



Monday, 13 April 2015

Dr Malcolm Roberts  
Chairman  
Queensland Competition Authority  
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BRISBANE QLD 4000

By email: [aurizon@qca.org.au](mailto:aurizon@qca.org.au)

**RE: Wiggins Island Rail Project (WIRP) Proposed Pricing Treatment – Clarification of regulatory framework and proposed commercial outcomes**

Wesfarmers, and other Wiggins Island Rail Project (“WIRP”) users<sup>1</sup> who have existing volumes on the Blackwater and Moura Networks, welcome the opportunity to make this submission on regulatory issues surrounding the WIRP Pricing Proposal, currently under due consideration by the Queensland Competition Authority (“QCA”).

The submission seeks responses from the QCA regarding its position across two areas:

1. socialising WIRP assets having regard to the ‘pooling’ of access rights and Take-or-Pay provisions (ToP) under AN’s 2010DAU and also the current draft of AN’s proposed 2014DAU; and
2. the significance of regulatory economic parallels between the various socialised destinations in the Goonyella system, and various destinations within the Blackwater/Moura network.

This submission is made on behalf of the WIRP Users who have signed below and is in addition to previous WIRP submissions made by those parties (collectively or in their own right).

**Pooling of access rights**

AN’s 2010AU permits the ‘pooling’ of access rights within a system of the CQCN, but not across systems within the network. WIRP users believe this concept would similarly apply under approval of AN’s 2014DAU, however, are of the view that ‘pooling’ relies upon socialisation. More specifically, for ‘pooling’ of access rights to apply to WIRP users, WIRP would need to be ‘socialised’ amongst the Blackwater and Moura systems and not considered a standalone system. If a different, separate system were to be established, WIRP users would not be able to rely upon drafting within the 2010AU to pool access rights between the Wiggins Island Coal Export Terminal (“WICET”) and any other coal unloading destinations in the Port of Gladstone.

The WIRP users believe such a result would create considerable economic inefficiencies. Specifically, by virtue of the Take-or-Pay (“ToP”) provisions under the access agreements, incumbent WIRP users

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<sup>1</sup> Collectively; Wesfarmers Curragh Pty Ltd, Glencore Coal Assets Pty Ltd, Caledon Coal Pty Ltd, Cockatoo Coal Ltd, and Yarrabee Coal Company Pty Ltd.

could potentially be required to pay twice for the same capacity in circumstances where they are railing to adjacent terminals within the Blackwater system on ad-hoc paths but also subject to take or pay for WIRP tonnes to WICET where they are unable to utilise WICET for any reason for any period of time. AN have confirmed its position in discussions with some WIRP users that it is prevented from looking beyond the current drafting of the 2010AU and in doing so have confirmed the possible commercial outcome above. WIRP users are of the view that such an outcome is untenable.

In regards to the concept of ‘pooling’, the incumbent Blackwater system WIRP users note the approach taken with respect to application of operator capping principles in the draft UT4. The policy framework of AN’s 2013DAU states that operators of train services can aggregate and socialise Train Service Entitlements (“TSEs”) within the same pool of rights.<sup>2</sup>

In this context, we seek to highlight AN’s stance on open access regulation, the concept of innovation and the benefits it consequently provides, as stated in AN’s *2013 Draft Access Undertaking, Volume 2: The 2013 Undertaking Proposal*:

*The primary purpose of open access regulation is to promote competition in the relevant downstream market. The benefits of competition in this market will be maximised by providing participants in the rail haulage market with sufficient flexibility to innovate, not just in terms of the productive efficiency of an individual train service, but also in terms of how the operator is able to maximise total resource efficiency and implement risk management strategies that maximise overall value to the operator and its customers. Dynamic efficiency and innovation, which is the creation of competitive markets that access regulation seeks to facilitate or replicate, is not fostered through standardisation.<sup>3</sup>*

Whilst the above statement specifically refers to operators within the CQCN, we believe the intent of the above statement is to establish a framework that facilitates greater efficiency and flexibility towards the management of contractual entitlements, i.e. to enable the effective management of volume risks by the participants within the supply chain. Consequently, we submit that similar principles of productive efficiency and innovation could also be applied to mines, especially where matters of fairness, economic efficiency and equality are achieved for all stakeholders. This principle ought to also have application across rail operators and access holders (i.e. where access agreements for a mine are held by multiple rail operators and/or between the mine and the rail operator/s.)

### **Unloading destination socialisation**

WIRP users believe that the ability of producers to ‘pool’ can be considered separately to matter related to pricing, where at present such ability to ‘pool’ is attached to whether access rights share the same system pricing.

Subsequently, we believe ‘pooling’ between unloading destinations within a system needs to be addressed. By way of example/precedent, Hay Point Terminal (“HPT”) and Dalrymple Bay Coal Terminal (“DBCT”) are two coal export terminals in close proximity that were socialised across the

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<sup>2</sup> Aurizon Network, 2013, pg. 265

<sup>3</sup> Aurizon Network, 2013, *2013 Draft Access Undertaking, Volume 2: The 2013 Undertaking Proposal*, April 2013, pg. 264, available at [www.qca.org.au](http://www.qca.org.au)



users of the Goonyella system. Similarly, RG Tanna (“RGT”), Barney Point Terminal (“BPT”) and Port of Gladstone (“PG”) are three coal export terminals in close proximity that were socialised across the users of the Blackwater and Moura systems.

With WICET located approximately 1km from these latter ports, we argue that WICET should be considered another unloading destination within the Blackwater and Moura systems, thus allowing users the ability to ‘pool’ access rights between terminals relatively adjacent to one another.

We seek responses from the QCA on these issues. More importantly, in a time of growing uncertainty surrounding UT4 and the treatment of WIRP, WIRP users seek well established and considered guidance that will continue to promote the economic efficiency of the CQCN.

If you have any questions regarding this submission, please do not hesitate to contact Ben Pentelow on [bpentelow@curragh.com.au](mailto:bpentelow@curragh.com.au) , or Jamie Freeman ([jfreeman@balanceadvisory.com](mailto:jfreeman@balanceadvisory.com))

Yours sincerely

#### **The incumbent WIRP Users<sup>1</sup>**

<sup>1</sup> Collectively; Caledon Coal Pty Ltd, Wesfarmers Curragh Pty Ltd, Cockatoo Coal Ltd, Yarrabee Coal Company Pty Ltd, and Glencore Coal Assets Pty Ltd.