

**SUBMISSION TO THE
QUEENSLAND COMPETITION AUTHORITY**

**AURIZON NETWORK'S
2014 DRAFT ACCESS UNDERTAKING (UT4.2)**

3 OCTOBER 2014

Table of Contents

1.	Executive summary	5
2.	Anglo American's general concerns	11
2.1	The need for regulation	11
2.2	Form of regulation	12
2.3	Provisions moved from the Access Undertaking to the Standard Access Agreements.....	13
3.	Part 2 - Intent and scope	13
3.1	Aurizon Network's functional responsibility and "Access-related Services"	13
3.2	Electricity supply and sale	17
4.	Part 3 - Ring-fencing	20
4.1	Services performed by Related Parties.....	20
4.2	Discrimination in favour of other Aurizon entities	22
4.3	Line diagrams	23
4.4	Staffing of Aurizon Network.....	24
4.5	Persons or business units with access to Protected Information	25
4.6	Waiver of ring-fencing compliance requirements by the QCA	29
4.7	Inadequacies in the complaint handling provisions and process.....	29
4.8	Schedule I - Confidentiality Agreement.....	30
5.	Part 4: Negotiation framework	31
5.1	Overview.....	31
5.2	Removal of the queuing and first in time mechanisms.....	33
6.	Part 5: Standard Access Agreements.....	34
7.	Part 6: Pricing principles	36
7.1	Extent of Aurizon Network amendments to Part 6	36
7.2	Socialisation of costs by inclusion in the RAB	36
7.3	Treatment of Renewal Expenditure as part of an Expansion	37
7.4	Delay caused by Aurizon Network.....	37
7.5	Application of pricing principles to Access Charges and Reference Tariffs	38

7.6	Burngrove and Coppabella to the Port of Gladstone	38
7.7	Potential inclusion of separately funded asset cost in the RAB	38
7.8	Simulation of capacity multiplier	39
7.9	Defining "Changes in Market Circumstances"	39
7.10	Cost allocation principles	40
7.11	Schedule F: operational characteristics of Reference Train Services.....	41
8.	Part 7: Available Capacity Allocation and Management.....	42
8.1	Capacity trading mechanism	42
8.2	General requirement for allocation (clause 7.2)	44
8.3	Renewals.....	44
8.4	Transfers	46
8.5	Mutually exclusive access applications.....	47
9.	Clause 7.6 and Schedule G: Network Management Principles.....	50
9.1	Overview.....	50
9.2	Compliance with the Network Management Principles.....	50
9.3	Making the System Rules for a System.....	50
9.4	QCA oversight of the System Rules.....	52
9.5	Review of the System Rules	52
9.6	Determination of an Access Holders affected Train Paths	53
9.7	Drafting of Schedule G: Network Management Principles.....	54
10.	Part 8: Network development and Expansions.....	54
10.1	Mandatory expansions.....	54
10.2	Access conditions regime.....	56
10.3	Asset replacement works.....	57
10.4	System Operating Parameters.....	57
11.	Part 9: Connecting infrastructure	57
11.1	Inconsistency with the recently approved Standard Rail Connection Agreement	57
11.2	The definition of Connecting Infrastructure.....	58
11.3	Protection against subcontracting of Aurizon Network activities.....	59
11.4	Connecting Infrastructure and Customer Specific Branch Lines	60

12. Central co-ordination..... 60

1. Executive summary

Anglo American thanks the Queensland Competition Authority (QCA) for the opportunity to provide a submission in respect of Aurizon Network's 2014 Draft Access Undertaking submitted by Aurizon Network Ltd (**Aurizon Network**) in August 2014 (**UT4.2**).

In general, Anglo American reiterates its previous submission on Aurizon Network's 2013 Draft Access Undertaking (**UT4**) to the extent that those issues have not been addressed by Aurizon Network. This submission seeks to identify where Aurizon Network has not accepted previous submissions made (or has not accepted those submissions in full) and also provides submissions on new material which has been added by Aurizon Network.

In summary, Anglo American makes the following further submissions:

- (a) **General issues with UT4.2:** Anglo American has a number of general concerns with Aurizon Network's redrafted UT4.2, in particular:
 - (i) UT4.2 has a clear intent of simplifying the Access Undertaking and turning it into a more "principle-based" document. However, Anglo American believes that the history of negotiations between coal producers and Aurizon Network does not show that the industry is ready for lighter-handed principle-based regulation and believes in the continuing need, particularly given the privatisation of Aurizon Group including Aurizon Network, for strong and comprehensive regulation of the Central Queensland Coal Network;
 - (ii) the form of regulation applied to Aurizon Network needs to be reviewed, specifically in light of the recent investigations and decisions made by the QCA in relation to pricing principles for monopoly regulation. Although there has not been sufficient engagement to properly consider a change to price cap in UT4, Anglo American suggests the QCA might consider entering into a dialogue with industry in anticipation of UT5 to consider whether a change in the nature of regulation, specifically, whether price cap or revenue cap regulation is more effective; and
 - (iii) a number of provisions and general regulatory concepts (including, by way of example, maintenance, transfer of Access Rights and resumptions) which have been moved from the Access Undertaking and placed in the Access Agreement. Anglo American disagrees with this restructuring as it reduces the transparency of important regulatory concepts and protections, and

subsequently reduces stakeholders' and investors' confidence in the regulation of Aurizon Network's monopoly assets;

- (b) **Part 2 - Intent and scope:** Anglo American has previously commented on the inappropriateness of narrowing the scope of the Access Undertaking by restricting the definition of Access-related Services under UT4 and UT4.2. Anglo American disagrees with the structural move of this provision regarding scope of the Access Undertaking to Part 3 of UT4.2, and also believes that a number of other non-contestable or effectively non-contestable services should be covered by the scope of UT4.2 with a broader rather than narrower approach preferred. Anglo American submits that this should be clarified and strengthened in order to ensure that there is no cross-subsidisation of services between the vertically-integrated elements of the Aurizon Group;
- (c) **Part 3 - Ring-fencing:** Aurizon Network has accepted the concept that there needs to be ring-fencing in respect of its interests in the Central Queensland Coal Network and any interest in ports held within the Aurizon Group. It has given a clear indication of its intention to vertically integrate into coal terminals: eg, AP-X. which gives further concerns regarding inadequate ring fencing provisions. Importantly, there are provisions in UT4 and UT4.2 which still only refer to ring-fencing between above and below rail operations, which need further amendment. These have been identified below. In light of the recent acquisition of Aquila Resources, related bodies corporate of Aurizon Network also now have interests in particular mines. The ring-fencing provisions must extend to mining interests to ensure that there is no discrimination between mines in which Aurizon Network has an interest and those where it does not have an interest;
- (d) **Part 4 - Negotiation framework:** Anglo American notes that Aurizon Network has addressed a number of the major concerns that Anglo American and other industry participants outlined in previous UT4 submissions. Anglo American has, however, identified a number of suggestions that Aurizon Network has not addressed, and which Anglo American believes should be covered in the Access Undertaking. In particular, Anglo American is concerned with the scope of the Preliminary Information that Access Seekers and Access Holders are required to provide when applying for Access Rights, the lack of structure around how and when Aurizon Network must provide Capacity Information critical to reliable, prudent and efficient investment in and expansion of the Network. The higher standard that Access Seekers must establish, particularly when making the initial application, to prove that they will

be able to properly utilise Access Rights is of concern. Further, Anglo American has strong concerns regarding the removal of the queuing and first-in-time mechanisms which previously protected the order of Access Applications and Access Seekers' priority. Anglo American believes that both these concepts should remain in the Access Undertaking;

- (e) **Part 5 - Standard Access Agreements:** Anglo American has previously expressed a view that the Access Holder Access Agreement is now no longer required and that UT4.2 need only contain Operator Access Agreements and End User Access Agreements with Train Operations Agreements. Anglo American has expanded upon this view in light of Aurizon Network's position regarding the Standard Access Agreements in UT4.2. Further, Anglo American is strongly concerned that the Standard Access Agreements contain provisions which are otherwise essential to include in the Access Undertaking (which should not be commercially negotiated under Access Agreements) and contain an inappropriate risk allocation, including making Operators / End Users liable for the actions of Third Parties that are not in the employ or control of the Access Holder, making End Users liable for a range of train control and maintenance aspects that should appropriately be addressed in the Train Operations Agreement. In addition, the Standard Access Agreements attempt to exclude as much risk from Aurizon Network as possible (even in situations where Aurizon Network is the best placed, or sole, entity that can control those risks). Anglo American submits that the Standard Access Agreements require significant redrafting in order to ensure that they appropriately allocate risk, and do not address issues which should be more appropriately clearly and transparently set out in the Access Undertaking itself;
- (f) **Part 6 - Pricing principles:** while Anglo American appreciates that the recent QCA decision regarding Aurizon Network's Maximum Allowable Revenue and pricing mechanisms (**MAR Decision**) includes significant discussion of these concepts, Anglo American has considered some of the major principles and drafting of Part 6 in preparing this submission. Specifically, Anglo American has considered the minor extent of the amendments that Aurizon Network has made to Part 6 of UT4.2 (as opposed to that submitted in UT4, even with extensive comments from stakeholders), the impact of socialisation and how this should be addressed in the Access Undertaking, and a number of specific concerns that Anglo American has in relation to the drafting of Part 6. Anglo American has not made extensive comments or drafting amendments to Schedules E and F of UT4.2 as it believes that these Schedules are most appropriately considered alongside the QCA's recent MAR

Decision, and will provide more in depth consideration of issues relating to the Regulated Asset Base and Reference Tariff construction in its intended submission in December 2014;

- (g) **Part 7 - Available Capacity Allocation and Management:** Anglo American notes that UT4.2 has made amendments from the concerns raised by industry in relation to UT4. Anglo American does not believe that these amendments appropriately address the major structural and operational issues with Part 7. Specifically, Anglo American believes that Part 7 needs to include a proper Capacity trading mechanism, ability to deal with renewal applications in a far more timely and appropriate manner, a workable method of deciding between Mutually Exclusive Access Applications (as Anglo American does not believe that clause 7.5.2 of UT4.2 is currently workable), and an objective method for dealing with Access Seekers so that Aurizon Network does not have subjective control over contestable markets upstream and downstream from its monopoly services;
- (h) **Part 7.6 and Schedule G - the Network Management Principles:** Anglo American has previously made extensive submissions and drafting suggestions in relation to these provisions. Anglo American does not believe that Aurizon Network has adequately addressed any aspect of its previous comments, specifically including the need for compliance with the Network Management Principles, the implementation of System Rules and the need for QCA oversight and review of System Rules particularly in circumstances where Aurizon Network can seek to amend the undertaking at any time but producers cannot. Anglo American strongly reiterates its previous comments on this aspect of the Access Undertaking;
- (i) **Part 8 - Network development and Expansions:** Anglo American again submits that the provisions regarding the Expansion of the Central Queensland Coal Network need to be significantly strengthened to ensure that Aurizon Network does not engage in economic hold-up to achieve the monopoly rents that are otherwise restricted by access regulation, having a detrimental and eroding effect on the competitiveness, efficiency and productivity of the Queensland coal industry as a whole. Specifically, Anglo American believes that the mandatory Expansion and access conditions regimes need to be retained in UT4.2, as without those vital powers to ensure the prudent and efficient expansion of the Central Queensland Coal Network, users currently have no evidence that a SUFA will be an effective method of ensuring the generation of sufficient capacity (and, as Anglo American has previously expressed, it is not convinced that SUFA (as the back up and not a substitute for Network

expansion) is bankable in the current form that Aurizon Network has submitted to the QCA). As such, Anglo American remains strongly of the view that there should be specific instances where Aurizon Network is required to expand the Central Queensland Coal Network in order to generate sufficient Capacity for users, and QCA oversight of the access conditions regime at the very least until such time as a workable SUFA is implemented;

- (j) **Part 9 - Connecting Private Infrastructure:** Anglo American notes that the drafting of Part 9 of UT4.2 is currently at odds with the provisions that the QCA has accepted in the recently approved (UT3) Standard Rail Connection Agreement. Anglo American does not understand why these provisions have been altered, when the QCA only recently underwent extensive public consultation for the purposes of determining the Standard Rail Connection Agreement. Further, Anglo American believes that the definition of Connecting Infrastructure requires work, and submits that the definition of Customer Specific Branch Lines should be removed altogether. Anglo American believes that individual users should be required to pay for individual spur lines and loops (which are properly Private Infrastructure) until such time as that Private Infrastructure connects with another part of the Central Queensland Coal Network (or Rail Infrastructure) which services more than one user. Anglo American believes that this allows contestability of construction and design (with appropriate restrictions to ensure that the Private Infrastructure meets appropriate Aurizon Network specifications), and ensures that other users are not required to bear the cost of major single-user spur lines or loops where the benefit is felt for solely one user; and
- (k) **Centralised co-ordination:** Anglo American has consistently expressed strong views regarding the effectiveness and efficiency achieved by an independent and transparent centralised coal supply chain co-ordination function. Anglo American has experienced the benefits elsewhere that the entire supply chain can receive through centralised co-ordination and believes that it could be effectively and appropriately be applied in relation to the Queensland supply chain. Anglo American maintains that the only way to ensure the efficiency and productivity gains are not otherwise eroded or diminished is to develop an independent central co-ordination function, so that vested interests cannot impact upon the efficiency gains (both volume and cost) that should be shared across the industry. Anglo American does not believe that Aurizon Network (as it has previously indicated) is the appropriate entity to operate as central co-ordinator, nor does Anglo American believe that it is appropriate for users or operators to act as the supply chain co-ordinator given the inherent conflict this

creates. Rather, the supply chain co-ordinator should be a completely independent entity whose sole task is to ensure the smooth and efficient operation of, as well as prudent and sensible development and investment in, the relevant supply chain. Anglo American does not believe that this central transparent role should be allowed to be influenced by the vested interests of any particular industry participant.

Further to its detailed submissions, and *attached* as schedules, Anglo American has provided extensive drafting of a number of aspects of UT4.2, including:

- (l) Part 4 - Negotiation framework;
- (m) Part 7 - Capacity allocation and management;
- (n) Part 8 - Network development and Expansions;
- (o) Part 9 - Connecting Infrastructure;
- (p) Schedule A - Preliminary, Additional and Capacity Information;
- (q) Schedule B - Access Application information requirements;
- (r) Schedule D - Ultimate Holding Company Deed;
- (s) Schedule G - Network Management Principles; and
- (t) the Standard Rail Connection Agreement.

