

Note: This document contains clause 7.4.2 and (new) clause 10.1.7 (and amendments to associated definitions) only. Readers must have regard to the draft 2014 Undertaking published on 30 January 2015 when reading this document.

QCA Draft Decision

Aurizon Network Pty Ltd

The 2014 Undertaking

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Part 1: Preamble

Part 2: Intent and Scope

Part 3: Ringfencing

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Part 6: Pricing principles

Part 7: Available Capacity allocation and management

7.1 Application

7.2 Capacity allocation and registers

7.2.1 General requirement for allocation

7.2.2 Capacity Notification Register

7.2.3 Committed Capacity Register

7.3 Renewals

7.4 Dealing with Access Rights

7.4.1 Assignments

7.4.2 Transfers

- (a) If an Access Holder intends to undertake a Transfer of all or part of the Access Rights to itself or a third party (each a **Transferee**), the Access Holder must give Aurizon Network reasonable notice of its intention to do so (**Notice of Intention to Transfer**).
- (b) A Notice of Intention to Transfer must:
 - (i) specify full details of the proposed Transfer including:
 - (A) the Access Rights which the Access Holder proposes to Transfer (**Nominated Access Rights**) [by describing](#):
 - (1) [the number and type of Train Services to be transferred; and](#)
 - (2) [the existing origin and destination of the Nominated Access Rights;](#)

- (B) the details of any changes to any nominations of a Train Operator previously given to take into account the proposed Transfer of the Nominated Access Rights;
- ~~(C)~~ the date ~~(Transfer Date)~~ (which is at least two (2) Business Days after the date Aurizon Network received the Notice of Intention to Transfer) on which the transfer of the Nominated Access Rights is to take effect (Transfer Date); and
- ~~(D)~~ the date on which the transfer of the Nominated Access Rights is to terminate (if any) ~~period for which (Transfer Period), the Nominated Access Rights are proposed to be Transferred (provided that the Transfer Date must not be less than three (3) Months, and more than two years, after the date on which the Access Holder gives the Notice of Intention to Transfer to Aurizon Network); and~~
- ~~(C)~~(E) all Access Agreements the Access Holder (or its Customer or Train Operator, as applicable) may have relating to the origin and destination of the Nominated Access Rights; and
- ~~(D)~~ the identity of the Transferee; and
- ~~(E)~~ the Access Rights proposed to be granted to the Transferee as part of the proposed Transfer (provided that the Access Rights must not use more than the Available Capacity that will be created by the relinquishment of the Nominated Access Rights as part of the proposed Transfer) ~~(Transferred Access Rights); and~~
- ~~(ii)~~ if the Transferee is not the Access Holder, be accompanied by an Access Application completed by the Transferee which must, as a minimum, contain:
- ~~(A)~~ evidence that the Transferee consents to the Transfer of the ~~Transferred Access Rights~~ proposed to be granted to the Transferee the Access Rights the Transferee proposes to acquire from the Access Holder (Transferred Access Rights) by describing:
- (1) the number and type of Train Services the Transferee proposes to acquire;
- (2) the origin and destination for the Transferred Access Rights;

(3) if the Transferred Access Rights require Capacity in addition to the Available Capacity that will be created by the relinquishment of the Nominated Access Rights as part of the proposed Transfer;

(B) evidence that the Transferee (or its Customer, if any) has secured, or is reasonably likely to secure, Supply Chain Rights for the Transferred Access Rights from the Transfer Date;

(C) either:

(1) evidence that the Transferee has secured or is reasonably likely to secure a rail haulage agreement for the Transferred Access Rights from the Transfer Date; or

(2) the details of any changes to any nominations of a Train Operator previously given to take into account the proposed Transfer of the Transferred Access Rights; and

~~(F)~~(D) all Access Agreements the Transferee (or its Customer or Train Operator, as applicable) may have to which the Transferred Access Rights could be added (if any).

