

3 July 2019

Mr Charles Millstead
Chief Executive
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Dear Mr Millstead

Submission – UT5 draft amending access undertaking

We refer to the draft amending access undertaking (**UT5 DAAU**) submitted to the Queensland Competition Authority (**QCA**) on 3 May 2019, which seeks to vary the Aurizon Network 2017 Access Undertaking (**UT5**) as approved on 21 February 2019.

While recognising the stated objective and benefits sought from the UT5 DAAU, Pacific National takes this opportunity to provide a submission focused on enhancing those outcomes. As a Railway Operator, Access Holder and future Access Seeker, Pacific National provides a perspective essential to the improvement of, and delivery of, benefits to the broader supply chain associated with the Central Queensland Coal Network (CQCN).

Pacific National proposes that the UT5 DAAU would be acceptable to Pacific National, subject to the following key changes outlined in this submission. Broadly, Pacific National recommends amendments that:

- provide Supply Chain Participants with the opportunity to be consulted and advocate on matters of importance and relevance to their participation in the CQCN;
- include Railway Operators in the consideration and development of the scope, constitution, decision making framework and governance arrangements that will apply to the Independent Expert (IE) and the Rail Industry Group (RIG); and
- require the requisite decision makers under the regulatory framework to have reasonable regard to, and consideration of, information from, and the interests of, those Supply Chain Participants.

We are conscious that regulatory certainty and predicability has been the cornerstone of Queensland's competitive rail freight haulage market since Pacific National first entered in 2009. Pacific National continues to support a process which has appropriate regard for Supply Chain Participants in the markets upstream and downstream from the CQCN.

This is a public submission.

Role of Supply Chain Participants

UT5 recognises the inter-relationships and inter-dependencies within the coal transport supply chain and provides an ability for supply chain groups to form and, manage the movement of coal. This provides supply chain participants with clarity, transparency and accountability for their respective roles within the approved UT5 regulatory framework.

There are also requirements that Aurizon Network and the QCA have regard to the matters raised by supply chain participants on how the operation of UT5 may impact (both positively and negatively) on the commercial risk profiles of those participants in the CQCN.

With this in mind, a matter of particular interest for Pacific National is that the UT5 DAAU will have a material change in the nature, scope and commercial balance of these approved arrangements. This is primarily effected by transferring a number of responsibilities to a supply chain group comprising:

- Aurizon Network;
- the proposed RIG, which is to comprise coal producers; and
- the proposed IE, which is to be established by Aurizon Network and the RIG.

Without any safeguard for our participation in, or consultation by, this supply chain group, Pacific National asserts that there will be less clarity, transparency and accountability than that which currently exists for supply chain participants under the approved UT5.

In reaching a negotiated outcome on the UT5 DAAU arrangements, Aurizon Network and some of the coal producers, could not have appropriate regard to¹:

- the legitimate business interests of Railway Operators and other Supply Chain Participants who are reliant on access to the CQCN to deliver on their contractual commitments to coal producers;
- the public interest in having competition in upstream and downstream markets from the CQCN; and
- the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of of users have been adversely affected,

when the insights of those persons and participants were not sought specifically for inclusion during the consultative process they undertook, and will continue not to be contemplated effectively where Supply Chain Participants are not consulted on matters relevant to them and their effective operations in the supply chain.

¹ ss 69E and 138(2)(a), (d), (e), (g) and (h) QCA Act

To maintain the valuable contribution of supply chain participants, and have regard to their interests in the CQCN, Pacific National propose the following changes to the UT5 DAAU:

1. All Supply Chain Participants be provided with the opportunity to be involved in the development of the scope, constitution and governance arrangements that will apply to the IE and RIG during the term of the UT5 DAAU.
2. The role of all Supply Chain Participants be incorporated into the IE's consultative and decision making processes (eg baseline capacity assessment (BCP), system operating parameters (SOP), capacity deficit decisions), monthly reporting obligations, business rules underpinning root cause analysis of performance trends and the development of performance metrics.
3. All Supply Chain Participants be provided with the option to have a role in all decision making processes pertaining to Aurizon Network's maintenance works, asset renewal works and operating requirements that will be implemented for the regulatory term.
4. All Supply Chain Participants be provided with the ability to have their interests taken into account by Aurizon Network when conducting feasibility studies on the scope and standard of a new capacity expansions and the like.
5. All Supply Chain Participants be provided with the ability to refer an IE or RIG decision to the QCA for review if the participant has a genuine concern the an IE and/or RIG decision did not have appropriate regard to all of the information that was presented by the Supply Chain Participants in the relevant decision-making process.

