

asciano

Submission to the Queensland Competition Authority on
the Aurizon Network July 2016 Submission of an
Amended 2014 Draft Access Undertaking

July 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 Aurizon Network submission of an amended 2014 Draft Access Undertaking (DAU). Asciano has made numerous submissions to UT4 regulatory consultation processes as outlined in Attachment 1. Asciano asks that its previous submissions as outlined in Attachment 1 are taken into account by the QCA when considering its decision on the Aurizon Network submission of an amended 2014 DAU.

This submission only comments on those sections of the QCA's Final Decision on the 2014 DAU which have been subsequently amended in the Aurizon Network submission. While Asciano has concerns about other elements of the QCA's Final Decision on the 2014 DAU these concerns are not addressed in this current submission.

This submission focuses on Asciano's specific concerns with specific proposed drafting amendments proposed in the Aurizon Network submission. Asciano requests that these concerns be considered and addressed in the QCA's assessment of the Aurizon Network submission.

Asciano believes that some of Aurizon Network's proposed drafting amendments introduce new and amended concepts. Asciano believes that changes involving the insertion of substantial new clauses and the deletion of clauses and sub-clauses and changes in concepts are matters which are best considered as part of the UT5 regulatory process, which is expected to be finalised by mid 2017. Asciano notes that any parties signing access agreements in the interim UT4 period have the ability to negotiate amendments to agreements to include the current Aurizon Network amendments if both parties believe they are beneficial.

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

2. Asciano's Position on Sections of the Aurizon Network Submission

In its submission Aurizon Network has made amendments to revenues and tariffs, and drafting of the Access Undertaking and related documents.

Comments on Changes to Revenues and Tariffs

While Asciano continues to have concerns about broader elements of Aurizon Network's access revenue and access pricing approaches Asciano does not believe that this submission, which relates to the finalisation of UT4, is the appropriate forum to raise these concerns.

Comments on Changes to Drafting

Asciano has identified approximately one hundred and fifty drafting amendments proposed by Aurizon Network in its submission.

Asciano notes that Aurizon Network has described the amendments it has made as "minor and inconsequential" and that they have been careful to ensure that they have "not departed from the policy position set out in the QCA's Final Decision." Asciano recognises that some of these drafting changes facilitate improved clarity and workability, but Asciano believes that some of the proposed drafting changes introduce new and amended concepts. Asciano believes that changes involving the insertion of new definitions, the insertion of new clauses and sub-clauses and the deletion of clauses and sub-clauses and changes in concepts may be matters which are best considered as part of the UT5 regulatory process; this regulatory process is expected to be finalised by mid 2017. Asciano notes that any parties signing access agreements in the remaining UT4 period have the ability to negotiate the access agreements to include the proposed Aurizon Network amendments if both parties believe the amendments are beneficial.

Asciano's specific concerns with some of the proposed Aurizon Network amendments are outlined below.

Asciano's Comments on the Aurizon Network Amendments to the QCA Final Decision Access Undertaking

The table below contains Asciano's comments on Aurizon Network's proposed amendments to the Access Undertaking contained in the QCA's Final Decision.

