

Submission to Queensland Competition Authority

Aurizon Network's 2012/13 Revenue Adjustment Amount – Submission to the QCA

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12 November 2013

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1 Executive Summary

Anglo American Metallurgical Coal Pty Ltd (**Anglo American**) welcomes the opportunity to make submissions to the Queensland Competition Authority (**QCA**) in respect of the Aurizon Network Ltd (**Aurizon Network**) 2012/13 Revenue Adjustment Amount – Submission to the QCA (**Aurizon Network Submission**).

Unless otherwise defined, capitalised terms in this submission have the definition provided to those terms in the QR Network 2010 Access Undertaking (**UT3**).

It is clear from the Aurizon Network submission that it has:

- (a) received a payment of \$1.6 million from an Access Holder pursuant to an Access Agreement in relation to the Goonyella system (**Transfer Fee**);
- (b) obtained the benefit of possession of the funds;
- (c) is proposing that the Transfer Fee is not included in its calculation of the Total Actual Revenue, which impacts on the calculation of the Revenue Adjustment Amount; and
- (d) has not provided adequate details for the exclusion of the Transfer Fee in its calculation methodology.

The Transfer Fee clearly falls within the definition of Total Actual Revenue as an '*Relinquishment Fee or equivalent amount payable under a relevant Access Agreement*'.

Anglo American submits that the QCA exercise its power to:

- (a) reject the current Aurizon Network Submission so far as it relates to the calculation of the Total Actual Revenue excluding the Transfer Fee and the impact that has on the Revenue Adjustment Amount;
- (b) request Aurizon Network to resubmit its submission including revised calculation methodology consistent with the requirements of UT3 and the submissions raised by Anglo American, along with any further requirements of the QCA; and
- (c) in the event that Aurizon Network does not resubmit its calculations in a suitable form within the required timeframe, calculate the Revenue Adjustment Amount in accordance with the submissions raised by Anglo American.

Should the QCA approve the Aurizon Network Submission in its current form, Aurizon Network will effectively '*double dip*' by receiving both the benefit of the Transfer Fee along with additional compensation from industry through the inflated calculation of the Revenue Adjustment Amount.

In the event that the Aurizon Network is required to repay the Transfer Fee it can unilaterally apply for an adjustment in subsequent years. This is a classic example of Aurizon Network's self-insurance which reflects the zero risk that Aurizon Network bears.

2 Background

As the QCA is aware, Schedule F, Part B of UT3 sets out the framework for regulating coal carrying train services in the Central Queensland Coal Network and, in particular, the methodology for calculating the Revenue Adjustment Amount.

The first revenue cap submission for 2006/07 was submitted to the QCA on 30 November 2007. The 2007 submission was approved by the QCA on 24 March 2008, and the Reference Tariff variation contained therein was implemented on 1 July 2008 for the 2008/09 year¹.

¹ Aurizon Network Submission p. 3

The latest revenue cap submission for 2011/12 year was submitted to the QCA on 28 September 2012 and approved in January 2013. The Revenue Adjustment Amount contained in the 2012 submission were reflected in 'transitional' Reference Tariffs which were approved by the QCA on 31 May 2013 (as part of the Draft Amending Access Undertaking to extend the term of UT3) and implemented on 1 July 2013 for the 2013/14 year².

Aurizon Network has submitted the Aurizon Network Submission as required by UT3³ which shall, be reviewed by the QCA for implementation in the 2014/15 financial year.

3 Process for the Submission of Revenue Adjustment Amount

At the end of each financial year Aurizon Network is required to calculate the Revenue Adjustment Amount⁴ for that financial year and must provide details of the methodology, data and assumptions used to calculate the Revenue Adjustment Amount⁵ to the QCA by no later than 30 September following the end of that financial year⁶.

In the event that the QCA refuses to approve the Revenue Adjustment Amount submitted by Aurizon Network then it may issue Aurizon Network with a written notice to vary its submission as required by the QCA, within 30 days of the written notice⁷. If Aurizon Network does not resubmit the Revenue Adjustment Amount to the satisfaction of the QCA then the QCA may determine the Revenue Adjustment Amount⁸.

