

asciano

Submission to the Queensland Competition Authority
December 2015 Consolidated Draft Decision on the
Aurizon Network 2014 Draft Access Undertaking

February 2016



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1. Executive Summary and Background

Asciano welcomes the opportunity to make this submission to the Queensland Competition Authority (QCA) in response to the QCA's December 2015 Consolidated Draft Decision (the CDD). The CDD brings together previous QCA Draft Decisions on the Aurizon Network Draft Access Undertaking (DAU), including:

- the Maximum Allowable Revenue (MAR DD);
- Pricing and Policy components of the Draft Access Undertaking (IDD);
- the short term capacity transfer mechanism proposed by Aurizon Network; and
- Wiggins Island Rail Project (WIRP) pricing and revenue approaches proposed by Aurizon Network.

Asciano has made numerous submissions to these regulatory consultation processes as outlined in Attachment 1. In this submission Asciano has not restated the positions it put forward in these previous submissions. Asciano asks that its previous submissions as outlined in Attachment 1 are taken into account by the QCA when considering its Final Decision on the DAU.

This Asciano submission focuses on elements of the QCA's CDD which differ from the QCA's previous draft decisions on the DAU and the related capacity transfer and WIRP pricing matters. Note that in this submission Asciano is not making any detailed comment on issues relating to the CDD position on Aurizon Network's maximum allowable revenue.

Asciano's primary concerns with the CDD are:

- the removal of the incentive mechanism. Asciano continues to believe that the efficiency of the Central Queensland coal network could be improved by the introduction of an incentive mechanism (ideally this mechanism should be mandated and not discretionary), and does not support the removal of the incentive mechanism;
- the dilution of the Ultimate Holding Company Deed;
- the removal of certain provisions in Schedule G that significantly lessen an access holder's flexibility to use their access rights in the scheduling process;
- the removal of force majeure from the definition of Aurizon Network Cause that has adverse impacts on an end customer's take or pay liability; and
- restrictions on take or pay arrangements that prevent the more efficient use of access rights.

Asciano requests that these issues be addressed in the QCA's Final Decision.

In addition, Asciano understands that although the IDD and CDD have removed the capacity diesel multiplier the multiplier charges continue to be levied by Aurizon Network. Asciano believes that these charges should be refunded to end users (i.e. the charges cease applying from July 2013).

Overall Asciano continues to broadly support the approach of QCA CDD and the recommended changes to the 2014 DAU in the QCA Draft Decision.

This submission is set out as follows:

- Chapter 1 is an executive summary and background;
- Chapter 2 outlines Asciano's broad position on the CDD;
- Chapter 3 outlines Asciano's specific position on various sections of the CDD where the CDD differ from the QCA's previous position in its Draft Decisions. and outlines specific issues and concerns that arise from the CDD and the access undertaking, access agreement, train operations deed and connection agreement proposed in the CDD;
- Chapter 4 outlines Asciano's concluding position; and
- There are two attachments:
 - Attachment 1 - information on Asciano submissions to the QCA consultation processes related to the Aurizon Network DAU; and
 - Attachment 2 - tabulated comment on the CDD access agreement and train operations deed.

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

2. Asciano's Position on the CDD and Broader Regulatory Issues

Asciano continues to support the CDD's position to not accept the Aurizon Network DAU. In general Asciano recognises that most changes from the Initial Draft Decision (IDD) to the CDD are not fundamental changes in policy or position. (Nevertheless Asciano has some concerns with changes in the CDD as outlined in this submission).

Asciano's major concerns with the CDD are outlined below.

Incentive Mechanism - One of Asciano's primary concerns with the CDD is the ongoing lack of an effective Aurizon Network KPI regime and the lack of an effective Aurizon Network incentive mechanism. Asciano has raised these concerns as key issues in its October 2013 submission¹ and restated its position on these issues in its October 2014 submission². Asciano believes that a genuinely efficient central Queensland coal supply chain will only be achieved with a mandated incentive mechanism which ensures that Aurizon Network has strong incentives to operate efficiently.

The IDD allowed for Aurizon Network to introduce an incentive mechanism at its discretion. This has been removed from the CDD. While the provision in the IDD was relatively weak Asciano does not support the complete removal of the incentive mechanism from the CDD. Asciano supports the introduction of a mandated incentive mechanism in the Final Decision. Asciano believes that the efficiency of the Central Queensland coal network could be improved by the mandated introduction of an incentive mechanism. If a mandated incentive mechanism is not supported by the QCA then Asciano supports the inclusion of a discretionary incentive mechanism in the Final Decision.

Asciano recognises that the issue of the incentive mechanism is unlikely to be addressed in the Final Decision, however Asciano believes that the baseline capacity review may be an appropriate forum to further progress discussions on efficient operations and utilisation of capacity and how these can be encouraged by an effective KPI and incentive mechanism regime.

Ring fencing and the Ultimate Holding Company Deed - Asciano is concerned with the dilution of the wording in relation to the Ultimate Holding Company Deed. In particular Asciano is concerned with changes to clause 3.1.4 of the deed. Under these changes the impact of the consequences which apply to Aurizon if they do not comply with their obligations under the deed are substantially reduced. The consequence of non-compliance is now limited to that in section 2.6 (c) of the access undertaking where Aurizon Group are no longer permitted to use or disclose confidential

¹ Asciano Submission to the Queensland Competition Authority in Relation to the 2013 Aurizon Network Draft Access Undertaking October 2013 pages 33 to 39

² Asciano Submission to the Queensland Competition Authority in Relation to the Resubmitted 2014 Aurizon Network Draft Access Undertaking October 2014 page 15

information until the failure to comply with the deed is rectified. This consequence is very weak and is unlikely to act as a deterrent. At minimum the previous IDD drafting in 3.1.4 of the deed should be reinstated. Under this drafting Aurizon is liable for any consequential loss suffered by any party as a result of any of Aurizon's businesses failing to comply with the obligations outlined in the deed.

Access Holder Trading Capability - Asciano is concerned that the CDD has removed Schedule G clause 8.2 (c) (iii). The removal of this clause significantly lessens an access holder's flexible use of their access rights. Asciano believes that either Schedule G clause 8.2 (c) (iii) should be reinstated or the corresponding clause in the 2010 Access Undertaking Schedule G Appendix 2 should be reinstated. Asciano believes the above clause should be maintained as it serves as an effective short term transfer process that occurs within the weekly scheduling process.