Clause	Description	Asciano Position
3.13 c)	Dilutes wording previously proposed by Aurizon Network in its 2013 DAU.	The original wording should remain. The new wording places a reduced obligation on Aurizon Network to enforce the confidentiality provisions.
3.13 h)	Clarifies that a Recipient of Confidential Information may be an employee of a Related Operator if they are performing activities such as management reporting, credit assessment, taxation implications or financing implication.	Asciano remains concerned that employees of Related Operator's may receive Confidential Information regardless of whether they have the right to receive it or not and regardless of whether they are required to have the information to perform these activities. The activities specified are too board.
6.4.1 d) ii)	The term "Access Charges" has been deleted and replaced with the term "Reference Tariffs". This now means that Non-Expanding Users should not experience a material increase in Reference Tariffs due to an Expansion.	<p>Asciano is concerned that existing users not subject to a Reference Tariff could be subject to a material increase. Asciano believes all existing users, regardless of the charges they are subject to should not experience any material increases.</p> <p>Asciano also notes that the terms material increase and differences are not adopted consistently throughout Part 6. (For example, in clause 6.2.3 a) and clauses 6.2.4 a) and c) Aurizon Network has removed the words "material increase" and "material" to permit the QCA to consider price discrimination simply on differences). Under clause 6.4.1 d) ii) Aurizon Network has chosen to keep the words "material increase". The concern is that the term "material increase" is subjective.</p>
6.4.8 b)	The wording "for the purposes of calculating the Expansion tariff to be approved by the QCA" has been deleted and replaced with "subject to any applicable Cost allocation proposal accepted by QCA under clause 6.4.3". This is intended to clarify that Asset Replacement and Renewal Expenditure for an Expansion to which an Expansion Tariff applies will be treated as part of the cost of that Expansion and subject to any applicable Cost Allocation Proposal accepted by the QCA.	Asciano's concern is that the term Cost Allocation Proposal is not referred to in 6.4.3. The only place the term Cost Allocation Proposal appears in the 2014 Undertaking is in clause 6.4.8 (b). On this basis, Asciano questions whether this clause 6.4.8 b) is referring to the wrong cross-reference.
7.2.1 a) vi)	A new clause has been inserted at 7.2.1 vi) which effectively states that even though an access seeker may meet all the	Asciano is concerned that this clause is subjective.

Clause	Description	Asciano Position
	<p>requirements in clauses 7.2.1 a) i) to v). Aurizon Network may refuse to allocate capacity if the access seeker has not been actively participating in the negotiation process.</p>	<p>Asciano recognises that this clause is intended to address instances where a party seeks to sit in the queue rather than execute an access agreement, however Asciano believes that clause 7.2.2 c) already provides Aurizon Network with an ability to review an access seeker's position in a queue every six months and therefore the insertion of clause 7.2.1 a) vi) is unnecessary.</p>
7.4.2 b) i) C)	<p>This clause has been amended to clarify timing issues related to transfers not requiring additional access rights and transfers where additional access rights and rapid capacity assessment is required.</p> <p>The amendments also introduce a restriction where a transfer must be submitted within a certain timeframe prior to the next train ordering week. This timeframe would restrict access holders' ability to flexibly transfer access rights freely as they would be restricted to submitting transfers within certain periods prior to the ordering week. Importantly, access holders would not be able to request short term transfer within a train ordering week to occur in that same ordering week.</p>	<p>Asciano believes that the section of this amendment relating to submitting transfers within a certain timeframe prior to the next train ordering week will reduce the number of short term transfers that could otherwise occur.</p>
7.4.2 e) ii) E)	<p>This clause has been deleted on the basis that no rail haulage agreements were signed before 1 March 2002.</p>	<p>Asciano seeks clarification as to whether this original clause refers to above rail haulage agreements or below rail access agreements. If the intention is to refer to above rail haulage agreements (which the original clause seems to imply) than the removal of this clause may have impacts on above rail haulage agreements signed prior to 1 March 2002 that may still be on foot.</p>
7.4.2 h)	<p>This clause has been deleted on the basis that Aurizon network believes that transfers that require additional access rights and detailed assessment will be better managed and served via the access application process in Part 4.</p>	<p>Asciano believes all transfers (regardless of type) should be addressed in section 7.4.2.</p> <p>Asciano believes that The QCA should assess whether such transfers are better managed under the access application in Part 4. If the QCA assess that these transfers are better managed under Part 4 than the transfer process in 7.4.2 should at least state that the access application process under Part 4 is to be applied for transfers that require additional access rights and detailed assessment. Otherwise, a transfer of this type is not covered in the transfer process under clause 7.4.2.</p>

