parameters such as sectional running times, benchmark transit times, axle load which are dependent on track quality.

A deterioration in the standard of the rail infrastructure over the term of the access agreement may impact the ability to reliably and efficiently operate train services. Aurizon Operations bases its rolling stock fleet and resource requirements to align to the system operating parameters agreed with Queensland Rail at the time of contracting. If the network standards are lowered, and hence cause a decline in track quality of the network, Aurizon Operations may require more rolling stock and resources to meet its obligations under haulage agreements to its end customers. This can reduce the sustainability of rail transport and the overall competitiveness of its customers in their end markets.

Allowing for above rail productivity gains

Aurizon Operations notes that the Draft Decision does not require the Access Provider to reasonably consider and respond to an Access Holder's request for commercial innovation or flexibility for non-coal access agreements. This has the effect of limiting an Operator's or Access Holder's ability to attract freight to rail from road and foregoing the associated safety and environmental benefits from modal shift.

Aurizon Operations interpretation of the current drafting provides Queensland Rail with the ability to reject any requests to vary from the Standard Access Agreement and provides no alternative process for the Access Seeker/Holder via a dispute resolution mechanism.

If the Access Undertaking and Standard Access Agreement does not include appropriate clauses which require the Access Provider to reasonably respond to requests from an Access Holder to improve the productivity of its rail operations, this will impair efficiency gains in the operations of the whole supply chain and not enable the Access Provider to meet the requirements of section 69E of the QCA Act.

Limiting the standard access agreement to the West Moreton System

Aurizon Operation's position is that the only appropriate circumstance where a Standard Access Agreement may be mandatory is where a reference tariff is in place, which is currently only the case in the Western System. Broadening the scope of the Standard Access Agreement does not support a negotiate-arbitrate model for access agreement negotiation and does not allow the trading of risks and reward between the contracting parties.

Where train services are not subject to a defined reference tariff, the Access Holders should have the ability to negotiate the terms and conditions of access with the Access Provider and not be subject to the provisions of the Standard Access Agreement. This will promote competition in upstream and downstream markets and incentivise commercial innovation.

Maintaining a tripartite agreement

The current drafting of the tripartite access agreement contemplates that it may be entered into by more than one operator in circumstances where an Access Holder chooses to have more than one operator.

This gives rise to a number of issues which are set out in Section 5 of this Submission. To address these concerns, Aurizon Operations proposes that Queensland Rail, the Access Holder and each operator enter into a separate access agreement in respect of the access rights to be operated by that operator.

A similar approach has been successfully adopted under existing access undertakings for other Access Providers in Queensland. To assist in providing the Access Holder with greater flexibility in the utilisation of its contracted haulage services with different operators, Aurizon Operations would support an Access Holder being allowed to share the allocation of its access rights across multiple access agreements by being allowed to vary its operator nominations in this way.

Improving operational and fiscal discipline on the Access Provider through greater transparency and accountability

Queensland Rail has proposed a reporting framework within Part 5 of the Access Undertaking that provides greater transparency to Access Holders than previous versions of the Access Undertaking. Overall, this improvement in transparency is welcomed, but the ultimate test of transparency should be whether Access Providers provide as much relevant data to Access Holders as possible to provide Access Seekers with a greater ability to evaluate opportunities for improving capacity utilisation and evaluating complimentary above and below rail investments.

Furthermore, increased transparency can improve the accountability of structurally separated access providers and provide incentives to improve efficiency, or to avoid declines in efficiency. The largest improvement is the commitment to report any causes that significantly change the operational performance of the relevant system. This is primarily seen in the reporting framework contained within Schedule 5 of the Standard Access Agreement. This type of reporting is critical to the performance of users of the relevant Network and allows for operators to use the data to communicate with end users and/or producers. Overall, for this to be effective and successful, it needs to have the appropriate metric's developed in conjunction with stakeholders of the relevant supply chain. Aurizon Operations is committed to working with all supply chain participants to identify the information which is more relevant to achieving the objectives of improving operational efficiency, reducing costs and determining common infrastructure standards which support competitive service quality expectations.

2

FY2014 and FY2015 Adjustment Charge

In submitting its 2015DAU, Queensland Rail did not propose to retrospectively apply the approved reference tariff back to 1 July 2013, despite previous commitments in successive draft amending access undertakings and the 2014 Annual Report that this would apply in an approved replacement access undertaking. The explanatory materials submitted by Queensland Rail did not provide a substantive explanation as to why the proposed 2015DAU was inconsistent with those commitments, and instead stated that the proposed reference tariff is consistent with applied access charges for the relevant periods and, therefore, retrospectivity was not a matter required to be addressed in the proposed access undertaking.

Aurizon Operation's submission to the 2015DAU noted that where the QCA does not accept the reference tariff methodology proposed by Queensland Rail, and associated building block parameters established a tariff which differed *materially* from that proposed by Queensland Rail, then the tariff should have retrospective effect which should be reconciled through the determination of Adjustment Charges as provided for in the 2015DAU.

Aurizon Operations strongly supports the principle within the QCA's Draft Decision that Queensland Rail should not be able to obtain a financial benefit arising from any delay in the approval date of the 2015DAU.

The Draft Decision also includes an assessment by Professor Flavio Menezes which concludes that the exclusion of retrospective reference tariffs in the proposed 2015DAU contributes to an increase in regulatory risks associated with stakeholder uncertainty as to the predictability of the regulatory outcome. Aurizon Operations supports this conclusion and considers the material variation from applied regulatory precedent without adequate and reasonable substantiation of a material change in circumstances is likely to have negative implications for complimentary investment by rail operators and end customers in the future.

The broader implication is that stakeholders will increasingly seek to increase the level of regulatory prescription as a direct consequence of a reduction in the confidence that Queensland Rail can be expected to meet its obligations under the access undertaking.

Consistent with views expressed in previous submissions by Aurizon Operations and other stakeholders, any benefits obtained by Queensland Rail due to the inability to retrospectively apply a tariff to the initial terminating date of the previous access undertaking is largely attributable to:

- > the timeframes associated with the lodgement of the original proposal;
- > incompleteness and lack of detail in the original proposal;
- > modifications to the original proposal; and
- > Queensland Rail's decision to withdraw the proposal (withdrawal of the 2013DAU) and the subsequent submission of a revised proposal (lodgement of the 2015DAU).

While Aurizon Operations recognises that there have also been substantive delays in the QCA's consideration of the 2013DAU, it is reasonable to conclude that retrospective application of reference tariffs would have been required even where the QCA met its statutory timeframes of 6 months.

Aurizon Operations' related Access Provider has historically, with the cooperation of its customers and the regulator, accepted retrospective application, even where that retrospectivity was to its own detriment. Aurizon Operations does not support the prospect of an Access Provider obtaining a financial benefit funded by Access Holders which arises principally from the Access Provider's own conduct.

Extensions to the 2008AU were approved on the basis that the determination of Western System reference tariffs in a replacement Access Undertaking would have retrospective effect to 1 July 2013. For example, the May 2014 extension Draft Amending Access Undertaking (DAAU), which extended the Undertaking to 31 December 2015, did not propose or include a new reference tariff with the attached correspondence noting Queensland Rail's commitment to commence the reference tariff from 1 July 2013 once a replacement undertaking was approved.

In approving previous extension DAAUs, the QCA did not approve a reference tariff for the extension period, with submission documentation clearly noting the transitional nature of the escalated prices. If this were not the case, stakeholders would have likely made different submissions and the QCA would most likely not have approved the DAAU without subsequent amendments to ensure the matter was beyond dispute. Accordingly, Aurizon Operations does not consider that the QCA is precluded from determining a reference tariff which commences prior to the approval date as this would not substitute a previously determined tariff.

Taking these matters into account, Aurizon Operations considers that Adjustment Charges are not retrospective variations to an Access Charge in an Access Agreement. The distinction between a retrospective reference tariff and a retrospective Access Charge is important. Aurizon Operations considers a retrospective Access Charge has the effect of varying the terms of contract for which the service was provided. The determination of an Adjustment Charge and its inclusion as a reference tariff component is intended to overcome the inability to retrospectively vary the terms of contract and ensure that the Adjustment Charge is applied on a forward looking basis as a reference tariff. Therefore, Aurizon Operations considers that the QCA should be able to determine reference tariffs which commence (but not apply) from 1 July 2013 for the purpose of determining the relevant Adjustment Charge amounts which will apply after the approval date.

Notwithstanding this view, Aurizon Operations recognises that the QCA may have some concerns with respect to the enforceability of this position without the voluntary commitment of the Access Provider. As a consequence, the QCA has sought to apply an alternate approach of assessing the actual revenue against a target revenue amount and redistribute those amounts to Access Holders on a forward looking basis through a discount to the underlying reference tariff.

Aurizon Operations considers that the distribution of the QCA's adjustment amount (the net present value of the difference between the actual revenue and target allowable revenue) should approximate the outcomes that would have been obtained from the retrospective application of the reference tariff to the maximum extent possible.

The amount of over-recovery by Queensland Rail is estimated to be \$26.3m for FY2014 and FY2015 in the Draft Decision. The Draft Decision does not include details on how this amount has been derived in order for stakeholders to assess and comment on the reasonableness or the reliability of that estimate.

Future Tariff Adjustments

As noted in the QCA's Draft Decision, the adjustment amount may be distributed or apportioned in a number of different ways, including:

- > through a lump sum bullet payment; or
- > an adjustment to the future reference tariffs that has regard to existing and/or previous Access Holders.

The current mechanism proposed by the QCA is to vary future reference tariffs which effectively returns (recovers) the overpayment (shortfall) to current or future Access Holders. It does not reconcile the adjustment to the relevant access arrangements prevailing over the relevant adjustment period.

Although the QCA considers such an approach is consistent with previously approved Adjustment Charges and, therefore, enhances regulatory certainty, Aurizon Operations disagrees given the significance of the adjustment amount, and the change of mine ownership during the period. This is particularly the case where the adjustment amount is inclusive of revenue attributable to Take-or-Pay (ToP) and Relinquishment Fees (RF) that were paid during the period. The consequential distribution of the adjustment amount is therefore not commensurate with the respective contributions to that amount and is inconsistent with the commercial arrangements between the affected Access Holder for that period and its customers.

In Aurizon Operations' view, a more equitable approach would be to reconcile the relevant adjustment amounts to Access Holders relevant to the adjustment period. This approach is preferred to the QCA Draft Decision as it:

- > restores the financial positions of all parties to what it would be if the Access Undertaking was approved before the commencement of the regulatory period;
- > does not distort the efficient price signals associated with applying a reference tariff which materially differs from the underlying reference tariff; and
- > is consistent with regulatory precedents and stakeholder expectations.

Adjusting forward looking prices would have the effect of Access Seekers who were not Access Holders for the period relevant to the adjustment amounts paying an access charge which is not consistent with the efficient costs of providing the service. Alternatively, the application of differential reference tariffs to ensure the adjustment amounts are applied only to those Access Holders or Access Seekers in proportion to the access rights held over that period may adversely affect one or more Access Seekers ability to compete with other Access Seekers in that system.

The economic literature identifies the most efficient and least distorting mechanism to make these types of adjustments is the application of fixed charges which are independent from the usage charge to avoid distorting consumption decisions.

Applying the Adjustment Charges

Assuming the adjustment amounts calculated by the QCA would be consistent with the retrospective application of the reference tariff, then this will result in a financial liability for Queensland Rail to Access Holders for the adjustment period. The corresponding adjustment amounts are equivalent to a capital contribution which can be returned to those Access Holders either by a lump sum payment or via a series of principal and interest payments. This is an appropriate mechanism which the QCA should have regard in determining whether to approve the 2015DAU.

Aurizon Operations is of the view that the repayment period should be as short as reasonably practical to reflect the expectations of stakeholders and the applied regulatory precedent (including the approval of the 2010 amended Western System reference tariff in the Queensland Rail 2008AU). Aurizon Operations considers that a one-off payment would not be contrary to Queensland Rail's legitimate business interests.

Queensland Rail has previously communicated, through earlier DAUs and extension DAAUs, its intentions to retrospectively apply the approved reference tariff and having regard to proposed tariff reductions in the QCA's June 2014 Consultation Paper. In this regard, it is expected that Queensland Rail would have made appropriate provisions for adjustment charges, notwithstanding its proposal now not to apply them.

Moreover, the financial viability of Queensland Rail in terms of the proposed bullet payment should also be assessed on the Queensland Rail below rail network as a whole, rather than just the Western System alone. Given the wider revenue base, the Adjustment Charges should not have a material adverse financial impact given the adjustment amount represents less than 3% of Queensland Rail's total network revenue in FY14¹. Where a one-off bullet payment would have significant impact on Queensland Rail's working capital and cash flows, then the QCA is able to determine multiple Adjustment Charges which may support the repayment in instalments over an appropriate period (e.g. the Adjustment Charge is payable monthly for a period of 6-12 months).