Aurizon Network Cause – Asciano remains concerned that the removal of force majeure from the definition of Aurizon Network Cause will have an adverse impact on an end customer's take or pay liability. Asciano is seeking that force majeure be reinstated into the definition.

Time Frames - The extensions in the DAU regulatory process mean that an approved Access Undertaking will apply from 1 July 2016 and expire in June 2017. Thus the approved access undertaking will only be in place for one year. These time frames provide limited regulatory certainty for participants in the central Queensland coal supply chain. Asciano would support a proposal to allow an approved 2016 access undertaking to continue beyond the current planned expiry date (dependent on the details of any such extension proposal).

Other Matters - Asciano also has several ongoing concerns and comments in relation to the access regime including:

- the CDD³ has restated QCA concerns regarding the complexity of Aurizon Network's multi-part tariff. The CDD maintains the position that a simpler tariff structure is preferred (this simpler tariff structure may also result in simpler take or pay provisions). The CDD suggests that Aurizon Network should undertake a review of tariff structures, including consultation with stakeholders, in developing its proposal for UT5. Asciano supports such a review of tariff structures;
- the nature of the access regime whereby the access agreements over-ride the Access Undertaking so there is still potential for Aurizon Network to contract away from the undertaking in order to benefit its related party operator. Asciano recognises that there are safeguards in place to minimise the potential for Aurizon Network to benefit its related party operator but the ability of Aurizon Network to contract away from the undertaking with its related party operator remains a concern; and

³ See for example QCA CDD Aurizon network 2014 DAU Volume 1 Governance and Access pp viii - ix

- the impact of UT1 access agreements. These agreements have different take or pay obligations than other access agreements and this in turn may result in these take or pay obligations being socialised across access holders with later access agreements. Asciano recognises that this result arises due to changes in access agreements over time but believes that at some point in the future this difference in take or pay treatment for access agreements from different periods will need to be addressed.

Overall Asciano continues to support the positions and conclusions of the CDD. The CDD will limit the potential of Aurizon Network to engage in discriminatory behaviour and inappropriate use of market power and increase the transparency and availability of information. Asciano believes that changes to the CDD could be made to:

- further improve the efficiency of the Central Queensland coal network by the introduction of a KPI regime and mandated incentive mechanism;
- further protect third party users of Aurizon network by reinstating the 2010 Ultimate Holding Company Deed attached to the IDD;
- increase the flexible use of access rights by access holders that maximises throughput in the coal supply chain;
- address the take or pay issue created by the removal of force majeure from the definition of Aurizon Network Cause; and
- having a take or pay arrangements that facilitate the more efficient use of access rights.

3. Asciano's Detailed Comment on the CDD

Asciano supports the CDD but has several comments, concerns and requests for clarification relating to the CDD as outlined in this section of the submission.

The structure of this section of the submission is based on the structure of the draft access undertaking as marked up by the QCA and appended to the CDD.

The comments in this section largely focus on areas where Asciano has concerns arising from new drafting contained in the CDD.

Comments on Draft Decision – Access Undertaking

Comment on Access Undertaking Part 2: Intent and Scope

Comments on specific sections of Part 2 are outlined below.

2.2 (a) and (b) – Objective and 2.4 - Behavioural Obligations – in order to reflect the wording in the QCA Act the CDD wording now refers to unfair differentiation rather than non-discriminatory negotiation. The reason for this is to reflect the unfair differentiation in the QCA Act. The QCA also believed that differences in language between the QCA Act and the undertaking on what is essentially the same subject matter can, in specific cases, create uncertainty and ambiguity.

Asciano recognises that behavioural elements have been shifted from section 2.2 (Objectives) to section 2.4 (Behavioural Obligations) to ensure these provisions are applied by Aurizon Network rather simply being objectives of the access undertaking.

Asciano very strongly supports the ongoing inclusion of these Behavioural Obligations as they:

- place obligations on Aurizon Network to not provide more favourable terms to a related operator, related competitor or a third party which has commercial arrangements with a related competitor;
- require Aurizon Network to conduct all transactions with related parties on an arms-length and consistent basis; and
- require that Aurizon Network must not engage in any activity or conduct that will result in cost shifting, cross-subsidies, price or margin squeezing

2.6 – Ultimate Holding Company Deed – the wording in the Ultimate Holding Company Deed has been substantially diluted.

By following a business model whereby Aurizon Holdings has a commercial relationship with Aurizon Network and is therefore both a customer and supplier, Aurizon is making effective ring fencing of the monopoly rail infrastructure more difficult.

Asciano agrees with the QCA's view that

*without a UHCSD in place, we do not consider access seekers and holders can have the confidence as there is no assurance that Aurizon Network's holding company will observe Aurizon Network's ring fencing obligations and not prevent or hinder Aurizon Networks compliance with these*⁴

However, the CDD undermines the effectiveness of the Ultimate Holding Company Deed in a number of ways including reduced consequences for breach, namely:

- Aurizon Network now “requests” the Ultimate Holding Company Deed, it no longer not “procures” the Ultimate Holding Company Deed;
- contravention of deed by Aurizon Holdings is no longer a contravention by Aurizon Network. (The drafting of the IDD access undertaking 2.6 d) stated that any contravention of the deed by Aurizon Holdings was deemed to be a contravention by Aurizon Networks. This drafting has been removed in the CDD);
- Aurizon Holdings now has to “enable” Aurizon Network to comply with the access undertaking rather than the previous wording which required that Aurizon Holdings “ensure” Aurizon Network complies with the access undertaking (section 3.2 of the Ultimate Holding Company Deed) ; and
- removal of Aurizon Holdings being responsible for consequential loss – clause 3.1.4 of the Ultimate Holding Company Deed.

The CDD position that Aurizon Network, due to its independence from Aurizon Holdings, cannot accept obligations that relate to Aurizon Holdings behaviour or that Aurizon Holdings should not suffer consequences if Aurizon Network breaches, is flawed. Aurizon Network is fully owned by Aurizon Holdings and is not independent. The Aurizon Network board is a subset of the Aurizon Holdings board.⁵ Further, the Aurizon Network board can take into account the interests of Aurizon Holdings in addition to the Aurizon Network's own interests in decision making.

The consequence of non-compliance with the requirement for a Ultimate Holding Company Deed is now limited to that in section 2.6 (c) of the draft access undertaking where Aurizon Group are no longer permitted to use or disclose confidential information until the failure to comply with the deed is rectified. This consequence is very weak and is unlikely to act as a deterrent. At a minimum the previous IDD drafting in 3.1.4 of the deed should be reinstated. Under this drafting Aurizon is liable for any consequential loss suffered by any party as a result of any of Aurizon's businesses failing to comply with the obligations outlined in the deed.

