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15 September 2017

Professor Roy Green
Chair
Queensland Competition Authority
Level 27
145 Ann Street
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Dear Professor Green

AURIZON NETWORK'S UT4 SUFA DAAU

The QCA has published a draft decision in relation to the 2017 Standard User Funding Agreement (**SUFA**) Draft Amending Access Undertaking (**DAAU**) submitted by Aurizon Network (**Aurizon**) in accordance with its UT4 Access Undertaking (**UT4 SUFA DAAU**). Queensland Treasury Holdings Pty Ltd (**QTH**) makes this submission in response to the invitation issued by the QCA in its draft decision.

Background

As you know, QTH is the owner of the infrastructure constituting the Central Queensland Coal Network (**CQCN**), which is leased by QTH to Aurizon under an Infrastructure Lease. This Infrastructure Lease is a confidential document as between QTH and Aurizon.

QTH's chief interest in proposals for a SUFA is to maintain and protect the integrity of the CQCN and the interests of QTH (on behalf of the State) under the Infrastructure Lease. Beyond this, QTH has always viewed the SUFA arrangements as being a commercial matter between Aurizon and its customers, and does not seek to be involved in negotiations between those parties, except to the extent that QTH's interests are affected.

In this context, the proposed SUFA model outlined in the QCA's draft decision is predicated on the assumption that QTH will:

- (a) enter into an Extension Infrastructure Head-Lease (**EIHL**) and an Integrated Network Deed (**IND**) with the SUFA Trustee for a SUFA project; and
- (b) in accordance with the EIHL and the IND, accept ownership of SUFA infrastructure upon completion.

This proposed structure obviously has the potential to impact on QTH's rights and obligations relating to its ownership of the CQCN. In view of this, QTH comments below on a number of matters in connection with the QCA's draft decision.

In principle support for a SUFA

QTH acknowledges the merits of a regime which could help facilitate the development of new rail infrastructure on terms that are acceptable to all interested parties and recognise and respect the interests of QTH and the State more broadly. QTH supports the SUFA concept in principle where these conditions are satisfied.

Template transaction documents for a SUFA

While QTH was consulted by Aurizon in relation to certain draft template documents early in the SUFA process, it has had no involvement since in the development of the structure for the SUFA or in the negotiation of the current draft template transaction documents. QTH also understands that further changes to the draft template transaction documents are likely to be proposed as a consequence of the QCA's draft decision, and that it is currently intended that even once the UT4 SUFA DAAU is approved, there will be scope for negotiations and access disputes in relation to the final terms of the transaction documents for each SUFA project.

The QCA should be aware that QTH has not reviewed or approved any of these draft template transaction documents (including those which would need to be executed by QTH) and does not propose to do so until those documents are closer to their final form. It will also be necessary for provision to be made to fund QTH's review of any such documents.

Execution of transaction documents in the context of a specific SUFA project

Subject to acceptable funding provision, QTH would be prepared to consider whether the SUFA transaction documents, in their final form, would be broadly acceptable to QTH as template documents. This would not, however, entail a commitment by QTH to agree to enter into transaction documents on those terms for any specific SUFA project.

As outlined above, QTH's chief objective is to maintain and protect the integrity of the CQCN and the interests of QTH (on behalf of the State) under the Infrastructure Lease. This will necessarily require QTH to review the specific details of any proposed SUFA project. QTH is not bound by Aurizon's access undertaking, and will need to consider, in the case of any specific SUFA project, whether it wishes to enter into an EIHL/IND and accept ownership of SUFA infrastructure and, if so, on what terms. Again, it will be necessary for provision to be made to fund QTH's review of any such proposal. QTH reserves its right to decline to execute transaction documents for any specific project, or to insist on changes to such documents where the interests of QTH and the State require this.

Implications for the QCA's final decision

QTH considers that the final decision on whether to approve the UT4 SUFA DAAU, in its current or in a modified form, is a matter for the QCA, and is not something on which QTH comments.

QTH notes only that it reserves its right to consider both the template SUFA transaction documents, and whether such terms are appropriate for any specific SUFA project. This does have the potential to create a conflict if Aurizon and/or access seekers have rights or obligations under Aurizon's Access Undertaking which are inconsistent with QTH's rights as the ultimate owner of the CQCN.

QTH invites the QCA to take these matters into account in making its final decision with respect to the UT4 SUFA DAAU, including whether there is a need for terms (either in the access undertaking or template transaction documents) to recognise and address any potential conflict of the type outlined above.

Thank you for allowing QTH the opportunity to make this submission.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Gerard Bradley".

Gerard Bradley
Chair