

File Ref: 1242179

23 May 2017

Mr Michael Fraser
Chairman
Aurizon Network Pty Ltd
GPO Box 456
Brisbane QLD 4001

Dear Mr Fraser

Aurizon Network - Request for a public workshop on WACC

Thank you for your letter requesting the QCA Board reconsider its position not to hold a public workshop in relation to Aurizon Network's weighted average cost of capital (WACC) proposal and supporting submissions as part of our investigation into your 2017 draft access undertaking (2017 DAU).

The QCA is progressing its assessment of Aurizon Network's 2017 DAU WACC proposal to ensure that all arguments and evidence provided is appropriately heard and properly considered.

My fellow Board Members and I have again carefully considered the matters raised in your letter. We maintain our view that a public workshop, involving oral submissions being presented directly to Board Members, would not provide for a constructive, effective nor timely consultation process at this stage of the QCA's investigation.

Written submissions presented to the QCA, in which Aurizon Network's statement of relevant facts, and its proposed methodology is clearly presented is our preferred approach to ensure that the QCA's investigation is balanced, effective and transparent. Written submissions from Aurizon Network and other stakeholders provide for arguments and information, especially on technical matters, to be clearly elucidated and detailed for the consideration of all stakeholders, and of the QCA, in a way that cannot be achieved in a workshop setting.

This approach was foreshadowed in our July 2016 *Statement of Regulatory Intent*, and implemented in our notice of investigation issued in December 2016. The QCA's investigation notice provided for the making of written submissions only and the QCA has proceeded with its investigation accordingly.

My fellow Board Members and I are mindful of providing Aurizon Network with every reasonable opportunity to present its proposals and provide supporting submissions. Nonetheless, compliance with deadlines is important for timely decision making. Indeed, natural justice requires matters be processed in a timely way and does not permit an unending process of information provision, particularly when sufficient time has already been allowed for consultation.

The QCA has encouraged all parties to provide information in writing and in a timely manner. In the event that Aurizon Network has new information or arguments, and there are legitimate reasons for the late provision of information, we will consider whether it is reasonable to take late information into account in accordance with the *Queensland Competition Authority Act 1997* (QCA Act).

Based on your previous correspondence, I understand that Aurizon Network is proposing that its consultant provide a verbal presentation of material that has already been submitted to the QCA in writing and is not proposing to present any new information. If this is so, a workshop would only be of benefit if Board Members are not engaged on your WACC proposal and supporting arguments. This is not the case.

Aurizon Network should be comforted from previous commitments provided by the Board to fully understand and properly consider all information provided by Aurizon Network, including its WACC proposal and supporting submissions, before making a decision on the 2017 DAU. In this regard, I can reassure you that the Board will fulfil its obligations to consider all arguments afresh and objectively. Consistent with good practice, in the event that the Board has specific questions or information requirements, we will seek clarification or further information from your organisation.

The QCA intends to deliver decisions within a reasonable timeframe and to administer consistent and predictable processes throughout our investigation into Aurizon Network's 2017 DAU. We believe that the structured and transparent regulatory processes that the QCA has implemented to date, and intends to maintain, will support a more efficient and timely regulatory process.

By continuing to implement structured and transparent regulatory processes, the QCA intends to facilitate balanced and constructive stakeholder engagement throughout our investigation to support greater accountability of, and confidence in, our decision making process.

Responses to various issues raised in your letter are provided below.

[Opportunities to put Aurizon Network's case](#)

In your letter you observe that Aurizon Network has not had multiple opportunities to present the detail of its WACC proposal, and has not made a number of submissions and presentations in support of its proposal.

Aurizon Network has been provided with a number of opportunities to outline its WACC proposal, including:

- Initial undertaking notice - The due date for submitting the 2017 DAU to the QCA was extended, at Aurizon Network's request, from 9 September 2016 to 30 November 2016. This provided Aurizon Network with over six months to develop its 2017 DAU proposal, including its WACC proposal and supporting submissions.
- Initial stakeholder submissions - Following receipt of the 2017 DAU, we invited stakeholder submissions and specifically invited submissions from Aurizon Network to be provided by 17 February 2017. This provided Aurizon Network and other interested parties an additional 11 weeks to present Aurizon Network's WACC proposals, as considered necessary by yourselves. This included various presentations provided by Aurizon Network.
- Collaborative stakeholder submissions - Following stakeholder submissions, we invited all stakeholders to collaborate and provide any agreed positions by 17 March 2017. Aurizon Network did not collaboratively progress WACC matters during this period, submitting that WACC does not lend itself to collaboration. However, Aurizon Network did respond to high-level positions on WACC that were outlined in other stakeholder submissions.