Building on elements of UT5

In addition to the ongoing role of Supply Chain Participants in the effective operation of the CQCN, Pacific National requests the QCA give consideration to a number of other matters when assessing the UT5 DAAU, which are intended to build on the existing elements of UT5, and achieve the object of Part 5 of the QCA Act.

6. The ringfencing arrangements in the UT5 DAAU must appropriately protect the legitimate business interests of Supply Chain Participants in light of the amendments made², particularly where those changes enable Aurizon Network to share the confidential information of certain participants (above-rail and export terminal operators) with the End Users and the RIG, and without necessarily obtaining the written consent of those affected parties.
7. The UT5 DAAU must contains appropriate regulatory safeguards to prevent Aurizon Network and the RIG, either independently or otherwise, from engaging in conduct which would have, or would be likely to have, the effect of:
 - (a) cost-shifting or cross-subsidies;
 - (b) price or margin squeezing; or
 - (c) lessening competition in markets upstream and downstream from the CQCN.

² Sections 3.6(b), 3.11(e)(ii) and 3.14(a) of UT5 DAAU

8. The Capacity Determination process must address the circumstances where Aurizon Network or the RIG may use the IE's Capacity Determination process³ to collectively push transport supply chain costs arising from an IE determination of an Existing Capacity Deficit⁴ through to the above-rail operators operating in competitive markets upstream and downstream from the CQCN.⁵ This is especially in light of the inability of the Supply Chain Participants to press for consideration of their interests in the overall consideration and determination of the IE. For example, where coal producers are willing to voluntarily relinquish any of their access rights, and the IE identifies changes to the operating mode of above-rail operators would ameliorate the capacity deficit in a coal system prior to the IE publishing the quantum of the capacity deficit in a coal system – the Supply Chain Participant has no recourse and no effective mechanism for influencing consideration of alternative factors in a holistic review.
9. The UT5 DAAU must maintain the regulatory predictability and certainty that currently applies to coal supply chains which have been built up over time and based on the precedents currently applying to supply chain groups (as defined in UT3, UT4 and UT5).
10. The appropriateness of an ability for existing access agreements and train operating deeds to be amended after the IE releases the determination on the System Operating Parameters⁶. With the inclusion of this mechanism to amend existing contractual arrangements, it is likely that coal producers will seek to compel above-rail operators to pass through all of the changes in the operating parameters irrespective of whether the changes will impose additional costs on the above-rail operators, or in fact create inefficiencies in the operation of their business in the supply chain given the limited consultation and influence over the assumptions used to build the System Operating Parameters.

Regulatory Framework

Pacific National considers it to be in the public interest for an approved access undertaking to exist that establishes a stable, certain regulatory framework. This facilitates the delivery of access services at prices that promote an efficient allocation of resources, consistent with the public interest in having competition in the above-rail haulage market. In this way, Supply Chain Participants including coal producers, train operators and export coal terminal operators are able to have greater confidence that they are able to address the business and regulatory risks when there is regulatory certainty.

To this end, the UT5 DAAU must not:

1. adversely impact the legitimate commercial and business interests of rail operators by preventing these commercial entities from being able to control or mitigate the business and regulatory risks created by regulatory arrangements which they have no influence over or consultation on; and

³ Section 7A.5(a)(iii)(A) and (B) of UT5 DAAU

⁴ For example, where a coal producer is willing to voluntarily relinquish any of its relinquishment rights, and where the IE is required to consider whether changes could be made to the operating mode of the above-rail operators which would ameliorate the potential capacity deficit prior to publishing its determination on the nature and scope of the capacity deficit in a relevant coal system.

⁵ We note that Aurizon Network is protected from this outcome (see cl.7A.5(h)), namely "To the extent Aurizon Network is required to implement operational changes and, in doing so, incurs costs that it would not otherwise be entitled to recover in accordance with this Undertaking, Aurizon Network will be entitled to recover such costs (provided those costs are reasonable and pre-approved by the QCA)."

⁶ Section 7A.12 of UT5 DAAU

2. prevent Supply Chain Participants from playing an appropriate role in the consultative processes for Aurizon Network's operating, planning, maintenance and investment arrangements, and subjecting them to decisions made by either the IE or by the outcome of a collective agreement between Aurizon Network and a special majority of the proposed RIG.

Conclusion

To address our comments, we propose the QCA recommend that amendments to the UT5 DAAU be implemented by Aurizon Network.

If you would like to discuss the matters in this submission in further detail, you can contact me by email (tanya_boyle@pacificnational.com.au) or mobile (0459812257).

Yours sincerely

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