

Saturday, 1 April 2017

Mr Charles Millstead
Chief Executive Officer
Queensland Competition Authority
Level 27
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Submitted via QCA Internet Portal

Dear Mr Millstead

Pacific National Submission Regarding the Aurizon Network 2017 Standard User Funding Agreement Draft Amending Access Undertaking

Introduction

Pacific National welcomes the opportunity to make this submission to the Queensland Competition Authority (QCA) on Aurizon Network's 2017 Standard User Funding Agreement (SUFA) Draft Amending Access Undertaking (DAAU).

The SUFA process is intended to facilitate the funding of extensions and expansions to Aurizon Network rail infrastructure by Aurizon Network customers and other parties. Pacific National operates trains on the Aurizon Network infrastructure and is likely to be a future operator on any user funded rail infrastructure in Queensland.

This submission contains no confidential information and may be considered a public document.

Pacific National Comments on the SUFA DAAU Regulatory Process

QCA previously evaluated the SUFA¹ as an amendment to the Aurizon Network 2010 Access Undertaking (UT3) and made a Final Decision on the SUFA in June 2016. In mid 2016 the Aurizon Network 2016 Access Undertaking (UT4) was being finalised, resulting in a situation where the SUFA Final Decision under UT3 needed to be amended to take into account UT4. The current SUFA DAAU aims to address this issue.

Pacific National has some concerns that given the current 2017 Access Undertaking (UT5) regulatory process is underway and expected to be finalised later in 2017 that a further SUFA DAAU may be required in the near future to take account of the UT5 Final Decision. Pacific National supports a position where finalisation of the 2017 SUFA DAAU is aligned with the finalisation of UT5 such that a further SUFA DAAU is not required following the finalisation of UT5.

¹ Previously Pacific National was part of the broader Asciano group. Asciano made submissions to the QCA's regulatory process evaluating the SUFA in March 2013, August 2013, December 2013 and January 2015. Following the sale of Asciano in August 2016 Pacific National has become a stand-alone company with new owners. These submissions made by Asciano before this ownership change should be treated as being from Pacific National.

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Pacific National Comments on the SUFA DAAU

In making this submission Pacific National recognises that many of the SUFA DAAU departures from the QCA's SUFA Final Decision made under UT3 are made to align the SUFA suite of documents with UT4.

Previous Pacific National submissions on SUFA have raised concerns with respect to the management of situations where SUFA extensions and expansions may reduce capacity for existing access holders and / or do not ultimately deliver the capacity expected by the SUFA extension and expansions.

Pacific National's primary concern with the SUFA DAAU is whether Aurizon Network provides a capacity warranty under each SUFA transaction.

The QCA's SUFA Final Decision² sought that Aurizon Network provide a capacity warranty, and in particular that Aurizon Network warrant that the work be fit for purpose and comply with contract as part of its general warranties under the Construction Agreement. However, the current SUFA DAAU does not include such a capacity warranty. Pacific National believes that such a capacity warranty should be included in the SUFA documentation.

The Pacific National position, as stated in its February 2017 submission³ to the QCA in relation to the UT5 regulatory process, is that

Pacific National believes that Aurizon Network has full control over the scope, cost and deliverable outcomes of any capacity expansions. Therefore any capacity shortfall resulting from a capacity expansion should have been able to be avoided by Aurizon Network during the planning, construction and implementation phases of any capacity expansion project. Given this Aurizon Network should be held accountable to correct the capacity shortfall (and bear the full cost of the capacity correction depending on the reason for the capacity shortfall).

Given this position, Pacific National believes that a capacity warranty should be included in the SUFA documentation, as such a warranty would ensure that Aurizon Network is accountable to correct any capacity shortfall and bears the full cost of the capacity correction.

In addition Pacific National would not oppose an amendment which allowed for the warranty to be waived at the discretion of the access seeker if the access seeker were seeking to minimise costs (i.e. the access seeker preferred lower costs rather than a guaranteed capacity).

Further to the issue of capacity shortfall Pacific National notes that the issue of capacity shortfall has been raised in submissions to the current UT5 regulatory process (including Pacific National's submission as outlined above). Given this Pacific National believes that the issue of a warranty for a capacity shortfall is likely to be better addressed in the SUFA regulatory process once the final UT5 position is known.

More broadly Pacific National continues to have concerns with the way in which the SUFA process will work within the vertically integrated structure of Aurizon (where Aurizon own and operate both Aurizon Networks and the Aurizon train operations). Pacific National remains concerned that SUFA proposals may provide a potential means for Aurizon's Network business and above rail business to work around existing regulatory controls such as ring fencing controls and cost allocation procedures when dealing with customers and potential customers. Pacific National recognises that these issues should be addressed via the broader instruments available to the QCA (such as the QCA Act, the Access Undertaking and the Aurizon Network costing manual) rather than the SUFA documentation. Nevertheless Pacific National seeks that the QCA monitor any agreements negotiated within the SUFA framework to ensure these agreements are consistent with the ring fencing and non-discrimination provisions of relevant regulatory instruments.

² See clause 2.2 of the Construction Agreement: General Conditions of Contract for Design and Construct attached to the QCA's SUFA Final Decision.

³ Pacific National February 2017 "Pacific National Submission to the QCA on the Aurizon Network 2017 Draft Access Undertaking" page 10

If you wish free to discuss this submission please contact either myself on 02 8484 8056 or Ying Yeung on 07 3002 3726.

Yours Faithfully

Stuart Ronan
Manager Access and Regulation
Pacific National