Anglo American has provided this drafting in mark-up in order to assist the QCA with its consideration of UT4.2, as well as to graphically illustrate the provisions that Anglo American believes are inappropriate or ineffective within UT4.2. Anglo American intends to provide further significant drafting amendments to Part 6, Schedule E and Schedule F with its response to the MAR Decision in December 2014 after consideration of the QCA's draft decision on these areas.

The proper regulation of the CQCN is absolutely necessary to ensure the productivity and efficiency of the entire Queensland coal chain. The Queensland coal producers operate in a highly competitive global coal market. If the regulation of the CQCN is not balanced then this can impact upon the international competitiveness of the Queensland coal producers. This also puts at risk employment in the industry and economic growth opportunities associated with the entire Queensland mining industry, but also creates a significant lessening of competition across the entire supply chain.

2. Anglo American's general concerns

2.1 The need for regulation

Natural monopoly regulation is a historic and integral element of competition law, both in Australia and, indeed, internationally. Natural monopolies exist as constraints in supply chains, where either market forces or specific characteristics (for example, significant capital investment, geographic reach, and specialised skills) have created a situation where only one firm provides that particular service for the entire supply chain.

This also means that other competitive elements of the supply chain are dependent upon the appropriate behaviour (or regulation) of the natural monopolist as they are subject to its profit-maximisation strategies in circumstances where they have no competitive alternative. The Australian Competition and Consumer Commission (ACCC) describes it as 'Competition ensures that prices will be lower and quality higher than would be the case if there were no competition (i.e monopoly).'¹ Therefore, the general purpose of the regulation of natural monopolies is to attempt to replicate the outcomes of a competitive market. But competition is not fostered solely for the sake of competition, the ACCC has said that 'competition; is not a goal of itself, but a means of achieving higher standards of living for a nation's citizens.'²

Queensland's coal industry is one of the State's largest and most important employers, and economic contributors for both the State, and the country.

There is currently a known reserve of more than 34 billion tonnes of resources, and this makes the highly developed Queensland coal industry the largest exporter of seaborne coal in the world. The Department of Natural Resources and Mines' September 2014 publication on *Queensland's coal - mines and advanced projects* stated that for the 2012-2013 financial year:

- (a) export coal was worth approximately \$24.1 billion;
- (b) exports went to some 30 overseas destinations;
- (c) coal sales accounted for \$1.7 billion of the royalties received by the State, some 82% of all royalties paid to the State;
- (d) coal mining directly created more than 30,000 jobs within Queensland, and countless others which are indirectly involved in the industry;³ and

¹ Australian Competition & Consumer Commission, *Australian Competition and Consumer Commission (ACCC) submission to the Proposed National Ports Strategy* (June 2010) 3.

² Ibid 3.

³ Queensland Government, *Average yearly output of raw coal per employee* (23 April 2014), available at <<https://data.qld.gov.au/dataset/coal-industry-review-statistical-tables/resource/02ad105c-cf61-4619-98c3-6ad75f47de29>>.

- (e) although there are still significant coal reserves in Queensland, coal exploration expenditure was only around two thirds of its highest levels.

All of these figures combine to mean that by dollar value to the State, coal is Queensland's most important export commodity.⁴

Importantly, the coal industry makes very significant tax contribution to both Federal and State Governments, averaging at a projected \$18.3 billion to State Governments alone over the next four coming years.⁵ The contributions made by the coal industry to Australia are also realised through education initiatives, training, apprenticeships, and fund community social infrastructure.⁶ These profits that are funded by exports, investment, and tax revenue are only secure while coal production costs remain competitive with other producers.

The global coal market is currently under significant cost pressure. To allow the Queensland coal industry to remain competitive UT4 needs to achieve:

- (a) appropriate risk allocation between Aurizon Network and the coal producers;
- (b) appropriate control of costs; and
- (c) a timely and balanced approach to network development.

Anglo American submits that any weakening of Aurizon Network's regulation will impact on the competition of the Queensland coal mines.

2.2 Form of regulation

Anglo American has previously expressed its views regarding the benefits and drawbacks for price cap regulation as opposed to revenue cap regulation. As such, Anglo American has not expanded on those views in this submission, however, as its previous submissions were made to the Research division of the QCA, in relation to UT4.2 Anglo American particularly points the QCA to its comments in:

- (a) Anglo American *Submission to the QCA re: Queensland Competition Authority Pricing Pages* in July 2013 at paragraph 3; and
- (b) Anglo American's *Submission to the QCA re: QR's Rail Access Undertaking (UT3)* on 12 February 2010, in particular this issue was considered by Dr John Fallon of Economic Insights at paragraph 2 of the attached expert report.

⁴ Queensland Resources Council, *Coal* (2014), available at <https://www.qrc.org.au/01_cms/details.asp?ID=1276>.

⁵ Minerals Council Australia, *Australians for Coal* (2014), available at <<http://www.australiansforcoal.com.au/>><http://www.australiansforcoal.com.au/>>.

⁶ Minerals Council Australia, *Australians for Coal* (2014), available at <<http://www.australiansforcoal.com.au/>>.

Anglo American understands that the UT4.2 process is likely too far gone for the consideration of amending the form of regulation, however, it notes the incentive and efficiency advantages to price cap regulation over revenue cap regulation. Because of these clear advantages, Anglo American is strongly of the view that the QCA should consider the form of regulation and perhaps conduct further inquiries into this for the purposes of the ongoing regulation of Aurizon Network.

2.3 Provisions moved from the Access Undertaking to the Standard Access Agreements

While Anglo American is supportive of negotiated commercial access where possible, it does not believe that where regulation is in place these provisions should necessarily be open to negotiation. Specifically, in drafting UT4 (and UT4.2), Aurizon Network has attempted to move a large number of provisions from the Access Undertaking to the Standard Access Agreements. As the terms of the Standard Access Agreements are negotiable, Anglo American believes that there are certain provisions that should not be open to such negotiation.

Anglo American has made extensive submissions on this point previously, particularly:

- (a) Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* in January 2014 at paragraph 6.4; and
- (b) Anglo American's *Submission to the QCA re: Aurizon Network's 2013 Draft Amending Access Undertaking (UT4)* in October 2013 at paragraph 5.

Anglo American continues to strongly support its earlier submissions.

Anglo American has also referred to a number of other provisions in this submission that have been removed from the Access Undertaking and placed in the Standard Access Agreements. These are noted in their relevant sections of this submission below.

3. Part 2 - Intent and scope

3.1 Aurizon Network's functional responsibility and "Access-related Services"

Anglo American has previously made submissions regarding the significant erosions that Aurizon Network has made to the scope of the Access Undertaking, specifically in relation to the definition of "Access-related Functions".⁷ This is incongruent with Aurizon Network's role as a regulated monopoly service provider. It is however, clearly consistent with the Aurizon

⁷ Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* (January 2014) paragraph 3.1.

Group's strategy of increasing its vertical-integration and leverage in the CQCN; both 'above' and 'below' rail.

Anglo American acknowledges that Aurizon Network has made amendments to the definition of "Access-related Functions" (clause 3.4(b) of UT4.2) retracting somewhat from the wholly inadequate previous provision regarding "Core Access-related Functions" (clause 2.8 of UT4). Anglo American submits that the amended definition of Access-related Functions still falls short of the scope required to cover those services of a natural monopolist which are non-contestable or only weakly contestable. This is particularly the case with the high degree of vertical integration shown in Aurizon, and as various functions and services previously in the Network business have been moved into the 'above rail' business.

Anglo American also notes that the debate regarding the scope of Access-related Functions is an important one, not only for these reasons but also because the definition of Access-related Functions determines the coverage of the ring-fencing provisions, and the scope of the Undertaking itself.

Before regulation of Aurizon Network can be considered to be effective, it is essential to define the scope of the regulation and which of Aurizon Network's activities it covers. This all centres around the definition of the "Access-related Functions", currently contained within clause 3.4(b) of UT4.2.

Structurally, Anglo American is concerned that the definition of Access-related Functions appears in Part 3 of UT4.2 (which is the part relating to ringfencing and confidentiality). While Aurizon Network has argued that this is merely a structuring difference, Anglo American disagrees. Part 2 is clearly headed "Intent and Scope", and the definition of Access-related Functions is the central concept regarding the scope of the Access Undertaking. As such, Anglo American believes that the definition of Access-related Functions should be moved back to Part 2 in order to recognise its importance in defining the correct ambit of the regulation.

In relation to the content of the definition, Anglo American refers to its earlier submissions, specifically in relation to modifying the definition from one of "Access-related Functions", to "Associated Services" in order to capture a broader range of activities. Further to its earlier submissions regarding those activities, Anglo American believes that the concept of "Access-related Functions" should cover all services provided by Aurizon relating to accessing the network to transport coal and which are non-contestable or weakly contestable, and should include by way of example:

- (a) electricity supply and sale, which while technically contestable is really not effectively contestable due to Aurizon Network's position in negotiating contracts for electricity supply and sale;
- (b) rail relocation and related construction and maintenance services (eg – of private spurs & loops) under standard terms & conditions which can only be conducted by Aurizon Network (or a related entity), and as such the market is not effectively contestable;
- (c) Transfer Facilities Licences (**TFLs**) regarding loadout interface requirements, load profiling, dust veneering and other matters which Aurizon Network has sole authority over, especially in instances where the individual producer does not own the spur and loop; and
- (d) capacity modelling, specifically dynamic modelling services such as system capacity and private infrastructure interface; this is essential for Customers to determine the 'usability' when contracting capacity particularly where Aurizon Network is the only entity that has access to all the necessary information required to carry out such modelling.

Due to the difficulty in precisely identifying all services that Aurizon Network should be required to provide as regulated services, Anglo American considers that the definition of Associated Services should be inclusive, allowing the QCA to determine further services over time that require oversight under the Access Undertaking.

The purpose of regulating a natural monopolist is to prevent it from being able to abuse its market power. Allowing Aurizon Network to place uncontestable, or weakly contestable, services outside the scope of the Access Undertaking allows Aurizon Network to determine its own service margin without any competition, and undermines the regulation itself.

The QRC originally attempted to address the scope of this provision in Submission 02 in October 2013. In particular, Anglo American supports the sub-clauses that the QRC recommended, including:

- (e) "The performance of all other Below Rail Services and all matters integral to the provision of Below Rail Services";
- (f) "Development of the Undertaking, any future access undertaking as well as any pro forma or standard documentation contemplated or required by the Undertaking and any amendments to any of these"; and

(g) "Protection of Protected Information in accordance with the Undertaking."

Anglo American does not believe that the definition of Access-related Functions provided by Aurizon Network in UT4.2 adequately addresses these points. In particular, while it focuses on the "primary function" described in clause 3.4(a),⁸ this encompasses Aurizon Network's duties to manage the Rail Infrastructure in accordance with the Rail Safety Act, but does not cover the broader concept of matters integral to the Below Rail Activities.

Anglo American believes it is imperative that the scope of this definition be addressed accordingly. As noted, the definition is particularly important to ensuring adequate ring-fencing arrangements. As was acknowledged by the ACCC, "the rationale of ring fencing is to assist the introduction of effective competition into markets traditionally supplied by public monopolies."⁹ This has been the case with Aurizon Network since its transition from the publicly-controlled QR Network in 2010.

One of the specific concerns noted by the ACCC in that paper was the opportunity for vertically-integrated monopolists to engage in the practice of cross-subsidisation, where costs can be shifted between the various entities in the group for the purpose of obtaining returns that are otherwise unattainable in competitive markets, or simply providing an anti-competitive advantage.¹⁰ This (combined with the protection of confidential information) is the main principle underpinning the ring-fencing of Aurizon Network.¹¹ The same issue that the QCA considered in relation to the vertical integration of QR Network under UT3 exists in relation to the now fully-privatised Aurizon Network under UT4. In fact, the extent of Aurizon Network's vertical integration has been significantly expanded in recent years. As a result of the successful acquisition of an interest in Aquila Resources, Aurizon Group now has interests in respect of the following assets in vertically related markets:

- (a) interests in mining tenements; and
- (b) interests in assets outside of the current CQCN.

Further, the Memorandum of Understanding between Aurizon and GVK has given Aurizon interests in a port development at Abbott Point and a railway asset which could have been competitive with Aurizon Network's railway; at least in respect of the Bowen Basin.

⁸ UT4.2 clause 3.4(b)(i).

⁹ Chris Pattas and Stephen Goldwater, *Information gathering for ring fencing and other regulatory purposes* (October 1999), 3.

¹⁰ Chris Pattas and Stephen Goldwater, *Information gathering for ring fencing and other regulatory purposes* (October 1999), 3, 6.

¹¹ This very same concept was noted by the QCA in relation to the provisions in UT3, see Queensland Competition Authority, *Final Decision QR Network's 2010 DAU* (September 2010), 47.

Prior to the Memorandum of Understanding with GVK, Aurizon had developed a proposal to build an "integrated" railway in the Galilee Basin¹².

Further, Aurizon Group's involvement in AP-X has made it clear that their further vertical integration plan includes ports.

In light of these significant increases in, and plans for further vertical integration, any attempt by Aurizon Network to weaken and erode the definition of access related functions and ring-fencing requirements impacts not only the operation of the Access Undertaking, but also the principles underlying the regulation of Aurizon Network within a larger non-regulated vertically integrated business.

As such, Anglo American submits that the protections afforded by the ring-fencing provisions of the Access Undertaking must exceed the levels afforded under UT3 given these developments, in order to address the Aurizon Group's expanding interests into other upstream and downstream markets from its monopoly below rail network.

This also means that the scope of Access-related Functions outlined in clause 3.5(b) should not only focus on the limited categories presented by Aurizon Network in UT4.2, but should be expanded to encompass all services associated with the below rail assets to ensure that cross-subsidisation is minimised and competitive markets are truly protected from the effects of Aurizon Network's monopoly.

3.2 Electricity supply and sale

Under UT4 Aurizon Network had removed the provisions in respect to electricity supply and sale. Under UT4.2 Aurizon Network has included a new clause 2.4 relating to electricity supply and sale.

However, clause 2.4 of UT4.2 in relation to the supply and sale of electricity by Aurizon Network is uncertain in its application. It is not clear that there is effective contestability in respect of the supply of electricity to the Aurizon Network electrified assets. Nor is it clear to Anglo American whether it would be practical to have separate supply arrangements even if legally or physically possible (eg – meterage). Electricity supply may not be practically contestable is as follows:

- (a) Aurizon Network has a significant amount of information in respect of electricity supply and demand for the CQCN which would not be easy for coal producers or rail operators to replicate;

¹² Queensland Government, Department of State Development, Infrastructure and Planning *Central Queensland Integrated Rail Project* (2014) <<http://www.dsdiq.qld.gov.au/assessments-and-approvals/central-queensland-integrated-rail.html>>.

