Submission to Queensland Competition Authority

Submission on Aurizon Network's Northern Bowen Basin System Rules

Anglo American Metallurgical Coal Pty Ltd

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1 Executive summary

Anglo American Metallurgical Coal Pty Ltd (***Anglo American***) welcomes this opportunity to present its views to the Queensland Competition Authority (**QCA**) on Aurizon Network Pty Ltd's (***Aurizon Network***) Northern Bowen Basin System Rules (***NBB Rules***). Anglo American notes that the QCA is considering various System Rules at the present time and would like to thank the QCA for the consistency of its approach to the way the various Central Queensland systems will operate.

Anglo American would like to stress the importance of the System Rules in general, and as such the importance of ensuring that they are effective and practical documents to help increase the efficiency and service delivery of the Central Queensland Coal Network (***CQCN***). The System Rules inform the System Operating Assumptions which drive the Network Development Plan (under Aurizon Network's 2013 Draft Access Undertaking (***UT4***)) creating the hierarchy of how rail access is to be managed and made available in an equitable way. Importantly, it is the cornerstone for regulating System Assumptions, and therefore, Train Service Entitlements (***TSE***s), pooling, scheduling, influencing capacity shortfalls and train path conflicts amongst many other operations. As such, the System Rules have the potential to drastically change the dynamic aspects of the operation of the CQCN without a noticeable change to the Access Undertaking.

Specifically in relation to the NBB Rules, Anglo American makes the following submissions:

(a) While theoretically understandable, defining an Access Holder's / End User's TSE on a weekly basis creates operational and commercial absurdities by requiring users to utilise 1/52nd of their Annual Tonnage every week. This does not accurately reflect the dynamic nature of coal railing, especially in relation to the cargo assembly system mode of operation at DBCT or allow users to mitigate system losses over the month or quarter and any Take or Pay impacts that result. Users are therefore subject to Take or Pay, even in situations where they could easily recover capacity week-to-week and this does not serve to deliver total contracted capacity or to maximise throughput;

(b) End Users have no control over the pooling of train paths or ad hoc capacity and, as such, an important asset for producers is held at an operator level. While Aurizon Network is regulated, the operators are not and the QCA should not risk considerable operational power being inappropriately applied without user consent. As such, End Users should be able to nominate the level that their paths will be pooled at. They should also have use of ad hoc capacity applied against their Take or Pay for the month rather than paying twice;

(c) The NBB Rules as submitted by Aurizon Network do not reflect the status quo of existing users in the scheduling process, and so foundation users face the risk of expansion compression or severe impacts to their contracted capacity because of the impacts of cross-system traffic or newly connected basins. As such, the NBB Rules should reflect the status quo of existing users and should provide for these paths to be laid first during the scheduling process;

(d) The NBB Rules as submitted by Aurizon Network currently provide for rigid scheduling which essentially results in an inflexible 7 day plan that is difficult to revise without penalty. This does not reflect the cargo assembly nature of DBCT which might require changes to its scheduling up to 48 hours before delivery. Due to the inflexibility of the NBB Rules, DBCT users are likely to be disadvantaged because of the port structure and may be at risk of double-paying for consumed TSEs or being excluded from ad hoc scheduling;

(e) There is no adequate amendment process for users to dispute sections of the NBB Rules, or to object to Aurizon Network unilaterally altering the requirements. While not directly part of the regulation of Aurizon Network, the NBB Rules define the operation of Aurizon Network and should not be left without efficient and timely dispute resolution mechanisms or QCA oversight (other than on the currently prescribed limited bases); and

(f) The NBB Rules do not provide capacity triggers or review mechanisms in the event of drastic changes to capacity, for example the predicted doubling of capacity in the Newlands system required if the Galilee Basin is connected. The NBB Rules have not been negotiated or considered in light of such expansive capacity and should, as one example, be automatically reconsidered if it were to eventuate.

Anglo American also notes that the System Rules potentially allow Aurizon Network latitude to manipulate the end market. The NBB Rules allow Aurizon Network the ability to maximise preferential customers, subjectively allocate train paths, preference short haul mines and to negotiate higher margin services through periods of high demand, including the possibility of drastic capacity increases caused by connection of, say, the Galilee Basin. Although currently only vertically-integrated through two stages of the coal chain (and with clear interest in a third, ie, terminal) Aurizon should be restricted from having excessive market power, particularly through the natural monopoly held by Aurizon Network.

2 Train Service Entitlement calculation

Anglo American believes that the calculation of an Access Holder's TSE in the NBB Rules is not reflective of operational requirements or in accordance with good contracting practices for access agreements. In particular, the requirements of section 4.6 of the NBB Rules do not reflect the practical operation of a dynamic system. While theoretically possible, perfect division of an Access Holder's TSEs is not practically possible and should not form an operational requirement under any System Rules.