(c) The Access Application ~~A Transferee must to be~~ completed and submitted by the Transferee under **clause 7.4.2(b)(ii)**:

(i) must be an Access Application in the form required to satisfy **Part 4** for the Transferred Access Rights if the Transferee (or its Customer or Train Operator) does not have an existing Access Agreement to which the Transferred Access Rights could be added; or

(ii) may be a short form Access Application that provides the information required in **clause 7.4.2(b)(ii)** if the Transferee (or its Customer or Train Operator) does have an existing Access Agreement to which the Transferred Access Rights could be added.

(d) If either:

(i) the Transferee does not have an existing Access Agreement to which the Transferred Access Rights could be added; or

(ii) **clause 7.4.2(e)** or **clause 7.4.2(f)** does not apply.

then, and-subject to this **Part 7** (which ~~shall~~ prevails to the extent of any inconsistency), the negotiation process for those Transferred Access Rights will be conducted in accordance with **Part 4**. For

clarity and without limiting the provisions of **Part 4** that apply to the Access Application, nothing in this **clause 7.4.2** affects the application of **clauses 4.3(f)** and **4.12(a)(ii)** to the Access Application.

- (e) Aurizon Network must, within two (2) Business Days after receipt of the Notice of Intention to Transfer, effect the transfer of the Nominated Access Rights to the Transferee in accordance with clause 7.4.2(h) if:

 - (i) the Transferee (or its Customer or Train Operator) has an existing Access Agreement in respect of the nominated origin and destination for the Transferred Access Rights;
 - (ii) the Transferee has provided evidence reasonably establishing it (or its Customer) will have Supply Chain Rights;
 - (iii) the Transferee has provided the details of any changes to any nominations of a Train Operator previously given to take into account the Transferred Access Rights on and from the Transfer Date;
 - (iv) the origin for the Transferred Access Rights is on the same Mainline Path as the Nominated Access Rights and is either the same origin as the Nominated Access Rights or closer to the destination for the Nominated Access Rights;
 - (v) the destination for the Transferred Access Rights is the same as the destination for the Nominated Access Rights; and
 - (vi) the Train Services for the Transferred Access Rights is the same as the nature or type of Train Services for the Nominated Access Rights.
- (f) Aurizon Network must, within two (2) Business Days after receipt of the Notice of Intention to Transfer, notify the Access Holder and the Transferee that a Rapid Capacity Assessment is required and commence that Rapid Capacity Assessment if:

 - (i) the Transferee (or its Customer or Train Operator) has an existing Access Agreement in respect of the nominated origin and destination for the Transferred Access Rights;
 - (ii) the Transferee has provided evidence reasonably establishing it (or its Customer) will have Supply Chain Rights;
 - (iii) the Transferee has provided the details of any changes to any nominations of a Train Operator previously given to take into account the Transferred Access Rights on and from the Transfer Date;

- (iv) the Transferred Access Rights uses the same Mainline Path as the Nominated Access Rights;
- (v) the origin for the Transferred Access Rights requires Access Rights in addition to the Nominated Access Rights;
- (vi) the destination for the Transferred Access Rights is in the same port precinct as the destination for the Nominated Access Rights; and
- (vii) the Train Services for the Transferred Access Rights is the same as the nature or type of Train Services for the Nominated Access Rights.

and on completion of the Rapid Capacity Assessment (which must be completed within two (2) Business Days from the commencement of the Rapid Capacity Assessment):

- (viii) Aurizon Network must promptly notify the Access Holder and the Transferee of the result of the Rapid Capacity Assessment;
- (ix) if the Rapid Capacity Assessment indicates there is sufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights, Aurizon Network must effect the transfer of the Nominated Access Rights to the Transferee in accordance with **clause 7.4.2(h)**; and
- (x) if the Rapid Capacity Assessment indicates there is insufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights, the Access Holder may request Aurizon Network to conduct a detailed assessment of the Notice of Intention to Transfer in which case **clause 7.4.2(g)** (excluding **clause 7.4.2(g)(i)**) will apply .

