



Professor Flavio Menezes
Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001

Queensland Rail's 2020 Declaration Review

16 July 2018

Dear Professor Menezes,

Aurizon Coal welcomes the opportunity to respond to submissions made on Queensland Rail's (QR's) 2020 Declaration Review. As an above rail operator with a significant presence on QR's networks, Aurizon Coal considers the outcome should ensure access seekers and access holders have reasonable terms of access and efficient pricing in the interests of competition in upstream and downstream markets.

Aurizon's above rail operations are conducted in two separate and distinct markets with different factors relevant to consideration of whether declaration or non-declaration should be made. Prior to 1 February 2018, Aurizon Coal was the only access holder in the West Moreton Coal System. Since that time, access holdings and the consequent commercial obligations have transitioned to the South West Producers with Aurizon Coal as their Nominated Rail Operator. Despite this change in commercial arrangements, Aurizon Coal has significant investments and interests in the West Moreton Coal System. The focus of this submission by Aurizon Coal relates to coal haulage in the relevant West Moreton and metropolitan systems.

Aurizon Coal notes that, except for the proposed Access Framework (the **Framework**), QR has provided little supporting evidence that the services provided by the West Moreton Coal System do not satisfy the access criteria in section 76 of the *Queensland Competition Authority Act 1997*; in particular that declaration does not promote a material increase in competition. On this basis Aurizon Coal considers that QR should continue to be subject to declaration post 2020.

To the extent that QR determines that the West Moreton Coal System should not be the subject of declaration. Aurizon Coal has noted below the critical elements that need to be included in the proposed Framework. This is not an exhaustive list of issues and concerns that Aurizon Coal has in relation to QR's Access Framework and Aurizon Coal may make further submissions to the QCA on the Access Framework.

The Queensland Competition Authority (**QCA**) must appropriately apply the economic and legal tests relevant to determining whether a declaration or non-declaration decision should be made. Aurizon Coal notes the detailed submissions provided by other stakeholders in

response to the Declaration Review and considers the detail in those submissions provides an appropriate reference point for the QCA to assess QR's submission.

Impacts on Competition in the Downstream Rail Haulage Market

Aurizon Coal acknowledges comments from QR that it does not have commercial interests in upstream or downstream markets and therefore has no commercial incentives to not provide access to the currently declared services for the purpose of reducing competition in the rail haulage market. However, the services provided by the West Moreton Coal System fundamentally differ from those provided in the Hunter Valley Coal Network and the Central Queensland Rail Network which operate with economies of scale and utilise modern engineering equivalents.

Whilst QR does not have the incentive to foreclose competition in the downstream rail haulage market, it does have the ability to severely impact the efficiency and competitiveness of that market. In particular, the risk that QR will make material pricing errors in the West Moreton Coal System can have a material effect on the efficient utilisation of, and investment in, that system with consequential effects on competition in the rail haulage market. Under the proposed Framework, QR would have the ability to price up to what the market could bear, without appropriate protections for reasonable and fair terms of access. In addition, the proposed Framework provides no guarantee that the service provided by QR (including reliability and performance) would be commensurate with any pricing position adopted by QR in the determination of floor and ceiling pricing.

QR has indicated that it does not support the QCA's prior determinations on the valuation of the assets comprising the West Moreton Coal System or the allocation of costs between coal and non-coal services. Furthermore, the Framework excludes any reference to this valuation and simply allows for the negotiation of prices between floor and ceiling limit, with the ceiling determined by a Depreciated Optimised Replacement Cost. Aurizon Coal has concerns with the extent to which a commercial arbitrator will have the expertise to make such a determination and that the exclusion of this reference to the established asset values is to allow for a material uplift in the conceivable ceiling price (as distinct from earning a reasonable commercial return on invested capital).

This raises the potential for increased and potentially uncapped access charges under the Framework that could materially erode rail operator margins as relevant stakeholders look to absorb those increased costs. This substantially undermines investment incentives in the rail haulage market and has the potential to deprive users of the West Moreton Coal System of efficiency benefits from increased above rail productivity that investment in innovation and technology would provide. This is compounded in the South West system by the fact that road is not a substitute for rail in coal services and it is noted that the associated port facilities have significant investment based on the fact rail is the assumed mode of transport.