In particular, Anglo American is concerned that TSEs are being notionally defined on a weekly basis, which is inconsistent with the monthly contractual allocations of TSEs. This is operationally impractical where the calculation of TSEs does not include planned network availability or planned loss events. Under the NBB Rules, Aurizon Network has elected to define indicative weekly TSEs as Annual Tonnage divided by 360 days and then multiplied by 7 (circa 1/52nd of the Annual Tonnage).

Anglo American submits that this approach creates the following issues:

(a) To achieve all Users' contracted Annual Tonnage actually requires that the NBB Rules be capable of scheduling TSE services greater than 1/52nd of the Annual TSE allowance in any given week. This is because in any given week the network capacity must be subject to planned network availability and planned loss events, and TSEs must adapt accordingly;

(b) It is apparent from the NBB Rules definition that contractual entitlements are potentially not theoretically achievable in periods of high overall demand (eg, competition for ad hoc pathing when used for make-up train services after system outages);

(c) The TSE definition should at least incorporate planned maintenance and network availability allowances, so that TSEs are reflective of expected commercial contract performance; and

(d) The inclusion of planned maintenance and network availability into the standard definition of TSE also allows the Operator to better match rollingstock requirements for haulage and access contracts.

In practice, actual railings must fluctuate according to ship queues or arrivals, users' stocks, the available capacity of the network and other planned or unplanned events in order to deliver all contracted TSEs. This means allowing railings below an exact 1/52nd proportion of individual users' contracted capacity, followed by railings above that to recover lost TSEs. Under the theoretical application of the NBB Rules, however, services can only decrease from the 1/52nd proportion of Annual Tonnage and so there is no practical ability to recover train paths in order to attempt to deliver users' full contracts.

Further, despite the fact that DBCT has operated cargo assembly for many years, there is no appropriate recognition of cargo assembly and no definitive TSE drawdown management requirements in the NBB Rules to reflect the operation of DBCT's facilities. Also, the manner in which the train ordering system historically in place at DBCT (under the DBCT Terminal Regulations) has been applied is currently under review, as is the stockpile management system. Both of these issues are not reflected in the current draft of the NBB Rules.

In light of the fact that Access Holders may not be able to utilise their full TSEs week-by-week, Anglo American also notes that there is no option in the NBB Rules for end customers or Access Holders to purchase additional TSEs. Including a provision allowing purchase of additional TSEs might operate to counteract loss events where TSEs are underutilised and help to provide the network with greater surge capacity in times of high capacity when even railings is simply impossible.

Additionally, a User with unused Take or Pay TSE for the month should also be entitled to have any ad hoc capacity made available to it prior to the paths being allocated to other users for reasons of operational simplicity (eg, short haul mines) or where it is more financially beneficial for Aurizon Network.

3 Pooling of train paths

The cargo assembly structure particular to DBCT requires individual mine TSEs to be aggregated under suitable pooling arrangements to be operationally effective in creating throughput tonnage. In light of this, the NBB Rules need to state and support suitable pooling arrangements for the drawdown of TSEs. Currently section 5.3.2 of the NBB Rules indicates that only TSEs held by an Access Holder are able to be traded off against each other, meaning that individual end users have no control over their available capacity.

A more appropriate requirement would be that the end customer is able to nominate how their TSEs are pooled; either by Terminal, Operator or by Access Holder (eg, End User Access Agreement). Anglo American believes that while responsibility for pooling should be left at the Operator level, End Users should have the ability to nominate where their TSEs are pooled, thus giving End Users greater control of their capacity.

Anglo American also believes that the pooling assumptions adopted by Aurizon Network should be expressly stated in the NBB Rules. With negotiations well under way on UT4, Anglo American submits that if the NBB Rules are to contain reference to pooling assumptions in the Access Undertaking, the QCA should not accept the risk that those assumptions might change with UT4, subsequently altering the application of the NBB Rules as approved in light of the 2010 Access Undertaking (***UT3***) assumptions. If the QCA feels that it is inappropriate to specifically outline the pooling assumptions in the NBB Rules, the NBB Rules (or the Undertaking) should at least contain a provision triggering review if principles that the System Rules rely on in UT3 are amended. If this is not inserted, industry cannot have any confidence in the long-term application of the NBB Rules and they will add to the already rising regulatory uncertainty created by the negotiation of UT4.

4 Scheduling

4.1 Impact of cross system traffic

Anglo American understands that the current submission of the NBB Rules has no regard to the impact that cross system traffic might have on the available TSEs and scheduling of a particular system. In particular, Anglo American notes that since recent connections, cross system traffic has the potential to significantly degrade the capacity available to existing users of the Goonyella system, and this is not reflected or considered by the NBB Rules.