(g) If **clauses 7.4.2(e)** or **7.4.2(f)** do not apply, Aurizon Network must:

- (i) within two (2) Business Days after receipt of the Notice of Intention to Transfer, notify the Access Holder and the Transferee that a detailed assessment of the Notice of Intention to Transfer must be undertaken and the date it anticipates that assessment will be completed;
- (ii) provide its final review and either consent to or not consent to the proposed Transfer within three (3) Months after receipt of the Notice of Intention to Transfer; and
- (iii) effect the Transfer of the Nominated Access Rights to the Transferee in accordance with **clause 7.4.2(h)** if:

(A) the Transferred Access Rights are granted under a new or varied Access Agreement between Aurizon Network and the Transferee (**Transferee Access Agreement**) that:

(1) has been negotiated and agreed in accordance with the requirements of this Undertaking; and

(2) (except for a condition in relation to the grant of the Transferred Access Rights taking effect under this **clause 7.4.2**) is unconditional and binding upon the Transferee.

(B) the Transferee has demonstrated to the reasonable satisfaction of Aurizon Network that the Transferee:

(1) will hold, or will have the benefit of, Supply Chain Rights from the Transfer Date utilising the Transferred Access Rights; and

(2) is reasonably likely to continue to hold, or have the benefit of, those Supply Chain Rights for the whole of the Transfer Period (including as a result of a right to renew or extend the Supply Chain Rights); and

(C) the Rail Infrastructure has sufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity) for the Transferred Access Rights without another Access Holder being adversely affected.

~~(e)~~(h) If Aurizon Network effects the Transfer of the Nominated Access Rights to the Transferee under any of **clauses 7.4.2(e), (f) or (g)** ~~the Access Holder gives a Notice of Intention to Transfer~~, then on and from the later of:

(i) the Transfer Date;

(ii) if **clause 7.4.2(f)** applies, two (2) Business Days after completion of the Rapid Capacity Assessment; and

(iii) the date the last of the conditions set out in **clause 7.4.2(i)** is satisfied.

(or such later date agreed by the Access Holder, the Transferee and Aurizon Network):

(iv) ~~the Access Holder will be taken to have relinquished the Nominated Access Rights~~ are removed from the Access

Holder's (or its Customer's or Train Operator's, as applicable) ~~under its~~ Access Agreement; which:

(A) relates to Train Services in respect of the origin and destination of the Nominated Access Rights; and

(B) was entered into first in time as determined on the following basis:

(1) a Pre-30 June 2006 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement;

(2) a Pre-1 October 2010 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement; and

~~(1)~~(3) a Pre-Approval Date Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement or a Pre-1 October 2010 Coal Access Agreement; and

(v) the Transferred Access Rights ~~will be~~ granted to the Transferee for the Transfer Period under the Transferee Access Agreement ~~except if the Transferred Access Rights are to be added to an existing Access Agreement the Transferee (or its Customer or Train Operator, as applicable) may have in respect of the origin and destination of the Transferred Access Rights, the Transferee Access Agreement must be the Access Agreement that was entered into last in time as determined on the following basis:~~

(A) a Pre-30 June 2006 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement;

(B) a Pre-1 October 2010 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement;

(C) a Pre-Approval Date Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement or a Pre-1 October 2010 Coal Access Agreement; and

~~(ii)~~(vi) the Transferee must pay (as between Aurizon Network and the Transferee) all Access Charges and other fees that may be charged by Aurizon Network in respect of the Nominated Access Rights under the Access Holder's Access Agreement. For the avoidance of doubt, if the Transferred Access Rights would incur Access Charges which, but for this clause 7.4.2(h)(vi), would be less for a Train Service than the Nominated Access Rights would incur, the Transferee is liable for the higher Access Charge that would be imposed on the Nominated Access Rights.