Asciano recommends that the 2010 Access Undertaking obligations relating to the Ultimate Holding Company Deed are reinstated.

⁴ QCA CDD Aurizon Network 2014 DAU Volume 1 Governance and Access p102

⁵ Michael Fraser (Aurizon Network Chair), Lance Hockeridge, John Cooper and Sam Lewis all sit on both the Aurizon Network board and the Aurizon Holdings Board.

2.8 Incentive Mechanism –as outlined in section 3 above Asciano does not support the removal of the Incentive Mechanism from section 2.8.

Asciano believes that the IDD drafting in relation to the Incentive Mechanism was too weak as it allowed Aurizon Network full discretion as to whether they developed an incentive mechanism.

Asciano believes that the development of an incentive mechanism should be mandatory and does not support the removal of section 2.8. Section 2.8 should be replaced with an obligation on Aurizon Network to develop an effective incentive mechanism that meets the criteria originally set out in 2.8 (b). Asciano notes that both the IDD and CDD have removed Aurizon Network's ability to claim for performance increments as part of their annual revenue adjustment process. The removal of this increment claim process will further reduce Aurizon Network's incentive to implement improvements in efficiency and performance. A mandatory incentive mechanism is needed to ensure efficiency improvements in the central Queensland coal network.

Comment on Access Undertaking Part 3: Ring Fencing

Asciano continues to support the CDD's broad position on ring fencing and notes that changes have been made to wording such that the wording refers to unfair differentiation rather than non-discriminatory treatment in order to reflect the wording contained in the QCA Act.

In considering the effectiveness of a ring fencing regime Asciano wishes to make the point that the absence of complaints under a ring-fencing regime does not necessarily imply the regime is effective. Rather, it could mean that access holders and access seekers do not have awareness that there has been a breach or that there is a lack evidence to substantiate a complaint. Asciano believes it is important that a strong ring fencing regime be maintained even in the absence of complaints in order to prevent any ring fencing breaches from occurring.

Decision Making Principles - Asciano believes that the decision making principles, particularly as they relate to how ring fenced information is used, are an important component of the access undertaking. We agree with the QCA's conclusion⁶ that without decision making criteria, the 2014 DAU does not balance the interests of access holders, access seekers and train operators with Aurizon Network's legitimate business interests. We agree with the conclusion that the decision making criteria from the 2010 Access Undertaking should be reinstated. We note the amendments to the decision making criteria are in line with the QCA Act. However, as Asciano has stated publicly previously⁷ Asciano has concerns around the use of the term "unfairly". The term 'Unfairly differentiate' is not defined in the QCA Act and the term is difficult to define legally. This creates

⁶ QCA CDD Aurizon Network 2014 DAU Volume 1 Governance and Access pp127 -128

⁷ Asciano Submission to Queensland Treasury July 2010, Proposed Amendments to the QCA Act 1997.

significant uncertainty around the meaning of “unfairly differentiates” and creates the potential for dispute between access seekers, Aurizon Network and the QCA.

Management Separation - Asciano concurs with the QCA's position⁸ that the 2014 DAU approach to management separation was unnecessarily complex, would reduce clarity and would increase the likelihood of disputes. The QCA's proposed drafting is sensible. However, Asciano strongly supports the QRC's position on the need for independent members of the Aurizon Network board⁹. Without this level of independence the Aurizon Network board cannot be relied upon to provide any effective governance in relation to separation and ring fencing from Aurizon Holdings.

Comment on Access Undertaking Part 4: Negotiation Framework

4.1 (f) – Overview - When a dispute arises during an access application or negotiation, it was argued that the time extension (i.e. the period between the issuing of a dispute notice and the finding) should be added to the access application or negotiation timeframes. The CDD drafting has clarified this. While Asciano supports this time extension, Asciano believes that the time extension should be the time between the issuing of a dispute notice and the resolution of the dispute between the parties (not simply when findings are made).

This position also needs to be reflected in clause 4.10.1 (c) (iv) (D).

Comment on Access Undertaking Part 5: Access Agreements

The CDD now proposes a single standard access agreement dealing with access rights and a single standard train operations deed dealing with operational matters associated with use of those access rights. This proposal reduces the number of standard agreements from four to two. Asciano supports the CDD proposal.

Asciano's detailed comments on the drafting of the Standard Access Agreement (SAA) and the Standard Train Operations Deed (STOD) are included in Attachment 2 of this submission.

Comments on specific sections of Part 5 are outlined below.

5.1 (d) – Development of an Access Agreement and 7.1 (f) - Application – these clauses have been amended in the CDD such that parties can agree to vary the terms of the Standard Access Agreement and any provisions of the Access Undertaking incorporated by reference into the Standard Access Agreement (including clauses 7.4.2 (Transfers), 7.4.3 (Relinquishments), 7.6 (Capacity resumption) and 7.7 (Force majeure)). Asciano believes that transfers, relinquishments and capacity resumption provisions of access agreements should reflect the provisions of the access undertaking in force at the time. These amended clauses relate to system capacity and so it is important that they are applied consistently across all system users. Any agreed variations to

⁸ QCA CDD Aurizon Network 2014 DAU Volume 1 Governance and Access pp150 -151

⁹ As summarised at QCA CDD Aurizon Network 2014 DAU Volume 1 Governance and Access pp149 -150

these provisions in one access agreements is likely to impact adversely on other system users of the system. Asciano queries why these clauses have been varied and strongly seeks that the IDD wording be reinstated.

5.2 - Access Charges under Access Agreements and SAA – In previous submissions¹⁰ Asciano raised concerns in some detail regarding the introduction of the term “Train Service Type” in the access agreement. Clause 5.2 (a) and the SAA continue to use this term. The SAA relates the agreement to “Train Service Types” rather than access rights and train services as was the case in the 2010 Access Undertaking. It is not clear why this change is required. The introduction of “Train Service Type” in the SAA is restrictive and diminishes the flexible use of access rights by an access holder.

Comment on Access Undertaking Part 6: Pricing Principles

Asciano continues to support the CDD's broad position on pricing principles.

Asciano strongly supports the QCA's position in regard to removing the diesel multiplier in the access undertaking. Aurizon Network has historically been applying a capacity diesel multiplier on train services that they assumed have consumed more network capacity than the reference train where it was intended to provide a price signal about the opportunity cost of operating a train that consumes more network capacity than the reference train.

