



Charles Millsted  
Director Economic Regulation  
Queensland Competition Authority  
L27 145 Ann St  
Brisbane QLD 4001

## Submission on the Amended 2014 Draft Access Undertaking

29 July 2016

Dear Charles,

Aurizon Operations (**Aurizon**) respectfully recommends that the Queensland Competition Authority (**QCA**) accept the amended 2014 Draft Access Undertaking (2014DAU) as submitted to bring the UT4 regulatory process to a close.

Notwithstanding this position, Aurizon wishes to address the QCA's final decision with respect to the partial waiving of relinquishment fees. However, for the avoidance of doubt, Aurizon is not seeking further variations to the 2014DAU, but is placing the issue on the public record to ensure it is sufficiently and appropriately addressed in the preparation and approval of the 2017 Draft Access Undertaking (2017DAU).

The issue of waiving a portion of relinquishment fees for a reduction in required train paths resulting from an increase in train payloads (with no consequential reduction in contract net tonnes or net tonne kilometres), is an essential requirement in promoting efficiency in the absence of alternate demand for these paths.

The UT4 final decision concluded:

*In response to matters raised by stakeholders, we note that access holders can attempt to transfer their access rights before seeking to relinquish them. This provides access holders with an opportunity to recover some value by negotiation rather than relying on Aurizon Network to make a decision on whether to waive relinquishment fees. Such discretion allows Aurizon Network to potentially engage in conduct that unfairly differentiates between users.*

In relation to these points Aurizon notes the following:

- the option to transfer is only viable where there is sufficient alternate foreseeable demand close to or above the system capacity (it is not necessary to contract for a path to be able to use a path);
- it has been empirically shown that there is no transfer of cost or risk to other users of the network where the waiver of the relinquishment fee is limited to those tariff components which incur the same revenue; and
- the QCA's reference to use of discretion by Aurizon Network to potentially unfairly differentiate between users has not been substantiated.

Aurizon considers the retention of financial disincentives to pursue productivity and efficiency improvements will result in a reduction of competition in the above rail haulage market. Aurizon reinforces its view that relinquishment fees that result from productivity and efficiency improvements should exclude the portion of the fee that relates to the net tonne and net tonne kilometre components of the access charges to avoid financial disincentives.

The decision appears to be in direct contrast to the following views expressed by the QCA in the final decision on Queensland Rail's access undertaking:

*Aurizon, New Hope and Glencore said that there should be a mechanism to allow access holders to vary the terms of their access agreements, during the term of the access agreement, to allow for efficiency and productivity improvements. This might also include new reference train services and relief in relation to relinquishment fees if train paths are relinquished because of these improvements.*

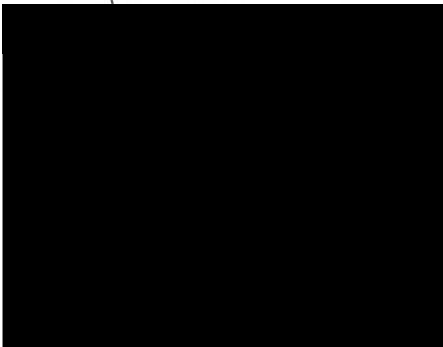
*We agree that it is important to promote efficiency and productivity improvements and that these improvements may be conceived during the life of a long-term access agreement. Efficiency improvements benefit access holders, access seekers and Queensland Rail.*

*We therefore require Queensland Rail to reasonably consider any proposed productivity or efficiency variations which arise during the term of an access agreement and negotiate in good faith as well as provide reasons for any refusal to vary the access agreement.<sup>11</sup>*

Aurizon has found it difficult to reconcile the QCA's reasoning between the two final decisions on essentially the same matter.

The QCA's acknowledgement of the benefits of promoting productivity and efficiency improvements requires a more constructive and facilitative approach to the 2017DAU and Aurizon looks forward to further engagement on this matter during that process.

Aurizon reiterates that it is not seeking to have these matters addressed in the finalisation of the 2014DAU but looks forward to working constructively with the QCA and other stakeholders on how to promote further productivity and efficiency improvements across all elements of the supply chain during the 2017DAU development.



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<sup>1</sup> Queensland Rail's Draft Access Undertaking, final decision 7.2