

**SUBMISSION TO THE QUEENSLAND
COMPETITION AUTHORITY**

NORTHERN BOWEN BASIN DRAFT

SYSTEM RULES

September 2014

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1. Executive summary

Unless otherwise defined in this submission, capitalised terms have the meaning given to them in the Northern Bowen Basin Draft System Rules. Anglo American Metallurgical Coal Pty Ltd (**Anglo American**) wishes to make a submission to the Queensland Competition Authority (**QCA**) in respect of the Indec Report entitled "Indec Consulting Review of Northern Bowen Basin Draft System Rules" dated June 2014 (**Indec Report**). Although the QCA has not specifically called for submissions, Anglo American believes that the proper construction of the Northern Bowen Basin System Rules (**System Rules**) is essential to an open, fair and transparent operation of the system and, on the basis of the Indec Report, further clarifications are required in that regard. In summary, Anglo American makes the following further submissions:

- (a) Anglo American is general supportive of the report and, in particular, is supportive of the concepts of "theoretical capacity", "practical capacity" and "allocated capacity" raised and discussed in the Indec Report;
- (b) Anglo American agrees with recommendation 5 that losses from changes in the three week network maintenance "lock down" period should be Aurizon Network cancellations. However, Anglo American believes that the current approach to the allocation of cause for delays and cancellations is fundamentally flawed as it is understood that there are a substantial number of disputes which have been raised and not resolved. In this regard, Anglo American is strongly supportive of an independent third party to be the arbiter of such disputes and raises some options below to allow this to occur for the least cost;
- (c) whilst Anglo American generally agrees with recommendation 7, Anglo American suggests that Aurizon Network should be required to explain why the Business Execution Rules are confidential and the detriment which would flow if they were made public given their apparent relevance to how access, and therefore contracted capacity, is ultimately delivered. It is unacceptable that rules in respect of the allocation of capacity between coal producers is confidential and coal producers do not have an opportunity to make submissions as to the appropriateness, or otherwise, of those rules;
- (d) there should be no 7 day scheduling process as currently detailed in the System Rules, which effectively becomes the locked down plan from which changes to train orders are considered by Aurizon Network. As the system operates on a rolling basis to incorporate short term stability in plans, clarity is required of the 72 hour ITP scheduling window and 48 hour scheduling window, where any changes to the 72 hour schedule outside of the 48 hour schedule will not result in Train Service Entitlement (**TSE**) consumption and any changes made by a coal producer within the 48 hour schedule may result in train path consumption. Although this seems to be the essence of the current system and that recommended in the Indec Report, Anglo American believes that some of the language which has been used in respect of the 48/72 hour scheduling window is loose and the System Rules should be unambiguous as to the operation of the principles in respect of TSE consumption.

The current drafting of the System Rules outlines a 7 - 10 day scheduling process, which is relatively inflexible unless changes are agreed with Aurizon Network. The weekly schedule, instead of being an indicative train plan for the following week, becomes the locked down plan from which changes to train orders are considered by Aurizon Network. This is inappropriate, given that the system actually runs on a rolling 48/72 hour scheduling basis, with relatively high variation outside of this period. Unless qualified below, Anglo American generally supports the recommendations of the Indec Report.

2. Recommendation 3 - Independent Third Party Dispute Resolution

The Indec Report recommends a review of the cost effectiveness of an independent third party to arbitrate any dispute arising from train service delays and cancellation.

It is Anglo American's understanding that there are a significant number of disputes as to the cause of train service delays or cancellations. It is also Anglo American's understanding that some of these disputes have been unresolved for in excess of 12 months.

Anglo American is of the view that it is important that these matters be resolved as there are consequences under UT3 where the cause of the delay or cancellation is an Aurizon Network cause. For example, the question of whether a particular train path has not been used due to an Aurizon Network Cause is important to:

- (a) the determination of Take or Pay revenue under clause 2.2.3 of Part B of Schedule H; and
- (b) determining who gets priority under the Contested Train Path Decision-Making Process under paragraph (c)(iii) of Appendix B.

In light of the substantial number of outstanding disputes and the length of time that these matters have been outstanding, Anglo American believes it is critical to have an independent party as the ultimate arbiter of the cause of delay.