~~(d)~~(i) Transfer of the Nominated Access Rights under any of clauses 7.4.2(e), (f) or (g), is conditional on the following being satisfied:

~~(i) the Transferred Access Rights are for Cyclic Traffic;~~

~~(ii)~~(i) Aurizon Network and the Access Holder have entered into an agreement, in a form reasonably acceptable to the Access Holder and Aurizon Network, to vary the terms of the Access Holder's Access Agreement to address the relinquishment of the Nominated Access Rights (including any variations to the Access Charge Rates);

(ii) if the Transferred Access Rights are being granted under a varied Access Agreement between Aurizon Network and the Transferee (Transferee Access Agreement), Aurizon Network and the Transferee entering into an agreement, in a form reasonably acceptable to the Transferee and Aurizon Network, to vary the terms of the Transferee Access Agreement to accommodate the Transferred Access Rights including:

(A) any variations to the Access Charge Rates; and

(B) the provision of security or additional security in respect of the Transferred Access Rights as a result of the transfer of the Transferred Access Rights, to the extent that Aurizon Network, acting reasonably, requires that security or additional security; and

(iii) if the Transferred Access Rights are being granted under a new ~~or varied~~ Access Agreement between Aurizon Network and the Transferee (Transferee Access Agreement), that Access Agreement:

(A) has been negotiated and agreed in accordance with the requirements of this Undertaking; and

(B) (except for a condition in relation to the grant of the Transferred Access Rights taking effect under this

clause 7.4.2) is unconditional and binding upon the Transferee; and

- (iv) the Transferee providing Aurizon Network with security in respect of the Transferred Access Rights, to the extent that Aurizon Network, acting reasonably, requires that security or additional security.
- (j) If Aurizon Network determines it cannot effect the proposed Transfer under any of **clauses 7.4.2(e), (f) or (g)**, it must provide reasons with its notice to the Access Holder and the Transferee to explain its decision.
- (k) If an Access Holder requests Aurizon Network to amend an Access Agreement to permit the Transfer of its Access Rights in accordance with this **clause 7.4.2** and Aurizon Network agrees, within three (3) Months of that request Aurizon Network and the Access Holder must enter into an agreement, in a form reasonably acceptable to Aurizon Network and the Access Holder, to vary the terms of the Access Agreement to incorporate the terms of this **clause 7.4.2** (including a right to require security or additional security in respect of Transferred Access Rights if the Access Holder's Access Rights are increased as a result of a transfer of Access Rights).
- (l) Within three (3) Months of the anniversary of the Commencement Date, Aurizon Network must:
 - (i) undertake a review of the operation of this **clause 7.4.2**;
 - (ii) consult with Access Holders and Train Operators about the workability of this **clause 7.4.2**; and
 - (iii) submit to the QCA either:
 - (A) proposed amendments to this **clause 7.4.2** that Aurizon Network (acting reasonably) considers necessary to improve the workability of the transfer of Access Rights; or
 - (B) detailed written reasons for not making amendments to this **clause 7.4.2**.

in which event:

(iv) the QCA must assess Aurizon Network's submission and, if deemed appropriate, seek submissions from stakeholders in respect of Aurizon Network's submission;

(v) if the QCA approves the amendments proposed by Aurizon Network, it must give notice to Aurizon Network of its approval, specifying a date upon which the proposed amendments will take effect; and

(vi) if either:

(A) the QCA does not approve the amendments proposed by Aurizon Network;

(B) Aurizon Network does not make any submission under **clause 7.4.2(I)(iii)** within the applicable timeframe; or

(C) the QCA disagrees with Aurizon Network's reasons provided under **clause 7.4.2(I)(iii)(B)**.

then the QCA may develop amendments to this **clause 7.4.2** to improve the workability of the transfer of Access Rights the Standard Access Agreement.

(m) Nothing in **clause 7.4.2(I)** prevents Aurizon Network from seeking amendments to this **clause 7.4.2** to improve its workability, even if the QCA has previously refused to approve proposed amendments to this clause.