- (b) economies of scale and transactional costs would suggest that Aurizon Network is in the single best place to conduct the negotiation in respect of the CQCN; and
- (c) negotiations in respect of the supply of electricity will generally include issues relating to physical assets, such as interconnection assets which are assets that neither coal producers nor rail operators have any authority to negotiate in respect to.

Practically speaking, once negotiated, the only method of socialising the cost to users who choose to use electric is through the EC Tariff which has been incorporated into the tariff methodology in the Access Undertaking.

These concerns are compounded by the physical difficulty imposed by the grid to overhead network connections, which provide limited options for generators to supply from the grid. The only method that would allow generators to supply from the grid involves extensive additional infrastructure and high transmission loss, decreasing the incentive for alternate supply and subsequently decreasing the level of competition in the market.

Therefore, Anglo American does not believe that the electricity supply and sale market is truly practically contestable.

Anglo American believes that the Access Undertaking should establish a series of principles relating to electricity sale and supply. Specifically, these principles should:

- (a) apply for all points of connection and load levels across the CQCN;
- (b) provide for the monitoring and management of all connection points, as the overhead network has been established to align with where and how much electricity is being sourced for each sub-region;
- (c) provide safety and other technical standards that ensure a continued high standard of the CQCN, but also apply appropriate and prudent design levels for third party connectors, so that connectors are not forced to construct connections to a higher standard than is required for the continued high quality operation of the CQCN; and
- (d) outline terms and conditions that could be agreed to in any supply contract entered into by third party suppliers in order to distribute power within the overhead network.

In light of this, Anglo American has significant concerns with the drafting of clause 2.4 of UT4.2. Anglo American is particularly concerned that:

- (a) Aurizon Network is only obliged to sell and supply electricity to third party operators so long as it continues to supply a Related Operator in connection with Access. This

means that if there is any change in supply or sale of electricity to Aurizon Operations, or somehow Aurizon Network does not supply Aurizon Operations with electricity specifically in relation to Access, it can refuse to supply all other Access Holders or Access Seekers. Anglo American believes that this would be completely contrary to the original purpose of the Access Undertaking; and

- (b) there is no definition of what terms might be deemed by Aurizon Network as "unreasonable or uncommercial" for the purposes of clause 2.4(b)(ii) of UT4.2. This means that Aurizon Network has the right to withhold the sale or supply of electricity, which might be essential to the operation of a mine or train service, until Aurizon Network receives commercial terms that are only acceptable to its business model and do not protect the interests or rights of users that require electricity for the utilisation of their Access Rights (although Aurizon Network is subsequently not required to provide that electricity).

Anglo American is further concerned about these provisions in light of Aurizon Network's promotion of electric traction in the Goonyella and Blackwater Systems, including its recent submissions to socialise the costs of electrification of the Systems, and to apply the EC tariff to all users regardless of their utilisation of electric traction. Anglo American is concerned as this promotion of the broader utilisation of electric traction is incongruent with Aurizon Network's drafting amendments in UT4.2 which seek to make the sale and supply of electricity an inconsequential (and extremely lightly regulated) aspect of the Access Undertaking.

Anglo American submits that the most appropriate method of approaching this issue is for clause 2.4 of UT4.2 to be amended to require Aurizon Network to supply electricity on a cost pass-through basis. Of course, any costs incurred by Aurizon Network in negotiating electricity supply agreement would be recoverable under the Access Undertaking if electricity supply was included in the definition of Access-related Services. It may be appropriate to consider under such an arrangement provisions to ensure Aurizon Network achieves the best possible cost outcome on behalf of producers.

At the very least, Anglo American submits that the refusal to supply electricity should be subject to notice periods which take into account the time and expense that would be required in order for a user to ensure the connection of third party supply of electricity. These notice periods would need to be two years or greater, in order to give Access Holders (or Train Operators) the time to ensure that third party infrastructure can be constructed, connections can be maintained, and the new electricity supply is a viable and reliable alternative to supply from Aurizon Network.

Further, Anglo American notes that both it and the QRC suggested amendments to clause 2.4 of UT4 in order to provide for the referral of disputes regarding the sale and supply of electricity to an expert or the QCA. Aurizon Network has failed to address these concerns, or implement the QRC's suggested drafting.

Without protections along these lines, Anglo American does not believe that Aurizon Network should be able to trivialise a network connection issue (ie, electricity supply) which could drastically impact upon the viability and competitiveness of an Access Holder's Access Rights which are otherwise governed and protected by the Access Undertaking.

4. Part 3 - Ring-fencing

4.1 Services performed by Related Parties

Aurizon Network has accepted the need for ring-fencing in respect of its interests in the Network and any interest in ports held within the Aurizon Group. There are, however, important provisions which still refer only to ring-fencing between above and below rail operations and therefore need further amendment.

Anglo American notes that while Aurizon Network has made amendments to parts of the ring-fencing provisions to broaden the scope to cover port entities (and Anglo American does not believe that this is broad enough, a point addressed below), these amendments are not reflected throughout Part 3. For example, while Aurizon Network is prohibited from unfairly discriminating between a third party and a Related Operator or a Related Party (under clause 3.2(a)(iii)), under clause 3.5(a) Aurizon Network is only prohibited from transferring or delegating Access-related Functions to a Related Operator. The term "Related Operator" is defined in Part 12 as a function unit which provides above rail services. Further, this oversight also exists in the provisions covering Protected Information, even for Protected Information that could possibly be received from entities that are involved in competitive markets with Aurizon Network's Related Parties.

Importantly, Anglo American notes that this oversight is not limited to one or two provisions within UT4.2 Part 3, but applies to a large number of clauses (including the management of Aurizon Network under Part 3 Section C) that still only address the concern relating to Related Operators and not Related Parties. Specifically, Anglo American notes concerns with:

- (a) Clause 3.5(a) - Access-related Functions should not be contracted out to any related entity, irrespective of whether that related entity is a Related Operator or not;

- (b) Clause 3.5(b) - Aurizon Network should not be permitted to compete with any related entity in their relevant market. For example, Aurizon Network should not be allowed to provide port services;
- (c) Clause 3.6(a)(ii) - Aurizon Network staff involved in Access-related Functions should not be permitted to undertake work at the direction of any related entity;
- (d) Clause 3.8(b) - no related entity providing port or mining services should be entitled to participate in the process for the appointment of Aurizon Network's Executive Officer or Executive Team;
- (e) Clause 3.9(a)(i) - no member of the Aurizon Network Executive Team (or the Executive Officer) should be permitted to have direct management responsibility for a related entity providing port or mining services;
- (f) Clause 3.9(a)(ii) - every member of the Aurizon Network Executive Team (including the Executive Officer) should have an independent management reporting line that does not include any person with direct management responsibility for a related entity with interests in ports or mines;
- (g) Clause 3.9(b) - the Aurizon Network Executive Officer should be maintained at the same or greater level of seniority within the organisational structure of the Aurizon Group as the executive managers of related entities with interests in ports or mines;
- (h) Clause 3.9(c) - interpretation clause should be updated to include Related Parties as well as Related Operators;
- (i) Clause 3.10 - Aurizon Network must not act on directions from a related entity with interest in ports or mines in respect of granting or exercising Access Rights;
- (j) Clause 3.11(e) - Protected Information disclosed to Related Entity a with interests in ports or mines should also be covered;
- (k) Clause 3.15(c) - Aurizon Network should also undertake not to use or disclose Protected Information for the purpose of a related entity with interest in ports and mines obtaining an unfair commercial advantage; and
- (l) Clause 3.22(a) - the Aurizon Network offices should also have restricted access for any employee of a Related Party (defined as any related body corporate with interests in port or mining assets), and any employee of a Related Party should be accompanied by an Aurizon Network employee while in the Aurizon Network offices.

Anglo American does not believe that there should be any reason that Aurizon Network should provide any mining information or port information relating to coal producers to any related entity that has interests in mines or ports. Therefore, the process providing for the disclosure of Protected Information should not apply to any Port or mining information as that information should not be disclosed under any circumstances.

As this Access Undertaking is intended to apply for up to a five year period, Anglo American believes that this needs to be addressed in order to ensure that the ring-fencing provisions remain effective and adequate in light of Aurizon Network's recently expanding interests.

4.2 Discrimination in favour of other Aurizon entities

Anglo American notes that Aurizon Network has made drafting amendments which seek to address the concern that the ring-fencing provisions of Part 3 did not adequately protect from discrimination in favour of an Aurizon Holdings-owned port entity.

In recent times, however, as noted Aurizon Holdings has adopted a strategy of expanding and diversifying its portfolio of interests. Anglo American submits that the Access Undertaking should be drafted in such a way that should Aurizon Holdings expand its interests into areas other than above rail services and ports, these would still be covered by the essential protections afforded to infrastructure users under Part 3.

In light of the recent acquisition of Aquila Resources, Aurizon Holdings also now has interests in particular mines. Specifically, Aquila Resources' Eagle Downs Hard Coking Coal Project just outside Moranbah will assumedly connect directly onto existing parts of the CQCN. This major project adds to Aquila Resources' Queensland interests in the Washppol Hard Coking Coal Project, the Talwood Coking Coal Project and the Walton PCI Coal Project, giving the Aurizon Group significant interests in an upstream competitive market from Aurizon Network, to sit alongside its known downstream interests in Aurizon Operations and Aurizon Terminal.

This is particularly concerning in light of provisions such as clause 8.2.3(f) (although Anglo American does not agree with the drafting of this clause, that is dealt with below) which allows Aurizon Network to request information on:

- (a) the status of a mine's coal reserves or resources (including the quantity of such reserves);
- (b) the status of project development and coal production;
- (c) the current project development project;

- (d) the status of mining tenure and key approvals; and
- (e) the status of out-loading capacity and rights.

As Aurizon Network is entitled to request this information from a user before it makes a determination on whether to undertake an Expansion or not, Aurizon Network will have highly confidential mining information of Anglo American. Under no circumstances should this information be given to related parties and in particular a competitor such as Aquila Resources.

As such, the ring-fencing provisions must extend to mining interests to ensure there is no discrimination between mines in which the Aurizon Group has an interest and those where it does not have an interest. Part 3 should be amended to include reference to "Related Parties" which should be defined as any related body corporate with interests in ports or mines.

4.3 Line diagrams

Anglo American also notes that Aurizon Network has removed the responsibility for rail infrastructure provisions that form clause 3.8 of UT3. In particular, Aurizon Network has removed the requirement to provide 'line diagrams' that is currently clause 3.8.1 of UT3. This requirement was contained in the Access Undertaking for the very important purpose that it allowed transparent understanding of regulated sections of the CQCN. While Anglo American notes that Aurizon Network has agreed to provide line diagrams as part of the Preliminary Information that must be provided to Access Seekers, there is no confirmation that this information will be readily available to existing users or rail operators.¹³ Further, there is no confirmation from Aurizon Network regarding the format or detail provided by the line diagrams; adding to the uncertainty of the information available.

This is particularly important as the entire scope of the Access Undertaking is based on what assets are covered by regulation and therefore appropriately in the RAB as opposed to assets used exclusively by Aurizon's 'above rail' business and not necessarily for the use of all operators or producers, and to ensure that access holders and seekers have the right to quickly and accurately correct errors within the scope of the regulation.

Anglo American also disagrees with Aurizon Network's submission that any grievance with the line diagrams, assuming they are publicly available and contain enough detail to determine the status of particular sections of the track, should be pursued through the complaints handling process in the Undertaking. Anglo American believes that this adds a time-consuming and most likely costly step to correcting an aspect of the regulation that the QCA

¹³ See UT4.2 Schedule A cl 1, where Aurizon Network is only required to make preliminary information available on the Website to Access Seekers.

should have clear control over: ie, which assets are regulated and which are not. As the CQCN is already a declared service, users and potential access seekers should not have to rely on the general provisions of the QCA Act to ensure that all parts of the CQCN are appropriately regulated.

Anglo American submits that the terms of UT3 clause 3.8.2 should be reintroduced to UT4.2, allowing the QCA to correct any instance where Aurizon Network has inappropriately transferred what should be a regulated asset to another Aurizon Group entity that is not subject to the regulatory oversight of the QCA. This is consistent with a rail business that is supposed to be vertically separated.

Anglo American does not believe that access holders and seekers should be required to track back through numerous definitions and provisions of other legislation (including the Rail Transport Infrastructure Act) in order to ensure that a declared asset, the CQCN, is appropriately defined. The incorporation of the rail diagrams into previous versions of the Access Undertaking has been a transparent and clear process. The question of whether particular infrastructure is regulated or not is fundamental to the proper functioning of the Undertaking and should be transparent and there should be a simple and clear process to adjust the status.

4.4 Staffing of Aurizon Network

Anglo American, and other industry participants, have previously made extensive submissions on the provisions relating to staffing and transfer of staff within the Aurizon Group.¹⁴ In particular, Anglo American is concerned with the provisions of UT4.2 clause 3.6.

Anglo American has significant reservations regarding the fact that UT4.2 only requires Aurizon Network staff whose duties primarily involve the performance of Access-related Functions to work primarily for Aurizon Network, and to not undertake any work at the direction of a Related Operator.

First, this provision ignores the amendments that were made to protect against the influence of other Aurizon entities in competitive markets, including Aurizon Terminal. This issue has been addressed previously in this submission.

Second, Anglo American is concerned about the phrase "primarily". This adds no certainty to the ring-fencing of Aurizon Network staff that have direct access to important below rail information. Even though the term might be referable to the use of "principally" in the Telstra Structural Separation Undertaking, and agrees that the prohibition on Aurizon Network staff

¹⁴ For further reference to the industry comments, please see paragraph 3.8 of the QRC Submission from October 2013.

should not prevent any work other than Access-related Functions, Anglo American, however, believes that there needs to be control, transparency, and relevant oversight regarding this. In this light, Anglo American supports the drafting that has previously been submitted by the QRC in order to address this very issue.

A very similar issue exists with Aurizon Network's drafting regarding the secondment of employees who are primarily engaged in Access-related Functions. Aurizon Network's redrafting of this provision in UT4.2 only exempts secondments to the Marketing Division, seemingly ignoring the fact that any other areas may be high risk. Again, this drafting does not address the necessary functions of ring-fencing provisions and increases the uncertainty attached to transfers of Aurizon Network staff.