Asciano understands that while transitional tariffs were being applied during the current access undertaking approval process Aurizon Network continued to apply the capacity diesel multiplier on diesel train services in the Blackwater and Goonyella systems during financial years 2013-14, 2014-15 and 2015-16. Asciano strongly believes that these capacity diesel multiplier charges should be refunded to end users (i.e. the capacity diesel multiplier charges should have ceased to apply from the beginning of the UT4 regulatory period being July 2013).

Comments on specific sections of Part 6 are outlined below.

6.4. 1 d) - Access Charges for Coal Carrying Train Services that Require an Expansion – The CDD has included specific expansion pricing principles supporting the general pricing principle that users which do not use an expansion should not be subject to any increase to tariffs due to the expansion. The expansion pricing principles include the principle 6.4.1 d) iii) that “if expanding users face a higher cost than non-expanding users, a zero contribution to Aurizon Network's common costs from expanding users is generally acceptable”.

Asciano does not agree that this situation should be “generally acceptable”. The expectation should be that expanding users should make a contribution to Aurizon Network's common costs,

¹⁰ See for example the Asciano Submission to the Queensland Competition Authority in Relation to the 2013 Aurizon Network Draft Access Undertaking October 2013 pages 86 to 96

although this contribution could be less than the contribution made by non-expanding users. Asciano believes that a more acceptable wording of principle 6.4.1 d) iii) is that “if expanding users face a higher cost than non-expanding users, a lesser contribution to Aurizon Network’s common costs from expanding users is allowed”.

The expansion pricing principles include the principle 6.4.1 d) iv) that “an allocation of the expansion costs to non-expanding Users may be appropriate where an expansion has clear benefits to those users”. Asciano has concerns with this principle as users who have not sought an expansion and who have not agreed to fund an expansion may be required to partially fund an expansion. This issue is of particular concern where the benefits identified are not verified by a third party and / or are based on Aurizon network scheduling and planning train operations in a specific manner which results in the expansion appearing to benefit users who did not seek the expansion or agree to fund the expansion. This principle should be removed. If it is believed that non-expanding users should partially fund an expansion the consensus expansion approach similar to that outlined in section 6.4.2 could be used.

6.7 – Pricing Objectives - Section 6.7 allows Aurizon Network to establish different access charges for non-coal carrying train services. Where capacity is insufficient to satisfy the access needs of all current and likely access seekers Aurizon Network can seek the Maximum Access Charge from access seekers. Asciano remains concerned that non-coal carrying train services could be disadvantaged as these services could potentially be subject to access charges set at the discretion of Aurizon Network. Asciano believes that non-coal services access pricing should cover their marginal cost and make some contribution to fixed cost, thus reducing the fixed cost to be carried by the coal services.

6.13.2 (g) (ii) (B) – Access Conditions - Asciano’s understanding of this section is that if the QCA refuses to approve some or all access conditions, Aurizon Network can enter into negotiations for a separate arrangement with access seekers that will be regarded as outside the scope of the access undertaking, and will be subject to Division 5 of Part 5 of the QCA Act. Asciano’s concern with this section is that it allows Aurizon Network and other parties (including Aurizon Network related parties or parties who are supplied train services by an Aurizon Network related parties) to negotiate alternative arrangements that have substantially reduced regulatory oversight, which in turn could adversely impact on other access holders, end users and / or train operators.

Comment on Access Undertaking Part 7: Available Capacity Allocation and Management

Asciano continues to support the CDD’s broad position on capacity allocation and management.

Comments on specific sections of Part 7 are outlined below.

7.3 (b) iii) – Renewals – The CDD has clarified several concepts relating to renewals. In particular renewals can have an alternative origin as long as the origin is within the same Track Segment. Asciano notes that the definition of 'Track Segment' refers to that contained in the Preliminary Information under Schedule A and is not defined as yet. Asciano is seeking that the exact definition of Track Segment be provided so Asciano can confirm that it has no concerns with the amendments in the CDD.

7.4 – Dealing with Access Rights - The CDD has essentially adopted the QCA supplementary draft decision on Short Term Transfers released in December 2014.

As outlined in previous Asciano submissions on the proposed short term transfer mechanism¹¹ Asciano believes that there are existing mechanisms in the 2010 Access Undertaking Schedule G that can be enhanced to facilitate short term transfers. Asciano remains strongly of the view that Schedule G of the 2010 Access Undertaking provides the basis for a short term transfer mechanism and should be used as the basis for any short term transfer mechanism in UT4.

If the QCA decides to implement the short term transfer mechanism outlined in the CDD, they should consider making the transfer process more efficient. Asciano believes that the complexity in the short term transfer process introduced in the CDD drafting can be replaced by a combination of the Schedule G principles and a short term transfer process that is applied in the weekly ordering process (i.e. transfer requests are submitted on the Tuesday and confirmed by Aurizon Network on the Thursday prior to the commencement of the scheduling week). Such a process should definitely be used for short term transfers that do not require detailed capacity assessments.

7.6 (a) (i) – Capacity Resumption - The CDD has amended the resumption test so an access holder now has to operate at least 85 per cent of the allowed train services “during each Quarter for 4 consecutive Quarters” (i.e. in a Quarter an access holder has to run 85 per cent of its allowed trains); whereas in the IDD an access holder has to operate at least 85 per cent of the allowed train services over four consecutive quarters (i.e. over a year an access holder has to run 85 per cent of its allowed trains).

Asciano opposes this amendment as train operations may vary from month to month due to maintenance windows at mines and other market and operating factors. Asciano believes the IDD approach of assessing train service entitlement utilisation over 4 consecutive quarters is more reasonable than the revised CDD drafting as the approach in the IDD drafting provides access holders with an opportunity to smooth volumes across 4 quarters.

¹¹ For example see the Asciano Submission to the QCA in Relation to an Aurizon Network Discussion Paper on a Potential Short Term Transfer Mechanism January 2015 and the Asciano Submission to the QCA in Relation to the QCA's Draft Decision on the Aurizon Network Discussion Paper on a Potential Short Term Capacity Transfer Mechanism May 2015

Comment on Access Undertaking Part 7A: Baseline Capacity

Asciano continues to support the CDD's approach to the establishment of a baseline capacity process as outlined in Part 7A.4.