Having regard to all above factors, Aurizon Coal submits that:

- Access on reasonable terms as a result of declaration would promote a material increase in competition in the market for rail haulage in the West Moreton Coal System; and
- There are no substitutes for the facility comprising the West Moreton Coal System, including the metropolitan rail corridor from Rosewood to the Port of Brisbane, and there is existing capacity within the facility to provide for the total foreseeable demand over at least the 2020 DAU period.

Certainty of Ongoing Application and Fair and Reasonable Terms of Access

To the extent the QCA determines that all or part of the QR Declared Service should no longer be declared, Aurizon Coal considers two critical factors absent from the proposed Framework, namely, the inclusion of a fairness and reasonableness principle; and sufficient certainty that the proposed Access Framework will remain in place and not be amended by QR to the detriment of access seekers, access holders and operators.

Aurizon Coal notes the submission of 31 May 2018 by the South-West Producers, in particular, the points highlighted in section 6.5 regarding the potential pricing outcomes in the event of a non-declaration decision. These points are particularly relevant in the absence of a fairness and reasonableness principle in QR's proposed Framework.

Any proposed Framework should include a principle of fairness and reasonableness particularly in the determination of access prices. This will be particularly relevant to the extent there is a need for commercial arbitration under the proposed Framework and it would be necessary for the arbitrator to determine an access price between floor and ceiling limits.

Aurizon Coal notes that access on reasonable terms is a fundamental premise of the declaration criteria and inclusion of this principle in the proposed Framework is appropriate and necessary given its inclusion is compatible with the arbitration outcomes that would be expected to be obtained in the case it continues to be a Declared Service.

Additionally, QR has a wide scope to amend the terms of the Framework within the term and Aurizon Coal has significant concerns that this latitude does not provide requisite regulatory certainty and undermines investment incentives of operators. The only option available to access holders and operators to challenge amendments made by QR is to start legal proceedings. This is ineffective considering the time and investment required to mount such proceedings.

Interaction of West Moreton Coal System with passenger services

The interaction of the coal carrying services with high volume and frequency passenger services also operating on the shared corridors in the West Moreton and Metropolitan networks introduces an element of complexity that is not present in the other QR networks. Government and political pressure and the interaction with bulk and freight services cannot be underestimated when considering the forward-looking decisions of network providers.

In this respect, Aurizon Coal considers the recent introduction of new passenger timetables in the NSW metropolitan rail lines to be instructive of the issues that confront relevant stakeholders when there is pressure to deliver additional services to constituents. The introduction of a revised timetable combined with a revised operations protocol has dramatically impacted the freight industry in NSW and introduced a level of uncertainty that is difficult to assess for freight haulage presently and in the future.

Conclusion

In conclusion, Aurizon Coal submits that the West Moreton Coal System (including metropolitan rail corridor from Rosewood to the Port of Brisbane) should remain declared having regard to the relevant access criteria in the QCA Act.

In the event the QCA determines that the QR Declared Service should no longer be declared, the Framework as proposed by QR would need to, *at a minimum*, be amended to include a fairness and reasonableness principle and seek to limit the scope of QR's ability to amend the

Framework within the term particularly given the limited and ineffective remedy for access holders and operators.

A lack of appropriate oversight with respect to maintaining existing access rights or providing additional access rights at a cost that QR determines that the industry can bear, introduces uncertainty for current South-West Producers and any other entrants to the West Moreton Coal System.

Aurizon Coal maintains that appropriate mechanisms are required to promote competition in up and downstream markets and provide the appropriate incentives to QR to provide fair and reasonable terms of access and pricing including obligations to maintain the network to an appropriate standard.

Should you have any questions in relation to the submission please contact me via phone on (07) 3019 2223 or email at Louisa.Chung@aurizon.com.au.

Kind regards

A handwritten signature in black ink, appearing to read 'Louisa', written over a faint horizontal line.

Louisa Chung
Manager Access
Coal Customers