Further, UT4.2 clause 3.6(d) allows Aurizon Network to receive assistance with Access-related Functions from staff employed within other areas of the Aurizon Group, in particular for "shared services and corporate functions". Anglo American does not understand how this provision interrelates with Aurizon Network's own drafting in UT4.2 clause 3.4 which states that only Aurizon Network can perform Access-related Functions. Further, as it has previously submitted Anglo American does not believe that it is appropriate for **any** Aurizon Group entity other than Aurizon Network to perform those Access-related Functions, as many of the other Aurizon Group entities operate in competitive markets against customers of Aurizon Network itself. Anglo American believes that this clause 3.6(d) undermines the purpose of the ring-fencing provisions altogether.

4.5 Persons or business units with access to Protected Information

Anglo American fully understands that certain categories of people within Aurizon Network, and within the broader Aurizon Group, require access to Protected Information for the purposes of Aurizon's reporting and listing obligations.

Anglo American does not, however, agree with the extensive list contained in UT4.2 clause 3.17(a). For example, Anglo American cannot see any reason why, where excluded as a Related Operator in many other sections of the Access Undertaking, the Aurizon Operations board of directors should be permitted access to Protected Information without being required to comply with clause 3.18.

Anglo American notes that while the provisions covering Protected Information (mainly Section D2 - Control framework for Protected Information) create a division between Aurizon Network and the Marketing Division, they do not effectively protect highly confidential and commercial information from other entities within the Aurizon Group that may use that information to gain an advantage in a competitive market.

While some allowances in clause 3.17(a) make sense, Anglo American does not believe that the exception for Aurizon Operations is required or appropriate within the ring-fencing provisions of Part 3. Further, there are a number of sub-clauses in clause 3.17(b) that are extremely broad and could easily result in Protected Information being disclosed or shared without adequate protection.

In particular, Anglo American is concerned with:

- (a) clause 3.17(b)(iv) - while Anglo American understands that disclosure might be required for the conduct of legal proceedings, dispute resolution or audit under the Undertaking, the Act or a Standard Agreement, Anglo American believes that this should be restricted to instances where that Protected Information is relevant or essential to the decision being made, rather than the open-ended requirement suggested by Aurizon Network;
- (b) clause 3.17(b)(v) - Aurizon's requirements under the listing rules are essential to its operation as a public company, however, Anglo American does not believe that disclosure of Protected Information should be permitted to another Aurizon Group company without consent from the company whose Protected Information is being disclosed, and should not be permitted at all to a Related Operator or a Related Party as they compete directly in markets where that Protected Information is commercially sensitive and relevant;
- (c) clause 3.17(b)(vii) - disclosure of Protected Information to bankers, either internal or external, should not be necessary for the performance of Aurizon Network's duties. If Aurizon Network wishes to do so, in order to raise funds or to address credit arrangements, it should be sufficient that it can de-identify the Protected Information (in line with clause 3.11(i)), or seek the consent of the party that disclosed the information to Aurizon Network;
- (d) clause 3.17(b)(ix) - while it is clearly essential that relevant people within Aurizon Network have access to Protected Information for the purposes of undertaking or performing Access-related Functions, Anglo American believes that this is an extremely broad reason for having access and should be limited in some instances. Anglo American submits that it would be better to ensure that there is a register of when and why Protected Information is accessed, and the Protected Information shared should be restricted to only the information directly required to fulfil that employee's role;

- (e) clause 3.17(x) - essentially replicates clause 3.17(b)(ix), as Protected Information is only provided to Aurizon Network for the performance of Access-related Functions, and so Anglo American questions why (when a broader definition of Access-related Functions is correctly applied) there would be duties beyond the provision of Access-related Functions where Aurizon Network employees require access to Protected Information. If such a situation arose, Anglo American believes that the information should only be shared with the consent of the original disclosing party, as this provision is otherwise far too broad and, therefore, uncertain;
- (f) clause 3.17(xii) - Anglo American raised a provision similar to this as a concern in the negotiations for UT3, and the clause was subsequently not included in the finalised version. The phrase "infrastructure forming part of the supply chain" can also include port service providers, some of which are competitors, and others which are competitors with various mining companies (eg, a number of mining companies with development interests at the Port of Abbot Point could also become infrastructure providers for the purposes of clause 3.17(b)(xii) and receive Protected Information in that capacity). Anglo American does not believe that this is appropriate and is an inappropriate broadening of the ring-fencing provisions, just as it was considered to be in UT3; and
- (g) clause 3.17(b)(xiii) - while Anglo American understands that it might be essential for Aurizon Network to share some Protected Information with external advisors, Anglo American does not agree that the sharing provision should be so broad and unfettered. While this covers sharing Protected Information with external legal and accounting advisers, where it could possibly be assumed that certain levels of protection are involved, this provision allows sharing of Protected Information with **any** external advisers, consultants or service providers. Anglo American does not understand the rationale behind such a holistic provision and submits that this should be constrained by consent from the original discloser, as well as a register of when and why that Protected Information was shared with an external adviser (and was not, for example, de-identified or aggregated).

From a drafting aspect, Anglo American also notes that clause 3.17(b) of UT4.2 is unworkable as it is currently written. The use of the term "and" after the semi-colon on clause 3.17(b)(xiv) implies that every one of the previous sub-clauses must be enlivened before disclosure is permitted without adhering to the process in clause 3.18. This would be impossible, and is assumedly contrary to Aurizon Network's drafting intention, therefore,

Anglo American recommends that the "and" previously referred to be replaced with the term "or" in order to allow the provision to operate as intended.

Anglo American also questions the need for clause 3.17(c) of UT4.2 (and, subsequently, clause 3.17(d) of UT4.2). Again, this provision is extremely broad and allows Aurizon Network to disclose Protected Information with no record or repercussion. While it makes sense to permit disclosure in emergency safety situations, Anglo American does not see any reason why Protected Information should be disclosed for the purpose of:

- (h) clause 3.17(c)(i)(D) - obtaining project delivery, engineering or rail construction services without the consent of the original discloser or the aggregation of the information;
- (i) clause 3.17(c)(i)(E) - obtaining maintenance services or asset planning services;
- (j) clause 3.17(c)(i)(F) - obtaining advice on Rollingstock or Rollingstock interface issues, specifically considering the fact that this would include Related Operators or Related Parties, and could include some mining companies with interests in Rollingstock, where such commercially sensitive business information could be inappropriately applied; and
- (k) clause 3.17(c)(i)(G) - Anglo American does not believe that the terms "shared services" and "corporate functions" are appropriately defined or restricted. While this provision could be arguably applied to some limited accounting services, which may or may not be acceptable, it could also be applied to allow a much wider swathe of Aurizon Group employees to access commercially sensitive Protected Information that has been provided to Aurizon Network by customers. Anglo American does not believe that this provision is appropriate, and submits that (coupled with stronger accounting separation rules) disclosure of Protected Information to wider Aurizon Group employees should only be permitted with the consent of the original discloser.

Anglo American does not believe that the restrictions provided by clause 3.17(d) are sufficient, as this only operates to restrict some of the areas of Protected Information that can be produced, rather than the alternative which is to permit no disclosure, unless consented to or required by law. The alternative form allows original disclosers of Protected Information to ensure that their commercially sensitive business information is not broadly scattered within the Aurizon Group (or, indeed, to numerous third parties who may be competitors with the original discloser).

Again, while Anglo American notes that the ring-fencing provisions contain some protections of Protected Information from the Aurizon Group Marketing Division, this is not the sole division that requires ring-fencing from the Protected Information and monopoly position held by Aurizon Network. Anglo American submits that the ring-fencing provisions need to be significantly strengthened in order to cover many other aspects of the Aurizon Group business, as without truly effective ring-fencing Aurizon's extensive interests in a number of competitive areas of the supply chain create regulatory risk and reduce the confidence and security of investing in the Queensland coal market.

4.6 Waiver of ring-fencing compliance requirements by the QCA

Anglo American notes that Aurizon Network has attempted to argue that waiver of ring-fencing compliance is acceptable, and that in any event this waiver is purely at the discretion of the QCA.

Anglo American does not agree that a waiver of the ring-fencing provisions should be allowed in any circumstances. There are already a large number of circumstances where Aurizon Network is appropriately permitted to be exempted from the ring-fencing provisions of Part 3. Anglo American does not believe that there should be a broader catch-all for Aurizon Network to be able to apply to waive any breach of the ring-fencing provisions. This increases the uncertainty of the regulation and reduces the importance placed on the provisions of Part 3 as a whole.

As with any vertically integrated business where only specific business units are regulated monopolies, ring-fencing is of utmost importance for the continued competitive operation of the upstream and downstream markets. Aurizon Network should not be able to apply to degrade the importance of the ring-fencing provisions, but should rather be expected to understand, co-operate and comply with these provisions.

Allowing waiver applications may increase the costs of regulation and in the view of Anglo American will outweigh any benefit as it does not see that waivers are likely to be granted.

4.7 Inadequacies in the complaint handling provisions and process

Anglo American has previously acknowledged its support for the complaints handling process submitted by the QRC.¹⁵ As such, Anglo American maintains that the complaints process is inadequate to deal with concerns that could be raised under the ring-fencing regime and

¹⁵ See Anglo American, *Submission to Queensland Competition Authority Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking* (January 2014), 14; Queensland Resources Council, *Submission 01 (Part 3.1 Ringfencing mark-up)* (October 2013), 18-19.

associated confidentiality agreements and reiterates the comments made in its previous submission.

4.8 Schedule I - Confidentiality Agreement

There are important protections which Aurizon Network has removed from the Confidentiality Agreement. These have been identified below:

- (a) payment by Aurizon Network to the Access Seeker of liquidated damages of \$10,000 where it can be established that a Related Operator is in possession of confidential information (clause 4 of UT3);
- (b) an express right for the Access Seeker to recover compensation from Aurizon Network for loss in excess of \$50,000 due to a breach of confidentiality (clause 5 of UT3);
- (c) continuation of the terms of the Confidentiality Agreement unless terminated by mutual consent by both parties (clause 6.2 of UT3);
- (d) disclosure and use of confidential information generally being limited to where it is necessary for the 'permitted purpose' which is a defined term;
- (e) disclosure to an Aurizon Group banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements is only permitted if a legally enforceable confidentiality deed in favour of the owner has been executed (clause 2.1(b)(viii) of UT3);
- (f) the regime governing disclosure to engineering, environmental or other advisers, consultants or service providers to Aurizon Network which requires the consent of the discloser which may not be unreasonably withheld where the recipient entered into a contract with its external consultants or independent advisers on the terms specified in clause 2.3 of the UT3;
- (g) the regime governing circumstances in which the Access Seeker may, in an Access Application, give notice to Aurizon Network that the Access Seeker does not wish Aurizon Network to disclose its confidential information to the groups of persons listed in clause 2.4(b) of UT3;
- (h) disclosure to a person or business unit within Aurizon Network for the purpose of that person or business unit undertaking or performing any Access-related Function should be made subject to compliance with clause 3.18 (clause 3.17(b)(ix) of UT4.2 unless they fall within the scope of one of the other permitted disclosures; and

- (i) the general obligations contained in clause 3 of UT3, which are standard for this type of agreement.

5. Part 4: Negotiation framework

5.1 Overview

Anglo American welcomes the fact that Aurizon Network has addressed a large number of the issues raised by industry in the course of the UT4.1 submissions.

Anglo American understands that the QRC has outlined a number of key issues that Aurizon Network has failed to address in relation to industry's suggested amendments, including a number of amendments to ensure that Aurizon Network's redraft fully delivers the commitments made to industry during consultation. Anglo American supports the submissions and suggested drafting on this Part of UT4.2 provided by the QRC.

Anglo American does, however, have a few minor additional concerns. In particular, Anglo American continues to be concerned that:

- (a) **Preliminary Information (clause 4.2(a) and Schedule A):** the Preliminary information listed in clause 1 of Schedule A allows Aurizon Network to unilaterally impose changes to the telecommunications system, solely by notice posted on the Aurizon Network Website. Anglo American does not believe that this is an appropriate method of communicating such changes to stakeholders, especially in situations where these costs will be passed through to stakeholders as part of Aurizon Network's OPEX. Anglo American suggests that this provision (specifically, clause 1(c) of Schedule A) be removed;
- (b) **Capacity Information (clause 4.2(c) and Schedule A):** Anglo American supports the obligation on Aurizon Network to provide Capacity Information within a timely period for the purpose of allowing an Access Seeker to make initial enquiries regarding Access Rights. Anglo American does not, however, agree with some of the restrictions that Aurizon Network has placed around the provision of Capacity Information. In particular, Anglo American notes that under clause 3(a) of Schedule A, Aurizon Network may refuse to provide Capacity Information where that provision would breach Aurizon Network's obligations under "this Undertaking, an Access Agreement or any relevant confidentiality agreement." Anglo American does not agree that Aurizon Network should be permitted to enter into confidentiality agreements that are not otherwise linked to an Access Agreement or the Access Undertaking which might then restrict the provision of important Capacity

Information to an Access Seeker. As such, Anglo American submits that the protection for "any relevant confidentiality agreement" should be removed and the restriction should remain regarding the confidentiality obligations imposed by the Access Undertaking and Access Agreements, both of which operate to protect commercially sensitive information that is in Aurizon Network's possession or control; and

- (c) **Ability to use Access Rights (Schedule B):** Anglo American understands the need for Access Applications to be submitted in the appropriate form so that they are readily and easily processed by Aurizon Network. Anglo American does not, however, agree with the extent or relevance of information that must be provided to Aurizon Network at that time through that Access Application process. In particular, Anglo American does not agree that Access Seekers should be required to provide:
- (i) clause 3(e) of Schedule B, which requires Access Seekers to prove (to Aurizon Network's subjective satisfaction) "sufficient facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities)" to enable that Access Seeker to fully utilise the Access Rights sought. Anglo American does not believe that this is a matter for consideration by Aurizon Network at this stage of an Access Application. Rather, it is an Access Seeker's concern to ensure that it has contracted with an operator with sufficient supporting facilities to fully utilise the Access Rights that it has sought in order to ensure that it is not subject to either Take or Pay obligations for Capacity that it has not utilised, or otherwise face resumption of its Capacity by Aurizon Network. Ensuring sufficient facilities to utilise the Capacity sought is, therefore, an above rail issue and one that the Access Seeker must address with its Rail Operator, and as such should be of no concern of Aurizon Network at that point in time; and
 - (ii) clause 3(f) of Schedule B, which requires an Access Seekers to prove that the anticipated output of its mine is sufficient (once more, to Aurizon Network's subjective satisfaction) to support full utilisation of the Capacity sought. Again, Anglo American believes that this is an issue for an Access Seeker to ensure and it should not concern Aurizon Network as the below rail infrastructure owner. If an Access Seeker inappropriately (over) contracts, it can be subject to Take or Pay or resumption, both of which operate as effective methods for ensuring that an Access Seeker applies for the necessary Capacity. Therefore, Anglo American submits that clause 3(f) of Schedule B

is also not an appropriate consideration for Aurizon Network at that point in time and should be removed from Schedule B.