Asciano recognises that the baseline capacity process as drafted in the CDD now is framed in terms of a collaborative consultation with regulatory intervention only if the consultation fails to progress the issue. Asciano is willing to work through the process outlined in 7A.4 with Aurizon Network and others involved in the central Queensland coal supply chain.

Comment on Access Undertaking Part 8: Network Development and Expansions

Asciano continues to support the CDD's approach to Network Development and Expansion. Asciano notes that the QCA is continuing to consult on the 2013 SUFA Draft Amending Access Undertaking¹² (i.e. an amendment of the 2010 Access Undertaking). Asciano recognises that the Final Decision's position on network development and expansion may be impacted by ongoing consultation on the SUFA process, and consequently Asciano is seeking clarity on how these current consultations will flow into the Final Decision.

Comments on specific sections of Part 8 are outlined below.

8.9.4 a) ii) – Funding a Shortfall Expansion – The CDD now only requires Aurizon Network to fund a capacity deficit if the shortfall was caused wholly by a default or negligent act or omission of Aurizon Network. Asciano is concerned that the CDD has weakened the position on capacity deficit that was contained in the IDD. The revised CDD position is that a more collaborative process is used where Aurizon Network will use their best endeavours to provide a capacity deficit solution and seek cost-sharing arrangements with users. Asciano does not support such a position and believes that since Aurizon Network had ultimate control on the scope, design and construction of the expansion they should be fully accountable for any capacity deficits that eventuate. Thus Aurizon Network should bear the cost of correcting the capacity deficit which should not be past on to users.

Comment on Access Undertaking Part 9: Connecting Private Infrastructure

Asciano has no additional comments on part 9 of the CDD.

Comment on Access Undertaking Part 10: Reporting

10.6.4 – Audit Process – The CDD has reverted to the position that Aurizon Network will appoint the auditor, although under 10.6.4 b) iv) the QCA must approve the auditor and may require that a replacement auditor be appointed. Asciano is concerned as this process effectively allows Aurizon Network to direct the selection of the auditor towards an auditor favoured by Aurizon Network

¹² On 17 February 2015 the QCA released Working Papers on SUFA Rent Models for consultation

(while still meeting the QCA's approval). Asciano supported the previous IDD wording whereby the auditor was selected by the QCA.

In addition, Asciano is disappointed that the CDD has not taken the opportunity to improve the transparency of the audit process. Two simple changes that Asciano has previously recommended would improve the audit process and give market participants improved reassurance that the audit process is effective and Aurizon is complying with the undertaking in all material respects. The key improvements are that:

- the auditor should consult with above rail operators and any interested end customers to ensure that any market concerns around compliance are adequately addressed in the audit; and
- the auditor should produce a confidential and a public audit report. These two changes would be inexpensive but would improve the effectiveness and transparency of the audit process.

10.7.1 a) - General – Under this clause upon request from the QCA Aurizon Network must provide the QCA with signed Access Agreements in order for the QCA to ascertain that the agreement is consistent with the access undertaking and the Act.

Asciano believes that this clause should be strengthened to require Aurizon Network to provide the QCA with any finalised non-standard agreement, along with an explanation of the substantial differences between the non-standard agreement and the standard access agreement.

Comment on Access Undertaking Part 11: Dispute Resolution and Decision Making

Comments on specific sections of Part 11 are outlined below.

11.1.1 a) - Disputes - Under section 11.1.1 a) prospective access users may now be parties to access disputes. Consequently disputes which may arise prior to an access application being lodged are now covered by the access undertaking. Asciano supports this amendment.

Comment on Access Undertaking Part 12: Definitions and Interpretation

Asciano's specific comments on Part 12 are outlined below.

Definition – Aurizon Network Cause - The CDD has maintained the IDD position in relation to this definition. Asciano is concerned that force majeure events have been removed from the definition of Aurizon Network Cause (as is contained in the 2010 Access Undertaking as "QR Network Cause"). This change to the definition of Aurizon Network Cause has an impact on an access holder's take or pay liability. Under Schedule F section 3.3 an access holder's take or pay liability is adjusted downwards for any train services, net tonnes or net tonne kilometres not operated due to Aurizon Network Cause. With the removal of force majeure events from Aurizon Network Cause it would lead to access holders being subject to a take or pay liability for services not operated due to force majeure events. As force majeure events are classified as events beyond the reasonable control of the affected party it would be unfair to have an access holder subject to take or pay for

services they could not operate due to a force majeure event. Asciano believes access holders should not be subject to take or pay for services not operated due to force majeure events.

Asciano seeks that force majeure events be reinstated into the definition of Aurizon Network Cause.

Comment on Access Undertaking Schedules

Asciano generally supports the Draft Decision's recommended changes to the schedules of the 2014 DAU but seeks that comments that were put forward in the Asciano submissions of October 2013 and October 2014 be taken into account in the Final Decision.

Comments on specific schedules are outlined below.

Schedule D - Ultimate Holding Company Support Deed – As outlined in this submission above the wording of the Ultimate Holding Company Deed has been weakened. In particular Asciano is concerned with changes to clause 3.1.4 of the deed which substantially weaken the consequences for Aurizon of non-compliance. At minimum the previous IDD drafting in 3.1.4 of the deed should be reinstated.

Schedule F – Reference Tariff – Asciano welcomes the CDD's positions to remove the capacity diesel multiplier. As outlined above in this submission Asciano strongly believes that capacity diesel multiplier charges levied from the beginning of the UT4 regulatory period (i.e. July 2013) should be refunded.

Schedule F – Take or Pay Arrangements – Asciano believes that further improvements to the take or pay arrangements should be considered by the QCA prior to the Final Decision. The take or pay arrangements proposed under section 3.3 continue to be assessed on a specific origin to destination pairing. This means that if an access holder uses in excess of their annual train service entitlements (TSEs) the excess TSE can only be used to offset the take or pay liability of TSE with the same origin to destination pairing. While this benefits access holders who have access rights with the same origin to destination pairing in one or more access agreements it does not serve any benefit or provide any flexibility beyond this. Thus, the take or pay arrangements in the CDD are restrictive and do not fully facilitate the efficient use of access rights.

Asciano believes an alternative take or pay mechanism should be established to create greater flexibility in the utilisation of access rights. Such an alternative mechanism should allow for excess TSEs from one origin to destination pairing in an access agreement to offset any under utilised TSEs from a different origin to destination pairing. That is, any additional train services for one origin to destination pairing can be used to offset the take or pay liability of a different origin to destination pairing that has under-utilised its TSEs during the year. With this approach access holders would have incentives to work together in order to maximise system throughput which in

turn reduces the take or pay liability borne by all users in the system under the socialised revenue cap regime. In considering this approach it should be recognised that Aurizon Network would not incur any financial disadvantage under such an arrangement as they would continue to have the ability to recover the difference between System Allowable Revenue and Total Actual Revenue. Asciano would be more than happy to explore such an alternative mechanism with the QCA, Aurizon Network and industry.

