

10 October 2013

Mr Mark Gray  
Chief Executive Officer  
Queensland Competition Authority  
GPO Box 2257  
Brisbane QLD 4001

Dear Mr Gray

### **Aurizon Network (AN) 2013 Draft Access Undertaking (DAU)**

BHP Billiton Mitsubishi Alliance (**BMA**) and BHP Billiton Mitsui Coal (**BMC**) welcomes the opportunity to provide a submission on AN's DAU. BMA and BMC support and have had detailed input into the Queensland Resources Council's (**QRC's**) submission, and we wish to highlight the areas of significant importance to the future sustainability of our coal mining operations in Queensland.

We recommend the Authority reject the DAU on the basis that it is inconsistent with AN's obligations as a regulated entity under the *Queensland Competition Authority Act 1997 (the Act)*. We also recommend the Authority consider all of its options in managing the DAU process to ensure:

- A comprehensive review of the DAU such that there is a full understanding of commercial implications and potential unintended consequences prior to a final determination;
- At a minimum, clear transitional arrangements are in place before the current Access Undertaking expires on 30 June 2014;
- Address and minimise commercial uncertainty (including potential liabilities and risks) particularly at a time when the coal industry is actively reducing costs and implementing productivity measures to remain commercially viable and globally competitive.

On 30 April 2013, AN provided to the Authority its DAU, comprising over 3,000 pages of documents constituting the "publicly" available submission and nearly the same page number again of "confidential" material. In our view, the sheer size, complexity and commercial importance of this documentation places the Authority and stakeholders in a very difficult position with respect to being able to comprehensively review and complete the determination process within current timeframes.

Given the commercial significance of these multi-user regulatory processes and the impact on the international competitiveness of Queensland's coal industry it is important for the Authority and stakeholders to consider all commercial, legal and economic issues to ensure that AN has fully met its statutory and regulatory obligations in the DAU. We believe the failure of AN to submit the DAU earlier than the end of April, despite evidence of detailed work having been completed much earlier, was a strategic decision made by Aurizon to compress timeframes for regulatory oversight and ensure that industry was not in a strong position to consider and address all issues of concern. In the previous two regulatory processes, AN (in its non-privatised form) typically commenced detailed consultation with industry and the Authority at least 12 months prior to the expiry of the 2001 and 2006 access undertakings. Even with early consultation, all three access undertaking processes took at least 2 years to conclude.

As you are aware, we have been actively involved in the QRC UT4 Steering Committee and have consulted with AN on a number of threshold issues to determine whether a negotiated outcome on these issues is possible. Whilst this process was informative in providing more detail on AN's intent with the DAU, the unrealistic commercial expectations of AN undermined genuine negotiation efforts. Further, the attempt by AN to remove regulatory protections designed to ensure Aurizon cannot use its monopoly power in the rail infrastructure market (through AN) would further exacerbate monopolistic behaviour in relation to future negotiations.

Our attached submission identifies the key issues and concerns we have with the DAU, however it cannot be regarded as an exhaustive list. We would appreciate further opportunity to provide you with more detail on these and other issues during that may arise during the development of your Draft Decision.

If you have any queries or require more information, please contact Tanya Boyle on telephone 3329 2348 or mobile 0459 812 257.

Yours sincerely

Neil Buckley  
**Outbound Supply Chain**  
**Rail Ports and Infrastructure Department**