Anglo American notes that a similar concern exists with the various items for consideration in relation to the cessation of negotiations under clause 4.12 of UT4.2. Again, Anglo American submits that it is not appropriate for Aurizon Network to subjectively consider whether an Access Seeker has relevant above rail rights or mine production services when deciding on an Access Application, specifically:

- (i) likelihood of securing a rail haulage agreement (clause 4.12(c)(ii)(B));
- (ii) sufficient facilities, including Rollingstock, to run Train Services (clause 4.12(c)(ii)(C)); and
- (iii) sufficient anticipated mine output to fully utilise the Access Rights sought (clause 4.12(c)(ii)(D)).

Any such access agreement would be conditional upon, amongst other things, a TOA or other rail haulage requirements being able to be met upon commencement of use of the access. The producer may not be in a position to appoint an operator and therefore be aware of or supply such information when applying for access.

5.2 Removal of the queuing and first in time mechanisms

Anglo American has made numerous submissions regarding the importance of queuing and first in time provisions for ensuring fairness and equitable management of the Capacity negotiation process.¹⁶ Anglo American has dealt with this issue in relation to its submissions regarding the Capacity Allocation provisions, considered at paragraph 8 of this submission below.

While Anglo American understands that the QRC has not specifically raised this as an issue, Anglo American reiterates its previous submissions in relation to queuing. While not perfect, the queuing mechanism in UT3 allowed an objective method of determining the order of Capacity negotiations and which position each Access Seeker sat in. Removing this important mechanism allows Aurizon Network greater control over who it negotiates with, and detracts from the equitable open-access regime that the QCA has monitored previously.

As such, Anglo American submits that the fundamental approach to queuing in UT3 should be adopted in UT4.2. That is, the approach should be:

¹⁶ See Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* (January 2014) 6, 29.

- (a) that where Aurizon Network receive an Access Application that it cannot satisfy without an expansion, a queue is formed;
- (b) if one or more of the people in the queue choose to trigger an expansion then Part 8 should apply;
- (c) if an expansion is not triggered under Part 8 then the queue remains in place and the first in time receives priority if any capacity becomes Available Capacity; and
- (d) the order of the queue should only be changed where an Access Seeker ceases negotiations or it becomes clear that an Access Seeker in the queue has no genuine intention of obtaining Access Rights or is unlikely to be able to utilise Access the subject of the Access Application.

It has generally been considered essential to third party access regimes that there is a queue for capacity and that the management of that queue occurs on a transparent and objective basis. The additional criteria in UT3 for changing the order of the queue (those relating to whether Aurizon Network's commercial performance is better served by changing the order of the queue) are not appropriate where the regulatory model includes a revenue cap. The fundamental purpose of a revenue cap is to ensure revenue adequacy and therefore there is no need for these provisions.

6. Part 5: Standard Access Agreements

There are currently three forms of Standard Access Agreement under UT3, being:

- (a) the Operator Access Agreement (which is the form used where the Rail Operator applies for Access (notionally on behalf of Producers) and enters into the Access Agreement directly with Aurizon Network);
- (b) the Access Holder Access Agreement (which was the original version which was intended to allow the Coal Producer to apply for Access and hold the Access directly in their own name but there were issues identified by industry that the form approved had the unintended consequence that the Coal Producer was primarily legally responsible for above rail liability); and
- (c) The End User Access Agreement (which was relatively recently approved by the QCA and allows the Coal Producer to apply for Access and hold the Access directly in their own name but specifically imposes above rail liability on the Rail Operators through the mechanism of a Train Operations Agreement).

Anglo American believes that that Access Holder Access Agreement is unnecessary and should not be approved by the QCA under UT4. In essence, it has been replaced by the approved End User Access Agreement/Train Operations Agreement. Of course, the fact that the Standard Access Holder Access Agreement is not approved under UT4 does not impact on any actual Access Agreement which has been negotiated based on the Standard approved under UT3. Those agreements will remain valid and enforceable.

Anglo American has previously submitted that it strongly disagrees with the approach taken by Aurizon Network to remove important provisions from the Access Undertaking (for example, the transfer provisions) and place them in the Standard Access Agreements. In this regard, Anglo American does not repeat its submissions but relies on those earlier submissions. **[Rowan to insert cross-reference to previous submissions.]**

Anglo American has also made previous submissions that the Standard Access Agreements do not contain an appropriate risk allocation between the parties. In this regard, Anglo American also relies on those earlier submissions.

In addition to previous comments, Anglo American has given some thought to the structure of the Standard Access Agreements with a view to making the agreements simpler. One option would be for both the Operator Access Agreement and the End User Access Agreement to have a short "Access Agreement" at the front dealing simply with the obligations to provide Access and the payment terms (ie, with the necessary commercial terms included) and then a Train Operation Agreement as a schedule. In respect of Operator Access Agreements the Operator would sign both documents and in respect of End User Access Agreements the user would sign the Access Agreement and the relevant Operator would be bound by the Train Operations Agreement (or any subsequently modified version once appointed).

Finally, clause 5.1(g) of UT4.2 refers to the fact that Aurizon Network will execute an Access Agreement up to "2 years" prior to the commencement of Train Services. This is an important regulatory protection as it is essentially the provision which requires Aurizon Network to provide Access. This is the single most important function of a third party access regime. Anglo American believes that this should be a reference to "3 years" to ensure consistency with the 3/5 rule contained in clause 4.4(e)(ii)(B) which allows Aurizon Network to reject an Access Application where the application relates to Access Rights which are proposed to commence on a date more than 3 years but no more than 5 years after the Receipt Date and Aurizon Network is satisfied of certain things. This would then provide a seamless operation that:

- (d) if the Access Application is for Access Rights within 3 years then Aurizon Network must enter into the Access Agreement (subject to the other provisions of the Access Undertaking); and
- (e) between 3 years and 5 years the 3/5 rule applies.

7. Part 6: Pricing principles

7.1 Extent of Aurizon Network amendments to Part 6

Anglo American has made previous submissions in respect of drafting amendments made by Aurizon Network to Part 6 of UT4.2. Anglo American notes that Aurizon Network has not made any significant drafting amendments to Part 6 after clause 6.2.6 of UT4.2. As such, Anglo American does not believe that Aurizon Network has addressed Anglo American's suggested drafting amendments after this point.

In this regard Anglo American refers the QCA to the drafting amendments proposed in Annexure A to its submission on UT4 submitted to the QCA in January 2014. Anglo American relies on this submission.

7.2 Socialisation of costs by inclusion in the RAB

Anglo American has made numerous submissions in the past regarding socialisation of costs, and refers the QCA to:

- (a) Anglo American's submission in response to the QCA's review of pricing principles in July 2013, specifically paragraph 5.2;
- (b) Anglo American's submissions regarding UT4 in October 2013 and January 2014; and
- (c) Anglo American's submission on the 2009 Draft Access Undertaking (preceding UT3), including the extensive expert submission by Dr John Fallon (then of Economic Insights) addressing the economic issues in respect of socialising costs.

Anglo American relies on those submissions and does not reiterate them here.

Anglo American generally agrees with the principle of socialisation of costs associated with "expansions" to the existing network where such expansions add additional volumes and reduce tariffs in a system and there are adequate protections in place, including robust voting processes, against material adverse outcomes. The pricing of Access on the CQCN is already sufficiently complex and this approach results in the simplest pricing outcomes.

However, Anglo American does remain concerned about the socialisation of costs relating to extensions to the CQCN. In this context, an "extension" means the physical extension of the CQCN into geographic areas where there was not previously railway infrastructure. The clearest example is extensions to connect new coal basins to the CQCN, for example, the Surat Basin or the Galilee Basin. In these cases, the extension may involve very significant costs in circumstances where the current users will obtain no benefit from the extension itself.

As noted, Anglo American can see that there may be circumstances where expansion works which occur in the mainline network could be socialised if they are prudent and particularly where they have benefits for current users. However, these principles would be subject to a materiality test, for example if access tariffs increase by 5% or more then there should be no socialisation. There also needs to be a robust and transparent customer approval process that provides coal producers with sufficient information to make fully informed decisions.

7.3 Treatment of Renewal Expenditure as part of an Expansion

Anglo American notes that footnote 1 in clause 6.2.4(b)(i) provides that Asset Replacement and Renewal Expenditure will be considered as costs arising from an Expansion to the extent that they are necessary for that Expansion. In circumstances where the Expansion costs are socialised then this approach does not affect any particular users rights. However, where the costs of a Expansion are not socialised then the users of the expansion capacity will be paying an incremental charge on assets which would have otherwise been socialised between all users in circumstances where all users benefit from the asset renewal.

Because of this, Anglo American believes that footnote 1 should be removed and a new sub-clause (c) should be inserted to specifically exclude the costs of Asset Replacement and Renewal Expenditure from the costs arising from an Expansion as these costs should otherwise be paid for and the work completed by Aurizon Network completely separately from the completion of an Expansion.

7.4 Delay caused by Aurizon Network

While Anglo American agrees that the time taken to obtain the QCA's acceptance or approval of a Pricing Proposal should not constitute delay on the part of Aurizon Network, Anglo American does not agree that clause 6.2.4(h) of UT4.2 should operate to protect Aurizon Network where it delays submission of a Pricing Proposal, or otherwise delays the provision of information required to determine the acceptability of a pricing proposal.

Anglo American submits that there should be a new clause 6.2.4(h)(iii) stating that any delay by Aurizon, in submitting a pricing proposal (either initial or subsequent amended pricing

proposal) or delay in the provision of information required to determine the acceptability of a pricing proposal does constitute a delay on the part of Aurizon Network triggering any rights or remedies relevant under the undertaking in favour of the affected Access Seekers or their Customers.

7.5 Application of pricing principles to Access Charges and Reference Tariffs

Anglo American notes that clause 6.1(a) of UT4.2 suggests that the pricing principles provisions of UT4.2 only apply to the development of Access Charges. Anglo American does not agree with this narrowing of the scope of the pricing principles. Rather, Anglo American submits that the pricing principle provisions should apply more broadly, both to the setting of Access Charges, but also to the setting of Reference Tariffs under the Access Undertaking as well.

Importantly, Anglo American notes that if the pricing principles in Part 6 are not expressed to apply to Reference Tariffs as well, Aurizon Network is entitled to approach pricing of Reference Tariffs in any manner that it determines. Anglo American believes that if that is the case, the QCA will be restricted from reviewing Aurizon Network's pricing development except in instances that are inconsistent with section 168A of the Act (only very general circumstances).

Anglo American believes that this narrowing of the scope of Part 6 means that Aurizon Network will have a much greater ability to challenge Reference Tariffs, including any QCA decision regarding Reference Tariffs developed after the approval of UT4.2. As such, Anglo American believes that clause 6.1(a) should be redrafted in order to expressly state that it also applies to developing Reference Tariffs.

7.6 Burngrove and Coppabella to the Port of Gladstone

Under UT3, clause 6.1.2(b)(ii) allowed for an Access Charge for a Train Service between Burngrove and Coppabella to the Port of Gladstone to be less than the applicable Reference Tariff for the relevant System. Anglo American understands that this was essentially for the purpose of reducing Aurizon Network's asset stranding risk on the particular rail corridor associated with the Burngrove and Coppabella to the Port of Gladstone line.

7.7 Potential inclusion of separately funded asset cost in the RAB

Clause 6.2.2(c) of UT4.2 permits Aurizon Network to separately recover costs from assets that are not funded as a Customer Specific Branch Line by recovering additional revenue above the ongoing Access Charge. Anglo American agrees with the principle for Aurizon Network to be able to do this.

Anglo American does not, however, agree that Aurizon Network should be permitted to include the cost of separately funded assets in the RAB. As it is currently draft, clause 6.2.2(c) states that "Aurizon Network **may** exclude" the relevant cost components from the RAB. This could result in a situation where Aurizon Network decides to include the cost components of the separately funded assets in the RAB, and also recovers the additional revenue above the ongoing Access Charge, meaning that Aurizon Network is double-recovering the costs of those assets.

Anglo American submits that this clause should be drafted to state that "Aurizon Network **must** exclude" cost components from the RAB where those costs are separately funded through an additional charge to the relevant Access Holders above the ongoing Access Charge.

7.8 Simulation of capacity multiplier

Clause 6.2.2(d)(iii) of UT4.2 envisages that the capacity multiplier (namely, the number of Train Paths available for a Reference Train Service and for the proposed Train Service) will be determined using a "readily available simulation package". Anglo American supports this use of clear and transparent third party software in order to determine such integral aspects of the Reference Tariff.

Importantly, in order to continue to provide this clear and transparent approach to determining one of the essential elements of a Reference Tariff, Anglo American believes that UT4.2 should be redrafted to contain clear access to information regarding the output of the readily available simulation package. Anglo American believes that this requirement should expressly outline that where a coal producer disputes the determination of the capacity multiplier, it is to be given access to the data provided to and received from the simulation package, as well as access to the simulation package itself. Without clear evidence of the information given to the simulation package, as well as any assumptions made within the simulation package, the final outcome is just unsupported data, whether the information package is readily available or not.

Anglo American strongly believes that this is an area that can be enhanced to ensure the transparency and accuracy of Aurizon Network's approach to determining Reference Tariffs.

7.9 Defining "Changes in Market Circumstances"

The definition of Changes in Market Circumstances is particularly relevant to clause 6.2.3 of UT4.2, where an Access Charge may vary due to a number of factors, including Changes in Market Circumstances.

Anglo American notes that there has been a minor, yet significant, amendment to the definition of Changes in Market Circumstances contained in Part 12. Specifically, Anglo American notes that this definition has changed from:

- (a) under UT3, an objective test of whether a change has occurred in any market which has had, or will have, a material effect on an Access Holder's ability to pay Access Charges; to
- (b) under UT4.2, a subjective test of whether a change has occurred in any market which has had, or **as assessed by Aurizon Network**, will have a material effect on an Access Holder's ability to pay Access Charges.

Anglo American does not believe that Aurizon Network's assessment should be included in this provision. Under UT3 it was based on a clear assessment of whether there was any definable change to market conditions, something that could be proved or disputed transparently and objectively. Under the UT4.2 drafting, the inclusion of Aurizon Network's assessment merely adds another potential level of complexity and confusion, without creating a measureable difference or providing a benefit to the analysis required by the provision, as well as introducing a subjective element.