Schedule G Network Management Principles – Asciano has several concerns with the drafting of Schedule G in the CDD. In particular the CDD has removed Schedule G clause 8.2 (c) (iii) as the QCA has not accepted Aurizon Network's pooling proposal. Asciano believes that only those specific words in clause 8.2 (c) (iii) (B) that relates to the pooling proposal (i.e. "Additional Path based on Pooled Entitlement") should be deleted rather than the entire clause 8.2 (c) (iii). The removal of this entire clause significantly lessens an access holder's flexibility to use their access rights in the scheduling process.

Asciano believes that either Schedule G clause 8.2 (c) (iii) should be reinstated or the corresponding clause in the 2010 Access Undertaking Schedule G Appendix 2 should be reinstated. This 2010 Access Undertaking clause states:

(ii) if:

- *an Access Holder submits Train Orders for less than its Nominated Weekly Entitlement for one Train Service Entitlement ("First Entitlement") and the path is not allocated in accordance with paragraph (i); and*
- *that Access Holder also submits Train Orders for a different Train Service Entitlement in excess of its Nominated Weekly Entitlement,*

then the path will be allocated to those other Train Orders in the manner requested by the Access Holder and that allocation will be documented and is deemed to be performance of the First Entitlement by QR Network for the purposes of scheduling the Access Holder's future Train Orders;

Asciano believes that the removal of this wording is not justified, and Asciano believes that at the least this wording from the 2010 Access Undertaking should be reinstated in the final access undertaking.

Schedule I – Confidentiality Agreement – Asciano is very concerned that clause 6 of the Confidentiality Agreement now only binds Aurizon Network rather than Aurizon Group. The previous wording of this clause should be reinstated to ensure that Aurizon group is also bound by the confidentiality agreement.

Similarly Asciano is very concerned that clause 7 of the Confidentiality Agreement has weakened the penalties for Aurizon Network (and Aurizon Group) of any breach of the agreement. The previous wording of this clause should be reinstated to ensure adequate remedies for any breach by Aurizon Network are available.

Comments on Draft Decision - Access Agreement and Train Operations Deed

While Asciano supports the CDD's position on the suite of contracts, there are concerns which were previously raised by Asciano in its previous submissions in relation to train service types which have not been fully addressed. Asciano is seeking that this matter be addressed in the Final Decision.

In addition to addressing the issue of train service types Asciano is also seeking that the QCA consider the issues outlined in Attachment 2 of this submission in its Final Decision. Attachment 2 of this submission addresses issues of detail in the drafting of the SAA and the STOD.

Additional comments on the train service type issue are outlined below.

SAA Definition – Train Service Type – In the SAA “Ad Hoc Train Service for a Train Service Type is defined as:

- a) *a Network Train Service which is additional to the Nominated Monthly Train Services for that Train Services Type but which is otherwise in accordance with the Train Description for that Train Service Type; or*
- b) *a Network Train Service which is not a Train Service for a Train Service Type but which Aurizon Network permits an Operator to operate for the Access Holder under this Agreement as if it was a Train Service for the Train Service Type (subject to any derogations to the Train Description for the Train Service Type permitted by Aurizon Network, which includes a change in the Origin and Destination for that Train Service Type provided that the changed Origin and Destination forms part of the Nominated Network).*

This drafting implies that once an ad hoc train is scheduled in the daily train plan the, Ad Hoc Train Service is to be treated as a contracted service under the access agreement (i.e. all of the terms and conditions of the agreement would apply to Ad Hoc Train Services as if it was utilising Access Rights for that Train Service Type). This drafting is supported by Asciano as it provides Ad Hoc Train Services the same level of scheduling priority as a contracted train service once it is entered in the daily train plan. The definition further states that it could include a change in the origin and destination for that Train Service Type provided that the changed origin and destination forms part of the Nominated Network. Again this is supported by Asciano as it provides an access holder with more flexibility to utilise their access rights. Asciano is seeking that the Final Decision clarify how such Ad Hoc Train Services will be treated for take or pay purposes (i.e. can ad hoc services offset the take or pay of existing contracted services). Asciano support such ad hoc services offsetting the take or pay of existing contracted services.

4. Conclusion

Asciano has made numerous submissions to 2014 DAU regulatory consultation processes. In this submission Asciano has not restated positions put forward in these previous submissions but is seeking that its previous submissions are taken into account when developing the Final Decision.

This submission focuses on elements of the QCA's CDD which differ from the previous draft decisions. Asciano's primary concerns with the CDD are:

- the removal of the incentive mechanism. Asciano continues to believe that the efficiency of the Central Queensland coal network could be improved by the introduction of an incentive mechanism (ideally this mechanism should be mandated and not discretionary), and does not support the removal of the incentive mechanism;
- the dilution of the wording of the Ultimate Holding Company Deed In particular Asciano is concerned with changes to clause 3.1.4 of the deed which substantially weaken the consequences for Aurizon of non-compliance. At minimum the previous IDD drafting in 3.1.4 of the deed should be reinstated;
- the removal of certain provisions in Schedule G that significantly lessen an access holder's flexibility to use their access rights in the scheduling process. Asciano believes that the corresponding clause in the 2010 Access Undertaking Schedule G Appendix 2 should be reinstated;
- the removal of force majeure from the definition of Aurizon Network Cause that has adverse impacts on an end customer's take or pay liability; and
- having take or pay arrangements that facilitate more efficient use of access rights.

Asciano is seeking that these issues be addressed in the QCA's Final Decision.

In addition Asciano has identified numerous other issues (as outlined in this submission) and is seeking that these issues also be addressed in the Final Decision. In particular Asciano understands that although the IDD and CDD have removed the capacity diesel multiplier the multiplier charges continue to be levied by Aurizon Network. Asciano believes that these charges should be refunded to end users from July 2013.

Attachment 1- List of Recent Asciano Submissions to QCA Regulatory Processes Related to Aurizon Network

Since October 2014 Asciano has made several submissions to QCA consultation processes relating to both the 2010 Access Undertaking and the current 2014 DAU regulatory process. Asciano is seeking that, to the extent that the content of these previous submissions to the QCA is relevant, these submissions be considered in the QCA's Final Decision on the 2014 DAU.

