GLENCORE

5 September 2013

Dr Malcolm Roberts
Executive Chairman
Queensland Competition Authority
Level 19, 12 Creek Street
Brisbane, Queensland

By email: rail@qca.org.au

Dear Dr Roberts

Aurizon 2013 Standard User Funding Agreement (SUFA)
Draft Amending Access Undertaking (DAAU)

Glencore is pleased to provide this submission in response to the Aurizon Network (AN) 2013 SUFA DAAU that was submitted to the Queensland Competition Authority (QCA) for approval on 22 July 2013.

Glencore has been an active participant in the Queensland Resources Council's (QRC) working group that has been seeking to negotiate a viable SUFA with AN for some considerable period of time.

Glencore fully supports the QRC Submission on the 2013 SUFA DAAU. Therefore Glencore does not propose, in this submission, to specifically re-raise the issues canvassed in the QRC Submission. Rather Glencore wishes to highlight the following two key points:

1. The time taken and process adopted by AN in getting SUFA to this point is clear evidence why AN's arugments for light handed regulation and primacy of commercial negotiations must not be supported; and
2. Any failure by the QCA to impose a viable SUFA framework (which must include a robust, balanced and objective Expansion Process) risks future investment in new mines in Queensland.

Glencore is concerned with the duration of the SUFA process, and that the 2013 SUFA DAAU falls substantially short as a viable alternative in circumstances where AN seeks to extract monopoly rents. These principal concerns are outlined below.

Process (including time taken) and implications for industry

The SUFA process has taken nearly 3 years and it is still unresolved.

The implications of this protracted process have been:

- a significant cost to industry in both dollar terms and management time and effort; and
- more significantly that Glencore was placed in a position of having no alternative but to accept the pricing and terms demanded by AN under the WIRP Deed. Negotiations with respect to rail

access requirements associated with our participation in the Wiggins Island Coal Export Terminal could not reasonably be regarded as commercial nor adequately protected by UT3. In reality the choice was either to accept AN's terms under the WIRP Deed or forgo expansion of our mine and risk the loss of industry's concession to own the WICET terminal.

In the absence of a robust regulatory failsafe, AN appears to have been able to leverage uncertainty to their commercial advantage:

- AN did not table their modified SUFA framework (that addressed the significant commercial issues identified early in the process i.e: tax issues and lack of suitablity for hybrid funding) until after the WIRP Deed was concluded; and

- AN was not prepared to meaninfully address the key issues which it has now been willing to move on in the 2013 SUFA DAAU prior to lodging the 2012 SUFA DAAU. AN effectively withdrew from negotiations on the 2012 SUFA DAAU from August 2012 and the issues now resolved had been tabled by industry and discussed from the outset.

Throughout its UT4 briefing sessions, in its UT4 submission, and in its recent submission to the Productivity Commission's National Access Regime review draft report, AN argues for light handed regulation and primacy of commerical negotiations. Glencore contends that the SUFA and Extension process negotiations provide clear evidence of the risk of adopting such an approach and that regardless of the sophistication and/or size of access seekers they in fact have no counterveiling power when dealing with a monoply.

A robust and prescriptive failsafe is critical where a monopoly infrastructure owner can engage in tactical delays to ensure its desired outcomes. In Glencore's view the failure to produce and negotiate an effective SUFA model within the timeframe of the WIRP negotiations, the drawing out of resolution of SUFA past the original expiry of UT3 and the segmentation of SUFA from the expansion process are warnings against less prescriptive regulatory protection for access seekers.

Will SUFA achieve its objectives?

While the 2013 SUFA DAAU is an improvement, Glencore still has significant reservations regarding the effectiveness of SUFA. These reservations are well covered in the QRC submission and Glencore supports the QRC's commentary and suggested amendments to the 2013 SUFA DAAU.

Glencore is concerned that even if the QCA adopts all of the QRC's proposed changes, the complexity and lack of commercial balance in SUFA will mean that it will not be attractive to third party funders (or if it is, only at significant rates of return or with guarantees from miners). The practical effect of this is that AN is free to require rates of return equivalent to those required by mining companies. Mining return requirements reflect the substantial risks attending mine investments (many of which are immediately apparent in the current economic environment). It can only be regarded as a market failure when a regulated monopoly infrastructure owner can extract mining returns while taking little or no risk (as is reflected in regulated access terms and the typical other risk transfers to miners that arise where access conditions are sought).

The efficacy of SUFA will only be known when it is tested on a live transaction. According, Glencore contests that there must a process whereby the QCA preserves the ability to require amendments to the Standard User Funding agreements and framework if an eventually approved SUFA DAAU proves ineffective.

GLENCORE

Given the risks posed to future investment in mines in Queensland by AN's own approach to investment in the Network, Glencore urges the QCA to adopt the changes proposed in the QRC submission and preserve for itself the ability to require further amendments once a live transaction has been attempted or concluded.

Glencore believes SUFA risks being significantly compromised by the current constraints on the QCA under the QCA Act. Accordingly, the SUFA DAAU (and ideally the QCA Act) must provide opportunities for further development of SUFA towards an ultimate goal of ensuring a balanced arrangement that facilitates, not hinders, economic development in Queensland via investment in new mines.

Glencore confirms that this submission can be made public.

Should you require further information or discussion on any aspect of this letter please contact Dierdre Mikkelson on 0448 450 828 or myself on 3115 5363.

Yours sincerely

[redacted]

pp Anthony Pitt
Glencore