Anglo American submits that Aurizon Network has failed to properly calculate the Total Actual Revenue (and therefore the Revenue Adjustment Amount) for the reasons outlined below and request that the QCA exercise its power to refuse the Aurizon Network Submission and request that it be varied to account for the Transfer Fee along with any other requirements that the QCA may identify.

Anglo American also submits that, should Aurizon Network fail to resubmit a submission which adequately calculates the Revenue Adjustment Amount in accordance with the QCA's requirements, that the QCA should calculate the Revenue Adjustment Amount and consider Anglo American's submissions in its calculations.

4 Calculation of Revenue Adjustment Amount

Pursuant to UT3, the Revenue Adjustment Amount is calculated by subtracting the Adjusted System Allowable Revenue⁹ from the Total Actual Revenue¹⁰ for the each of the Individual Coal Systems for that year¹¹.

² Aurizon Network Submission p. 3

³ Subclause 3.2.6

⁴ Subclause 3.2.1

⁵ in accordance with subclause 3.2

⁶ Subclause 3.2.6

⁷ Subclause 3.2.12(b)

⁸ on terms consistent with clause 3.2

⁹ to be determined in accordance with subclause 3.2.2

¹⁰ to be determined in accordance with subclause 3.2.3

¹¹ Subclause 3.2.1

In other words:

$$\text{Revenue Adjustment Amount} = \text{Total Actual Revenue} - \text{Adjusted System Allowable Revenue}$$

Where:

- (a) **Total Actual Revenue** = Total revenue for coal carrying trains that Aurizon Network has actually earned over the relevant year whether or not actually collected by QR Network including any Take or Pay amount, *Relinquishment Fees* and 'any equivalent amounts payable under a relevant Access Agreement'¹².
- (b) **Adjusted System Allowable Revenue** = the sum of various costs actually expended by Aurizon Network during the year such as maintenance costs, costs of connection and operation of the electric transmission and general operating costs.

Although Aurizon Network has not explained how the transfer was effected, in Anglo American's view it is clear that the Transfer Fee falls within Relinquishment Fees or any equivalent amounts.

5 Failure of Aurizon Network to include Transfer Fee as Total Actual Revenue

5.1 Transfer Fee paid to Aurizon Network

Aurizon Network state that during the 2012/13 year, the Transfer Fee was invoiced and collected from an Access Holder in the Goonyella system. Aurizon Network has advised that there is a dispute as to the payment of the Transfer Fee between Aurizon Network and the Access Holder and a dispute notice has been lodged by the Access Holder in accordance with the relevant Access Agreement.

5.2 Transfer Fee omitted from calculation of Total Actual Revenue

Aurizon Network has stated that it expects that the dispute will be resolved prior to the QCA's decision on the Revenue Adjustment Amount and on that basis has stated in the Aurizon Network Submission that:

'for the purposes of this submission, QR Network has not included the transfer fee within Total Actual Revenue'.

Aurizon Network does not provide any further justification or basis for the omission of the Transfer Fee from the calculation of the Total Actual Revenue. Aurizon Network has a requirement to satisfy the QCA that the methodology, data and assumptions used to calculate the Revenue Adjustment Amount have been conducted in accordance with the requirements of UT3¹³, Anglo American does not believe that the Aurizon Network submission has given the sufficient information in respect of the transfer.

Instead Aurizon Network has simply offered to *'liaise with the QCA to the extent that any amount is confirmed following agreement between QR Network and the Access Holder following this submission, including providing information on any resulting adjustments to the Revenue Adjustment Amounts'.*

This allows Aurizon Network to unilaterally determine whether to update the QCA at a later stage after already receiving the benefit of the inflated Revenue Adjustment Amount. Anglo American

¹² Subclause 3.2.3(b)

¹³ in accordance with the requirements set out at Clause 2.3

notes that, given the conduct of Aurizon Network in its submission (i.e. failure to adequately explain the methodology applied to omitting the Transfer Fee and misleading statements in relation to the calculation of Total Actual Revenue (see discussion at paragraph 5.3 below)), and Aurizon Network's approach to collaboration generally, Anglo American is not confident that Aurizon Network will necessarily address the issue in the future, particularly where it may be detrimental to Aurizon Network.