Anglo American submits that section 5.3.4 of the NBB Rules should be expanded in order to deal with the issues raised by degraded capacity due to cross system traffic. Where there is potential for congestion at a particular loadout for cross system trains, trains must be planned and scheduled into the loadout as per the mine's determination of which service is to receive priority. This is opposed to the possibility of releasing trains on an 'on arrival' basis (assuming that is what the reference in the draft NBB Rules means). The mine making the determination should be required to consider (among other things):

(a) production continuity;

(b) stockpiling capacity;

(c) coal availability; and

(d) shipping order of arrival.

The mine's determination is particularly required for both the management of shipping demurrage and for avoiding production outages resulting from becoming 'stock bound'.

4.2 Application of the 'Status Quo Rule'

Anglo American is strongly of the view that priority scheduling should rest with End Users who require it most in order to ensure the efficient use of the CQCN and work to achieve railing of full contracted capacity, while maximising network capacity at the same time. This would mean that End Users requiring immediate shipping of their coal should receive priority over End Users who are subject to a stockpile system and whose TSEs are therefore not drastically affected by rail delays.

At the same time, Anglo American believes that in recognition of earlier contracting of expansion capacity compared to GAPE, a rule should be instituted (the 'status quo' rule) that requires the scheduling of Goonyella services for HPS and DBCT in the ITP and DTP before GAPE services are scheduled. This concept should be incorporated into the existing section 5.3.5 of the NBB Rules and will ensure that the foundation End Users of the Goonyella system, DBCT and HPS do not suffer from expansion compression resulting from the GAPE expansion scope or operations.

5 Cargo assembly versus 7 day planning

Anglo American is broadly concerned with the scheduling process outlined in section 6 of the NBB Rules. In particular, Anglo American is troubled by the inequitable treatment in the allocation and planning of services between terminals and the ability to use TSE, leading to further degradation of DBCT's achievable throughput capacity.

Anglo American believes that Aurizon Network is instituting a rolling, locked down, 7 day planning horizon where it agrees orders and allocates services for DBCT, HPS and GAPE in the ITP. Once allocated, alterations to train services in the ITP can only be made in accordance with section 6.1 requests to alter train services and only if agreed to by Aurizon Network.

Anglo American understands that this represents a significant departure from the prior scheduling arrangements which allowed for a much shorter planning horizon for the Goonyella system, usually between 48 and 72 hours.

For complex terminals such as DBCT, planning occurs on a long term basis, however, lockdown of train services must be as close to the actual day of operations as possible in order to maintain stability in the daily plan; eg, a 48 hour rolling basis allowing flexibility.

Anglo American is concerned that once Aurizon Network allocates services in the ITP between DBCT, HPS and GAPE, any DBCT service alteration requests in the 7 day period prior to plan lockdown will effectively be quarantined within a very narrow window of pathing. Assuming GAPE and HPS can maintain a 7 day plan and therefore not require ITP service alteration requests, the window for DBCT alterations would then only be from existing DBCT services sitting within the ITP, thus institutionalising a relatively rigid 7 day planning horizon.

This rigidity in the train scheduling to the Goonyella system terminals potentially causes an inability to maximise desired scheduled services at DBCT within the 48 hour locked down plan. This will cause resultant terminal throughput degradation, decreasing the efficiency of the Queensland coal chain as a whole, and either create an inability for end users to properly utilise their contracted TSEs or consumption of multiple TSEs for the operation of a single service. Either option shows the scheduling danger of not properly allowing for flexibility in train planning.

Anglo American submits that the document needs to make the scheduling process very clear; ie, that all services in the ITP for all Access Holders can (and will) be altered as required to facilitate requested changes so that the 48 hour locked down plan as closely as possible reflects the final orders of all Access Holders (inclusive of changes) in the lead up to that 48 hour period.

6 Discrimination against long haul mines

While Anglo American is particularly concerned about the impact that the NBB Rules will have on scheduling different types of terminal operations, it also notes that there is no structure in place to protect the railings of long haul mines.

Where additional capacity is available, it can be meted out to users as the relevant Operator or Aurizon Network sees fit. As it is much simpler to lay down short run train paths from mines close to the coast, Anglo American is concerned that mines that require long haulage and greater co-ordination will rarely receive an equal share of the benefit of additional capacity, particularly with a potential objective to only maximise system throughput (rather than deliver contracted capacity).

Anglo American submits that principles should be included in the NBB Rules allowing for equitable distribution of extra capacity between End Users to ensure that mines requiring greater transport alignment are not unfairly disadvantaged or discriminated against because of their location. Additionally generated capacity should be employed for the benefit of the whole system and should not unwittingly give particular End Users a competitive advantage.