Anglo American strongly submits that this should remain an objective test, rather than being based on Aurizon Network's subjective opinion of the impact of a market change.

7.10 Cost allocation principles

Anglo American was a strong supporter of the development of cost allocation principles, in particular the Cost Allocation Manual under UT3.

Under UT4.2, whilst clauses 6.2.4(b) and 6.2.4(f) seems to envisage that if Aurizon Network submits "cost allocation principles" to the QCA, then the QCA may approve them having regard to section 138(2) of the QCA Act.

The clause envisages that the cost allocation principles will be specific to a particular Pricing Proposal as opposed to general cost allocation principles. Whilst it is entirely appropriate that the QCA has oversight of a particular allocation of costs in respect of an Expansion, Anglo American believes that the general Cost Allocation Manual under UT3 has merit.

As such, rather than reducing the QCA oversight of the cost allocation principles, or removing the requirement to produce a Cost Allocation Manual from UT4.2 altogether, Anglo American is of the opinion that the QCA should be encouraging greater transparency in

Aurizon Network's cost allocation. The Cost Allocation Manual needs to be expanded to deal with the increasing vertical integration of Aurizon Network.

7.11 Schedule F: operational characteristics of Reference Train Services

Clause 1.3.1 of Part A of Schedule F of UT3 previously contained a specific list of characteristics relating to Reference Train Services which were essentially operational in nature. These characteristics were clear and transparent and related specifically to the operational nature of Reference Train Services.

Anglo American understands that Aurizon Network has included similar provisions regarding the operational characteristics of Reference Train Services in clause 1.3(b) of Schedule F of UT4.2. There are, however, noticeable differences in the operational characteristics as well. Specifically, Anglo American is concerned with:

- (a) the requirement in clause 1.3(b)(x) of Schedule F of UT4.2 which incorporates measures regarding minimising coal spillage and leakage, as well as coal dust emissions management, which will be published by Aurizon Network on its website from time to time. A unilateral ability to change the level of compliance in respect of coal spillage and coal dust management is not acceptable, particularly when Aurizon Network is requiring coal producers to put in place measures that are not required by law. The inclusion of this provision in Schedule F is an indirect measure for Aurizon Network to establish its own standards on spillage and coal dust emissions, both areas that Anglo American submits are better addressed in a broad manner by the appropriate regulatory bodies and authorities. It is not an appropriate criterion to apply to whether a particular Train Service is a Reference Train Service;
- (b) the requirement in clause 1.3(d) of Schedule F of UT4.2 that a train service operates on the "same terms" as a Standard Access Agreement. Anglo American agrees that where there is a significant variation from the terms of the Standard Access Agreement, this might adversely affect the characteristics of those train services, however, Anglo American does not believe that a small deviation in terms from the Standard Access Agreement will not impact the system. As such, Anglo American believes that this provision should be deleted. If it were to be retained then Anglo American submits that it would be appropriate to redraft this clause by changing the phrase "same terms" to "substantially similar terms", in order to recognise an instance where there is only a small deviation from the standard terms. It should also be limited to changes to the SAA which impact on the nature or characteristics of the

Train Service. For example, a departure from the SAA in respect of the level of security cannot change the nature or characteristics of the Train Service; and

- (c) the requirement in clause 1.3(e) of Schedule F of UT4.2 that a Train Service Entitlement be based on the principle that Trains will be available 24 hours per day and 360 days per year. While Anglo American appreciates the dedication to industry displayed by Train Operators, it does not believe that it is practically possible for Trains to be available for operation for every hour of the day on as near to every day of the year as possible. Anglo American believes that this is an inappropriate assumption upon which to base Train Service Entitlement calculations. Anglo American submits that this should be redrafted to contain a more realistic and achievable assumption, such as [330].

Anglo American understands from its participation in the QRC UT4.2 process that none of these amendments have been agreed with industry or have been part of the negotiation process.

Anglo American is particularly concerned about these changes to the operational characteristics contained in Schedule F as UT4.2 contains a new definition of Allowable Revenue which specifically links these characteristics to the revenue that Aurizon Network is entitled to recover from each System for a Year. Although Anglo American has not been able to work through the implications of this change, it may mean that any subjective criteria that have been introduced into Schedule F gives Aurizon Network subjective control over which services count toward their Allowable Revenue, and which services do not.

If this is correct, then any Train Service which falls into the subjective criteria in Schedule F can now be deemed not to meet those criteria, meaning that those Train Services will not count toward an Access Holder's Reference Train Services and will fall outside the Revenue Cap. Aurizon Network will still get paid for those Train Services, even though they are not Reference Train Services, but could possibly be entitled to "top up" for not reaching its revenue cap for that Year, even though it received revenue for the excluded Train Services.

Therefore, without explanation by Aurizon Network as to what the changes in defining Allowable Revenue achieve, Anglo American cannot support the changes.

8. Part 7: Available Capacity Allocation and Management

8.1 Capacity trading mechanism

Anglo American understands that Aurizon Network is working with industry in drafting a workable short-term rail capacity trading mechanism. Anglo American agrees that a workable

short-term capacity rail trading mechanism is required in order to ensure that the vagaries of mining production can be compensated for and use of contracted capacity can be maximised, ensuring that low production periods for one industry participant can be compensated for by surges from another.¹⁷ This increases the productivity and railings of the CQCEN, reduces the need for reliance on ad hoc path scheduling and promotes the overall efficiency of the network.

Anglo American notes, however, that Aurizon Network proposes to incorporate these capacity trading mechanisms into the standard access agreements. Anglo American does not believe that this is an appropriate, or even viable, option for dealing with a capacity trading mechanism.¹⁸

An essential component of a capacity trading mechanism is that the process is clear and transparent. This ensures that all parties involved in the transfer understand what steps need to be taken in order to complete a transfer. This essential transparency can only be achieved by ensuring that the capacity trading mechanism is included in the Access Undertaking.

If the provisions for the capacity trading mechanism are included in the standard access agreements, the necessary transparency surrounding the process may be lost. As each agreement is individually negotiated and is subject to privity of contract, the user wishing to transfer the capacity has no way of knowing whether the user accepting the capacity is utilising the same standard access terms, or even whether than user is signed on to the same version of the standard access agreement. This will create a perverse situation where users can only organise capacity transfers through Aurizon Network (as the contract intermediary), increasing the complexity of the transfer process and most likely the time involved. With short-term transfers, particularly down to the 48-hour transfer windows that industry has suggested, this complexity reduces the viability of a transfer, will make users hesitant to enter into the transfer process, and will subsequently result in less efficiency for the CQCEN. Anglo American has previously noted that ensuring the expediency of this process is essential to its effectiveness. Further, any transfers would probably become variations to excepted access agreement.

Rather, Anglo American submits that the transfer process should be clearly outlined in the provisions of UT4. This means that users will be able to determine the manner in which a

¹⁷ Anglo American has previously expressed its support for a short-term capacity trading mechanism, as well as its comments on Aurizon Network's suggested mechanism in Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* (January 2014) paragraph 8.1.

¹⁸ Indeed, Anglo American has made extensive submissions on the numerous suggestions by Aurizon Network to remove provisions from the Access Undertaking and place them in the standard access agreements, a process that Anglo American does not support. In particular, see paragraph 2.3 above; Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* (January 2014) paragraph 6.4; and Anglo American, *Submission to the QCA re: Aurizon Network's 2013 Draft Amending Access Undertaking (UT4)* (October 2013) paragraph 5.

capacity transfer is deemed possible and will then be able to present Aurizon Network with what they think is a workable capacity transfer, allowing the process to operate smoothly and efficiently and increasing the utilisation of available train paths, contracted tonnes and the throughput of the CQCN overall.

8.2 General requirement for allocation (clause 7.2)

Anglo American has previously made submissions on the drafting UT4.1 in relation to the general requirement for allocation of capacity.¹⁹ Anglo American does not believe that Aurizon Network's redrafting shown in UT4.2 adequately addresses the previous submissions made by Anglo American.

Importantly, Anglo American believes that there should be clear and (predominantly) objective criteria for whether an Access Seeker can truly utilise the capacity requested. This should not include terms such as "sufficient facilities" or "sufficient anticipated output".

8.3 Renewals

Anglo American supports Aurizon Network's agreement to reinstate the "Replacement Mine" concept. This concept is especially important for major mine operators to ensure that their businesses can respond to economic pressure and market demands, as well as to integrate the end of life of one mine with the development and growth of the next.

Anglo American does, however, recommend minor changes to the drafting of clause 7.3(b) of UT4.2 suggested by Aurizon Network. In particular, Anglo American suggests:

For the purpose of **clause 7.3(a)**, where the relevant Access Rights relate to coal carrying Train Services, Aurizon Network will disregard any change to the origin or destination of the relevant Train Services in considering whether the relevant Access Rights are equivalent Access Rights so long as the Train Services for the Renewal:

- (i) continue to have a substantially similar requirement for contracted capacity ~~the same requirement for Mainline Paths~~ as the existing Train Services; and
- (ii) the origin of the Train Services for the Renewal and the origin of the Train Services under the existing Access Rights relating to the Renewal are located in the same Track Segment.

Further, Anglo American notes that the Track Segments are to be designated by Aurizon Network in the Preliminary Information that will be provided to supply chain participants.

Anglo American does not believe that this is adequate.

¹⁹ See Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* (January 2014) paragraph 8.1.

If information regarding Track Segments (and actually specifying where each Track Segment is) is only provided in the Preliminary Information, this means that industry, supply chain participants and the QRC will have no opportunity to review Track Segments prior to the commencement of the new Access Undertaking. This will also provide all those entities with no opportunity to challenge the structuring of Track Segments, including any situation where Aurizon Network's division of Track Segments is too restrictive and effectively removes the operation of clause 7.3(b) of UT4.2 anyway (after Aurizon Network agreed that it would reintroduce the successful terms of the Replacement Mine concept).

Further, there is no clarity on whether Access Holders or Customers are able to challenge the Preliminary Information once it is produced, or whether Aurizon Network's right to unilaterally amend the Preliminary Information from time to time also includes a right to amend the boundaries of the Track Segments from time to time without seeking review or approval.

Anglo American does not believe that it has been given enough information to determine whether the concept of Track Segments is actually viable, and whether there is enough control over the delineation of Track Segments to ensure that Aurizon Network's redraft of the old Replacement Mine concept will operate in a similar fashion, or whether it can be utilised to Aurizon Network's (or its Related Parties') unfair advantage. Anglo American suggests that it would be possible to rectify this uncertainty through the following redrafting of the definition of Track Segment contained in **Part 12**:

Track Segment	A part of the Rail Infrastructure comprising a rail corridor shown as a specified "Track Segment" <u>in Schedule [X] of this Undertaking (updated from time to time as approved by the QCA)</u> , as shown in the Preliminary Information including all branch lines directly connecting coal mine loading facilities to that "Track Segment" .
----------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Anglo American also believes clause 7.3(f)(i) should refer to "5 years" instead of "10 years". It is understood that it is appropriate to require Access Agreements to be for 10 years in the context of new infrastructure and expansions. However, where there is a renewal of Access Rights on the mainline CQCN there is no need for the agreements to exceed 5 years. A 5 year minimum period would also assist coal producers to more easily align their rail and port contracts, in order to provide for the most efficient operation of, and use of, capacity allocation in the supply chain.

Finally, Anglo American remains of the view that renewals under the Access Undertaking should be an extension of the current Access Agreement and not treated as a new Access Application subject to the process set out in Part 4. There is no need for the complexity of that process to apply.

Anglo American continues to support the arguments of the QRC (and Anglo American's previous arguments) that the 12 month timeframe for a renewal application is unnecessary. If the QCA does, however, determine that it is appropriate to include a 12 month lockdown on renewal applications, Anglo American believes that this should at the very least be protected from delays caused by Aurizon Network. As such, Anglo American believes that the following drafting should be inserted if the QCA determines that a 12 month lockdown is necessary:

- (iv) the Renewing Access Seeker has not executed an Access Agreement for that Capacity with Aurizon Network under this **clause 7.3** at least 12 months prior to the expiry of the Access Rights (or, where the Renewing Access Seeker fails to execute an Access Agreement prior to 12 months before the expiry of the Access Rights because of a delay attributable to Aurizon Network's negligence, recklessness or otherwise delay in negotiation, a lesser period determined by reducing the 12 month period by the time lost due to the delay)~~(or such lesser time prior to the expiry of the Access Rights as may be agreed by Aurizon Network).~~

Anglo American has attached a mark-up draft of Part 7 outlining the minimum changes that it believes need to be made to Part 7 to make it workable.

8.4 Transfers

As outlined above, Anglo American does not agree with the approach of Aurizon Network to remove the main provisions in respect of transfers from the Access Undertaking and place them in the Access Agreements.

The transfer process under the Access Undertaking is a way to ensure that the CQCN is utilised efficiently and with maximum delivery of contracted capacity (usually resulting in maximum throughput) through a transparent process contained in an Undertaking.

Anglo American is of the view that a transfer:

- (a) for up to the same term;
- (b) submitted in the same form;
- (c) for the Transferred Access Rights; and

(d) where the Transferee demonstrates a reasonable likelihood of being able to fully utilise the relevant Access Rights,

should result in a requirement for Aurizon Network to execute the Transfer.

Clause 7.4 of UT4.2 does not envisage a concept similar to the "customer initiated transfers" under UT3. Clause 7.4 talks only about an Access Holder seeking to transfer rights. The purpose of the customer initiated transfer provisions was to enable a coal producer to seek to transfer its Access Rights to itself (as an End User) or to another Access Holder (sometime another operator). In particular, it gave the coal producer this right even if the current Access Holder did not agree to the transfer. It is important that UT4.2 has similar provisions. It is insufficient for these provisions to be placed in the SAA, particularly where the producer is not the Access Holder.

8.5 Mutually exclusive access applications

Anglo American has previously made submissions in relation to the consideration of Aurizon Network's "revenue adequacy" as one of the factors for determining between Mutually Exclusive Access Applications.²⁰ Anglo American re-iterates these submissions.

It is unnecessary for Aurizon Network to consider its own revenue adequacy when determining between Mutually Exclusive Access Applications as its revenue is assured under the revenue-cap form of regulation.

Anglo American notes that Aurizon Network has not made any amendments to clause 7.5.2(d)(vii) of UT4.2 regarding the factors that Aurizon Network should consider in order to determine whether an Access Application (which is a Mutually Exclusive Access Application) promotes efficient investment in and use of the Rail Infrastructure. Anglo American has specific concerns with the ambit of each of the factors to be considered in this provision. These are considered separately below.

