



Friday 27 June 2014

Dr Malcolm Roberts
Executive Chairman
Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001

By email: rail@qca.org.au

Dear Dr Roberts,

Asciano Submission on the QCA Position paper on the Aurizon Network 2013 SUFA DAAU

This Asciano submission is in response to the Queensland Competition Authority (QCA) May 2014 Position Paper on Aurizon Network's 2013 Standard User Funding Agreement (SUFA) Draft Amending Access Undertaking (DAAU). Asciano welcomes the opportunity to make this submission. This submission is public.

Background

Under the current SUFA proposal, users purchase units in a trust that funds infrastructure expansion, which is then leased to Aurizon Network in return for payments. The QCA Position Paper is seeking comment on whether this current SUFA proposal is workable. The Position Paper raises a number of concerns with the current SUFA proposal including:

- a lack of sufficient security and certainty over rental cash flows;
- a need for clarity regarding control over construction;
- a need for a process which allows users to assess financing options;
- a need for a clear regulatory approval process; and
- a need for SUFA assets to be maintained to a standard similar to other Aurizon Network assets.

Even if these concerns are addressed there may remain concerns relating to the workability of the current SUFA proposal, including concerns over taxation impacts.

Asciano Position

Asciano was not involved in the discussions that resulted in the development of the current SUFA proposal. Asciano is seeking that the issues outlined in this submission below be addressed in any final SUFA documentation approved by the QCA.

Vertical Integration and Cost Shifting

In previous consultations on SUFA Asciano has raised its concerns about the vertically integrated structure of Aurizon and how the SUFA proposals provide a potential channel for Aurizon's Network business and above rail business to work around regulatory controls, such as cost allocations procedures and ring fencing. Asciano continues to believe that this fundamental issue should be at the forefront of any assessment of a SUFA proposal before the QCA.



Asciano notes that the Position Paper (page 44) states that the SUFA agreements are drafted in such a manner that could give rise to discrimination concerns regarding:

- the condition of SUFA funded assets versus Aurizon Network funded assets, and
- parties eligible to participate in a SUFA,

but that these issues could be addressed by implementing an assessment process to ensure the condition of SUFA assets and Aurizon Network assets are the same and allowing other creditworthy parties (such as above rail operators) to be eligible participants in a SUFA.

The Position Paper (page 44) notes that the QCA does not believe the SUFA arrangement can provide a channel for cost shifting.

Asciano believes that there is potential for cost shifting in the allocation of maintenance and operating costs between SUFA assets and other existing assets which may favour one set of end users or one set of operators over another. However, Asciano recognises that this potential is minimised if an assessment process is implemented to ensure the condition of SUFA assets and Aurizon Network assets are similar.

More broadly Asciano remains concerned that the SUFA provides:

- a potential channel for the facilitation of discussions between Aurizon's above rail business and end users through Aurizon Network;
- a potential channel for Aurizon Network to select capital extension and expansion projects which favour Aurizon's above rail business and which favour end users contracted to Aurizon's above rail business.

Overall the SUFA process may potentially provide some scope for Aurizon's network business and above rail business to work around regulatory controls. Asciano is seeking that the QCA consider this issue in any assessment of a SUFA proposal before the QCA.

Identity of Unit Holders in a Trust

Asciano is seeking that the final SUFA documentation clarifies whether an above-rail operator can hold a unit in a trust. Asciano believes that above rail operators should be able to hold a unit in a trust.

Asciano notes that the Position Paper (page 44) appears open to broadening the parties eligible to participate in a SUFA to include above rail operators (and any other creditworthy party). Asciano supports this position.

More broadly Asciano believes that the involvement of other parties (such as above rail operators or ports) in a SUFA may provide more scope for the development of innovative supply chain solutions, and as such the involvement of these parties should not be discouraged.

Maintenance

Asciano supports a position that any SUFA expansions or extensions must be maintained to a similar standard as other Aurizon Network assets.

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Asciano notes that the Position Paper (page 44) appears to support an assessment process to ensure the condition of SUFA assets and Aurizon Network assets are the same. Asciano supports this position.

Regulatory Approvals

The Position Paper discusses regulatory preapproval and approval processes in some detail. Asciano believes that these preapproval and approval processes should explicitly consider:

- the impact of the expansion proposal on all system users; and
- the ring fencing and confidentiality regime that is proposed to apply to any expansion proposal (with a view that any SUFA expansions or extensions must be subject to the same ring-fencing and confidentiality provisions as apply to the regulated Aurizon Network).

Dispute Resolution

Asciano is seeking that the final SUFA documentation clarifies whether an above-rail operator can be a party to SUFA related dispute resolution processes. Asciano believes that above rail operators should be able to be parties to disputes which impact on their operations (for example an issue relating to track quality and maintenance is likely to have a large immediate impact on an above rail operator).

Alignment of Units

Asciano believes trust units should align with a unit holder's access entitlements which are created as a result of the SUFA infrastructure. In the event access rights do not align with funding requirements Asciano believes that units should be transferred to ensure there is an alignment.

Conclusion

Asciano recognises that fundamental issues relating to the workability of the SUFA must be resolved prior to any further drafting of the detailed SUFA documentation. Asciano is seeking that the issues outlined in this submission be taken into account in both broader consideration of the workability of the current SUFA proposal and in the detailed drafting of any SUFA documentation.

Please contact Stuart Ronan on (02) 8484 8056 if you wish to discuss this submission.

Yours faithfully,

A large black rectangular redaction box covering the signature area of the document.

Geoff Featherstone
General Manager Strategy
Pacific National