Aurizon Operations notes that this approach is consistent with the QCA's approval of \$13.8 million in Adjustment Charges payable to Queensland Rail in November 2010 associated with the 40% increase in the access charge and its retrospective application to 1 July 2009².

Determining the Adjustment Charges

Aurizon Operations was the Access Holder for the period relevant to the determination of any adjustment amounts. As a consequence, the application of Adjustment Charges should occur as an Adjustment Charge in an Access Agreement between Aurizon Operations (the Access Holder) and Queensland Rail (the Access Provider). This is consistent with previous Adjustment Charge determinations made by the QCA which are specific to individual Access Holders.

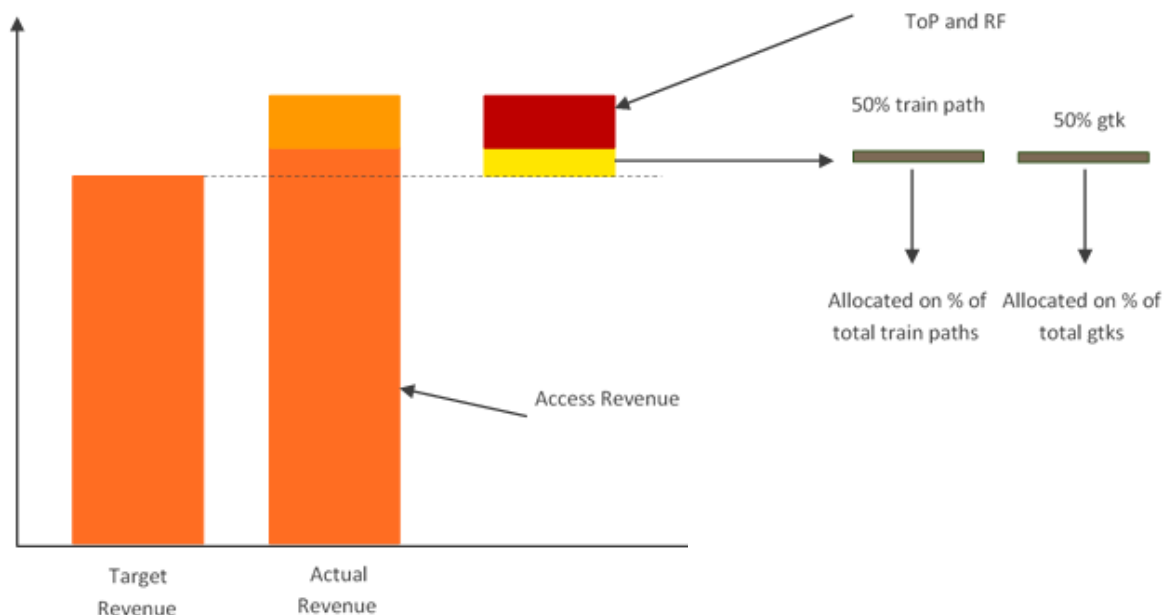
Adjustment Charges should be determined in line with the respective contribution of the relevant origin to destination access charges, rebates payments and additional access payments such as ToP and any relevant RFs. In the absence of a retrospective reference tariff to 1 July 2013 to recalculate the respective billing components on past invoices, then the QCA should determine Adjustment Charges which reflect the retrospective application of reference tariff and take or pay obligations to the maximum extent possible.

Aurizon Operations proposes that the Adjustment Amount should be separated into three distinct categories. Again, assuming the Adjustment Amount is in favour of Access Holders as detailed in the Draft Decision, the RF plus the ToP payments are first deducted from the Adjustment Amount. The residual amount is then allocated into 2 categories on either train path or gross tonne kilometre (gtk) basis to the relevant End Users. The allocation of the train path and gtk component would be based on the respective mine's train paths and gtk's for the relevant year. This is consistent with revenue allocation to the derivation of the respective tariff components. This approach is presented graphically in the following indicative graph.

¹ Queensland Rail 2013-14 Below Rail Financial Statements total below rail revenue is \$904 million.

² Queensland Competition Authority (2010) Approval of Queensland Rail's Adjustment Charges for 2009-10, November.

Illustrative only. Insufficient information to determine the respective contributions to the difference between the target revenue and the actual revenue.



Aurizon Operations is of the view that RF and ToP payments need to be deducted prior to determining the Access Charge components of an Adjustment Charge. As per the QCA Draft Decision 8.15, the ToP capping mechanism would have applied if the Undertaking was approved prior to the commencement of the regulatory period. This means ToP payments would have been restricted to recovering a shortfall between the actual revenue and the target revenue. Similarly in the event of an under-recovery and need to apply Adjustment Charges associated with recovering a variation then take or pay should only be applied to address any shortfall following appropriate variation of access charges.

Given the limited information contained in the QCA Draft Decision, Aurizon Operations is unable to assess how the over-recovery amount of \$26.3m will be divided among the three categories. Nevertheless, Aurizon Operations is committed to working with the QCA, Queensland Rail and relevant stakeholders to achieve an equitable distribution of the over-recovery through appropriately determined Adjustment Charges.

Aurizon Operations considers the implementation of Adjustment Charge as described above:

- > is consistent with the Access Provider's legitimate business interest as the term for the application of adjustment charges can be extended to address any working capital restrictions;
- > is in the public interest of improving the predictability and certainty of regulatory decisions;
- > is consistent with the legitimate business interests of the Access Holder who held the rights to use the service over the period of 1 July 2013 to the approval of the 2015AU;
- > is consistent with stakeholders' expectations that the reference tariff will be retrospectively applied when it is approved;
- > is consistent with the previous retrospective application of the Western System reference tariff in the 2005AU and the 2008AU, which promotes regulatory certainty; and

- > does not create perverse incentive for Queensland Rail to delay the approval of the Undertaking.

Recommendation

- > **Adjustment Charges are calculated consistent with a commencement date of 1 July 2013 (irrespective of whether the reference tariff commences on that date)**
 - > **Adjustment Charges are calculated with respect to the affected Access Holder for the period between 1 July 2013 and the approval date**
 - > **Adjustment Charges are calculated with respect to recovery within 12 months of the approval date over an appropriate number of months having regard to the Access Provider's working capital requirements**
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Pricing Principles and Western System reference tariffs

The Western System reference tariff has been a significant matter of debate since 2005. The Draft Decision represents the consolidation of a substantial volume of information which has been submitted to the QCA over numerous regulatory consultation processes. Aurizon Operations considers that the Draft Decision finally establishes a line in the sand with respect to both the asset valuation and the interrelationship between asset standard and maintenance costs. This will greatly assist in improving the predictability of forward looking price expectations. Importantly, it will allow all supply chain participants to constructively engage in the planning and assessment of productivity enhancing investment which will support increased volumes and greater efficiency of all services using the Western System rail infrastructure.

Aurizon Operations welcomes the detailed consideration the QCA has undertaken in relation to the Western System reference tariff and the pricing principles which underpin the proposed reference tariff. However Aurizon Operations considers there are some aspects of the Draft Decision regarding the proposed reference tariff, regulatory framework and pricing principles which may result in less efficient outcomes or create perverse incentives. This section of the submission provides the reasoning for these views and suggested amendments which would support efficient investment in, and utilisation of, the Queensland Rail network.

Part 3 Pricing Principles

The Draft Decision proposes a range of amendments to the pricing principles proposed in the 2015DAU which were largely consistent with access undertakings previously approved by the QCA. As the pricing principles are relevant to all negotiations which are subject to the access undertaking, they have universal application over a broad range of market characteristics, services and economic conditions. Aurizon Operations has reviewed the Part 3 Pricing Principles with consideration to how they would apply to all access negotiations and suggests that small changes are necessary to ensure they remain appropriate to all prospective access agreements.

Revenue Limits

The primary role of the revenue limits is to avoid circumstances which could give rise to a cross subsidy between one or more customers. This test is typically a two part test that would require the demonstration that one or more customers is being charged less than its incremental costs and others are paying more than their stand-alone costs. The relevance of applying both tests to determine the presence of a cross-subsidy is that a combination of services can pay less than stand-alone costs where one or more services are also paying less than their incremental costs. This does not represent a subsidy, but simply an economic loss to the service provider (subject to the non-discrimination principles being adhered to).

The ceiling limit also provides a constraint against one or more Access Holders paying an access charge which exceeds the amount necessary to promote efficient investment in the facility.

The definition of incremental costs as the basis for the Floor Revenue Limit requires the inclusion of the physical asset depreciation which is normally represented as a function of future renewals expenditure and the impact the service has on the timing of that expenditure. As such, incremental costs will typically exceed the short run marginal costs (or direct costs).

The Draft Decision includes a requirement that Queensland Rail seek the QCA's approval where the Access Provider seeks to apply an access charge below the Floor Revenue Limit. Aurizon Operations notes that for marginal services that operate in unconstrained corridors, it may be in the public interest to price services between the short run marginal costs and incremental costs.

The requirement to seek the QCA's approval to price below incremental costs in the absence of any rate complaints for prices above stand-alone costs represents an additional regulatory burden which reduces the commercial flexibility for the Access Provider and Access Seeker to respond to changing market conditions. Additionally it may reduce the incentives to operate those marginal traffics on an ad hoc basis. It may also be necessary to price some traffics which are subject to strong modal competition at marginal cost to avoid losing those services to road permanently.

Aurizon Operations recognises the objectives of the QCA's position, but considers that any obligation to seek the QCA's approval of an access charge should only be a requirement where Queensland Rail proposes an access charge below short run marginal costs as this might be inconsistent with the efficient utilisation of rail infrastructure.

The Draft Decision also proposes to remove the reference to Depreciated Optimised Replacement Cost (DORC) as the basis for determining the asset value for use in determining the Revenue Ceiling Limit. The alternate approach would involve either the value agreed with the Access Seeker, or as determined by the QCA.

The QCA's position has been influenced by the economic and engineering characteristics of the Western System rail infrastructure. Aurizon Operations considers that the Western System is an outlier and that the determination of efficient costs for that system may not be applicable to other rail corridors. The default approach should reflect DORC principles, but should also have regard to the service and characteristics of the facility as has occurred with the QCA's valuation of the Western System.

The Draft Decision represents a reasonable approach to establishing an asset value relevant to the application of the Revenue Ceiling Limit. As section 101 of the QCA Act requires the Access Provider to supply the Access Seeker with details of the value of the assets used in determining the access charge, this allows that value to represent a factor to be agreed between the parties.

The mechanism by which the value would be determined by the QCA is not reasonably defined. In this regard, the undertaking should refer to the value of assets determined by the QCA under an access determination. However, where the value of the assets is to be determined by the QCA under an access determination, this may preclude other stakeholders from contributing to that review. It is also likely that the outcome of that access determination could be binding on other Access Seekers who were not a party to the arbitration. Therefore, where the QCA proposes to make an access determination in relation to an asset value, consideration should be given to how interested parties are consulted on that valuation.

Recommendation

- > **The QCA should only be required to approve an access charge where the proposed access charge would be less than the direct costs of providing the service**
- > **The Undertaking should define the mechanism by which the QCA would determine the asset value to be used in assessment of the maximum revenue limit including where that limit would be applied to other access negotiations and the relevant consultation process for establishing that limit**

Limits on Price Differentiation

Aurizon Operations supports the QCA's Draft Decision in relation to limits on price differentiation. The Draft Decision also requires that the 2015DAU include an explicit requirement that Queensland Rail will not establish access charges for the explicit purpose of preventing or hindering access to the network to avoid interference with passenger services.

The requirement for such an explicit obligation appears unnecessary and it is unclear why the Access Provider would have an incentive to engage in that conduct given passenger services are not in competition with freight services. The Access Provider is also able to rely on passenger priority legislation which avoids any requirement to price a non-passenger service to avoid conflict with passenger services.

Aurizon Operations recognises that the incentives for avoiding interference with passenger services and the potential for passenger delays may be stronger than management incentives to reduce Transport Services Contract (TSC) payments by increasing freight revenue. However, it is far more likely that the Access Provider would rely on non-price means such as capacity availability to restrict access. Capacity and price are also matters that could be the subject of an access determination and, given the substantial complexity and difficulty in establishing the explicit purpose on the basis of only one aspect of conduct, the additional clause appears unnecessary.

Capital Contributions and Non-Discrimination

Where an Access Seeker is required to fund an extension to the facility to provide the capacity necessary for its proposed operation, the limits on discrimination should also extend to the net cost of access inclusive of any capital. Rail corridors which are supported by TSC payments are unlikely to generate sufficient incremental revenue to allow for the return of the full economic benefit of the contribution to the Access Seeker as required under clause 5(c) of Schedule I.

