



Submission to the Queensland Competition Authority

**Supplementary submission regarding Aurizon Network's resubmission of the
Capricornia System Rules**

Anglo American Metallurgical Coal Pty Ltd

October 2013

Contents

1	Introduction and executive summary	1
2	Interaction with the submission of UT4	2
	2.1 Train Service Entitlement	2
	2.2 Maximising delivered train paths	2
3	Maintenance multiplier	3
4	Lack of an adequate amendment process	3
5	Flexibility of the CSR for future developments	4

1 Introduction and executive summary

Anglo American Metallurgical Coal Pty Limited (**Anglo American**) welcomes the opportunity to make submissions to the Queensland Competition Authority (**QCA**) in respect to Aurizon Network Pty Ltd's (**Aurizon Network**) redrafted Capricornia System Rules (**Redrafted CSR**). Please note that any terms not defined in this submission refer to the definitions in the Redrafted CSR or the 2010 Access Undertaking (**UT3**).

Anglo American notes that Aurizon Network has redrafted sections of its initial draft Capricornia System Rules (**Initial CSR**) to address some of the concerns raised by stakeholders (in particular the definition of a 'network cause'). Even though the Redrafted CSR appear to be significantly different, Anglo American notes that many of the issues raised by stakeholders and the QCA (in its draft decision) have not been addressed. Anglo American submits that the QCA should ensure that stakeholders' concerns are properly considered and relevant amendments made to the Redrafted CSR before they are approved.

In particular, Anglo American reiterates the following submissions (for further detail please see Anglo American's submissions in relation to the Initial CSR):

- (a) that Aurizon Network must provide a train graph of the Capricornia rail network in a manner consistent with the Network Management Principles;
- (b) particularly in respect of the reporting requirements on how above and below rail delays affect dispatch intervals, the number and proportion of reference and non-reference trains that have operated and how the use of reference and non-reference trains has increased / decreased the number of system paths available in the Capricornia coal chain;
- (c) increased transparency in respect of the scheduling constraint summary, the maintenance multiplier and the circumstances in which a TSE is deemed by Aurizon Network to be consumed;
- (d) that Aurizon Network does not have the scope to unilaterally change activities included in the 21-day maintenance lock-down period unless this is allowed by the Network Management Principles;
- (e) where an Access Holder cancels a system path on the day of operation, it should not be recorded as TSE consumption against that Access Holder if another Access Holder is able to order and use the below-rail network path that was associated with the original system path;
- (f) there is a distinct lack of clarity or power in the amendment process that allows users to object to amendments to the Redrafted CSR. Aurizon Network may implement unilateral changes to the Redrafted CSR and users can only object using the lengthy dispute resolution process contained in UT3, without any timely recourse or consideration of their objection. Further, operators have no right to object at all. Whilst this might be consistent with the requirements of UT3, at the time that UT3 was approved there was no thought that the System Rules would affect the legal rights and obligations of the coal producers. In light of the importance of the System Rules and the impact on users, this process needs to be rectified so that the essential entities involved in the operation of the Capricornia System can play a part in dynamic developments to the Redrafted CSR; and
- (g) the Redrafted CSR have no ability to deal with connections to the Capricornia System that have significant impacts on the capacity and scheduling of the system. This is particularly important for the Moura Line as it will potentially have to deal with increased capacity flowing from the Wiggins Island Coal Export Terminal (**WICET**) and the Surat Basin Rail (**SBR**). Anglo American suggests developing a protocol where an established

calculable increase in capacity triggers a consultative review process, allowing users and operators to contribute to the operation of the Capricornia System if capacity is significantly different from when the CSR are approved.

As Anglo American stated in its submissions on the Initial CSR, its major concern with the Redrafted CSR is a distinct lack of transparency or clarity as to how the Redrafted CSR will be applied. There is no appropriate method to review Aurizon Network's decisions under the Redrafted CSR and no true oversight, giving Aurizon Network the ability to control an important operational aspect of the Queensland coal chain without any effective regulatory oversight. This seems to be similar to the aggressive stance taken by Aurizon Network in response to its regulation in the 2013 Draft Access Undertaking (**UT4**) and Anglo American submits that the QCA must require transparency and accountability for Aurizon Network or the regulation of the business will be rendered ineffective.

2 Interaction with the submission of UT4

2.1 Train Service Entitlement

As Anglo American submitted in relation to Aurizon Network's draft UT4, the System Rules should be amended to provide specific details on how the general principles contained in the Network Management Principles can be applied to each individual system.

While the Redrafted CSR do offer greater transparency in relation to most aspects of TSE consumption, Anglo American notes that there is still a lack of clarity around the cancellation and reallocation of train paths.

As Anglo American submitted in relation to the Initial CSR, a train path should not be deemed consumed in any circumstance where another user is able to order and use the same below-rail path that was associated with the original system path. Obviously, this is limited to situations where the subsequent allocation uses a similar Mainline Path as the original order, however, if that occurs Aurizon Network is still operating a train path and the system has not been disadvantaged. As such, the original user should not be punished for that reallocation, even where it has occurred within the 48 hour lockdown period.