However, Anglo American does agree that it is important that this process is neither time consuming nor expensive.

One option would be to refer the ability to make a determination as to the cause of delay or cancellation to an entity which is already constituted. For example, the Integrated Logistics Company (ILC) is a body that could be tasked with the ability to determine disputed causes of cancellations as it relates to lost capacity. The charter of the ILC is Goonyella System specific but this could be reviewed if it was considered to be the best option.

An alternative would be to establish under the Access Undertaking a panel of, or an, independent expert(s) who would be able to determine the cause of delay or cancellation. The Access Undertaking could strictly limit the ability to provide submissions and evidence and impose strict time limits. In limiting the amount of information which can be provided and the time period within which the dispute must be determined, the costs are generally lower.

Another option would be for the matters to be raised as a dispute to the QCA. However, this option would only be acceptable if the QCA were allowed by the parties to agree to a strict timetable and level of information relevant to the dispute. Alternatively, to minimise time and cost, the QCA (or an independent expert appointed by the QCA) could make a final binding decision on any outstanding cancellations on each occasion when Aurizon Network seeks approval of its revenue relevant to the financial period.

3. Measurement of capacity

Anglo American support the concepts of "theoretical capacity", "practical capacity" and "allocated capacity" raised and discussed in the Indec Report. In particular, at recommendations 8 and 9. However, Anglo American believes that its submission was incorrectly referenced by the Indec Report at section 3.7.4 as supporting priority scheduling for cargo assembly over other ports.

Anglo American would also like to make some additional comments to ensure the effectiveness of these recommendations as follows:

- (a) the assessment and publication of theoretical, practical and allocated capacity must be forward-looking, that is, the MTP must set out the theoretical, practical and allocated capacity for the next month;
- (b) the data on theoretical, practical and allocated capacity should be "live" in the sense that between the issue of a MTP and day-of-operation, a significant number of changes will be made by Aurizon Network. These changes should be published as soon as possible;
- (c) the MTP should be transparent and available not only to access holders and access seekers but also customers; and
- (d) the pathing and other assumptions forming the MTP, including the theoretical, practical and allocated capacity, should be detailed within the Network Development Plan.

This is important to ensure users have visibility of 'real' system capability in different periods. This will not only facilitate higher throughput and better system utilisation but it is critical to determine the ability and risks in planning and scheduling railings. For example, planned and unplanned maintenance outages will increase the risk of pathing (including ad hoc) not being available.

4. Recommendation 5 – Network Maintenance Lock Down Period

Anglo American agrees with recommendation 5 that any losses from changes made by Aurizon Network in the three week "lock down" period should be categorised as Aurizon Network cancellations.

There are changes which will have a significant impact upon the coal producers and the maintenance lock down period should be considered locked down and not able to be unilaterally altered by Aurizon Network. For example, recently Aurizon Network made a change in respect of maintenance outages within the locked down period which had a significant impact upon the coal producers as they had incorporated the maintenance outage into their mine maintenance and production plans. This is a significant issue because when the change was made the coal producers were unable to alter the mine maintenance and production plans and therefore were unable to take advantage of their monthly TSEs. This was exacerbated by the monthly entitlement not allowing subsequent 'catch up'.

It may be appropriate to provide an exception from this rule where Aurizon Network and all affected Access Holders and Customers agree to a subsequent change within the 3 week window.

5. Recommendation 6 - Business Rules for the Port Demand Profile

Whilst Anglo American generally agrees that the System Rules need to incorporate and work with the Port, Anglo American does not believe that the business rules for how the port operates should be developed by Aurizon Network. Particularly given that the port operates under its own rules (being based on 'Turn of Arrival') which determines how trains are ordered.

Any such business rules determining how the port demand profile is to operate must be developed and agreed between the affected parties through an industry body with representation by the coal producers. Once developed, the System Rules and the business rules for the port must operate in conjunction with each other and not in the interests of one stakeholder.

6. Recommendation 7 - The Business Execution Rules

Whilst Anglo American generally agrees with recommendation 7, it believes that Aurizon Network should be required to establish why the document is confidential and to explain the real detriment that would flow if the document was made public.