Where the Access Seeker is subject to competition with other Access Holders or Access Seekers, it may be subject to a greater cost of access. For example, if an Access Seeker competing in the intermodal freight market was required to fund an additional passing loop, then its net cost of access would include the access charge and the amortisation of the capital contributed over the term of access less any rebates paid by Queensland Rail for the use of the rail infrastructure.

If in this scenario the Access Seeker is required to pay the same access charge as a competitor who was not required to make a capital contribution, then the differences in the net cost of access could have a material adverse effect on the Access Seeker's ability to compete in the relevant market. Therefore the limits on price discrimination should also promote competitive neutrality where extensions to the facility are funded by an Access Seeker.

Aurizon Operations recognises that there are circumstances where this principle could not be achieved. For example, the reduction in the access charge relative to the competitor to reflect the value of the contribution should not fall below the incremental floor price as this would preclude the Access Provider from recovering its efficient costs.

Recommendation

- > **The proposed clause 3.3(b) is unnecessary as the Access Provider does not compete in downstream markets and is required to comply with the statutory requirements in sections 104 and 125 of the QCA Act**
 - > **The limits on price discrimination should seek to achieve competitive neutrality in the net cost of access where a capital contribution is required and the full economic benefit is unable to be returned to the Access Seeker.**
-

Renewal Provisions

The Draft Decision also includes provisions which allow existing Access Holders to obtain a 'one-off' ability to achieve long term price certainty, or at least for the duration of the renewed agreement.

Essentially, Access Seekers must renegotiate a term consistent with the economic life of their own sunk investments.

Aurizon Operations recognises the benefits to mineral customers in being able to secure long term price certainty subject to changes in cost or risk. However, the renewal arrangements also need to reflect any relevant factors associated with the initial negotiated price. For example, if the initial price was discounted on the expectation of improvements in market conditions for that commodity, the renewal provisions could be contrary to the Access Provider's interests.

The drafting is also overly restrictive by requiring that the renewed access rights must be associated with an *identical number of train services which are identical in all respects*. This would preclude the Access Seeker from being able to renew on largely revenue neutral terms if it sought to reduce the number of train services and change its rolling stock configurations. Similarly, the Access Seeker may seek to contract for a reduced number of services to reflect proposed productivity improvements which would reduce the required number of train paths for an equivalent service in terms of expected net tonne kilometres. It is highly desirable, and consistent with ensuring the prices include incentives to improve productivity, that the access rights can be renewed on terms which reflect the change in operations but represent no material variance in cost or risk to the Access Provider. This is also important in capacity constrained corridors and end users have a desire to increase capacity and throughput in the most efficient/lowest cost means.

The renewal provisions are also of little practical relevance to intermodal freight which has ongoing renewal of access agreements for shorter durations due to market uncertainty and competitive risks. It may also be necessary for prices in these markets to vary to have regard to changes in market conditions (i.e., due to changes in the competitiveness of modal substitutes).

The renewal provisions are therefore likely to be relevant to a small number of users of Queensland Rail's network such as the mineral traffic on the Mt Isa rail corridor. Aurizon Operations, as it has proposed in previous submissions to the QCA, supports a broader requirement that where an the Access Provider is proposing a renewal access charge which differs by more than CPI from the current access charge, then the Indicative Access Proposal should include details on:

- > The relevant changes in cost or risk associated with the variation of the proposed access charge from the current access charge;
- > The change in market conditions and relative prices of substitute services which supports those increases; and
- > Where the proposed variation is associated with differences in the Access Seeker's rolling stock configuration and/or operating plan, and there is no commensurate reduction in expected net tonne kilometres, how the proposed variation is limited to mitigating any economic loss from the reduction in train paths

Recommendation

- > **The requirements for an Indicative Access Proposal in response to an access application which seeks to renew existing access rights in an access agreement should include detailed explanatory material where the Access Provider proposes changes in the price or methodology for determining the price relative to the price of the existing access rights**
 - > **The proposed renewal provisions should also support a reduction in access rights for increased productivity subject to no net financial effect on the Access Provider**
-

Hierarchy of Pricing Principles

As a general principle Aurizon Operations supports the elevation of the limits on price differentiation above revenue adequacy. However, there may be circumstances where discrimination is required in order to achieve revenue adequacy. This would necessarily require the approval of the QCA in order to ensure there are no adverse impacts on competition in upstream or downstream markets. The QCA should ensure that the undertaking does not preclude the QCA from making an access determination which is inconsistent with the proposed ranking of the pricing principles.

The elevation of pricing limits above revenue adequacy is potentially inconsistent with other aspects of the Draft Decision. For example, the RAB value review provisions in clause 1.2(b) of Schedule E have regard to the ability to pay and the possibility of actual bypass. Prices up to and not exceeding these threshold points may exceed the amounts determined under the revenue limits. This is most likely to occur where demand declines at the extremes of a linear corridor and the resultant prices for other users who do not use that infrastructure are required to recover the total system costs.

Recommendation

- > **The QCA should clarify the operation of the RAB optimisation provisions in the context of the hierarchy of pricing principles and the Western System reference tariffs.**
-

Western System reference tariff

Aurizon Operations largely supports the QCA Draft Decision on the Western System reference tariff and considers that it represents an appropriate balance of interests of various stakeholders. However there remains substantial uncertainty as to the ongoing capacity availability over the applied economic life of the asset and potential asset stranding risks associated with the future development of the proposed inland rail alignment. As a consequence, rail operators, customers and the access provider are required to make investments with uncertainty.

The Draft Decision substantially mitigates some of this uncertainty by adopting a line in the sand approach under which investment decisions can be considered and optimisation of maintenance, operations and capital expenditure can be evaluated.

The Draft Decision also reflects the unique engineering and operational arrangements which prevail for Western System users and has been appropriately reflected in the high maintenance cost and low asset value used to derive an efficient cost base having regard to relevant economic drivers. For these reasons the Draft Decision does not necessarily represent a benchmark or regulatory precedent which would be binding to other rail corridors. Aurizon Operations therefore requests that this be specifically noted by the QCA in its final decision.

The QCA has sought to appropriately address the implications of the significant lag between the approval date of the 2015DAU and the originally proposed commencement date for the reference tariff of 1 July 2013. Aurizon Operation's views on this position were expressed in section 2 of this submission.

The QCA's assessment of the opening asset value is consistent with previous submissions made by Aurizon Operations on both the 2013DAU and the 2015DAU. This section addresses the following aspects of Draft Decision as it relates to the Western System reference tariff:

- > Scope of the reference service;
- > Forecast coal volumes and the volume reset mechanism;
- > Cost allocation methodology; and

> Take or Pay capping.

Scope of the reference service

The 2015DAU does not include a reasonable description of the scope of services which are subject to the access undertaking. Aurizon Operation's submission to the 2015DAU recommended that the definition of Access be amended to align to clause 2.1(b) of 2008AU and as defined in Aurizon Network's 2014DAU.

These provisions are important in the context of the Western System reference tariff as the 2015DAU defines Access as the operation of a train from a specified origin to destination and, therefore, potentially excludes a range of other activities associated with the use rail transport infrastructure for the purpose of transporting coal.

Similarly the specification of the reference service only requires Queensland Rail to provide below rail services but does not address what comprises the provision of access for the purpose of operating a train service, which includes, without limitation:

- Loading and unloading of a train service;
- Locomotive repositioning;
- Undertaking rollingstock examination on route;
- Marshalling and shunting; and
- Rolling stock stowage

Where the QCA does not consider it appropriate to amend the definition of Access, then the Final Decision should outline the reasons for the departure from regulatory precedent which applies to the rail transport infrastructure that is subject to the 2015DAU. The 2015DAU specification of the reference train should also be amended to include the full scope of activities which are associated with the use of rail transport infrastructure for the transportation of coal in the Western System. This would provide greater certainty to Access Seekers that the operation of these services will not result in charges or penalties for services not captured by the definition of access.

Forecast coal volumes and volume reset mechanism

The underlying reference tariff in the QCA's Draft Decision of \$18.88 per thousand gross tonne kilometres is significantly influenced by the reduction in volumes associated with the cessation of operations at the Wilkie Creek mine and suggests that further reductions in the reference tariff could be achieved where the contract volumes for coal carrying services are commensurate with the upper limit of allocated coal capacity (**Contractual Upper Bound**).

Aurizon Operations strongly supports the retention of a price cap form of regulation to promote financial incentives to improve the throughput of the coal supply chain. The primary objective of this framework is to ensure that the potential for increased access revenue arises predominantly from either the increased availability of train paths or the rail volumes exceeding that which would be expected from operations at the Contractual Upper Bound. This also reflects the strong downside revenue protection Queensland Rail obtains from take or pay arrangements.

However, the QCA has sought to balance Queensland Rail's legitimate business interests of recovering its efficient costs by establishing the tariff on the basis of forecast volumes. As the forecast volumes are substantially lower than the Contractual Upper Bound, Queensland Rail could earn revenue substantially in excess of the target revenue for reasons other than railing above the contractual upper bound.

Similarly, Access Seekers may rely on ad hoc path availability in order to avoid the take or pay liability associated with contracting for that additional capacity.

In order to overcome these incentives, the QCA has proposed a volume reset of the tariff where the contracted volumes exceed the forecast volumes. By increasing the contract volumes above this amount Access Holders would obtain a reduction in their reference tariff and are provided a strong incentive to contract for available capacity.

The ability of Access Holders to achieve this outcome is potentially constrained by:

- > Queensland Rail obtaining a financial benefit from ad hoc - and not contract - volumes with the potential to create incentives to delay execution of an access agreement; or
- > The inability to contract for those paths due to the application of the queuing provisions and potential delays or disputes in the negotiation between an Access Seeker and the Access Provider.

Aurizon Operations considers this issue can be overcome by allowing Access Seekers to contract up to the Contractual Upper Bound on a provisional basis. This would allow the paths that would otherwise be utilised on an ad hoc basis to be contracted while Queensland Rail completes negotiations with an Access Seeker. The provisional paths would then be resumed and allocated to the Access Seeker to align with the commencement of their access rights. Aurizon Operations considers this approach is consistent with the obligation of the Access Provider to address the reasonable requirements of an Access Seeker.

Where the efficient maintenance and operating costs have been assessed based on the forecast system volumes, then it would also be necessary for the target revenue to be adjusted to reflect the additional incremental costs associated with the additional volumes. Aurizon Operations considers that it is preferable that this be determined upfront through appropriate formulaic adjustment in order to limit the impact of any delays in approving the revised reference tariff.

Take or pay needs to reflect avoidable costs

Aurizon Operations supports the Draft Decision to uplift the take or pay from its current percentage of 80% as this is necessary to ensure internal consistency with the allocation of costs and risks assumed in the determination of the reference tariff.

The Draft Decision proposes to increase the take or pay obligation to 100% of the access charge. This would result in the Access Provider recovering more than the efficient costs as some maintenance and operating costs would have been avoided from the contracted service not operating.

The take or pay obligation should therefore exclude avoidable costs. These costs should be symmetrically proportional to the incremental costs added to the target revenue associated with the addition a train service as described above.

Cost Allocation Methodology

The Draft Decision proposes to allocate capital and other costs between coal and non-coal services on the basis that the system is a constrained network and coal carrying train services are precluded from contracting capacity above the level predetermined by the Shareholding Ministers reflected by passenger priority and preserved train path legislation.

The Draft Decision is consistent with allocative efficiency where it can be demonstrated that there would be additional demand from coal services up to the full system capacity if the relevant contracting restrictions were lifted. Aurizon Operations understands that the feasible capacity of the Port of Brisbane coal handling facility exceeds the Contractual Upper Bound.

Aurizon Operations recognises that the Draft Decision is reasonable and theoretically correct, but notes that there are consequences from this approach, including:

- > The potential for the Access Provider to not recover its efficient costs associated with sustaining capex within the rail corridor where non-coal volumes or prices do not provide a sufficient return; and
- > The need for rebate arrangements to be appropriately adjusted to ensure alignment of rebate payments with the attributable revenue to those investments

Aurizon Operations also notes that not all rail infrastructure on the Western System may be common between coal and non-coal services and this infrastructure should be directly allocated to the appropriate service accordingly. For example, tunnel deepening may not provide any direct benefit to coal carrying train services and is therefore not a common cost.

The application of a price cap form of regulation is therefore essential to allow the Access Provider to recover any revenue deficit associated with the fixed cost allocation methodology from ad hoc coal services above the Contractual Upper Bound. Queensland Rail would be able to minimise the non-coal shortfall by working proactively with market participants to maximise the use of all train paths, even if it is constrained from contracting for those services.