2.2 Maximising delivered train paths

As it submitted in relation to Aurizon Network's draft UT4, Anglo American reiterates that the overriding focus of Aurizon Network (and therefore the regulation and supporting documents) should be to maximise delivery of contracted capacity. This does not necessarily exclude a principle focusing on maximising system throughput, however, it will often apply inconsistently to the more general concept of system throughput.

An example of this inconsistency is the cancellation of a long-haul train path. Applying the two principles discussed above creates the following results in relation to the cancellation of a long-haul train path:

- (a) **Maximising system throughput** might mean that short-haul mines receive numerous more available train paths because it is more efficient for system throughput to process several short-haul increases but this means that long-haul mines do not receive their contracted capacity; whereas
- (b) **Maximising delivery of contracted capacity** will mean that all mines will be treated equally, and where a long-haul mine could pick up another long-haul mine's cancelled train path in order to achieve as close as possible to contracted capacity.

As such, Anglo American believes that the major focus of Aurizon Network, as instructed by the System Rules, should be on maximising delivery of contracted capacity. Anglo American submits

that this should be achieved by amending the Redrafted CSR (in particular clause 4.2.1) in order to reflect the focus on maximising the delivery of contracted capacity to all customers first, then maximising system throughput as a subsequent (but always secondary) principle.

3 Maintenance multiplier

Although Aurizon Network has made some attempt to clarify the operation of the maintenance multiplier, Anglo American does not believe that this addresses its original concerns. There is still a distinct lack of transparency as to the application and operation of the maintenance multiplier and Anglo American believes that this should be rectified before the CSR can be approved.

In particular, Anglo American is concerned that:

- (a) when calculating and applying the maintenance multiplier, section 3.4 of the Redrafted CSR does not make it clear whether Aurizon Network must take into account any constraints of loading or unloading facilities or Rail Operators other than those directly attributable to Aurizon Network itself; and
- (b) the maintenance multiplier does not necessarily apply to offer a Rail Operator paths that are usable for a particular end customer that is supposedly receiving the benefit of any Upwardly Adjusted Paths.

Anglo American notes that, on the whole, the provisions regarding the application and development of the maintenance multiplier simply lack transparency regarding network availability and planned and unplanned maintenance. This overriding lack of clarity must be improved before the Redrafted CSR are approved or the maintenance multiplier will become an important, yet almost completely incalculable, element of the operation of the Capricornia System.

Anglo American also submits that this entire process should be informed by the overriding principle of ensuring that a customer's contracted train paths (or TSEs) are delivered (as opposed to an overall carte blanche principle to maximise system throughput which might unfairly discriminate against customers due to the specific characteristics of their mines.

4 Lack of an adequate amendment process

As submitted in relation to the Initial CSR, Anglo American notes that the Redrafted CSR still allow Aurizon Network unilateral power to amend the CSR without any true recourse for customers. This must be amended before the Redrafted CSR become operational or Aurizon Network will have an unacceptable level of control over the system for a regulated entity.

Anglo American reiterates that:

[It] is concerned that Aurizon Network has a broad and unfettered ability to make amendments, deletions or additions to the CSR, as it is considered a purely operational document. However, this assumption is not correct and the CSR can affect fundamentally important issues such as the consumption of TSEs. Anglo American submits that a more considered approach should be applied, including a compulsory consultation and submission process for certain amendments.

Although in clause 1.2 Aurizon Network has an obligation to notify all relevant parties when changes to the CSR are proposed, there is no obligation to incorporate objections or developments from consultation into the amended CSR. The only restriction on Aurizon Network is that it must have regard to the equitable operation of the CSR. Therefore, as long as all users are equally disadvantaged by an amendment, there will be no avenue to object under the CSR.

If a user does wish to lodge an objection to an equitably applied amendment, it will have to do so by utilising the dispute resolution process under UT3. This dispute process can stretch to extended periods of time and end without achieving a result for the user in relation to its objection. With an important operational document like the CSR, the inability of the document to create a fast and effective dispute resolution process and deal with important objections in a short space of time will

simply not translate into effective operability of the CSR. Anglo American requests that the QCA consider implementing, or asking Aurizon Network to implement, a short timeframe dispute resolution process that can see users' objections considered and dealt with before the operation of the system is detrimentally effected.

Although the Redrafted CSR contain what appears to be a more detailed amendment process, the outcome of the further elements is essentially the same: ie, Aurizon Network is not required to amend the Redrafted CSR or even to implement submissions from users, only to 'consider' them. Further, only 'Affected Persons' may make submissions or refer a dispute to the QCA, and only on grounds that the amendments operate inequitably amongst users or are materially inconsistent with the terms of an Access Agreement.

5 Flexibility of the CSR for future developments

Anglo American does not feel that Aurizon Network has addressed any of its concerns in relation to the inflexibility of the CSR to deal with future developments to the Capricornia System. In particular, Anglo American is concerned about the possibility of increased capacity generated by the connection of WICET or SBR.

This issue formed paragraph 5 of Anglo American's initial submission on the Initial CSR. Anglo American again stresses that the Redrafted CSR cannot be approved without a proper mechanism for review of the CSR if there is a dramatic increase in system capacity or required capacity.