

File Ref: 544666

17 May 2013

Mr Michael Carter  
Chief Executive Officer  
Aurizon Network Pty Ltd  
GPO Box 456  
BRISBANE QLD 4001

Dear Mr Carter

### Aurizon Network's 2013 Draft Access Undertaking Assessment Process

On 30 April 2013, Aurizon Network Pty Ltd (Aurizon Network) submitted a voluntary draft access undertaking (the 2013 DAU) to the Authority for its approval. Under the *Queensland Competition Authority Act 1997* (the QCA Act), the Authority must consider the 2013 DAU and either approve or refuse to approve it.

On 1 May 2013, the Authority commenced an investigation into the 2013 DAU in accordance with section 146 of the QCA Act. The Authority published the 2013 DAU on its website ([www.qca.org.au](http://www.qca.org.au)) and sought submissions from interested parties. The closing date for submissions is 9 July 2013.

I am aware that Aurizon Network and the Queensland Resources Council are considering how they can best work together to discuss issues arising from the 2013 DAU with the view to reaching agreement on those issues where possible. While these considerations are incomplete, I understand that each contemplates some role for the Authority.

The Authority is committed to a timely and an efficient decision-making process and notes all parties' strong desire to see an approved undertaking in place by 1 July 2014. That said, I remind stakeholders that the Authority must conduct itself in accordance with the relevant provisions of the QCA Act in making its decision and conducting a consultation process. The Authority also must adopt a role that is appropriate given its statutory functions.

The Authority has sought to establish a process which gives all stakeholders the opportunity to convince the Authority of the merits of their positions and arguments in a transparent way. To date, the Authority has published the 2013 DAU and called for submissions (the 2013 DAU and explanatory material has been published on the Authority's website and the supporting documentation is being progressively uploaded, pending confidentiality checks).

Following this, I confirm that the Authority intends to:

- (a) prepare and publish a draft decision – to provide all stakeholders with an opportunity to see the Authority's analysis and preliminary views on the 2013 DAU as lodged;
- (b) call for further submissions – so stakeholders can respond to the matters raised in the draft decision in a transparent way;
- (c) publish submissions wherever this is reasonable, and subject to confidentiality claims; and

(d) prepare and publish a final decision.

In addition, the Authority may conduct hearings, hold public seminars and workshops, and establish working groups as part of its investigation on the 2013 DAU, and in accordance with Part 6 of the QCA Act. I wish to alert stakeholders to this Part of the QCA Act, as it is relevant for understanding the scope of the role of the Authority in conducting an investigation into the 2013 DAU.

Further details about the timing and conduct of the Authority's consultation processes will be provided at a later date. This will reflect, in part, stakeholders' response to Aurizon Network's proposal, the complexity of any issues to be resolved and the information available to the Authority to inform its views. I anticipate that further consultation, including under the Part 6 provisions, may be useful once the Authority has received submissions from stakeholders - to the extent that submissions highlight key industry concerns or raise significant new issues that require additional detailed attention or information. On this note, the Authority is happy to consider suggestions put forward by stakeholders regarding the nature and scope of issues that might benefit from further consultation. It may also be appropriate to reconvene to test the general direction and preliminary positions developed from the Authority's own analysis of particular issues, as they are developed. It is not for the Authority to say how stakeholders choose to participate in this process.

The Authority also welcomes stakeholders' efforts to engage with each other to find common ground or to test whether agreement can be reached on particular matters.

However, I wish to be clear that the Authority will consider the 2013 DAU in accordance with the QCA Act. This means that, in making its decision, the Authority may have regard to the fact that stakeholders have agreed on particular matters, but the Authority is not obliged to accept any such agreements. Rather the Authority will weigh the arguments and information provided in accordance with the decision criteria set out in section 138 of the QCA Act, in reaching its decision. So while an agreement may inform the Authority's views on particular matters, including Aurizon Network's, end users' and train operators' interests (section 138(2)(b), (c) & (e)) or the public interest (section 138(d)), it is not the only matter that the Authority will take into account in reaching its decision.


#### Submissions on Aurizon Network's 2013 DAU

The Authority intends to consider Aurizon Network's 2013 DAU with the view of having a new access undertaking approved and in place for 1 July 2014. This is consistent with stakeholders' wish to resolve these issues as quickly as possible. I accept that this is a very ambitious goal. However, I believe it can be achieved if all parties actively engage with the process by providing their views in a fulsome and in a timely manner and by actively developing and promoting options where they believe the proposal needs to be improved.

As a first step, the Authority has called for submissions on Aurizon Network's proposal, with submissions due 9 July 2013. I am aware that a number of stakeholders are concerned that they will not be able to meet this deadline. The Authority will consider any requests to extend the due date for submissions. However, I would like to remind stakeholders that extending the due date for submissions will necessarily delay the subsequent assessment processes and so, in all likelihood, affect the timing for having the approved arrangements in place.

Any enquiries on this matter should be directed to Leigh Spencer on (07) 3222 0532.

Yours sincerely

  
Malcolm Roberts  
Chairman

cc: *Mr Michael Roche, Chief Executive, Queensland Resources Council*