Recommendations

- > **The Undertaking should clearly specify the range of activities the Access Holder is able to undertake on rail transport infrastructure relevant to the reference service and reference price**
 - > **The take or pay, target revenue and reference tariffs should be symmetrically proportional to the avoidable costs associated with not operating train service or adding additional contracted services**
-

Queensland Rail's obligations to maintain and provide a service consistency

Operating Constraints

At the time of executing an Access Agreement, both the Access Seeker and Access Provider agree on the Sectional Running Times applicable to the part of the network that will be utilised based upon the boarded speeds at the time. Aurizon Operations has recently reviewed information and found that the boarded speed during the term of existing Access Agreements has substantially reduced as a result of permanent speed changes across the network. Aurizon Operations has two concerns with this:

1. Aurizon Operations has formed the view that the cause of permanent speed restrictions changes may be due to an overall reduction in the 'Standard' of the track. This has occurred through a combination of issues including track degradation, reduced maintenance and less than adequate monitoring, and subsequent ability to adequately to respond to, operational matters to prevent accelerated track degradation; and
2. Aurizon Operations has found it difficult to monitor the impact of these changes as Queensland Rail does not report on changes to boarded speed times from contract boarded speed times

As a rail operator, Aurizon Operations will seek to optimise operations and find improvements to the schedule to accommodate the changes to meet contracted volumes. However this overall increase in

transit time, due to track quality, has pushed the cost of slower cycle times onto the rail operator, decreasing the quality of rail services compared to road without subsequent price adjustments.

Aurizon Operations considers the boarded speed limits are a matter relevant to infrastructure standards. It should therefore be subject to the compensation provisions in clause 8.12 of the access agreement due to a Net Material Financial Impact - but it is noted that this relies on interpretation. Therefore, for avoidance of doubt, Aurizon Operations submits that this should be explicitly addressed by ensuring that the benchmark transit time for the relevant service is defined within the Interface Standard and relevant to that Access Agreement. A benchmark transit time would therefore refer to:

the time it takes in minutes for the contracted train service to travel at the nominated speed limits from its origin to destination as applied at the commencement of the access agreement, or as otherwise agreed.

The compensation provisions also require that the proposed amendment to the Infrastructure Standards must impose an average annual net cost of more than 1% of the annual access charges before compensation is required to be paid. The difficulty in the construction of these provisions is that permanent speed restrictions in isolation may not meet this threshold, but cumulative impacts of individual changes may substantially exceed the threshold. This exposes the Access Holder to potentially significant changes in its operating costs over the duration of the agreement without recourse to the Access Provider. In order to address the accretive impacts associated with multiple permanent changes in nominated speed limits, the compensation provisions should also be amended to refer to the proposed amendment or the cumulative impact of the proposed and previous amendments of the same type (for the avoidance of doubt the cumulative impact of changes to the benchmark transit time).

Recommendation

- > **The definition of infrastructure standards should include an explicit reference to a benchmark transit time and the compensation provisions in clause 8.12 of the standard access agreement amended to consider the cumulative impacts of changes from the benchmark transit time**
-

Maintenance Costs

To determine the efficient maintenance costs for the Western System, the QCA engaged a consultant, B&H Strategic Services Pty Ltd (B&H), to assess the reasonableness of Queensland Rail's proposed costs.

The B&H report is difficult to fully analyse due to the number of instances where confidentially has been claimed over certain metrics. To allow for a complete review and stakeholder consultation, information must be freely available. Aurizon Operations does not understand why the information within the B&H report has had confidentially claimed over it, as other Access Providers within Queensland have provided similar detail to stakeholders as part of their regulatory process.

The QCA's assessment resulted in the conclusion that Queensland Rail's maintenance for the Western System should be reduced from Queensland Rail's proposed \$143million over the term of the Access Undertaking, to \$114.6million.

Overall, of the \$114.6m being proposed by the QCA as the efficient maintenance allowance for the Western System, the QCA's assessment has concluded that 78% of this is attributable to coal traffic and of that amount, 67.4% are fixed costs. This then results in an allocation of \$89.6m to coal traffic and the balance to non-coal traffic.

The QCA's analysis has apportioned the reduction to a combination of reasons, with the majority being due to either:

- > the scope and/or unit rates in various maintenance activities being assessed as excessive in nature and did not reflect the efficient costs of that particular activity. This reduction was primarily within the re-sleeper program; or
- > the maintenance activity has the purposes of 'prolonging the life of the formation' and, in the case of ballast undercutting, should be assessed in conjunction with the formation repair program and treated as capital.

Aurizon Operations welcomes the QCA's assessment of the efficient costs, specifically where the unit costs are greater than current market rates.

Aurizon Operations would, however, caution the QCA reasoning of treating ballast undercutting as capital due to its assessment that it is a substitute for 'formation repair where the damage is not deep'³ and, therefore, combining formation repair and ballast undercutting together. Ballast undercutting is completed for a range of reasons, including drainage and interlocking of the other rail infrastructure elements to prevent movements under load. Formation repair and ballast undercutting should be considered separate activities that are clearly benchmarked and measurable. Notwithstanding, Aurizon Operations also acknowledges that some railway owners capitalise ballast undercutting for accounting purposes and that capitalisation reduces the quantum of the maintenance costs in the building blocks and can reduce tariff volatility where these activities are not expected to have a consistent and stable scope over time.

As noted, the B&H Report is heavily redacted, so there is no visibility of the undercutting scope that Queensland Rail proposes to complete during the term of the Access Undertaking. It is difficult to understand why this has been treated as confidential given that other Access Providers have detailed out their maintenance activity scope in kilometres within their public submissions. Furthermore, the B&H Report does not provide any detail that assists stakeholders provide feedback on the appropriateness of the scope.

Aurizon Operations therefore considers that the QCA should, in its Final Decision on the 2015DAU, provide commentary conveying that it has reviewed the scope for maintenance activities and provided a decision that articulates the appropriateness of the methodology to construct it and the ability for Queensland Rail to deliver the scope. This should then be reflected within the reporting requirements of Section 5 of the 2015DAU.

Recommendation

- > **The Final Decision should ensure that the scope of maintenance should be appropriately specified to ensure the efficacy of the maintenance cost reporting requirements**
-

Resurfacing

Again, the resurfacing scope content of the B&H report has been redacted, so stakeholders cannot provide full commentary in relation to this activity.

Although it generally supports the QCA's review of maintenance costs, Aurizon Operations has concerns over the reduction in the resurfacing allowance.

³ B&H report, Section 2.3.4.1, Pg. 12

Resurfacing is a critical activity to the operation of train services as, over time, train loads and speeds result in increased forces upon the track infrastructure. These forces result in surface irregularities which, when left untreated through a maintenance activity (i.e. resurfacing), results in a direct increase in the number of speed restrictions over the affected sections which, ultimately, results in an increase in the sectional running times and costs to the operators.

Resurfacing helps maintain the rail's 'top and line', which is critical to the delivery of operations upon the network. If there is inadequate preventative resurfacing, speed restrictions quickly develop. Speed restrictions are generally put in place as a result of mud-holes developing below the base of a sleeper. If these mud-holes are not promptly rectified, vastly more expensive issues develop, including:

- > The corners on the sleepers eventually grind off, which reduces their ability to absorb the impacts from rolling stock thus transferring larger forces directly to the ballast and formation. This ultimately results in accelerated maintenance activities on both ballast and formations.
- > In the event of rain, the ballast underneath the sleeper setting like concrete, forcing the rail to lose the required elasticity. This creates greater forces on both the infrastructure and rolling stock.

Access Providers should aim to minimise speed restrictions through preventative activities. If a mud-hole develops, a more frequent resurfacing program will be required in that section of track, as resurfacing will not provide a 100% fix for the issue.

The B&H Report has recommended that there be a reduction in the overall resurfacing costs of \$3,950,000 over the term of the Access Undertaking. This is a reduction of over one third of Queensland Rail's proposed allowance. The B&H Report has linked parts of this reduction to both the re-sleepering program and ballast undercutting program, so a portion of the overall reduction may have been transferred into these costs categories.

In either scenario there has been a reduction in the resurfacing allowance and it is unknown if this has also resulted in a decrease in the required scope as the relevant detail is redacted. If there is a reduction in the proposed scope, then the QCA should evaluate the historical resurfacing activities against the change in temporary speed restrictions in order to assess the potential relationship, and subsequent consequences, of a reduction in resurfacing scope.

There is a balance between reducing an allowance for works during the term as a result of an independent consultants recommendation (who is not accountable for any outcome as a result of the reduction) and the Access Provider being unable to provide the service for which it must recover 'at least' its efficient costs.

A reduction in the maintenance allowance and scope results in a transfer of the operational costs from the Access Provider to the Operator as a deterioration in track quality will result in additional costs to rail operators through both maintenance on locomotives and wagons, as well as additional operational delivery costs (e.g., labour, fuel, etc.)

The reduction in the maintenance allowance also has to be considered in the context of the Access Agreements. The QCA, as part of its Draft Decision on the Standard Access Agreement, has required Queensland Rail to provide Access Holders with periodic KPI reporting. One of the reporting metrics is the Sectional Running Times. A reduction in the resurfacing allowance and a subsequent reduction in the track quality could result in the required performance indicator not being met.

Furthermore, a deterioration in the standard of the network results in delays to services. Aurizon Operations has based its rolling stock fleet and resource requirements on the network standard at the time of contracting. If the network standards are lowered and, hence, causes an increase in the transit time of services, Aurizon Operations may require additional rolling stock and/or resources to meet its obligations to end customers.

Recommendation

- > **The QCA should evaluate the prospective long term consequences of regulatory error in the determination of the resurfacing scope and whether those consequences materially outweigh a reduction in the maintenance cost allowance**
-

4

Promoting above rail productivity gains

The QCA's Draft Decision approves Queensland Rail's proposal to remove the Access Agreement Principles (previously Schedule E) from the Access Undertaking. These principles provided the baseline for what must be contained within an Access Agreement. The decision to remove these principles was made in favour of having a Standard Access Agreement apply for all traffic types. The Access Undertaking now requires that all Access Agreements conform to the Standard Access Agreement unless otherwise agreed by Queensland Rail.

Aurizon Operations considers that this decision removes any commercial innovation or flexibility for non-coal agreements. The Access Undertaking does not include obligations on the Access Provider to reasonably consider and respond to Access Holder requests for variations which would result in productivity gains. The current drafting provides Queensland Rail with the ability to reject any such requests to vary the terms of the Standard Access Agreement and provides no alternative process for the Access Seekers via a dispute resolution mechanism.

Aurizon Operations strongly submits that if the Access Undertaking and Standard Access Agreement does not include appropriate clauses which require the Access Provider to reasonably respond to requests from an Access Holder to improve the productivity of its rail operations, this will impair efficiency gains in the operations of the whole supply chain and not enable the Access Provider to promote the objects of Section 69E of the QCA Act.

Standard access agreements should be restricted to train services which have a reference tariff

The primary purpose of a Standard Access Agreement is to limit or reduce the scope of discrimination which might arise between the operations of related party rail operator and those of a competitor. That is, they have a distinct objective to promote competition. They are also typically only relevant to the specification of the underlying risk allocation associated with a defined reference service and reference tariff. This principle is common across multiple regulated industries, including gas, where the approved gas access arrangement is relevant only to the reference service.

In contrast, the function of an indicative access agreement, similar to that which applies with the ARTC and other railway managers, is simply to reduce the information asymmetry between the Access Provider and the Access Seeker and to improve the efficiency of negotiations by providing a well progressed starting point for the commencement of negotiation. However, no part of the indicative access agreement is binding on either the Access Seeker or the Access Provider.

Where train services are not subject to a defined reference tariff, the Access Seekers should have the ability to negotiate the terms and conditions of access with the Access Provider and not be subject to the provisions of the Standard Access Agreement. Aurizon Operations is strongly of the view that the application of the Standard Access Agreement as applied under the QCA's Draft Decision is inconsistent with the intention of the negotiate-arbitrate model as:

- > it precludes the ability to arbitrate the terms of access which might be associated with promoting efficiency or competition; and
- > it is not feasible for the QCA to predetermine all the potential terms and conditions which might be associated with every access agreement an Access Seeker might require.

Aurizon Operations therefore considers that the relevant undertaking provisions in Section 2.9.4 should be amended to explicitly state that the Standard Access Agreement:

- > is applicable to reference services approved under this Access Undertaking and may be amended as agreed between Queensland Rail and the Access Seeker; and
- > is indicative for all other access negotiations, subject to the condition that an Access Seeker is permitted to request amendments from the Standard Access Agreement where this would better satisfy the reasonable requirements of the Access Seeker and Queensland Rail is required to appropriately consider such a request.