"Expected duration of the facility or business" - clause 7.5.2(d)(vii)(A)

Anglo American understands that it is important to show that the Access Seeker has enough annual tonnage to ensure that it will use its contracted Capacity for the term of its Access Agreement, otherwise it could hamper the efficiency of the CQCN toward the end of the term of its Access Agreement.

Anglo American does not believe, however, that it is appropriate to consider the duration of the facility beyond the term of the Access Agreement being sought. If Aurizon Network is

²⁰ See Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* (January 2014) paragraph 8.1 "Matters for consideration in Mutually Exclusive Access Applications".

permitted to consider the expected duration of the facility beyond the term of the Access Agreement sought, it will have the perverse effect of disadvantaging an Access Seeker with less resources than another, or disadvantaging an Access Seeker with a quicker mine development and export program (that would use its resources quicker). This is extremely disadvantageous to an Access Seeker with a mine nearing the end of its life, meaning that Available Capacity is only granted to those miners with larger ongoing stockpiles of resources and resulting in waste and inefficiency in the Queensland coal industry. It would mean that mines with lesser resources are devalued due to the difficulty in obtaining Access Rights and would have an adverse impact on an upstream segment of the supply chain.

Further, Anglo American believes that it is only Aurizon Network's concern whether the Access Seeker will have mine duration for at least the duration of the Access Agreement sought. Beyond this, it is not Aurizon Network's concern as to whether the Access Seeker has ongoing resources as Aurizon Network's interest (and, therefore, the interest being protected by the regulation) is only for the term of the contract at hand.

"Quality and saleability of the product" - clause 7.5.2(d)(vii)(B)

Again, Anglo American understands the reason behind the inclusion of this clause, however, does not agree with the drafting suggested by Aurizon Network.

This provision also creates extreme subjectivity that will be decided by Aurizon Network. Anglo American does not believe that this criterion is actually relevant to the determination of Mutually Exclusive Access Applications by Aurizon Network. As long as an Access Seeker has sufficient duration of mine, as well as a reasonable likelihood of obtaining the appropriate Supply Chain Rights, the quality and saleability of the Access Seeker's product is of no concern to Aurizon Network. Aurizon Network is protected by long-term Take or Pay contracts, ensuring that it has revenue certainty and nothing to do with the quality or saleability of the Access Seeker's product actually impacts upon Aurizon Network's legitimate business interests in the CQCN. Giving Aurizon Network the unfettered ability to determine which of two Mutually Exclusive Access Applications has the highest quality and most saleable product gives it unreasonable control to determine what product is shipped through the Queensland coal chain, and what product is of most worth to export and to mine. Anglo American does not believe that it is appropriate for Aurizon Network to make this determination and submits that clause 7.5.2(d)(vii)(B) of UT4.2 be removed in its entirety.

"Capital efficiency and density of network utilisation" - clause 7.5.2(d)(vii)(C)

Anglo American is unclear on how Aurizon Network intends to apply this criterion. It is not clear how two competing Access Applications can materially impact on capital efficacy nor is

it clear how density of network utilisation can be utilised to make a determination between the two applications.

For the reasons stated above, Anglo American does not believe that either capital efficiency or network utilisation are appropriate or reliable methods for distinguishing between Mutually Exclusive Access Applications, and as such clause 7.5.2(d)(vii)(C) of UT4.2 should be removed.

"Contribution to long-term demand for Access" - clause 7.5.2(d)(vii)(D)

Again, Anglo American does not fully understand the purpose or operation of this particular clause. In particular, Anglo American does not understand why an Access Seeker's Access Application should be required to contribute, or otherwise assumedly not overly detract from, the long-term demand for Access in the CQCN.

Importantly, the clause does not specify whether a Mutually Exclusive Access Application will be given precedence, or will lose priority due to its affect on the long-term demand for Access.

This clause is uncertain and vague, and does not create a simple or definable objective concept with which to determine disputes between Mutually Exclusive Access Applications. As such, Anglo American believes that clause 7.5.2(d)(vii)(D) should be removed in its entirety.

"Current and future competitiveness of the relevant supply chain" - clause 7.5.2(d)(vii)(E)

Anglo American does not believe that this is an appropriate provision. Aurizon Network is not the supply chain co-ordinator for the Queensland coal chain. Nor, as Anglo American has expressed,²¹ does it believe that Aurizon Network is the appropriate entity to take the role of supply chain co-ordinator due to its extensive vertical integration and the interests of its Related Parties.

Therefore, Anglo American does not believe that it is appropriate, or indeed possible, for Aurizon Network to accurately predict whether a particular Access Application will or will not promote the current and future competitiveness of the relevant supply chain in preference to another Access Application. Anglo American submits that this clause should also be removed in its entirety.

²¹ See paragraph 10.4 of this submission for further consideration of Anglo American's extensive submissions on the issue of centralised co-ordination.

9. Clause 7.6 and Schedule G: Network Management Principles

9.1 Overview

Anglo American has previously made extensive submissions regarding the provisions outlining and governing the Network Management Principles.²² Anglo American believes that the Network Management Principles are an extremely important aspect of the Access Undertaking as they govern the utilisation of Access Rights, and the day-to-day operations of the relevant Systems.

Anglo American notes that Aurizon Network has attempted to address some of the concerns that Anglo American has raised previously, however, it does not believe that these amendments properly address the major issues with the drafting of these provisions, either in UT4 or UT4.2.

As such, Anglo American continues to strongly support its previous submissions on this point (including its suggested drafting amendments). Anglo American has also clarified its objective in a number of areas in relation to the amendments suggested by Aurizon Network in UT4.2, which Anglo American has addressed in greater detail below.

9.2 Compliance with the Network Management Principles

Anglo American believes that Aurizon Network should be required to comply with the Network Management Principles. Aurizon Network has agreed to this principle, however, its redraft in UT4.2 has enumerated specific categories of compliance. Anglo American believes that these specific categories could have varying interpretations and could result in uncertainty and challenges to Aurizon Network's compliance with certain other aspects of the Network Management Principles.

As such, Anglo American submits (as it has done previously) that clause 7.6.1 clearly state only that "Aurizon Network must comply with the Network Management Principles." Aurizon Network has agreed to this concept and Anglo American believes that it leaves far less room for misinterpretation or confusion.

9.3 Making the System Rules for a System

Anglo American notes that through its redraft, Aurizon Network has inserted a qualification in its requirement to draft System Rules in clause 7.6.3(a). Specifically, this qualification

²² Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* (January 2014) paragraph 8.2, and schedules 1 and 3; Anglo American, *Submission to the QCA re: Aurizon Network's 2013 Draft Amending Access Undertaking (UT4)* (October 2013) paragraph 8.

requires that Access Holders for at least 60% of the relevant Train Paths must request the development of System Rules.

Anglo American strongly disagrees with this qualification as it merely adds another, possibly time-consuming step to the process of developing System Rules.

There have been extensive submission and public consultation processes undertaken through the UT3 period in order to determine the scope and terms for the development of a number of relevant System Rules. Throughout this process, Anglo American notes that there has not been extensive or vocal objection to the development or implementation of System Rules. As such, Anglo American believes that Aurizon Network should simply be required to develop System Rules where they do not exist for a System, due to the important position that System Rules have in governing capacity use and allocation within a relevant System.

Anglo American also notes that under UT4.2 Aurizon Network is only required to seek to ensure compliance with the Network Management Principles. This is a vague and uncertain term and should be removed from UT4.2. Anglo American notes its understanding of the hierarchy of capacity allocation documents submitted with its January 2014 submission on UT4. In Anglo American's understanding, the System Rules sit lower in the capacity allocation process than the Network Management Principles and, as such, should be reliant upon and operate in complete conjunction with the Network Management Principles in order to ensure transparency and ease of reference for Access Holders, Access Seekers, Train Operators and Aurizon Network alike.

Further, Anglo American notes that while Aurizon Network is now required (under UT4.2 clause 7.6.3(a)) to develop System Rules, there is no timeframe or timing requirement. Anglo American believes that this should, at the very least, be replaced with a requirement for Aurizon Network to develop the System Rules promptly. More strictly, Anglo American is of the opinion that Aurizon Network should be required to develop and implement System Rules for the relevant System/s within six months of becoming aware that it is required to develop System Rules, and if it does not comply with that timeframe, Anglo American believes that the QCA should be empowered to determine and implement (with the assistance of experts where required) System Rules that it believes are appropriate for the relevant System/s. Where the QCA is required to engage experts for the purpose of developing and implementing System Rules because Aurizon Network has failed to comply, Anglo American believes that Aurizon Network should bear the relevant cost and should not be entitled to pass this through to users. Otherwise, Anglo American believes that users are being forced to pay for expert reports that Aurizon Network had months to prepare and did not address appropriately during that time.

9.4 QCA oversight of the System Rules

As part of UT4.2, Aurizon Network has inserted a restriction on the oversight of the QCA in relation to the System Rules. Specifically, clause 7.6.3(d) now forces the QCA to accept System Rules drafted by Aurizon Network unless the System Rules:

- (a) would not operate equitably amongst users; or
- (b) are inconsistent with UT4.2 (including the Network Management Principles).

Anglo American strongly disagrees that such a restriction should be placed on the oversight and approval power granted to the QCA.

First, Anglo American notes that this drafting renders the QCA's power to request and consider public submissions almost completely pointless, as the QCA will not be able to enforce any appropriate suggestions made in those public submissions unless they fit clearly within one of the abovementioned categories.

Second, as the System Rules contain essential aspects of capacity management and allocation principles, Anglo American does not believe that it is appropriate to allow these aspects to be solely governed by Aurizon Network without QCA oversight, except in the narrow circumstances permitted under UT4.2. Anglo American particularly disagrees with prohibiting the QCA from considering whether the System Rules meet other aspects of the QCA Act, or relevant principles for regulation.

Due to the important role that the System Rules play in determining Capacity allocation and TSE consumption, Anglo American believes that they should be subject to full public scrutiny, as well as control and amendment by the QCA where Aurizon Network's suggested amendments to the System Rules are inappropriate (and not just in the limited areas that Aurizon Network has acknowledged under UT4.2).

9.5 Review of the System Rules

Anglo American has previously made extensive submissions regarding the ability for Aurizon Network to unilaterally amend the System Rules. Aurizon Network supports its previous submissions in relation to this issue.

Anglo American does, however, note that Aurizon Network has redrafted clause 7.6.4(d)-(j) of UT4.2 to operate in a fairer and more equitable manner for Access Holders. In particular, Anglo American agrees with Aurizon Network's submissions process, namely that it will prepare and disclose the amendments to the System Rules and then:

- (a) if Aurizon Network does not receive any reply submissions on the draft System Rules, it will notify the QCA that the System Rules amendments have been passed; and
- (b) if Aurizon Network does receive reply submissions on the draft System Rules it will notify the QCA and provide the QCA with all the required information to enable the QCA to either approve or disallow the System Rules amendments.

Anglo American supports this two step process which ensures that if there are any stakeholder concerns they will be properly considered and, if necessary, implemented by the QCA.

Anglo American does not, however, support the scope of either:

- (c) the topics that stakeholders are entitled to make submissions on under clause 7.6.4(d) of UT4.2; or
- (d) the scope of the QCA's consideration of stakeholder submissions regarding amendments to the System Rules, as considered in clause 7.6.4(g).

Anglo American has addressed the extremely narrow scope of the oversight and protections regarding QCA-approval of the System Rules at paragraph 9.4 of this submission. Anglo American believes that similar submissions apply here as well.

Therefore, while Anglo American supports the process amendments suggested by Aurizon Network, it does not agree that the scope of the QCA's consideration, or the topics that Access Holders can make submissions regarding, should be narrowed. As any amendment made by Aurizon Network could have an extreme impact on the allocation of Capacity and TSEs, Anglo American strongly maintains that Access Holders should be entitled to comment on any aspect of Aurizon Network's proposed draft System Rules, and the QCA should similarly be entitled to fully consider and provide a determination on any point.

9.6 Determination of an Access Holders affected Train Paths

Anglo American agrees with Aurizon Network that Access Holders should have the right to comment on the creation of, and amendments to, the System Rules. Anglo American also agrees that Access Holders' interests should be weighted to the proportion of Train Paths that each Access Holder holds in the relevant System, in order to ensure equitable representation of the affected Train Paths.

While Anglo American agrees with these broader concepts, it does not agree with Aurizon Network's current drafting of those concepts in clause 7.6.5 of UT4.2. In particular, Anglo

American does not believe that the provisions are clearly drafted to ensure that Access Holders may quickly and easily determine their relevant proportion of voting rights.

Anglo American submits that each Access Holder's relevant voting power should be determined based on the Access Holder's contracted tonnage for the relevant financial year (running from 1 July until the next 30 June). Without such a strict clarification, the provisions that Aurizon Network has inserted into UT4.2 regarding determination of voting power could operate to achieve incorrect outcomes, for example where an Access Holder has already railed a majority of its contracted tonnes for a period it may be underrepresented, or conversely if an Access Holder has not railed a large portion of its tonnes it may be unfairly overrepresented. Anglo American believes that the only way to correct this eventuality is to have a specified category measured over a specified period, which creates a simple measurement of each Access Holder's voting power for the relevant System. This would remove the complexity and confusion that is generated by Aurizon Network's current drafting of clause 7.6.5 of UT4.2.

9.7 Drafting of Schedule G: Network Management Principles

As mentioned above, Anglo American has previously provided extensive drafting regarding the Network Management Principles.²³ Anglo American continues to fully support its previously submitted drafting in favour of the amendments made by Aurizon Network in UT4.2. Anglo American extensively considered its drafting during its previous submission to the QCA and believes that no parts of its drafting operate in a vacuum from any other. As such, Anglo American submits that its drafting should be accepted in full.

10. Part 8: Network development and Expansions

10.1 Mandatory expansions

Anglo American has previously made extensive submissions on the notable exclusion of the mandatory expansions regime from UT4. Importantly, Anglo American does not share the exact views of the QRC on this issue. Aurizon Network has not adequately addressed Anglo American's concerns in UT4.2.

As such, Anglo American refers the QCA to its previous submissions, specifically:

- (a) Anglo American's *Submission to the QCA re: Aurizon Network's 2013 Draft Amending Access Undertaking (UT4)* in October 2013 at paragraph 7.1;

²³ In particular, Anglo American refers the QCA to its suggested drafting provided in Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* (January 2014) schedule 1. This schedule contains extensive redrafting that Anglo American considered for a long period of time prior to submitting to the QCA.

- (b) Anglo American's *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* in January 2014 at paragraph 9.1;
- (c) Schedule 2 to Anglo American's *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* in January 2014 at clause 8.2.1; and
- (d) Anglo American's *Submission to the QCA re: the QCA Position Paper on the Standard User Funding Agreement* in July 2014 at paragraph 2.