Clause	Description	Asciano Position
7.5.3 b)	Clause 7.5.3 b) has been inserted where, in relation to mutually exclusive access applications, if Aurizon Network offer available capacity to access seekers in a queue the offer will be subject to an access seeker executing an access agreement within 20 business days of it accepting the offer.	<p>Asciano is concerned that the 20 days timeframe between the period when an access seeker intends to take up the offer of access rights and for them to execute an access agreement is too short in practical terms. For example, the internal governance process for an access seeker may take longer than 20 days.</p> <p>Asciano is also concerned that if an access seeker cannot meet this 20 day period their opportunity to gain access rights lapses and clause 7.5.3 c) applies where negotiations are suspended as per clause 4.8. The suspension process under clause 4.8 does not give any indication of what position in a queue the suspended access application retains under such a scenario.</p>
Definition Expansion	The definition is amended such that expansion projects exclude projects undertaken for safety and operational performance purposes, single projects of under \$10 million dollars or cumulative projects under \$20 million.	If the projects being undertaking for safety and operational performance reasons are being undertaken as the direct result of an expansion then these projects should be considered as an expansion project.
Schedule E 1.1 e)	Includes a definition of “dispose” which excludes an unsold asset which is replaced by an expansion or by maintenance work.	Asciano’s concern is that if assets which have been replaced by newer works remain in the asset base then this may artificially inflate the value of the asset base. If an asset has been replaced its value should be removed from the asset base.
Schedule E 1.2 c) iii)	Inserts clause 1.2 c) iii) E) that limits the QCA to only remove an asset if no other alternative mechanism will be effective in addressing the issue of falling demand.	<p>Asciano’s concern is that this new clause constrains the QCA. Asciano believes that all parties recognise that the RAB will only be reduced if no other reasonable options are available.</p> <p>Asciano believes that this matter is better considered as part of UT5, which is expected to be finalised by mid 2017.</p>
Schedule G 2 d) and e)	Deletes existing clauses due to a perceived duplication between these clauses and 7A.4.2 h).	<p>Asciano’s concern is that the Capacity Assessment Report as contemplated by 7A.4.2 h) does not yet exist. Until the Capacity Assessment Report exists then the wording in Schedule G 2 d) and e) should be retained.</p> <p>Following the development of the Capacity Assessment Report this matter should be reviewed. Asciano believes that this matter is better considered as part of UT5, which is expected to be finalised by mid 2017.</p> <p>Furthermore Asciano notes that 7A.4.2 h) requires Aurizon Network to publish the Strategic Train Plan on its website for each</p>

Clause	Description	Asciano Position
		<p>coal system to the QCA and stakeholders, whereas the intent of the obligations under Schedule G 2 d) and e) is to provide the Strategic Train Plan to individual access holders and access seekers.</p> <p>Asciano suggests that the amended clause under Schedule G clause 2 c) should also make references to the obligations under clause 7A.4.2 g) to ensure that access holders, access seekers, customers and train operators are recipients of the Strategic Train Plan.</p>
Schedule G 2 j) and k)	Deletes existing clauses due to a perceived potential for inconsistency in review mechanisms between these clauses and 7A.4.2.	<p>Asciano's concern is that the Capacity Assessment Report as contemplated by 7A.4.2 h) does not yet exist. Until the Capacity Assessment Report exists then the wording in Schedule G 2 j) and k) should be retained.</p> <p>Following the development of the Capacity Assessment Report this matter should be reviewed. Asciano believes that this matter is better considered as part of UT5, which is expected to be finalised by mid 2017.</p>
Schedule G 3.1 d), f) and g)	<p>Amends clauses to remove a potential requirement for Aurizon Network to publish confidential information. The clauses now require Aurizon Network to use reasonable endeavours to agree to confidentiality obligations that do not prevent the disclosure of information.</p> <p>One particular amendment relates to Aurizon Network's confidentiality obligations under 3.1 f) A) and B), where these obligations are treated differently for agreements entered into prior to the approval date of UT4 and agreements entered into after the approval date of UT4.</p>	<p>Asciano is concerned that this changed wording would only obligate Aurizon Network to include in the Master Train Plan those TSEs contained in agreements entered into after the approval date of UT4. Asciano is seeking confirmation that the Master Train Plan will include all TSEs.</p> <p>Asciano also notes that Schedule G clause 3.1 b) specifies that the Master Train Plan must be published covering a period of at least one month and up to three months. On this basis, Asciano believes that the time period obligations under Schedule G clause 3.1 b) may limit Aurizon Network exposure as they only publishing an access holder's future contracted paths for a maximum of three months. The QCA should consider whether the amendments to clause 3.1 f) A) and B) are necessary on this basis.</p>
Schedule G 8.3 a) i)	Amends clause to clarify that any Short term transfers are included in the scope of the TSE.	Asciano believes that in order to ensure all transfers are considered in this process the proposed amendment should refer to all transfers, not just short term transfers.