Improving the productivity of rail operations

Of significant concern to rail operators when negotiating long term access rights with structurally separated Access Providers is the lack of flexibility and commercial implications of seeking to improve the productivity and efficiency of their operations.

In negotiating an access agreement the Access Provider is seeking to obtain long term revenue certainty and a price is negotiated having regard to the costs and risks of providing the service. This price will also have regard to the proposed operating plan and rolling stock configurations initially proposed by the Access Seeker.

It is not practical to foresee all prospective changes in operations and rolling stock that might be contemplated over the duration of the access agreement and to ascribe an alternate access charge to each of those changes. This can result in a conflict between certainty and technical/dynamic efficiency. In the absence of an alternate demand for capacity, which may be realised from an improvement in the productivity of the Access Holder's rail operations, the Access Provider has weak incentives to negotiate variations to an existing access agreement.

The efforts of the operator to improve the productivity and competitiveness of its operations can also provide opportunities for the Access Provider to expropriate those efficiency gains. This can be done by seeking to vary the price substantially more than necessary, to reflect any changes in cost or risk, or to offset any loss of revenue associated with the proposed changes in operations and rolling stock.

Section 101 of the QCA Act contains an obligation on the Access Provider to satisfy the Access Seeker's requirements as follows:

"In negotiations between an Access Provider and Access Seeker for an access agreement, the Access Provider must make all reasonable efforts to try to satisfy the reasonable requirements of the Access Seeker"

To support this position, Aurizon Operations considers the 2015DAU should include a requirement that where an operator seeks to vary the terms of an access agreement to improve the efficient use of railway facilities, then the Access Provider must make all reasonable efforts to satisfy those requirements and limit any variations in the access charge to the direct change in cost or risks associated with the changes proposed by the Access Holder.

Aurizon Operations has recently undergone a substantial review of the operational performance of its rolling stock. Part of that process has been exploration of innovative alternatives to current operations and, more specifically, to operate longer trains and different configurations. The exploration of these alternatives has the ability to benefit all parts of the relevant supply chain, in particular through the freeing up of capacity within existing systems. This would help avoid costly expansions of below rail networks or other forms of capital expenditure within other parts of the supply chain.

A key objective of Part 5 of the QCA Act is the efficient utilisation and investment in rail infrastructure with prices for access that provide incentives to improve efficiency. This is also intended to have the effect of promoting effective competition in upstream and downstream markets.

Accordingly, there is a trade-off and inherent tension between the objectives of promoting transparency and coordination for the purpose of improving efficiency, and allowing effective competition to operate in the downstream market. The standardisation or homogenisation of train services through the provisions of the standard access agreement merely serves to restrict a competitive market by limiting the scope of competition to only price.

The inherent problem with standardisation is that it can preclude any differentiation intended to address the individual preferences of end customers; the role of a competitive above rail environment is to respond to those differing customer preferences through innovation in commercial offerings. The effect of standardisation in the below rail contracting framework can be to limit and stifle such innovation.

Importantly, the inflexibility associated with long term contract rigidity may also adversely affect an existing operator's ability to compete where a competitor is able to contract on more efficient operations during the term of that access agreement.

An access undertaking that facilitates efficiency

Aurizon Operations is strongly supportive of an access undertaking which facilitates rail operators and other supply chain participants to improve their productivity and operational efficiency. Importantly, the Draft Decision has the effect of creating significant financial disincentives in terms of rail operators pursuing productivity improvements. This is because under the proposed access undertaking, Queensland Rail is not required to participate with rail operators in negotiating fair pricing and capacity outcomes for these improvements. Aurizon Operations believes this is a fundamental flaw in the framework adopted in the proposed access undertaking and strongly recommends that appropriate changes be made to ensure that improvements in the utilisation of capacity, and not just paths, is incentivised.

Furthermore, Aurizon Operations is concerned that where an operator is seeking to implement operational efficiencies that have the effect of reducing the number of Train Service Entitlements to deliver the same volumes, the reduction of paths will be subject to a relinquishment fee for the required full value of the access charges over the remaining term.

Clause 2.4(b)(iv) of the 2006 Competition Principles Agreement (CPA) notes that the State access regime should incorporate the principle that regulated access prices should be set so as to provide incentives to reduce costs or otherwise improve productivity. Where a service provider is currently earning revenue below its revenue ceiling levels, it may have strong incentives to seek to fully capture the value of efficiency incentives in the rail haulage market. This arises because the rail operator would need to negotiate the ability to reduce path requirements upfront and disclose its potential innovations and productivity gains. Alternatively, at the time of entering a new agreement, the rail operator might seek a reduced number of paths for the same traffic task. Again, the service provider might seek to increase access charges to capture the value of these above rail efficiency improvements.

The transfer of these efficiency gains to the service provider removes the incentives for rail operators to innovate and pursue productivity gains. It is therefore inconsistent with the principles of the CPA. Accordingly, Aurizon Operations submits that the QCA should have regard to the need to provide incentives for reducing costs and improving productivity associated with the use of the regulated service.

Aurizon Operations has previously submitted in response to the QCA Draft Decision on Aurizon Network's 2014 Draft Access Undertaking⁴ and in response to the Queensland Rail 2015 DAU⁵ on the issue of impairments to efficiency associated with relinquishment fees where the size of the fee is disproportionate to the associated potential loss in access revenue. Aurizon Operations considers that relinquishment fees should be capped so as to not exceed the reduction in revenue associated with the variation in an access agreement arising from improving the productivity of train services.

Aurizon Operations maintains that relinquishment fees which exceed the costs, or lost revenue, to the Access Provider are inconsistent with the requirements of Section 168A(d) of the QCA Act which requires that prices include incentives for efficiency.

Preventing changes to MTP that removes efficiency

Aurizon Operations is supportive of an access undertaking that provides greater flexibility for Queensland Rail and Access Holders to make changes to a Master Train Plan (MTP), without restrictive review triggers. Less prescriptive provisions will support the ability for rail operators to request changes to a MTP that are intended to improve efficiency. Aurizon Operations also agrees that a clause preventing changes (should parties dispute any MTP or DTP change) is a prudent inclusion. However, clause 2 of Schedule F of the 2015DAU has been amended such that it is not clear what criteria will be used for assessing whether or not a change to the MTP should be made in the following circumstances:

- > a change to the MTP would not adversely impact any Access Holder's scheduled train service entitlement from being met (or, if it would, the provisions of the proposed clause 2.1(m) of Schedule F have been satisfied);
- > a change to the MTP will allow all Planned Possessions to be met; and
- > any adjoining rail infrastructure networks can accommodate the proposed change.

It is not clear why Queensland Rail would oppose an Access Holder's proposal to make a change to the MTP if these conditions are satisfied, particularly where it would improve supply chain efficiency or facilitate schedule optimisation to enable lower cost maintenance possessions or improve train path availability.

Despite the benefits of a less restrictive MTP review process, Aurizon Operations believes that the absence of the ability of Access Holders to have proposed changes approved where the above criteria are satisfied may make disputes more likely, since it provides the potential for Queensland Rail to make a change to a MTP without consideration for the efficiency of Train Services.

Recommendation

- > **Amend the undertaking to make it mandatory that the Access Provider substantiate the reasons why an Access Seekers request cannot be achieved through altering the terms and conditions prescribed in the Standard Access Agreement**
 - > **Access Undertaking and Standard Access Agreement to include an obligation to negotiate productivity variations in good faith subject to no financial disadvantage to Queensland Rail**
-

⁴ Submission to the Queensland Competition Authority Draft Decision on Aurizon Network's 2014 Draft Access Undertaking 17 April 2015

⁵ Submission to the Queensland Competition Authority Queensland Rail's 2015 Draft Access Undertaking 5 June 2015

-
- > Amend the provisions relating to relinquishment fees to cap the obligation to pay a relinquishment fee associated with a variance to train service entitlements and rolling stock configuration to the variation in access revenue arising from that change
 - > Amend the Network Management Principles to include provisions that allow Access Holders to request MTP changes to support operational efficiency, and to require that MTP changes requested by Queensland Rail do not result in reduced train operation efficiency.
-

5

Maintaining the tripartite agreement

The tripartite access agreement contemplates that it may be entered into by more than one operator in circumstances where an Access Holder chooses to have its access rights operated by more than one operator. This gives rise to a number of issues:

- > while the draft proposed by the QCA attempts in some instances to deal with the fact that there may be multiple operators under one access agreement, the draft does not consistently deal with the potential for having multiple operators under the same agreement. For example, the termination provisions appear to address the fact that the agreement may be terminated in relation to a particular operator, but the security provisions do not appear to address this issue;
- > having multiple operators as a party to one access agreement gives rise to confidentiality concerns where confidential information in relation to one operator may be disclosed to another operator. Some of the schedules of the access agreement contain commercially sensitive operational details, such as sectional running times. Arrangements should be put in place to quarantine individual operator's commercially sensitive information and an obligation should be included to ensure that Queensland Rail and the Access Holder are prohibited from disclosing any individual operator's commercially sensitive information under an access agreement to another operator; and
- > under clause 27.4 of the Standard Access Agreement, unless an amendment to the access agreement only relates to Queensland Rail and an Access Holder, all parties are required to execute any variations to the access agreement. This means that if multiple operators are party to one access agreement and a variation to the access agreement is required which would benefit one operator but not the other, the second operator could refuse to approve the variation.

These issues could easily be overcome by ensuring that Queensland Rail, the Access Holder and each operator enters into a separate access agreement in respect of the access rights to be operated by that operator. This would clarify any confusion which ensues from having multiple operators being a party to one access agreement and means that the access agreement truly is "tripartite."

A similar approach has been successfully adopted under existing access undertakings for other Access Providers in Queensland. To assist in providing the Access Holder with greater flexibility in the utilisation of its contracted haulage services with different operators, Aurizon Operations would support an Access Holder being allowed to share the allocation of its access rights across multiple access agreements by being allowed to vary its operator nominations in this way. This is consistent with customer initiated transfer provisions included in previous standard access agreements but would be simplified by the same customer being a party to both access agreements.

Recommendation

- > **Remove the ability to have multiple operators as parties to the same tripartite access agreement and amend the access agreements to support the ability for an Access Holder to allocate the right to operate access rights across multiple access agreements**
-

Reducing the level of prescription regarding access agreements to allow commercial and contractual innovation

The rail infrastructure managed by Queensland Rail supports a large diversity of train services which operate across multiple markets and are subject to varying economic characteristics. Many of the markets in which rail services are provided are subject to constrained market pricing associated with substitute services such as road haulage. Below rail pricing without reference to changes in the productivity and efficiency of competing services has direct impacts on the ability of rail operators to fund innovation to improve the efficiency and utilisation of rail infrastructure.

While Queensland Rail, or a related party, does not compete directly in the downstream market, the efficiency, reliability and availability of access to the declared service has a material impact on promoting demand for those services. Improvements in the scale of the market for transportation by rail associated with improvement in the efficiency and utilisation of rail infrastructure is a key driver of promoting competition in the overall freight market.

Negotiate-arbitrate model

Aurizon Operations' preference is for the Queensland Rail 2015DAU to provide a framework which promotes and strengthens the effectiveness of the negotiate-arbitrate model as intended by the Competition Principles Agreement through:

- > Providing a set of principles or a framework for negotiation and agreement of commercial outcomes for use of Queensland Rail's infrastructure;
- > Ensuring the undertaking adopts an appropriate allocation of risk and substantially reduces Queensland Rail's discretion to transfer risks which are best managed by the Access Provider through the Standard Access Agreement;
- > addressing the substantial information asymmetry in the access negotiation through the disclosure of the relevant price and cost information to the Access Seeker;
- > ensuring the Access Provider has sufficient incentives to improve efficiency and support an effectively competitive above rail market by supporting a rail operator's operational efficiency and innovation initiatives;
- > the increased accountability on the Access Provider through performance reporting and consultation requirements in relation to variations to the master train plan;
- > improving the predictability of the likely changes in the efficient costs of providing the access through sufficiently disaggregated financial information; and,
- > incentivising the movement of freight from road transport to rail transport through efficient and effective pricing of access to the rail infrastructure.

Balancing prescriptiveness with contracting flexibility

Aurizon Operations supports having a regulatory model which promotes commercially negotiated outcomes for rail access and reflects the legislative intent of establishing a negotiate-arbitrate model.

The concept of prescriptiveness may appear counter intuitive to the intent of the negotiate-arbitrate model where aspects of the commercial negotiation are determined upfront by the independent regulator. Alternatively, prescription could be interpreted as including a greater degree of structure regarding the provision of information, obligations on parties to the negotiations and increased oversight of the conduct of negotiation. Aurizon Operations prefers the latter interpretation as being consistent with promoting an effective negotiation.