5.3 Transfer Fee required to be included in Total Actual Revenue

It is clear that the definition of Total Actual Revenue for AT₂₋₄ is intended to include revenue from transfer fees for the following reasons:

- (a) Relinquishment Fees are specifically referred to as being included in the Total Actual Revenue;
- (b) there are two types of transfers which are contemplated in the terms of UT3, being:
 - (i) transfers under clause 7.3.6(c) of UT3 and the fee for the transfer is a Relinquishment Fee (see clause 7.3.6(e) which states that an Access Holder who wishes to relinquish or transfer access rights must pay a Relinquishment Fee to Aurizon Network); and
 - (ii) transfers under clause 7.3.7 of UT3 which are known as Customer Initiated Capacity Transfer and fee is a Relinquishment Fee (see clause 7.3.7(b)(vi) which states that a transfer under this clause can only proceed if the customer has paid the Relinquishment Fee);
- (c) even if the "Transfer Fee" was made pursuant to a transfer provision in an Access Agreement (as opposed to a transfer purporting to rely on the terms of UT3) then any fee payable under that Access Agreement falls within the concept of "an equivalent amount payable under the Access Agreement" as contemplated by clause 3.2.3(b) of Part B of Schedule F.

Anglo American notes that Aurizon Network has omitted subclause 3.2.3(b) (which contemplates equivalent amounts payable under an Access Agreement) from its methodology of the calculation of Total Actual Revenue (see subparagraph 3.1.1 of the Aurizon Network Submission). This is despite the fact that the words in subclause 3.2.3 of the Schedule F, Part B of UT3 which read "*The Total Actual Revenue for AT 2-4 is the sum of*" clearly relates to the amounts identified in each of subclauses (a), (b), (c) and (d) and not simply subclause (a), (c) and (d).

5.4 Additional benefits associated with payment of Transfer Fee

In addition to the reasons identified above, Anglo American also wishes to highlight the obvious benefits associated with the approach being adopted by Aurizon Network in respect of the Transfer Fee including:

- (a) **Control:** Aurizon Network has control of the funds paid by the individual coal producer during the term of any dispute;
- (b) **Interest:** Arguably Aurizon Network will receive the benefit of any interest earned on the money held by Aurizon Network during the term of any dispute; and
- (c) **Double Dip:** In the meantime, by not including the \$1.6 million in the Total Actual Revenue, Aurizon Network recovers an additional \$1.6 million from users (referred to as the second \$1.6 million). If Aurizon Network wins the dispute it keeps the \$1.6 million and there is no clear mechanism for Aurizon Network to pay back the second \$1.6 million. If Aurizon Network loses the dispute it pays back the first \$1.6 million but may keep the

second \$1.6 million as there is no clear mechanism for Aurizon Network to refund the amount.

It seems to Anglo American that the far preferable approach is for Aurizon Network to account for the transfer fee in the Total Actual Revenue. In those circumstances, if Aurizon Network loses the dispute then it pays the first \$1.6 million back and there is no further issue. If Aurizon Network wins the dispute then it keeps the \$1.6 million and there is no need for any further adjustments.

6 Conclusion

It is clear that the Transfer Fee should be included in the calculation of the Total Actual Revenue and therefore Aurizon Network have applied an incorrect methodology to the calculation of the Revenue Adjustment Amount.

Anglo American submits that the QCA should reject the Aurizon Network Submission so far as it relates to the omission of the Transfer Fee from the calculation of the Total Actual Revenue and the effect that has on the Revenue Adjustment Amount to avoid Aurizon Network from double dipping.

Anglo American submits that QCA use its power to:

- (a) request that Aurizon Network resubmit its calculations in a manner that is compliant with UT3 and the submissions raised by Anglo American, along with any further requirements of the QCA; and
- (b) in the event that Aurizon Network does not resubmit its submission setting out the calculations in a suitable form within the required timeframe, calculate the Revenue Adjustment Amount in accordance with the terms of UT3 and the submissions raised by Anglo American.