Asciano's Comments on the Aurizon Network Amendments to the QCA Final Decision Standard Access Agreement

The table below contains Asciano's comments on Aurizon Network's proposed amendments to the Access Undertaking contained in the QCA's Final Decision.

Clause	Description	Asciano Position
1.1	Amends the definition of Consequential Loss and introduces the definition of Third party. The amendment ensures that exclusions for consequential loss extend to claims from third parties to the extent that these claims would fall within the definition of Consequential Loss.	Asciano is concerned that this new drafting introduces amended definitions to UT4 and its associated documents at this late stage. Asciano believes that this matter is better considered as part of UT5, which is expected to be finalised by mid 2017.
6.2 a) i)	The clause is amended such that if there is no due date specified for the payment of a security then the payment of the security must be made within five business days of Aurizon Network giving written notice to the access holder.	Asciano is concerned with this amendment as five business days may be too short a time period for an access seeker to organise and pay the security. Asciano also notes that clause 6.2 a) ii) allows for a security to be paid in ten business days. Asciano believes that the Aurizon Network amendment in 6.2 a) i) should be amended to ten business days. This will make the time frames in 6.2 a) I and 6.2 a) ii) consistent.
Schedule 7 Access Interface Deed 1.1	Amends the definition of Consequential Loss similar to that outlined in clause 1.1 outlined above.	See comment above in relation to clause 1.1.

Asciano's Comments on the Aurizon Network Amendments to the QCA Final Decision Rail Connection Agreement

The table below contains Asciano's comments on Aurizon Network's proposed amendments to the Standard Rail Connection Agreement contained in the QCA's Final Decision.

Clause	Description	Asciano Position
1.1	Amends the definition of Consequential Loss and introduces the definition of Third party. The amendment ensures that exclusions for consequential loss extend to claims from third parties to the extent that these claims would fall within the definition of Consequential Loss.	Asciano is concerned that this new drafting introduces amended definitions to UT4 and its associated documents at this late stage. Asciano believes that this matter is better considered as part of UT5, which is expected to be finalised by mid 2017.

Asciano's Comments on the Aurizon Network Amendments to the QCA Final Decision Standard Studies Funding Agreement

The table below contains Asciano's comments on Aurizon Network's proposed amendments to the Standard Studies Funding Agreement contained in the QCA's Final Decision.

Clause	Description	Asciano Position
1.1	Amends the definition of Consequential Loss and introduces the definition of Third party. The amendment ensures that exclusions for consequential loss extend to claims from third parties to the extent that these claims would fall within the definition of Consequential Loss.	Asciano is concerned that this new drafting introduces amended definitions to UT4 and its associated documents at this late stage. Asciano believes that this matter is better considered as part of UT5, which is expected to be finalised by mid 2017.

3. Conclusion


This submission focuses on Asciano's specific concerns with specific proposed drafting amendments proposed in the Aurizon Network submission. Asciano requests that these concerns be considered and addressed in the QCA's assessment of the Aurizon Network submission.

Asciano believes that some of Aurizon Network's proposed drafting amendments introduce new and amended concepts. Asciano believes that changes involving the insertion of substantial new clauses and the deletion of clauses and sub-clauses and changes in concepts are matters which are best considered as part of the UT5 regulatory process, which is expected to be finalised by mid 2017. Asciano notes that any parties signing access agreements in the interim UT4 period have the ability to negotiate amendments to agreements to include the current Aurizon Network amendments if both parties believe they are beneficial.

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

Since October 2014 Asciano has made 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 by the QCA. 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
- 29 February 2016 – Asciano Submission to the QCA Consolidated Draft Decision on the 2014 DAU.



Level 18 15 Blue Street
North Sydney NSW 2060
Australia

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