The regime's prescriptiveness should be proportional to the level of the Access Provider's market power, the industry structure and the objective of promoting competition. For Queensland Rail, while it is a monopoly provider of below rail services, there is competition for services through the use of alternative transportation methods. Irrespective of this, there are sufficient grounds to require an increase in the cost and asset performance transparency to improve the effectiveness of negotiation with minimal regulatory costs to the Access Provider.

The 2015DAU should include prescriptiveness around the process for negotiating access, pricing for access, future developments of the rail network, reporting and dispute resolution. It is of key importance to Aurizon Operations that the Access Provider commits to responding to Access Holder and Access Seeker requests in a timely manner, and that the responses provide all the information needed to assess whether to take up a haulage opportunity.

While Aurizon Operations acknowledges that an access undertaking is required to specify a maximum time for an access provider to respond where there is high demand, these timeframes effectively become default target dates. In order for rail to respond to tenders for transportation services, rail operators need to be able to match the timeframes associated with competing modes. This necessarily requires the Access Provider to be responsive and provide indicative access proposals in much shorter timeframes.

Where the level of prescriptiveness should be removed is in the principles for inclusion in an access agreement. An access agreement, consistent with the negotiation-arbitrate framework, should:

- > Allow for Access Holders and rail operators to move forward and grow/change operations in the future as new technology and engineering advancements become available.
- > Focus on unlocking value, implementing operational changes, improvements and transformation, which may mean a trade-off across above rail and below rail costs and savings to result in a neutral position for Queensland Rail.

Furthermore, depending on the timing of entering an access agreement and a haulage agreement, there can be a mismatch of above rail contract length and below rail contract length. Therefore during the term of an above rail contract, the access position could change and Aurizon Operations may have no ability to amend the above rail contract to reflect the change, resulting in an increased level of risk for Aurizon Operations. Having a principles based framework, rather than a fixed Standard Access Agreement, provides Access Holders with the ability to negotiate the terms of the access agreement to account for this misalignment of term.

Implications for Queensland Rail's 2015DAU

As outlined throughout this Submission, Aurizon Operations believes Queensland Rail should be accountable to Access Seekers and Access Holders through greater transparency of process and reporting of network performance, including maintenance.

Aurizon Operations appreciates that for Queensland Rail, having a mandatory Standard Access Agreement simplifies and streamlines the process for entering into negotiations and finalising an agreement with Access Seekers. However, this has a significant impact upon the commercial terms of an above rail contract for:

- > All non-coal services; and
- > Services where the above rail contract and the access agreement terms are not aligned.

Improvements in the framework to accommodate a negotiate-arbitrate model

Aurizon Operations considers that freight and intermodal access agreements require greater flexibility than what currently exists under the Standard Access Agreement. Some of the reasons for this include the following:

- > Dedicated consists which operate for freight and intermodal services require more prescription around the ability for the Access Provider to implement scheduling changes;
- > Higher competitiveness from alternative logistic providers such as road hauliers in the freight and intermodal markets. Alternative logistic providers offer haulage services without the prescriptive terms and conditions that are included in the Standard Access Agreement; and
- > Seasonality of agricultural products and rail demand profiles.

Aurizon Operations considers that the decision to forego a list of principles for a Standard Access Agreement in the 2015DAU removes any commercial innovation or flexibility for non-coal agreements due to the 2015DAU not including an obligation on Queensland Rail to reasonably consider and respond to an Access Seeker's request to vary terms from the Standard Access Agreement. For example, where road is a competitive threat (eg, intermodal), Aurizon Operations would welcome the development of a pricing mechanism that encourages rail operators to pursue the transfer or conversion of road on to rail, increasing Queensland Rail's aggregate revenue and improving the competitiveness of rail.

The current drafting provides Queensland Rail with the ability to reject any such requests to vary the terms of the Standard Access Agreement and provides no alternative process for the Access Seekers via a dispute resolution mechanism.

Aurizon Operations would encourage the re-inclusion of Schedule E from the current access undertaking, and a relaxation of the requirement to negotiate based on the terms of the Standard Access Agreement.

Ability for Access Holders to negotiate away from the Standard Access Agreement for coal

Where appropriate, provision should be made to allow the parties to negotiate the terms of the Standard Access Agreement for coal services to avoid the terms of the Standard Access Agreement negatively impacting the commercial terms of the above rail haulage agreement. Potential negative commercial implications on above rail haulage agreements which could arise from the terms and conditions imposed in a Standard Access Agreement include the following:

- > inability of rail operators to fully recover an alternative reference tariff structure through the billing provisions of the above rail contract; and
- > a mis-alignment between the respective liability position of the Access Holder and the rail operator under the rail haulage agreement and the access agreement, as the parties have already apportioned liability under the haulage agreement based on the understood liability position as at the time that the rail haulage agreement was executed.

A contributing factor in the potential for misalignment between the above and below rail access arrangements is the uncertainty and variation on the commencement and terminating date of the access undertaking, with rail operators being required to contract based on the expected below rail terms and conditions. To alleviate this uncertainty, an Access Holder requires the ability to negotiate the terms of the Standard Access Agreement subject to facilitating contractual alignment with its customer.

As addressed earlier in this Submission, Aurizon Operations has significant concerns about the same tripartite access agreement being required to be entered into by more than one operator as this would potentially require the disclosure of above rail commercial arrangements.

Recommendation

-
- > **Ensure the 2015DAU provides sufficient prescription around processes and reporting to enable correction of information bias towards Queensland Rail**
 - > **Include a list of principles for access agreements to support a negotiate-arbitrate model for non-coal access agreements**
 - > **The ability for all parties to be able to negotiate away from the standard terms and conditions for coal access agreements**
-

Detailed comments on the Standard Access Agreement

Access Holder definition

The QCA's version of the Standard Access Agreement changes the Access Holder to be either the Customer or the Operator. The Standard Access Agreement will provide for either option in the same template. However, in Schedule 1 of the Standard Access Agreement, Item 1 defines the Access Holder as being the Operator. This needs to be amended, and Aurizon Operations suggests changes to Access Holder definition such that it represents the Customer's ability to be the Access Holder.

Recommendation

- > Amend definition for clarity of an Access Holder being a customer
 - > Amend Schedule 1 to reference the Access Holder, not Operator
-

Access Rights renewal

The QCA has amended the renewals provision (clause 1.2) in the Standard Access Agreement and strengthened the obligation in the 2015DAU (clause 2.9.3) such that Access Holders for all types of access rights have an ability to request renewal of those rights on expiry of the existing access agreement. Aurizon Operations sees this as a positive change as intermodal and freight businesses are subject to the same issues relating to investing funds for long term infrastructure as the coal business has. As a result, Access Holders should be granted similar rights to renew the below rail access.

Access Rights

Access is defined in the 2015DAU as

"...the non-exclusive right to use a specified part of the Network for the purpose of operating Train Services"

Access Rights are defined in clause 2.1(a) of the Standard Access Agreement as

"...the non-exclusive right to access the Network commencing on the Commitment Date for the Train Services until the End Date for those Train Services (unless this agreement terminates earlier in accordance with its provisions or any Law) subject to, and in accordance with, this agreement (Access Rights)"

As noted in section 3, Aurizon Operations considers the scope of what constitutes Access is too narrow, and needs to contain a greater amount of detail similar to that contained in the 2008 Access Undertaking, so that it is clear to Access Seekers and Access Holders what other services are necessary for the operation of Train Services and, therefore, form part of Access. Without sufficient detail, it is not clear what the level and extent of services to be received from Queensland Rail in return for the payment of Access Charges will be. Aurizon Operations believes this concern would be overcome by inserting in the 2015DAU a clause similar to clause 2.1(b) and 2.1(c) of the 2008 Access Undertaking which clarifies what is the scope of the Access Undertaking and hence, the Access Rights being granted to the Access Holder.

Recommendation

- > **Include clauses 2.1(b) and 2.1(c) from the 2008 Access Undertaking in the 2015DAU**
-

Operational Rights

The Standard Access Agreement includes an obligation on Queensland Rail to provide the right to operate train services in accordance with the Train Service Description (clause 3.1), but does not include what was previously included in the scope of Access, including:

- > loading and unloading of a Train at facilities other than Other Rail Infrastructure;
- > Train marshalling and shunting;
- > Train stowage; and
- > use of the Rail Infrastructure such as signalling, train control services and associated communications, access to walkways and crew changeover points, the provision of electric transmission infrastructure on electrified sections of the track and entry upon land.

Aurizon Operations considers this is not workable, as using the Access Rights means it will need to be granted rights separately to undertake these activities. As noted in section 3 on the scope of the reference services, by keeping these activities outside of the scope of what is provided for in the 2015DAU and Standard Access Agreement, Queensland Rail could charge higher fees to allow these services to be undertaken or utilised. As such, Aurizon Operations believes these aspects of operating a train service should be reflected in the scope of the operational rights provided by Queensland Rail in the Standard Access Agreement.

Recommendation

- > **Include clauses 2.1(b) and 2.1(c) from the 2008 Access Undertaking in the 2015DAU**
-

Commercially Sensitive Information

As noted above, having multiple operators as a party to one access agreement gives rise to confidentiality concerns where confidential information in relation to one operator may be disclosed to another operator. As some of the schedules of the Standard Access Agreement contain commercially sensitive operational details, arrangements should be put in place to quarantine individual operator's commercially sensitive information and an obligation should be included in the Standard Access Agreement to ensure that Queensland Rail and the Access Holder are prohibited from disclosing any individual operator's commercially sensitive information under an access agreement to another operator.

Recommendation

- > **Include provisions to protect the confidential information of rail operators**
 - > **Altering the provisions would be unnecessary if the agreement remained exclusively tripartite**
-

Participation in Dispute

Where the Access Holder is the customer, clause 4.6(c) provides that if there is a dispute between the Access Holder and Queensland Rail, the operator will not participate in the resolution of the dispute. Aurizon Operations considers there may be circumstances where the Access Holder would elect to have its rail operator involved in the dispute to enable timely resolution of the dispute. Aurizon Operations therefore submits that the provision should be amended to allow for the Access Holder to elect whether or not to include the rail operator in the dispute process. This would mirror the ability for the Access Holder to determine whether it wishes to be involved in a dispute between Queensland Rail and the operator as provided for in clauses 4.6(a) and 4.6(b).

Recommendation

- > **Provide an ability for the customer as an Access Holder to opt whether to have a rail operator involved in a dispute resolution process**
-

Payment Obligations

The Standard Access Agreement provides in clause 6 that an Access Holder who is a customer can elect to pay Take or Pay and Access Charges or require the Operator to pay Access Charges.

As discussed above in the Section entitled “Access Rights”, Aurizon Operations is concerned that due to the limited definition of Access proposed by Queensland Rail, the operator may be exposed to payment of Ancillary Charges for use of the Network for undertaking stowage, shunting etc. If these charges are not represented in the access agreement, the operator may be unable to pass-through these charges to the customer. To resolve this concern, and as stated above, the scope of what constitutes Access should be broadened to include these additional movements on the network, as well as any other services which are necessary for the operation of Train Services.

Recommendation

- > **Include clauses 2.1(b) and 2.1(c) from the 2008 Access Undertaking in the 2015DAU**
-

Performance Level Reporting

The QCA has proposed in its Draft Decision to impose an obligation (clause 6.7) on Queensland Rail to provide weekly and monthly reports based on Performance Levels set out in Schedule 5 of the Standard Access Agreement. The QCA has also proposed some standard metrics which should be reported on, and included a good faith obligation to negotiate additional Performance Levels if requested by the other party. An acknowledgement is included that Performance Levels may involve financially based incentives and sanctions applicable for the term of the Standard Access Agreement. Aurizon Operations considers this to be a step towards increased transparency and welcomes the addition of performance reporting in the Standard Access Agreement. Aurizon Operations would like to also ensure the provisions require Queensland Rail to provide accurate data with respect to the metrics included in Schedule 5. Aurizon Operations is uncertain how the QCA proposes any financial incentives are to be determined, and how these would work if the Access Holder is the customer; eg, whether the Customer could enforce performance levels through linking these to Access Charges. Aurizon Operations would welcome further guidance from the QCA in relation to the criteria to be applied in assessing financial incentives.

Recommendation

- > **strengthen obligation to ensure accuracy of data for reported metrics**
 - > **provide more guidance around what the criteria to be applied when assessing financial incentives**
-

Network Management

The QCA has amended clause 7.1 to include an obligation on Queensland Rail to ensure that maintenance of the network is undertaken in a way that upholds the infrastructure standard as required in the Rolling Stock Interface Standards (as defined in the Operating Requirement Manual), and is undertaken in accordance with any agreed criteria and the Network Management Principles . Aurizon Operations welcomes this change as it will ensure greater certainty as to the standard to which the Network will be maintained over the period of the access agreement, and the manner in which the maintenance work will be scheduled to maximise the capacity of the network.