~~(e) —~~

~~(i) the Transferee has demonstrated to the reasonable satisfaction of Aurizon Network that the Transferee:~~

~~(A) will hold, or will have the benefit of, Supply Chain Rights from the Transfer Date utilising the Transferred Access Rights; and~~

~~(B) is reasonably likely to continue to hold, or have the benefit of, those Supply Chain Rights for the whole of the Transfer Period (including as a result of a right to renew or extend the Supply Chain Rights); and~~

~~(ii) the Rail Infrastructure has sufficient Capacity to support the grant of the Transferred Access Rights to the Transferee without another Access Holder being adversely affected.~~

~~(f) The Transfer of the Transferred Access Rights commences on the later of:~~

~~(i) the date upon which the Access Holder pays the Transfer Fee to Aurizon Network; and~~

~~(ii) the Transfer Date.~~

- ~~(g) — Aurizon Network must:

 - ~~(i) — calculate the Transfer Fee; and~~
 - ~~(ii) — notify the Access Holder of the amount of the Transfer Fee and how the Transfer Fee was calculated;~~
 — at the following times:

 - ~~(iii) — if the Access Holder is considering Transferring some or all of the Access Rights but has not given Aurizon Network a Notice of Intention to Transfer in respect of those Access Rights, promptly following a request by the Access Holder; and~~
 - ~~(iv) — if the Access Holder has given Aurizon Network a Notice of Intention to Transfer, not less than five Business Days before the Transfer Date.~~~~

- ~~(h) — The Transfer Fee is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges (**ATPY**) for the relevant Train Service Types that would have been payable for the remainder of the term of the relevant Access Agreement assuming:

 - ~~(i) — the Nominated Access Rights were not transferred; and~~
 - ~~(ii) — the Train Services were not operated for the Access Holder for a reason other than Aurizon Network Cause;~~~~(PV Amount) less the amount which is the product of the PV Amount and the Reduction Factor.~~~~

- ~~(i) — Despite any other provision in this **clause 7.4.2**, if:

 - ~~(i) — the Transfer Fee is calculated to be an amount that is less than zero; or~~
 - ~~(ii) — the Nominated Access Rights to be Transferred are to be Transferred for a period which, when aggregated with the sum of the periods of all previous Transfers of Access Rights for Train Services for Train Service Types with the same origin and destination and with a Transfer Period (for each such Transfer) within the three year period ending on the last day of the Transfer Period, is less than two years;~~
 then the Transfer Fee will be zero.~~

- ~~(j) — If the Access Holder has not paid (or commenced a dispute in respect of the calculation of) the Transfer Fee within 20 Business Days after the latest of:

 - ~~(i) — the Transfer Date;~~
 - ~~(ii) — the date Aurizon Network gives the Access Holder a notice under **clause 7.4.2(f)(ii)**;~~~~

~~(iii) — the date that Aurizon Network gives the Access Holder a valid tax invoice in respect of the Transfer Fee; and~~

~~(iv) — in respect of payment only, the date any dispute regarding the calculation of the Transfer Fee is determined;~~

~~then Aurizon Network may give the Access Holder a notice (**Transfer Cancellation Notice**) with respect to Nominated Access Rights specified in the Notice of Intention to Transfer in which case:~~

~~(v) — the Notice of Intention to Transfer is deemed to have never been given by the Access Holder; and~~

~~(vi) — the Nominated Access Rights that were the subject of the Notice of Intention to Transfer will not be Transferred to the Transferee.~~

~~(k) — The giving of a Transfer Cancellation Notice in respect of the Transfer of Nominated Access Rights does not prevent the Access Holder from subsequently giving Aurizon Network a new Notice of Intention to Transfer in respect of the same Nominated Access Rights.~~

~~(l) — Clause 7.3.7 (Customer Initiated Capacity Transfer) of the 2010 Undertaking continues to apply to each Access Agreement entered into, prior to the Approval Date, by Aurizon Network and an Access Holder who has a Customer (Prior Access Agreement), as though:~~