In addition to the above opportunities, the QCA's forthcoming draft decision will provide a further opportunity for Aurizon Network to present its proposals and supporting information before the QCA makes any final decision on the 2017 DAU.

I note that Aurizon Network has utilised consultation opportunities provided to date to submit written submissions and presentations in support of its WACC proposal. These submissions and presentations are published on the QCA website.

It is understandable that discussions between Aurizon Network and the QCA at the Board and Executive levels have not considered WACC matters in detail. Discussion with any stakeholder on matters that are under active investigation should be limited to avoid any actual or perceived bias of the QCA's investigation. Again, this supports the QCA's commitment in this investigation to consider submissions that are provided in writing only.

I reiterate that in this investigation, a structured and constructive consultation process, consistent with that outlined in the QCA's *Statement of Regulatory Intent*, will facilitate a balanced and effective stakeholder engagement process, and a transparent and timely investigation of WACC (and other) matters.

No new information

As noted above, I understand that Aurizon Network is proposing that its consultant provide a verbal presentation of material that has already been submitted to the QCA and is not proposing to present any new information. Further, it would appear that the presentation would focus on certain parameters, such as the market risk premium, the risk-free rate, equity beta and gamma, with an emphasis on technical and academic arguments. On such matters, written submissions are preferred as they provide greater detail and a complete consideration than that provided by an *ad hoc* complementary oral presentation.

Again, I would like to reiterate that the Board will fully understand and properly consider all the information provided in support of Aurizon Network's 2017 DAU before making a decision. The QCA and its technical experts are carefully reviewing the positions submitted by Aurizon Network and other stakeholders as part of our investigation. These positions are being considered afresh and on their merits. Aurizon Network will be notified of the QCA position and its reasons in the publication of the draft decision.

Reasons for not conducting hearings and workshops during the 2017 DAU investigation

There are a number of procedural concerns with hearings or workshops that have informed us in our decision to proceed with a structured consultation process that does not rely on verbal consultations. In particular, my fellow Board Members and I note that:

- We have a preference for arguments to be presented in written form, particularly when those arguments relate to technical and financial matters, for the reasons stated above.
- The proposed workshop would occur outside the stated deadline for submissions which has now well passed.
- There is no guarantee that the verbal information presented in a workshop will not contain new information or arguments. Natural justice would need to be afforded to all other interested parties. As such, additional consultation opportunities would be required to respond to any new information or arguments, which would have consequential impacts on the timing of our forthcoming draft decision.
- Past experience with verbal hearings is that they are not the most effective means for consulting with stakeholders, part-way through an active investigation. They are resource and time intensive, and inevitably, the Board must resort to the written submissions of all stakeholders. Those written submissions ought to provide other stakeholders and the QCA with a complete and fulsome understanding of the matters of concern.

QCA out of step with regulatory practice

As part of our investigation, we remain cognisant of the approaches adopted by other regulators in relation to WACC as well as other aspects of the regulatory framework. However, in considering the merits of arguments provided by a regulated entity and stakeholders, and taking account of expert advice, you will be aware that it is not unusual for regulators to adopt different positions on some matters. I acknowledge that this has occurred in the case of Aurizon Network with some WACC parameters in UT4, but again, I note that we will consider matters afresh and reach a decision having regard to the factors set out in section 138(2) of the QCA Act.

This would of course include taking account of changes in market circumstances since the UT4 WACC was set in 2014.

A balanced and transparent process

In conclusion, I can provide assurance that the QCA fully understands the positions raised by Aurizon Network (and other stakeholders) and is assessing all arguments having regard to section 138(2) of the QCA Act. The process has been designed to provide sufficient time for all positions to be submitted and for a balanced and transparent process to be progressed.

To this end, we will publish this letter and the relevant preceding correspondence on the QCA's website. This will avail other stakeholders the opportunity to make their views known if they so desire, and will provide comfort to all participants that the QCA's process is reasoned and balanced.

The QCA remains committed to considering Aurizon Network's 2017 DAU proposals and supporting material, and all stakeholder submissions, in a fair and reasonable way to reach an appropriate, robust and evidence-based regulatory decision. As indicated previously, Aurizon Network will have further opportunities to submit additional information in support of its 2017 DAU proposal, particularly in response to our forthcoming draft decision.

Finally, I would be happy to discuss these matters with you, and would also welcome direct representations to QCA staff should you consider that necessary.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roy Green', with a stylized flourish at the end.

Professor Roy Green
Chair