However Aurizon Operations is still concerned that Queensland Rail has the ability to amend Interface Standards without a contractual requirement to consult with rail operators to consider the impact on the provision of rail haulage services. Aurizon Operations believes that all amendments proposed by Queensland Rail to these Interface Standards should have the endorsement of the rail operators where the change will impact the efficiency of the supply chain.

Recommendation

- > **Include a contractual obligation for Queensland Rail to consult with rail operators and seek endorsement of any changes to the Interface Standards which would impact the efficiency of the supply chain**
-

Alterations to Train Services

The QCA has taken on board Aurizon Operations' concern in relation to alterations to train services with the introduction of the Alternative Schedule Time and Useable Schedule Time definitions, which considers ability to use due to above rail capability.

As the QCA has not completely adopted Aurizon Operations' proposal, further consideration needs to be given to how Queensland Rail is obliged to provide an Alternative Schedule Time and how this is captured where it is caused by an Operational Constraint. Aurizon Operations considers there should be additional clarification included in the drafting that ensures that if a path cannot be maintained due to Operational Constraint and the offered replacement path is not usable by the rail operator, this should be recorded as Queensland Rail Cause.

Recommendation

- > **Amend clause 8.6 to include clarification that if Queensland Rail needs to reschedule a path due to an Operational Constraint, and it cannot offer an Alternative Scheduled Time, it will be recorded as Queensland Rail cause**
-

Queensland Rail may supply data

The QCA's Draft Decision proposes to amend clause 8.8(d) such that intellectual property for data provided between the parties remains that of the supplier of that data. It goes further to ensure that reproduction of such data is only allowed for the purpose for which the data was provided.

Aurizon Operations appreciates the QCA's position on this. However Aurizon Operations would like to see a carve-out included for particular types of data. For example, where the information is collected by equipment that is paid for under the RAB and provided to the operator (such as from wayside equipment), this information should be readily available for the operator to use. This is particularly important to ensure a rail operator can use this data to analyse the performance of its rolling stock and ensure above rail maintenance activities are undertaken efficiently.

Recommendation

- > **Amend clause 8.8(d) to allow rail operators to use information provided by Queensland Rail from equipment that is provided for in the RAB as required for part of the regulated service**
-

Operating Requirements Manual (ORM)

The QCA has proposed the removal of Queensland Rail's right to amend the ORM from the Standard Access Agreement (previously clause 9) and placed this in the 2015DAU (clauses 4.3.1 and 4.3.2). The provisions in the 2015DAU now have two separate categories for changes to the ORM, being safety related and all other matters. For safety matters, Queensland Rail is now able to make changes to the ORM and advise rail operators of these changes, with operators bearing the cost of any amendments required to adhere to the changes. For non-safety related matters, Queensland Rail must consult with rail operators and work out compensation due where relevant.

Aurizon Operations considers the changes made by the QCA to be beneficial for all rail operators. Aurizon Operations would like to further expand on the obligations for Queensland Rail to advise of changes due to safety related matters to ensure that rather than just notifying, there is reasonable consultation with rail operators prior to introducing the change. This will enable a fuller assessment of the financial impact to be understood and assist in making sure the impact is minimised wherever possible. This will also enable all impacted stakeholders to understand how the change impacts the efficiency of the supply chain.

Recommendation

- > **Include drafting for clause 4.3.1 to provide for consultation with rail operators prior to notification of implementing a change to the ORM**
-

Obstructions

Clause 10.2 outlines the process for rectification of an obstruction on the network. In considering how to remove Obstructions from the network, Aurizon Operations believes there should be consideration given to whether or not the proposed form of removal could cause any actual or potential environmental harm. Not giving consideration to this could result in an uninsurable event (environmental slow release) for the impacted rail operator, hence environmental harm needs to be addressed or at least considered in Queensland Rail's decision process making process.

Queensland Rail is responsible for the overall co-ordination and management of the response to a Network Incident. Whilst there are clear obligations imposed on an Operator under Restoration and Recovery in relation to mitigation prevention and compliance with Queensland Rail's direction, there should be a mutual obligation for Queensland Rail to also "minimise and mitigate potential or actual damage or injury to persons, property..." including actual or potential harm to the environment. As slow release of a substance is not an insurable event, incident recovery is the best opportunity to mitigate exposure to further damage to persons, property and the environment. Where Queensland Rail fails to comply with this obligation, it should be required to accept an appropriate share of the liability for costs or claims relating to the incident.

Aurizon Operations suggests that additional drafting should be included in this clause which requires Queensland Rail to consider further environmental harm in the decision making process of removing an obstruction.

Recommendation

- > **Amend clause 10.2 to provide for Queensland Rail to consider any potential environmental harm**
-

Insurance

In its review of Clause 16 (Insurance) of the Standard Access Agreement, Aurizon Operations has identified a number of concerns with respect to an Access Holder's or operator's ability to comply with its obligations with respect to insurance. Aurizon Operations has previously stated in its 2015DAU submission in June 2015⁶ that insurance policies will always have exclusions and it is not for another party to determine what the acceptable exclusions are for insurance, provided it is consistent with industry standard.

The expectation of Queensland Rail that an Access Holder will be able to hold insurance that satisfies all proposed liabilities and indemnities is not practical. Additionally the expectation of an Access Holder and/or operator to provide copies of its insurances as opposed to certificates of currency is unreasonable.

Recommendation

- > **Amendment of Clause 16 to reflect more reasonable and feasible insurance policy obligations. Aurizon Operations has proposed drafting in Attachment 1**
-

Security

The QCA has amended clause 17 of the Standard Access Agreement in its Draft Decision to include an obligation for Queensland Rail to consider the financial capability of an Access Holder and rail operator when determining whether security is required. Although Aurizon Operations welcomes this amendment, it is still unclear how a financial capability test will be applied by Queensland Rail on a case by case basis.

⁶ Submission to the Queensland Competition Authority Queensland Rail's 2015 Draft Access Undertaking 5 June 2015

As a proposed solution, Aurizon Operations suggests that Queensland Rail use a test of whether or not a party has an Acceptable Credit Rating in determining if security is required to be held. The QCA has proposed that this be defined this as

"Acceptable Credit Rating means a minimum long term credit rating of not less than BBB- from Standard and Poor's Rating Service (or equivalent rating by another internationally recognised ratings agency)."

Where the Access Holder and/or the operator complies with the Acceptable Credit Rating criteria, it should not be required to provide security under an access agreement. If during the term of the access agreement the party no longer holds an Acceptable Credit Rating, Queensland Rail could have a contractual right to undertake a further assessment at that time as to whether security is required under the access agreement.

Where the Access Holder is not the operator, and the Access Holder has taken responsibility for the payment of access charges as well as Take or Pay under the access agreement, the amount of security required to be provided by the operator (where required) should be reduced. This reflects the decreased risk of the operator defaulting on a payment under the agreement, and is consistent with what has been proposed by Aurizon Network in its draft Train Operations Agreement under the 2014DAU.

Recommendation

> Amend clause 17.1 to include clarification that where a party has an Acceptable Credit Rating, it will be deemed to meet the criteria for financial capability

Adjustment for Material Change and Net Financial Effect definition

Clause 18.2 (Adjustment for Material Change) entitles Queensland Rail to review access charges where there has been a Material Change. As outlined in Aurizon Operations' previous submission⁷, while Aurizon Operations acknowledges a large portion of Queensland Rail's infrastructure is supported by Government funding, Aurizon Operations does not agree that in all cases any change in government funding should automatically result in an access charge review.

This issue was previously addressed in the 2013DAU by allowing Queensland Rail to review access charges which were priced below the revenue floor where there was a change in Transport Services Contract ("Infrastructure TSC") revenue which is provided to support rail infrastructure. The 2015DAU has the effect of expanding this to access charges for all train services operating over Infrastructure TSC supported infrastructure where there is a change in Infrastructure TSC funding.

Access holders are not parties to negotiations with the Government in relation to either the funding or the standard of infrastructure that funding is intended to provide. Consequently, Aurizon Operations considers that it is unreasonable to transfer the risk of changes in this funding to an Access Holder as it is largely outside of the reasonable control of the Access Holder to mitigate this risk. To address this, the Standard Access Agreement should include an obligation on Queensland Rail to disclose to the Access Holder the funding term for the Infrastructure TSC payments supporting infrastructure. This enables the Access Holder to make an assessment of the risk of future access charge increases. Where the risk is

⁷ Submission to the Queensland Competition Authority Queensland Rail's 2015 Draft Access Undertaking 5 June 2015

considered too high, the Access Holder can reconsider options, including contract term or alternative modes of transportation.

If Queensland Rail does have an ability to adjust the access charges, where the new access charges result in it being uneconomic for the rail operator to continue to operate train services, the Access Holder or operator should have a right to terminate the access agreement.

Recommendation

- > **Amend the material change clause to only permit the review of access charges for a change in funding from an Authority where the access charge is below the revenue floor limit**
 - > **Include obligation for Queensland Rail to advise the Access Holder of the term of Infrastructure TSC funding**
 - > **Include the ability for Access Holder to terminate the access agreement where the access charge which results from a material change makes it uneconomic to operate Train Services**
-

Termination where no access rights remain

Clause 21.4 provides for Queensland Rail to elect to terminate the access agreement where there are no longer contracted access rights contained in the agreement. Aurizon Operations considers there are circumstances where it is beneficial for the access agreement to remain on foot even though no access rights remain. For example, this allows the Access Holder to operate trains on an ad hoc basis on the part of the network which the access agreement relates to. As such, Aurizon Operations would like to see the clause amended to allow all parties to agree to the termination of the agreement, rather than it just being Queensland Rail's decision.

Recommendation

- > **Amend clause 21.4 to allow mutual consideration of whether the access agreement should be terminated**
-

Take or Pay charges

Aurizon Operations appreciates the included acknowledgement in the Standard Access Agreement that where a reference tariff is not payable, take or pay charges are as negotiated between the Access Holder and Queensland Rail, particularly given that services such as freight have quite varying take or pay arrangements.

Interim Take or Pay Notices

The QCA Draft Decision introduces the concept of Interim Take or Pay Notices (refer Schedule 3, clause 5.4 of the Standard Access Agreement). Aurizon Operations has significant concerns with the introduction of this provision. The provision will force Access Holders to take Queensland Rail to dispute resolution over all billing issues during the year.

This is an overly prescriptive clause to protect Queensland Rail's working capital position. Aurizon Operations recommends that conclusive evidence is removed. The final year end bill can then be amended to reflect an adjustment of the amount either higher or lower.

Take or Pay Capping Schedule 3 Schedule D 2015DAU

Aurizon Operations considers that where a reference tariff is set below the building blocks component, take or pay should be capped. That is, Queensland Rail should not obtain both access revenue and take or pay revenue for the same train path. Hence, Aurizon Operations appreciates the additional provisions included in clause 4(c) of Schedule D of the QCA's Draft Decision for the 2015DAU to cap payment of take or pay where Queensland Rail has received its Approved Ceiling Revenue Limit.

Aurizon Operations also notes that the capping of take or pay is addressed solely by the requirements in Schedule E which requires that where the take or pay charges would result in Queensland Rail earning more than the approved ceiling revenue limit, they will be reduced and determined equitably across relevant train services. However, there are no corresponding provisions in the Standard Access Agreement. It is preferable that the capping of take or pay occur via appropriate formulas within the access agreement in order to ensure the right to contractually enforce the provisions via the access agreement, as opposed to having to rely on compliance with the Access Undertaking.

Recommendation

- > **Amend Schedule 3 clause 5.4(c) of the Standard Access Agreement to remove reference to the notice being conclusive evidence of the accrued Take or Pay Charge liability in respect of the relevant period"**
 - > **Amend the Standard Access Agreement to define the take or pay capping provisions which would reduce the take or pay obligation in the Access Holder's access agreement**
-

Billed empty or non-existent wagons as full

The proposal to invoice Access Holders for empty or non-existent wagons is a significant change from current practice. Aurizon Operations does not support the proposed arrangements without an appropriate consideration of root cause and deduction for under-loading which may also be attributable to Queensland Rail.

Train under-loading may occur for a range of reasons, including the impact of delays associated with making a passenger service healthy and the consequential reduction in loading time to return services to schedule. Alternatively, temporary speed restrictions and other below rail delays may reduce available loading times. In other circumstances a wagon may need to be removed from a consist due to overloading which potentially leaves another user one wagon short due to loading practices of another network user.