Although Anglo American accepts that there may be a need for a document, which is separate from the System Rules that plays a role such as the current Business Execution Rules, these must be transparent to all parties to ensure that there is no discrimination between rail operators. For example, the rules in respect of overloaded wagons need to be clear and consistently applied to all operators equally.

7. Recommendation 10 - Performance Reporting

Anglo American agrees that Aurizon Network should be required to develop a more comprehensive performance report on train path consumptions. In particular, this reporting should include reporting on Aurizon Network Causes and an allocation of other causes between coal producers, rail operators and port providers where relevant.

Anglo American also notes that whilst more comprehensive reporting is important, it is more important that there is transparency leading up to the 'day-of-operations'.

8. Recommendation 13 - 48/72 Hour Scheduling

The current drafting of the System Rules outlines a 7 to 10 day scheduling process, which is relatively inflexible unless changes are agreed with Aurizon Network. The weekly schedule, instead of being an indicative train plan for the following week, becomes the locked down plan from which changes to train orders are considered by Aurizon Network. This is inappropriate, given that the system actually runs on a rolling 48/72 hour scheduling basis, with relatively high variation outside of this period. In addition, the criteria used by Aurizon Network for allowable changes to the weekly plan are those intended for use in changes to the daily train plan. It is also of note that the contested path process also appears to only operate in the System Rules at the point of laying down the weekly plan, whereas it should actually have clear application in scheduling/changes to the 48/72 hour schedules.

It is Anglo American's belief that the current system in respect of the scheduling of train services in the Goonyella System operates in relation to TSE consumption and charging as follows:

- (a) no Access Charges are imposed on the access holder in respect of any train path which is not actually used;
- (b) train orders are not considered final orders until development of the 48 hour schedule;
- (c) changes to the 72 hour schedule outside of the 48 hour schedule does not result in a TSE consumption; and
- (d) any changes made by an access holder within the 48 hour schedule also does not incur Access Charges but will count as a TSE consumption for the purposes of the Network Management Principles (NMP), for example, in the contested path process.

Anglo American believes that this is the most appropriate approach to TSE consumption and that it must be very clear in the System Rules that this is the position and that, in particular, there is no 7 day lock down period. This is particularly important in a coal supply chain where at least one of the ports is operating on a cargo assembly basis which is more likely to require changes in the schedule to facilitate better throughput, for example, where a vessel can be brought forward because another has late cargo availability issues.

9. Recommendation 25 - Reporting on Locked Down Possessions

Anglo American supports the concept of Aurizon Network being required to report in respect of changes in locked down possessions.

However, Anglo American believes that these reports should be provided on at least a quarterly basis with prompt and timely updates due to any changes.

10. Recommendation 27 - Access Holder Agreement on Contested Train Paths

Although Anglo American agrees generally with the concept that relevant access holders may agree amongst themselves as to the allocation of contested train paths, Anglo American has some concerns in respect of the specifics of the application and implementation of this recommendation.

Although producers may choose to become Access Holders in their own right the parties represented in any agreement between the Access Holders is currently most likely to be rail operators holding the vast majority of access in the CQCN (albeit on behalf of producers). In those circumstances, that particular access holder may gain an advantage at the negotiation table. A coal producer who is not "separately represented" as an Access Holder will have no way of knowing if their interests have been discriminated against by the "group" Access Holders in reaching agreement.

There should be some transparency and reporting in respect of the allocation of Contested Train Paths when it is by agreement amongst the Access Holders.

11. Recommendation 30 - Dynamic System Capacity Modelling

Anglo American generally agrees that Dynamic System Capacity Modelling is important to ensure the proper and efficient operation of the Goonyella System.

However, dynamic system capacity modelling has been undertaken by Aurizon Network and the ILC for a number of years. It is already well known that the connection of the GAPE had an impact on cross system traffic and the total capacity of the Goonyella System. Therefore, Anglo American remains strongly of the view that the System Rules should include the "Status Quo Rule" without further delay for undertaking more dynamic system capacity modelling. Alternatively, Aurizon Network should be required to undertake the necessary expansions to restore the Goonyella System to its capacity prior to the connection of the GAPE infrastructure.