Anglo American reiterates these earlier submissions, and submits that Aurizon Network should be subject to a minimal standard of mandatory expansion requirements.

While Anglo American believes that Aurizon Network should always remain liable for certain forms of Expansion (for example, asset replacement, ballast replacement and Expansions to deliver Shortfall Capacity that Aurizon Network committed to provide in a previous Expansions), it also believes that a mandatory Expansion regime is essential to the proper operation of the CQCN.

Numerous small enhancements or augmentations are constantly required to the CQCN in order to deliver more Capacity, increase the efficiency of the Network or deliver contracted Capacity. These Expansions, while necessary, are not appropriately the subject of a SUFA, which involves a complex suite of documents, extensive professional advice for all parties and heavy financial investment from banks and lending institutions. Rather, these Expansions should be covered by a process (precisely like that already agreed in UT3) that allows for Aurizon Network to fund and construct these minor Expansion assets, and then increase the Regulated Asset Base in order to recover the costs (and an appropriate Return on Capital) over a period of time.

In the term of UT3 since its inclusion in the Access Undertaking, Anglo American does not know of a single instance where an Access Holder or Access Seeker has specifically relied on the provisions of Part 8 to force Aurizon Network to complete an Expansion. This is a rarely used, yet essential element of the regulation of the CQCN as it gives industry and investors confidence that they will be able to draw on sufficient and appropriate Access when required to ensure proper exploitation of their export commodities.

Further, Anglo American notes that in its recent decision regarding SUFA, there is an obligation on Aurizon Network to fund shortfalls of capacity, including forcing it to invest

where an Expansion does not deliver the suggested Capacity.²⁴ Anglo American supports this view and believes that the QCA should appropriately apply this within its UT4.2 decision as well.

Even if the QCA determines that the SUFA process should replace the mandatory expansion regime, Anglo American believes that it is essential the mandatory expansion regime continue for as long as the SUFA process remains untested. Currently, a SUFA is not even agreed, let alone signed or tested by parties within the CQCN, and neither Aurizon Network, stakeholders nor the QCA know whether SUFA will actually be workable in reality. Even if SUFA does prove to be workable, it may not prove that a SUFA can be agreed, signed and completed in time to properly exploit a minor efficiency objective and Anglo American does not believe that the entire Queensland coal industry should be prevented from increasing its efficiency because SUFA presents a block.

As such, Anglo American believes that the mandatory Expansion process should remain an integral part of the Access Undertaking.

10.2 Access conditions regime

While Anglo American has always supported the concept of SUFA, it continues to maintain that while there is no proven workable and bankable SUFA the Access Undertaking needs to contain an adequate access conditions regime (similar but not identical to the one contained in Part 7 of UT3).

Anglo American has made extensive submissions on this point previously. In particular, Anglo American directs the QCA to:

- (a) Most relevantly and recently, Anglo American's *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* in January 2014 at paragraphs 7.7 and 9.3;
- (b) Anglo American's *Submission to the QCA re: Aurizon Network's 2013 Draft Amending Access Undertaking (UT4)* in October 2013 at paragraph 7.4;
- (c) Anglo American's *Submission to the QCA re: the 2013 Standard User Funding Agreement DAAU* in August 2013 at pages 1-3;
- (d) Anglo American's *Supplementary submission to the QCA regarding the 2013 Standard User Funding Agreement DAAU* on 12 December 2013 at page 1; and

²⁴ Queensland Competition Authority, *Position Paper: Aurizon Network's 2013 Standard User Funding Agreement Draft Amendments Access Undertaking* (May 2014) chapters 7 and 14.

- (e) Anglo American's *Submission to the QCA re: QR's Rail Access Undertaking (UT3)* on 12 February 2010 generally, and specifically at paragraph 3.3.

Anglo American believes that its views on the access conditions regime have been adequately expressed in those submissions. However, it does note that there were aspects of the Access Conditions regime in UT3 which created some practical difficulties which could be improved upon under UT4.2.

10.3 Asset replacement works

Anglo American does not understand why Aurizon Network has redrafted the provisions regarding its obligation to complete asset replacement works to defer to relevant obligations within Access Agreements (see UT4.2 clause 8.2.1(d)).

While Access Agreements may contain provisions that entitle Access Holders to ensure that Aurizon Network maintains a relative standard of infrastructure, these provisions are too important to not include in the Access Undertaking. Further, as asset replacement works are essential to the operation of the entire CQCN, Anglo American submits that it would be best to ensure that clause 8 includes a clear and transparent provision which requires Aurizon Network to complete asset replacement and renewal works at its own cost whenever they are required. These costs can obviously then be rolled into the RAB (where prudently incurred) and used to determine the Reference Tariff, however, it is inappropriate for them to be included in individual Access Agreements.

10.4 System Operating Parameters

The current draft of UT4.2 does not provide for Aurizon Network to lodge the System Operating Parameters with the QCA and obtain approval.

Anglo American believes that these documents are critically important to the operation of the CQCN and QCA approval is necessary as significant rights can be affected by changes in the System Operating Parameters.

Attached is a draft of suggested amendments in this respect.

11. Part 9: Connecting infrastructure

11.1 Inconsistency with the recently approved Standard Rail Connection Agreement

Anglo American notes that Aurizon Network's redrafted Part 9 of UT4.2 is extremely different to the understanding that was only recently reached with the QCA regarding the Standard Rail Connection Agreement.

The purpose of developing a Standard Rail Connection Agreement was to ensure that Aurizon Network and connecting users had a standard-form contract that operated fairly to protect the interests of both the infrastructure owner and the third party user.

Importantly, the relevant provisions of UT3 (clauses 8.3 and 8.4) allowed freedom of contract with sufficient regulatory oversight to ensure that Aurizon Network could not exploit its natural monopoly position for more than the appropriate regulated rate of return.

As such, Anglo American proposes that the entire Part 9 of UT4.2 be replaced with the provisions of clauses 8.3 and 8.4 that were the subject of extensive discussion and public consultation, and were finally agreed under UT3 in order to avoid completely redrafting provisions and agreements that are only a year old. Given that the UT4 negotiation process is an extremely extensive and complex one, Anglo American sees no reason to renegotiate a final decision of the QCA that remains recent, and can easily be included in UT4.2 if the provisions of clause 8.3 of UT3 are mirrored in Part 9 of UT4.2.

Anglo American has provided redrafting for Part 9 and the Standard Rail Connection Agreement as annexures to this submission.

11.2 The definition of Connecting Infrastructure

Along similar lines, Anglo American also notes that the less inclusive definition of Connecting Infrastructure currently proposed in UT4.2 does not align with the more inclusive definitions:

- (a) existing in UT3;
- (b) existing in the current Standard Rail Connection Agreement; or
- (c) proposed in the UT4.2 Standard Rail Connection Agreement.

Anglo American believes that in order to facilitate the smooth operation of the standard agreements and to create certainty of operation for user, investors and Aurizon Network alike, the definitions should be aligned. This consistency would mean that users have a clear understanding of which assets will be considered Connecting Infrastructure prior to relying on the Standard Rail Connection Agreement. Anglo American believes that the existing (and more inclusive) definition of Connecting Infrastructure should be included in UT4.2, specifically that:

Connecting Infrastructure means the rail transport infrastructure (including, without limitation, track, signalling and overhead traction electricity (if applicable)) that is either:

- (a) identified as Connecting Infrastructure on the plan detailed in schedule 2; or

(b) not identified on the plan detailed in schedule 2 as being Private Infrastructure, Connecting Infrastructure or part of the Network, but is managed, controlled or owned by Aurizon Network and connects the Network to the Private Infrastructure, as modified, upgraded or replaced from time to time.

While Anglo American does not necessarily disagree with Aurizon Network's less inclusive definition of Connecting Infrastructure (drafted in UT4.2), Anglo American believes that it should be considered in the broader context of regulation. Designing, constructing and managing Connecting Infrastructure is exclusively a monopolistic market; ie, there are number private contractors that could connect Private Infrastructure to the CQCN on behalf of users. On the other hand, Anglo American understands Aurizon Network's desire to oversee the connection of Private Infrastructure to its asset, however, such strict oversight means that Aurizon Network is monopolising the market for Connecting Infrastructure and it should become part of the Access-related Functions and be governed by the regulation. As such, Anglo American submits that the decision needs to be made as to whether:

- (d) Aurizon Network wishes to be the sole operator for the design, construction and management of Connecting Infrastructure, in which case it should submit to proper regulation of its services in this market; or
- (e) Aurizon Network wishes to act competitively in this market, in which case it should allow a broader definition of Connecting Infrastructure and should permit it to be built to a standard appropriately aligned with the relevant legislation, and rail technical and safety construction guidelines.

11.3 Protection against subcontracting of Aurizon Network activities

Further, Anglo American believes that there should be specific provisions inserted in Part 9 of UT4.2 to ensure that stakeholders have appropriate oversight of the agreements and subcontracting that occur behind the Standard Rail Connection Agreement. While Anglo American agrees that Aurizon Network should be entitled to design, construct and manage the building of any connection to join Customer-specific track to the CQCN, Anglo American does not believe that this gives Aurizon Network the right to achieve a margin on its role in this process, or to request higher standards than those established in the relevant legislation and safety standards. Specifically, Aurizon Network is not entitled to "gold plate" its assets using funds supplied by stakeholders for the purpose of obtaining otherwise open access to the CQCN. Anglo American also believes that these rights should be appropriately backed-up by rights contained within the Standard Rail Connection Agreement to ensure that Aurizon

Network's role, and the standards required for connection, are both clearly established in an enforceable form.

11.4 Connecting Infrastructure and Customer Specific Branch Lines

There is a lack of clarity in UT4.2 as to the difference between and treatment of Private Infrastructure, Customer Specific Branch Lines (CSBL) and Connecting Infrastructure.

In summary, Anglo American believes that:

- (a) Aurizon Network should not be allowed to decide whether it funds a CSBL;
- (b) In fact, there should be no CSBL concept. Customer specific balloon loops and spurs should be Private Infrastructure until it reaches Connecting Infrastructure (ie infrastructure connecting Private Infrastructure to the mainline network);
- (c) Private Infrastructure should be privately funded and not rolled into the RAB; and
- (d) Connecting Infrastructure should be strictly limited in scope to infrastructure necessary for the purpose of "interconnection".

12. Central co-ordination

Further, Anglo American has long been a supporter of the benefits of independent centralised co-ordination.²⁵ Anglo American submits that the key aspects of successful centralised co-ordination are:

- (a) **Independence:** centralised co-ordinators should be independent export chain co-ordination bodies without any interests that may influence it's decision making and with the objective of ensuring co-ordinated, independent and impartial system performance assessment, reporting and recommendations in respect of investment. Any involvement by an entity involved in another aspect of the supply chain not only taints the co-ordination with a lack of independence, making some participants wary of sharing information, being involved in supply chain groups and investing money for co-ordination planning but also fetters the impartiality of the decision making process ; and

²⁵ Anglo American, *Submission to the QCA re: Queensland Competition Authority Pricing Papers* (July 2013) 10; Anglo American, *Submission to the Productivity Commission re: Review of the National Access Regime* (18 April 2013) 8; Anglo American, *Submission to the Productivity Commission re: Review of the National Access Regime in light of the Draft Report* (July 2013); Anglo American, *Submission to the QCA re: Aurizon Network's 2013 Draft Amending Access Undertaking (UT4)* (October 2014) 20; Anglo American, *Submission to the QCA re: Aurizon Network's Reply Submission on the 2013 Draft Access Undertaking (UT4)* (January 2014) 17; recently and importantly see Anglo American, *Submission to the ACCC re: Application for Interim Authorisation of DBCT Coal Chain Coordinator* (March 2014).

- (b) **Transparency:** processes governing allocation of capacity and scheduling decisions should be established in strict criteria that can be objectively monitored in order to ensure that all supply chain participants are treated fairly and equitably.

Anglo American believes that with these two key factors, centralised co-ordination is an effective way of ensuring the more efficient use of the supply chain for the benefit of all participants, as well as the broader Queensland economy.

While Anglo American understands that the model exists in a different regulatory space, the Hunter Valley Coal Chain Co-ordinator (**HVCCC**) is an excellent and proven example of workable and efficient centralised co-ordination. Anglo American understands that the HVCCC ensures:

- (c) day to day planning and scheduling, focusing on supply chain co-ordination in order to fulfil customers' orders in the shortest possible timeframe; and
- (d) long term capacity planning, using 10-year sophisticated simulation and optimisation modelling tools to target all supply chain participants' investment decisions and focus capital expenditure.

The specific independent functions of the HVCCC centre around:

- (e) determination of contractible system capacity and assumptions;
- (f) measurement of actual performance against system assumptions and allocation of system losses; and
- (g) usage of contractual entitlements and administration of capacity transfers.

Currently in the Queensland coal chain, these functions are all governed separately, by the various port authorities and Aurizon Network. These entities, and especially Aurizon Network, have vested interests in the performance of upstream and downstream Related Parties, meaning that the key functions that are undertaken by a central co-ordinator like the HVCCC are subject to the business interests and biases of the individual operators. Absent these factors, any stakeholder will still have its own commercial interests impacting decision making in any event.

More importantly, an independent central co-ordinator like the HVCCC can achieve capacity enhancements through efficiency objectives, rather than only through investment, meaning that the supply chain increases capability without excessive spending to achieve that result. This ability to oversee supply chains for the purpose of releasing latent capacity is what Anglo American sees as the single most important role of a centralised supply chain co-ordinator. In

order to achieve this aim, it must be the sole focus of the central co-ordinator, to the exclusion of its own business interests and profit maximising goals. This is why Anglo American believes that a supply chain participant, including Aurizon Network or a terminal operator, could never provide appropriate or effective supply chain co-ordination, being compromised by its own interests.

As part of the Hunter Valley Coal Chain, Anglo American has seen the HVCCC achieve efficiency improvements through independently reviewing various aspects of the coal chain including timing at loading and unloading points, as well as alignment of port, rail and mine contracting and planning. This has ensured that users achieve capacity utilisation increases where possible through scheduling enhancements, before being burdened with the cost of Expansions and enhancements in order to attempt to ensure that the system delivers contracted capacity.

As such, Anglo American believes that Aurizon Network should at the least be required to participate in supply chain groups to ensure the best possible utilisation of the existing assets before expansion of those assets. As such, Anglo American believes that Aurizon Network should be bound by outcomes of supply chain co-ordination, particularly where those outcomes are focused on achieving the most efficient and best use of the Queensland coal chain assets.