The administrative complexity and difficulty of identifying root cause will result in a significantly costly and time consuming process for assigning accountability for under-loading between the Access Provider, the load-out, the port and rail operators. Aurizon Operations considers that where the Access Provider may be subject to a loss from under-loading, then any compensation for that loss should be:

- limited to the avoided costs as discussed in section 3 regarding take or pay;
- adjusted for any contribution the Access Provider has made to that under-loading; and,
- subject to efficient and timely dispute provisions.

The proposal is a material variation from current billing practices and represents an unreasonable contractual term as the Access Holder will not have any appropriate contractual arrangements in place with its customers or the port to be able to transfer the liability where the cause is not attributable to the rail operator.

The alternative to this administrative approach would be to recognise under-loading as a system wide loss with the loading efficiency factor adjusted to ensure Queensland Rail would be expected to earn the target revenue ceiling.

Aurizon Operations is also concerned that this principle would be applied to non-coal services if the provisions of the Standard Access Agreement were mandated for all access agreements. Applying such a rule to freight and intermodal traffic would result in Access Holders being more significantly disadvantaged due to these businesses having quite different loading practices. It might also have a material impact on competition in the rail haulage market if it presented a barrier to entry for a rail operator who might experience lower utilisation rates as it established a market presence.

Recommendation

- > In the event that Queensland Rail would incur an economic loss and not recover its efficient costs due to under-loading and empty wagons then it should provide the QCA appropriate historical data to support an adjustment to the loading efficiency factor**
-

6

Improving operational and fiscal discipline on the Access Provider through greater transparency and accountability

Quarterly performance reports

The Quarterly performance report, published on the Queensland Rail website, enables users of the rail network to assess the relevant performance of the network.

Overall, the level of detail will enable users of the network to complete the necessary analysis. However, where the 2015DAU obligations are deficient is in terms of Queensland Rail confirming the accuracy of the data published. Currently, Queensland Rail is required to use 'reasonable endeavours' to ensure that each report is accurate. There is no detailed process for rectification.

Therefore, clause 5.1.1 (b) should be expanded upon to include an obligation that if an error is identified, Queensland Rail should immediately correct the error through the publication of a corrected report. This corrected report should highlight where there was incorrect data supplied.

Aurizon Operations also has concerns relating to the drafting within Clause 5.1.2(a)(vii) which relates to the measure of track quality. The clause currently contains the wording 'if any'. The drafting and decision documents are not clear as to the intended purpose of this text. The wording creates ambiguity on the obligation for which Queensland Rail is to comply. The ultimate outcome for this drafting is that there is actually no obligation to publish this measure. The wording 'if any' should be removed as this measure is critical to oversight of the management of the rail network.

Clause 5.1.2 (b) outlines that Queensland Rail must also report on certain metrics from the quarterly reports on the other systems, including the West Moreton System, the Mt Isa Network, the North Coast Line and the metropolitan network. The quarterly reports must be an obligation on all Queensland Rail systems including a detailed report for the North Coast line. Although the quarterly performance metrics do not need to be fully replicated, the performance of the Access Provider is critical for Access Holders to understand to enable them to measure the performance against the stated performance metrics within the applicable Access Agreement. This should be done by including clause 5.1.2(a)(vii) within clause 5.1.2(b).

In addition to the above points, there are some minor drafting errors in the QCA's marked-up Standard Access Agreement which Aurizon Operations has detailed below:

Clause	QCA proposed text	Correct text
5.1.2 (a)(ii)(B)(2)	due solely to delays attributed to an Access Holder or a Nominated Rolling Stock Operator	due primarily to delays attributed to an Access Holder or a Nominated Rolling Stock Operator
Definition	Operational Constraints	Definition should include where it is any speed that is not the nominated speed board

Expenditure reports

The QCA has taken positive steps by making Draft Decisions that require Queensland Rail to complete reporting which reconciles its incurred costs to the approved allowances. It would be beneficial for commentary explaining any over or under spends to be included within these reports.

Transparency on approved cost related matters provides Access Holders with transparency to ensure that Queensland Rail is allocating the allowance to cover the approved efficient costs whilst providing the service to the relevant system along with maintaining it in line with its commitments made through the development of the Access Undertaking and execution of access agreements.

Annual Financial Statements

Aurizon Operations supports the QCA Draft Decision on the requirement for Queensland Rail to produce annual financial statements. It is critical to ensure that the Access Provider is allocating the correct funds in line with the approved efficient costs. Critical to the transparency of the allowance expenditure is being able to draw a direct link to the delivery of committed activities such as maintenance or operational activities. Therefore, the reporting of the maintenance activities through clause 5.2.2(i) and (j) of the QCA's marked-up 2015DAU, is vital to transparency of the Queensland Rail expenditure.

The appointment of the auditor responsible for reviewing the Annual Financial Report should be in line with the requirements within 5.4.4 (b) of the QCA's version of the 2015DAU and should not be limited to the selection of an auditor who has 'experience in the area of costing railway activities'.

Performance Reporting within Agreements

The QCA's Draft Decision requires Queensland Rail to adopt additional obligations to report both weekly and monthly on performance metrics contained within Schedule 5 of the Access Agreements. Aurizon Operations agrees with these positive obligations to measure performance of the Access Provider.

However, the drafting should be expanded to require Queensland Rail to report to Access Holders the track condition for each relevant system or applicable to the relevant haul for which the Access Agreement is being established over. As part of reporting this, a baseline condition metric must be agreed prior to the execution of the Access Agreement. The baseline must be detailed out within the applicable access agreement schedule and reported on within the periodic reports. If, in the event there is an improvement or deterioration of that particular metric's value, then Queensland Rail should provide appropriate reasoning relating to the movement.

The level of the metrics within Schedule 5 of the Standard Access Agreement is an improvement. However it needs to be made applicable to the Access Holder across all systems where Queensland Rail is the Access Provider.

In addition, the drafting within Schedule 5 of the Standard Access Agreement should be expanded upon to have a positive assurance obligation for Queensland Rail to ensure that the data is correct. An obligation for Queensland Rail to ensure accuracy is critical here as Access Holders will be making decisions based upon the data provided, along with ensuring that Queensland Rail are providing access in line with the standard in which it was agreed at the time of the executed access agreement.

Operating Requirements Manual

Aurizon Operations supports the QCA decision and drafting within 4.3.2 in relation to changes made to the Operating Requirements Manual. The inclusion of non-safety related changes to the ORM through the regulatory amendment process will ensure that full and proper consultation is completed prior to any change. Aurizon Operations would like to further expand on the obligations for Queensland Rail to advise of changes due to safety related matters to ensure that rather than just notifying, there is reasonable consultation with rail operators prior to introducing the change.

7

Attachment 1: Redrafted Insurance clause for Standard Access Agreement

16 Insurance

16.1 Operator's Obligation to obtain and maintain Insurance

The Operator must:

- (a) effect, or cause to be effected, before the Commitment Date (or, if applicable, the earliest Commitment Date); and
- (b) maintain, or cause to be maintained, until both the expiry of the Term and the Operator having fully complied with clause 15.10,

insurance in accordance with Prudent Practices having regard to the Operator's activities and, works, ~~obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Operator is obliged to indemnify Queensland Rail under this agreement)~~ provided that such insurances must include ~~(without limitation):~~

- (c) a public liability policy of insurance:
 - (i) that covers the Operator ~~and each of the Operator's agents, consultants, contractors and their sub-contractors (each an Insured Party)~~;
 - (ii) for an amount of not less than \$350 million per occurrence;
 - (iii) the coverage of which includes ~~(without limitation):~~
 - (A) the rights, interests and liability in respect of any Claim against an Insured Party arising out of:
 - (1) any damage or loss occurring to any property ~~(except property of insurance?)~~; and
 - (2) injury (including death) to any person ~~(except employees?)~~,

arising out of or in connection with any thing done or omitted to be done in the performance or purported performance of this agreement; and

- (B) the Operator's operations and activities on the Network; and
 - (iv) ~~that has a maximum deductible for any one claim of \$500,000;~~
- (d) a carrier liability policy of insurance:
 - (i) that covers the Operator's liability in relation to goods being transported by Train Services;
 - (ii) for an amount of not less than \$10 million per occurrence; and
 - ~~(iii) that has a maximum deductible for any one claim of \$500,000; and~~
 - (e) all other insurances that the Operator ~~or the Operator's agents, consultants, contractors and their sub-contractors are~~ is required by Law

to hold in relation to or in connection with the exercise of rights ~~or the performance of obligations~~ under this agreement.

16.2 Access Holder's obligation to obtain and maintain Insurance

The Access Holder must:

- (a) effect and maintain insurance covering such liability as arise at common law or by virtue of any relevant Workers Compensation Legislation in respect of any Access Holder's staff; and
- (b) effect, or cause to be effected, before the Commitment Date (or, if applicable, the earliest Commitment Date); and
- (c) maintain, or cause to be maintained, until both the expiry of the Term and the Operator having fully complied with clause 15.10,

insurance in accordance with Prudent Practices having regard to the Access Holder's activities, works, obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Access Holder is obliged to indemnify Queensland Rail under this agreement).

16.3 Insurer

The Access Holder and the Operator must ensure that their respective Insurance effected and maintained in accordance with clause 16.1 or 16.2 is with an insurer having an insurance financial strength rating of "A" or better by Standard & Poor's or ~~similar agency if Standard & Poor's ceases to exist or to provide such ratings, the rating which most closely corresponds to that rating by another agency or person which is recognised in global financial markets as a major ratings agency.~~

16.4 Essential terms and conditions

The Access Holder and the Operator must ensure that, for their respective Insurances, to the extent permitted by Law, all Insurances effected and maintained in accordance with clause 16.1 or 16.2 must:

- (a) note the interests of Queensland Rail; and
- (b) not contain any exclusions, endorsements or alterations ~~to the accepted policy wording~~ that adversely amends the cover provided without the written consent of Queensland Rail (which consent must not be unreasonably withheld or delayed).

16.5 Payment of premium and deductibles

The Access Holder and the Operator:

- (a) must pay when due all premiums, charges and other expenses necessary for effecting and maintaining in force their respective Insurances; and
- (b) are responsible for the payment of all policy deductibles or excesses for their respective Insurances.

16.6 No prejudicial action by the Operator

The Access Holder and the Operator respectively must not, do or permit anything to be done (including any omission), which:

- (a) may result in any respective Insurance being vitiated or rendered void or voidable; or
- (b) would give rise to an entitlement by its insurer to avoid payment of any claim in whole or in part under its respective Insurances.

16.7 Disclosure of Insurance

- (a) The Access Holder and the Operator must provide to Queensland Rail evidence of their respective insurance policies effected and maintained pursuant to this clause 16 (including evidence that the cover provided under those insurance policies comply with clause 16 and of the currency of those insurance policies) to Queensland Rail's reasonable satisfaction:
 - (i) at least ten Business Days prior to the initial Commitment Date;
 - (ii) upon renewal of each Insurance during the Term; and
 - (iii) whenever requested to do so in writing by Queensland Rail.
- (b) If the Access Holder or the Operator, whenever required to do so under this agreement, fails to produce to Queensland Rail evidence to the satisfaction of Queensland Rail (acting reasonably) of Insurances that have been effected or maintained by it, Queensland Rail may:
 - (i) effect and maintain the Insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Queensland Rail; or
 - (ii) suspend this agreement under clause 14.1(a)(i) or 14.2(a)(i).

16.8 Compliance

The Access Holder and the Operator must at all times comply with the terms of their respective Insurances effected under this clause 16.

16.9 Claims

- (a) In addition to any other obligation on the Access Holder or the Operator, the Access Holder and the Operator respectively must:
 - (i) notify Queensland Rail as soon as practicable after the occurrence of any claim under their respective Insurance (including providing reasonable details of the claim relevant to the this agreement); and
 - (ii) keep Queensland Rail informed of subsequent developments concerning any claim.
- (b) Upon settlement of a claim under any Insurance covering damage to the Network, if Queensland Rail is entitled to payment in respect of such damage, the Insurance monies received must be paid to Queensland Rail commensurate with the amount to be paid out by Queensland Rail in

relation to the damage unless the Access Holder or the Operator has already partially or totally indemnified Queensland Rail for the relevant damage (including in respect of the amount of any deductible), in which case the monies will be paid to the Access Holder or the Operator (as applicable) but only to the extent that Queensland Rail has been indemnified.

16.10 Insurance not a limit of Operator's liability

The Access Holder and the Operator's compliance with their respective Insurances does not limit that Party's liabilities or obligations under this agreement.

16.11 Joint Insurance Policy

- (a) To the extent that the Operator has complied with its obligations to insure in accordance with clause 16.1, the Access Holder is not required to take out insurance which would cover the same risks.
- (b) If the Operator and Access Holder deem it efficient and appropriate, the Operator and Access Holder may take out joint insurance policies to comply with their respective insurance obligations under this clause 16.