Further, Anglo American notes that when coupled with the inflexibility of Aurizon Network's 1/52nd weekly TSE calculations (discussed at paragraph 2), long haul mines will feel the full effect of their geographical disadvantage. Where system loss or decreased capacity events occur, it will be far simpler for short haul mines to pick up cancellations, diversions, additional resources and ad hoc paths and as such, the ability for short haul mines to recover lost TSEs will be much greater than for long haul mines. As noted above, this places long haul mines at a competitive disadvantage due to the operation of the regulation (through the NBB Rules) and undermines the purpose of regulation in the first place.

7 Lack of an adequate amendment process

In regard to the amendment process for the NBB Rules, Anglo American echoes the comments that it submitted to the QCA in relation to the Capricornia System Rules on the same point.[1] As stated there, Anglo American is similarly concerned that the amendment process contained in the NBB Rules is completely inefficient and unacceptable for dealing with important operational documents.

Specifically in relation to the NBB Rules Anglo American reiterates the following points:

(a) The amendment process in the NBB Rules inappropriately reflects the plan alterations process in schedule G of UT3 (both of which require reconsideration);

(b) At any point in time, Supply Chain Stakeholders may request reviews of the NBB Rules, however, these reviews will only be undertaken if Aurizon Network determines it necessary to do so (and Aurizon Network's decision whether or not to conduct a review cannot easily be disputed) (see section 1.2.1 of the NBB Rules);

(c) Aurizon Network has a broad and unfettered ability to implement unilateral amendments to the NBB Rules. This process should be amended to include a compulsory consultation process, an objection and suggestion process and submissions which should be reviewed by the QCA. If these limited consultative measures are not included, the operation of industry regulation (UT3/UT4) will hardly extend to Aurizon Network under the NBB Rules;

(d) The NBB Rules should allow for objections on grounds beyond their equitable operation. Otherwise, as long as End Users and Access Holders are equitably discriminated against, there will be no enshrined ability to contest the actions of Aurizon Network; and

(e) As the NBB Rules are an operational document, the NBB Rules should provide for an adequate review process which does not rely on the lengthy and complicated process under the Access Undertaking. Anglo American understands that the System Rules rely on flexibility and timing and the dispute resolution process should also reflect the need for timely and efficient decision-making.

8 Flexibility of the NBB Rules for future developments

Again, Anglo American raised a similar submission in relation to the Capricornia System Rules.[2] In relation to the NBB Rules, Anglo American is concerned that there is no ability for the NBB Rules to deal with capacity increases due to new connections. Specifically, Anglo American is concerned that Aurizon Network has previously suggested connecting the Galilee Basin to the Newlands System, which would likely double the required capacity and impact GAPE and the Goonyella system through overflow traffic.

While the connection of the Galilee Basin, for example, adds potentially hundreds of Mtpa of required additional capacity, the NBB Rules have no mechanism for review or adaptation to the new capacity requirements. This will also drastically affect the scheduling and planning of the Newlands system and must be considered before the NBB Rules, which as already discussed will be inherently difficult to amend in their current form, are approved.

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[1] Anglo American Metallurgical Coal Pty Ltd, *Submission to the Queensland Competition Authority: Response to the Draft Decision on the Draft Capricornia System Rules* (August 2013) paragraph 4, available at http://www.qca.org.au/files/R-Anglo-Submission-DraftDec-ProposedSystemRules-0813.pdf.

[2] Anglo American Metallurgical Coal Pty Ltd, *Submission to the Queensland Competition Authority: Response to the Draft Decision on the Draft Capricornia System Rules* (August 2013) paragraph 5, available at http://www.qca.org.au/files/R-Anglo-Submission-DraftDec-ProposedSystemRules-0813.pdf.

As discussed above, due to the lack of an adequate amendment process in the NBB Rules, once current submissions close and the System Rules become operational there will be little to no chance that End Users or Operators will be able to apply for an amendment to the NBB Rules. As such, if the connection of the Galilee Basin and the additionally required capacity is not considered in the current round of submissions, End Users and Operators will have no input to how decreased spare capacity, increased total capacity or expansion compression will be managed in relation to mines that have made investments relying on regulatory certainty. If this is not considered, the NBB Rules (similar to the Capricornia System Rules) can become a tool used by Aurizon Network to manipulate the negotiation of what should be regulated access.

As submitted in relation to the Capricornia System Rules, Anglo American reiterates that:

> Even with the inclusion of an effective dispute resolution or amendment process, Anglo American submits that there should be clauses included which trigger a review of the operation of the NBB Rules in the event of significant capacity changes. If this were the case, users would have the ability to voice concerns about the operational procedures being implemented by Aurizon Network in the situation of a significant growth in capacity. This could be phrased to only trigger in an instance where the capacity change was above 'X'Mtpa to the system. Therefore, if WICET or SBR prove to have minimal effect on the system, they will not trigger reviews. Otherwise, users will have another opportunity to be involved in developing System Rules drafted in light of the significant implication on capacity.