

19 June 2013

Malcolm Roberts  
Chairman  
Queensland Competition Authority  
GPO Box 2257  
**Brisbane QLD 4001**

Dear Malcolm

### **5 June 2013 Draft Amending Access Agreement – GAPE Reference Tariffs**

Thank you for the opportunity to respond to Aurizon Network's (AN's) most recent Draft Amending Access Undertaking (DAAU) on the Goonyella Abbot Point Expansion (GAPE) Reference Tariffs. BHP Billiton Mitsubishi Alliance (BMA) and BHP Billiton Mitsui (BMC) endorse the Queensland Resources Council (QRC) submission.

We note this most recent DAAU addresses one of our concerns that GAPE users have the benefit of the same level of transparency, rigour and regulatory precedent as is currently afforded to the users of other regulated coal systems within the 2010 Access Undertaking.

The intent to infuse the now withdrawn April GAPE DAAU with amendments being sought by AN in the 2013 Draft Access Undertaking process is a worrying trend that has emerged in access discussions with AN over the last twelve months. Accordingly, we formally register with the Authority our overarching concerns with AN's strategy to:

- blur the lines between regulation and commercial negotiation;
- remove all obligations to fund any future capital expenditure at the regulatory Weighted Average Cost of Capital;
- remove existing assets in the regulatory asset base from the system based reference tariff pricing methodology (e.g. connection costs and potentially balloon loops); and
- wind back the regulatory protections which are currently enshrined in the 2010 Access Undertaking.

The 2013 Draft Access Undertaking reveals repeated claims for AN to have greater power and discretion in negotiating access to the regulated network. What is missing from this regulatory discussion is an acknowledgement that AN is a regulated monopoly provider of access services, for which no viable competition exists. Users have no bargaining power in contract discussions with AN given AN's base negotiating position is always the standard suite of access agreements.

Importantly, whilst AN has demonstrated a willingness to negotiate higher rates of return with users (e.g. GAPE Deed), AN has not been open to any discussion around changes to the risk and liability protections afforded both by the standard agreements and the 2010 Access Undertaking. AN must be able to demonstrate genuine contractual movements around the risk matrix underpinning the regulated return, before the Authority can be confident that AN will not abuse its monopoly position in future contract discussions with users for access to the regulated rail network.

We note that in AN's 5 June 2013 letter to the Authority, it acknowledges user submissions on the April 2013 GAPE DAAU. AN advises the Authority that it "will seek to address comments and concerns through a series of customer meetings to be held prior to 30 June 2013". We advise that, to date, no

approach has been made by AN to discuss the June GAPE DAAU or any aspect of BMA/BMC's submissions to the Authority on the GAPE DAAU.

We stand behind our previous GAPE submissions and request the Authority consider all the issues raised by us in forming its decision on AN's June GAPE DAAU. We re-affirm our request, in accordance with the information gathering powers of the *Queensland Competition Authority Act 1997*, for the Authority to obtain a copy of the GAPE Deed (via AN or a GAPE Deed customer), to satisfy itself that the interrelationship of the GAPE Deed and the reference tariff pricing methodology in the GAPE DAAU do not deliver windfall gains to AN which were not anticipated by customers when they executed the GAPE Access Agreement and Deed in early 2010.

If you have any queries or require more information, please feel free to contact Ms Tanya Boyle on mobile

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Yours sincerely

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Neil Buckley  
Rail Ports and Infrastructure Department  
**BHP Billiton Mitsubishi Alliance**