These submissions are outlined below:

- 3 October 2014 – Asciano Submission to the QCA in relation to the Resubmitted 2014 Aurizon Network Draft Access Undertaking
- 7 November 2014 – Asciano Response to Aurizon Network Submission on 2013-14 Revenue Adjustment Amount and Increments
- 12 December 2014 – Asciano Submission to the QCA in relation to the QCA's Draft Decision on the MAR Component of the Aurizon Network 2014 DAU
- 30 January 2015 -- Asciano Submission to the QCA in relation to the QCA's Draft Decision on the Aurizon network 2013 SUFA DAAU
- 30 January 2015 -- Asciano Submission to the QCA in relation to an Aurizon Network Discussion paper on a Potential Short Term Transfer Mechanism
- 6 February 2015 – Asciano Submission to the QCA in relation to an Aurizon Network Proposed Tariff for Train Services to Wiggins Island Coal Export Terminal
- 20 March 2015 – Asciano Response to QCA Draft Decision on Aurizon Network Submission on 2013-14 Revenue Adjustment Amount and Increments
- 17 April 2015 – Asciano Submission to the QCA Draft Decision on the Pricing and Policy Component of the Aurizon Network Draft Access Undertaking
- 24 April 2015 - Asciano Submission to the QCA in relation to an Aurizon Network DAAU to Extend the Term of the 2010 Access Undertaking and Address Treatments of Revenue Volumes and Tariffs
- 29 May 2015 - Asciano Submission to the QCA in relation to the QCA's Draft Decision on the Aurizon network proposal for a Potential Short Term Capacity Transfer Mechanism
- 15 September 2015 – Asciano Submission to the QCA in relation to the QCA Draft Decision on Reference Tariffs for the Wiggins Island Rail Project Train Services
- 6 November 2015 - Asciano Response to Aurizon Network Submission on 2014-15 Revenue Adjustment Amount and Increments
- 5 February 2016 – Asciano Response to Aurizon Network Submission on 2014-15 Revenue Adjustment Amount and Increments

Attachment 2 – Asciano's Comments Draft Decision Access Agreement and Train Operations Deed

The tables in Attachment 2 below outline Asciano's comments on the SAA and the STOD. The SAA and STOD used are the SAA and STOD which were attached to the CDD.

Table 1: Asciano's Comment on the "Access Agreement – Coal" which is appended to the CDD

Clause Reference	Outline of Clause	Asciano Comment
1.1 Definitions	Change in Access Undertaking – paragraph (b) of this definition includes any change in interpretation or application of the undertaking due to a decision of a court or other authority	<p>Asciano queries whether a change in interpretation or application is actually a change in the access undertaking and therefore proposes that paragraph (b) of this definition be deleted.</p> <p>A Change in Access Undertaking is deemed to be a Material Change (which also includes a Change in Law or a Change in Tax) which permits Aurizon Network to attempt to vary the agreement.</p> <p>Paragraph (b) of this definition has the potential to be applied unfairly, and may have unintended consequences for the access holder and access provider.</p>
1.1 Definitions	Consequential Loss – includes under paragraph (b) any loss of whatever nature concerning supply of product from a mine to any third party or to make product available to transport.	Asciano is concerned with the breadth of this paragraph. Given that loss of revenue, profits, production and business opportunities are already included in this definition, Asciano considers that this paragraph (b) is not required.
3.2 Changes in Access Undertaking	This section provides for changes in the Access Undertaking to be notified to Access Holders and incorporated into the Access Agreement.	This clause provides for some for parties to negotiate the acceptance of access undertaking changes. This may have the potential to lead to different outcomes for access holders; this in turn raises concerns in relation to the potential for discrimination. Asciano believes that the acceptance of any changed undertaking conditions should explicitly be non-discriminatory and to the extent that different clauses are negotiated the most favourable clauses should be available to all access seekers.
4.3 Exercise of Access Rights and Operator	4.3(b) (ii) (A) requires the Access Holder to submit with a notice to nominate an Operator, an executed Train Operations Deed.	Asciano queries the practicability of the timing in the clause 4.3. In particular, Asciano is concerned that the time frames in this clause will create significant lead times, given that Aurizon Network must be

Clause Reference	Outline of Clause	Asciano Comment
nomination		given at least 20 business days notice and that the Train Operations Deed would need to be executed in advance of Aurizon Network approving the nomination and that the above rail agreements would need to be executed before this Train Operations Deed. Asciano believes shorter time frames are appropriate.
4.8 Operation of Ad Hoc Train Service	Allows Access Holder to nominate an Operator to run an ad hoc train service	<p>This clause requires the Operator to have an existing Train Operations Deed. Asciano queries how this will operate in practice, in particular for haulage requirements that arise on short notice (for example spot hauls) where the access holder wishes to utilise a different operator.</p> <p>As currently worded this clause may limit the choice of operator. Asciano seeks further clarification on this process and whether the intent of the process is for operators to have Train Operations Deeds pre-agreed with potential customers.</p>
12	Under this clause (12.2) Aurizon Network is not to unreasonably delay negotiating and executing an access agreement where executing such an agreement would result in a lessening of the Relinquishment Fee or Transfer Fee.	Asciano considers that this requirement should be strengthened to require Aurizon Network to actively use reasonable endeavours to identify opportunities where negotiating and executing an access agreement would result in a lessening of the Relinquishment Fee or Transfer Fee.
13.3	No compensation or liability	Asciano queries the justification for this clause. Asciano believes that it could be removed.
19	Insurance by Access Holder	<p>Asciano has the following concerns with these provisions:</p> <ul style="list-style-type: none"> • Clause 19.1 requires the insurance to be taken out with a corporation licensed to conduct insurance business in Australia or otherwise reasonably acceptable to Aurizon Network. This clause should be amended to confirm that Aurizon Network's consent is not required where the use of unauthorised insurers is permitted by the Insurance Act. • Clause 19.3 requires the access holder to provide evidence of the policies. As these policies can be commercial in confidence, Asciano