~~(i) — that clause forms part of this Undertaking but only applies to Prior Access Agreements;~~

~~(ii) — references in that clause to “Adjustment Charges”, “Dispute”, “Take or Pay” and “Undertaking” have the meanings given to those terms under this Undertaking;~~

~~(iii) — a reference in that clause to:~~

~~(A) — “QR Network” is a reference to Aurizon Network; and~~

~~(B) — “clause 10.1.4” is a reference to clause 11.1.5 (of this Undertaking); and~~

~~(iv) — except as provided under clauses 7.4.2(k)(i) to (iii), that clause otherwise has the same meaning and effect as it had under the 2010 Undertaking.~~

~~For clarity, a change in the nomination of a Train Operator by an Access Holder does not constitute a Transfer.~~

Part 7A: Baseline Capacity

Part 8: Network development and Expansions

Part 9: Connecting Private Infrastructure

Part 10: Reporting

10.1 Reports

10.1.1 *Annual financial report*

10.1.2 *Annual compliance report*

10.1.3 *Annual maintenance plan*

10.1.4 *Annual maintenance cost report*

10.1.5 *Monthly Network Performance Report*

10.1.6 *Annual Regulatory Asset Base roll-forward report*

10.1.7 *Quarterly reports on transfers*

Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network must, within ten (10) Business Days after the end of each Quarter in the Term, publish on the Website a report (which Aurizon Network must ensure is accurate and not misleading) in relation to the relevant Quarter containing the information set out below:

- (a) information on the number of Notices of Intention to Transfer received by Aurizon Network in the Quarter;
- (b) the number of those Notices of Intention to Transfer that satisfied the criteria in **clause 7.4.2(e)**;
- (c) the number of those Notices of Intention to Transfer that satisfied the criteria in **clause 7.4.2(f)** and the length of time the Rapid Capacity Assessment took for each; and
- (d) the number of those Notices of Intention to Transfer that were dealt with in accordance with **clause 7.4.2(g)** and the length of time between receipt of each Notice of Intention to Transfer and Aurizon Network's notice to the Access Holder and the Transferee under **clause 7.4.2(g)**.

Part 11: Dispute Resolution and Decision Making

Part 12 Definitions and Interpretation

12.1 Definitions

In this Undertaking these terms have the following meanings:

- Pre-30 June 2006 Coal Access Agreements** (a) Access Agreements in place on the day immediately prior to 30 June 2006; or
(b) New Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the ~~Old~~ Access Agreement [described in paragraph \(a\)](#) apply in respect of the relevant Access Rights.
- [Pre-1 October 2010 Coal Access Agreements](#) (a) [Access Agreements in place on the day immediately prior to 1 October 2010; or](#)
(b) [New Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement described in paragraph \(a\) apply in respect of the relevant Access Rights,](#)
[but does not include a Pre-30 June 2006 Coal Access Agreement.](#)
- [Pre-Approval Date Coal Access Agreements](#) (a) [Access Agreements in place on the day immediately prior to the Approval Date; or](#)
(b) [New Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement described in paragraph \(a\) apply in respect of the relevant Access Rights,](#)
[but does not include a Pre-30 June 2006 Coal Access Agreement or a Pre-1 October 2010 Coal Access Agreement.](#)
- [Rapid Capacity Assessment](#) [A Capacity Analysis which is limited to an analysis of Available Capacity having regard to the Baseline Capacity Assessment or most recent Capacity Assessment \(if any\) to determine if there is sufficient Available Capacity \(if the Nominated Access Rights is deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment\) for the Transferred Access Rights.](#)
- Transferee Access** The meaning given to the term in **clause 7.4.2(dg)(iii v)(A)**

Agreement

and for the purpose of **clause 7.4.2(i)(ii)**, in that clause and for the purpose of **clause 7.4.2(i)(iii)**.