Clause Reference	Outline of Clause	Asciano Comment
		<p>considers that this should be restricted to the provision of a certificate of currency; and</p> <ul style="list-style-type: none"> • The requirement in clause 19.5 b) that any changes to the policy require Aurizon Network's written consent should be restricted to material changes. •
21	Limitations and Exclusions of Liability	<p>Asciano has the following concerns with these provisions:</p> <ul style="list-style-type: none"> • Asciano believes clause 21.4(b) should contain a time period in which the relevant train service is to be rescheduled • 21.4(b) iv) B refers to the situation where the failure to make infrastructure available is "of a magnitude which is beyond the scope of that performance and adjustment regime". Asciano considers that this wording is vague and subjective and should be further clarified. <p>Asciano considers that clause 21.7 shifts the risk position in this agreement to the access holder. Asciano believes that that the clause should be deleted.</p>
22.3	Parties to assist loss adjuster	Clause 22.3(b) should be limited to expressly exclude legally privileged material.
26	Suspension	This clause potentially allows Aurizon Network to suspend services with no notice of such suspension. While Schedule 6 outlines the Suspension Events, and therefore the Access Holder should be aware of the potential for suspension, unless the suspension relates to a safety issue Asciano would expect at least 2 business days notice of impending suspension. Asciano requests that this time frame be included in the Access Agreement.
35	Most favoured nation status	This clause provides the opportunity to raise issues with potential pricing differentiation. Where it is found that Aurizon Network has provided access charges to another customer at a rate outside of the pricing differentiation limits


Clause Reference	Outline of Clause	Asciano Comment
		outlined in the UT, they are obliged to rectify but the clause provides no avenue for recompense payable to the disadvantaged Access Holder. Asciano requests that this be rectified.
Schedule 2	1.4 Special Operating restrictions and 1.6 Permitted train movement on the Nominated Network	These issues have traditionally been incorporated within the relevant Operating Plan, which allows for ease of updating and review. Asciano believes that they should be shifted from the Access agreement to these operating documents.

Table 2: Asciano’s Comment on the “Train Operations Deed – Coal” which is appended to the CDD

Clause Reference	Outline of Clause	Asciano Comment
10.1 b)	Operation of Train Services – The Operator must not operate Train Services if the Access Holder does not hold Supply Chain Rights for these Train Services.	It is not clear why this requirement is imposed on the Train Operator as they will not necessarily have knowledge of whether an access Holder does or does not hold Supply Chain Rights. The section should include a requirement for the Access Holder or Aurizon network to advise the Operator if the Access Holder does not hold Supply Chain Rights.
11.1 and 11.2	Exercise of Train Control	The obligations of Aurizon Network in regard to the train control function should be strengthened to reflect the importance of Aurizon Network’s responsibilities. For example, these obligations should include: <ul style="list-style-type: none"> • safe and efficient operation of the Network so that any permitted use of the Network by the Operator is facilitated promptly and effectively and in accordance with the agreement; • have facilities including track structures, supports, signalling systems, etc. in place to enable the Operator to utilise the Train Paths and in accordance with the agreement; • receive, record and collate information from the Operator and other users of the Network to more effectively exercise the train control function and

Clause Reference	Outline of Clause	Asciano Comment
		<p>to comply with the network management principles;</p> <ul style="list-style-type: none"> • maintain and operate a Network control centre and a communication system for the purpose of communication with the operator and other users of the Network, and to facilitate the Operator's access to that communication system; and • use its best endeavours to provide the Operator with details, as soon as reasonably practicable of all operating incidents which has affected or could potentially affect the ability of any train to use its path, or which otherwise affects the security or safety of the train, the freight or other users of the Network.
<p>17.1 and 17.2</p>	<p>Weighbridges and Overload Detectors – provides that Operational Constraints may be imposed against an Operator if load exceeds Maximum Allowable Gross Tonnage and Maximum Desirable Gross Tonnage, which are defined as that weight noted in an “Authority to Travel” or “Train Route Acceptance”.</p> <p>Note the terms “Authority to Travel” or “Train Route Acceptance” are also mentioned in Clause 22.2 in relation to overloading.</p>	<p>Standard 71 has previously been the source of the definition for allowable weight limits and the application of relevant operational constraints. Standard 71 applies consistently across all Rail Operators.</p> <p>An “Authority to Travel” or “Train Route Acceptance” is specific to an individual Operator, meaning that different Maximum Allowable and Desirable Gross Tonnages may potentially be applied to different operators.</p> <p>Asciano believes that Maximum Allowable and Desirable Gross Tonnages should be applied consistently and transparently to all Operators. Thus in order to avoid the potential for discrimination these tonnages should be linked to a standard that applies to all Operators rather than an “Authority to Travel” or “Train Route Acceptance”.</p>
<p>16.3 and 16.4</p>	<p>Record Keeping and Verification</p>	<p>These clauses put obligations on parties which may not necessarily be a Party to the Deed (i.e. the party responsible for the weighbridge or overload detector, which is not necessarily either the Rail Operator or Aurizon Network) and which conceivably may not have a contractual relationship with the Parties to the Deed.</p> <p>Asciano believes that these sections should be reviewed with a view to considering whether they should be in a separate agreement with the party responsible for the</p>

Clause Reference	Outline of Clause	Asciano Comment
		weighbridge or overload detector.
19.2	Aurizon Network is required to carry out Maintenance Work such that the Infrastructure is consistent with the Rolling stock Interface Standards and that the Operator can operate Train Services in accordance with their Scheduled Times.	Similar to the comments on clause 11 above, Asciano considers that the obligations of Aurizon Network with respect to maintenance activities should be strengthened to reflect the importance of the responsibilities that Aurizon Network has. The current focus is on scheduled times and interface standards, rather than the safe use of the network.
20.4	Management of Incident Response – if an incident occurs, the Operator must make arrangements to effect the Recovery and Retrieval within three hours after the Incident occurred.	This should be clarified that the incident site should not be disturbed unless both Aurizon Network and the Operator have had the opportunity to complete appropriate investigations of the incident site.
21.4 (IDD STOD)	Training - Requirement for Aurizon Network to provide training to the Operator's Staff if it is required for a particular Interface Risk identified in the Interface Risk Assessment and the Operator can only obtain that training from Aurizon Network.	<p>This requirement was previously include in the STOD attached to the IDD. In the STOD attached to the CDD it has been removed.</p> <p>Asciano believes that the clause should be reinstated.</p>
Schedule 6, clause 2.1	Aurizon Network Below Rail Transit Time thresholds are set as an annual average	Asciano believes that Below Rail Transit Time should be measured and averaged over a shorter time period. Annual averaging does not provide the operator or access holder with the ability to review regular performance levels.



Level 18 15 Blue Street
North Sydney NSW 2060
Australia

Tel: 02 8484 8000
www.asciano.com.au