



Australian
Competition &
Consumer
Commission

Australian Competition and Consumer Commission

Draft Decision

Australian Rail Track Corporation's proposed variation of the Interstate Rail Network Access Undertaking to include the Southern Sydney Freight Line

6 February 2013



© Commonwealth of Australia 2013

This work is copyright. Apart from any use permitted by the *Copyright Act 1968*, no part may be reproduced without permission of the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131 Canberra ACT 2601.

Contents

Contents	3
Glossary	4
Summary.....	5
1 Introduction	8
1.1 The ACCC’s preliminary view	8
1.2 Proposed effect of the ARTC’s application	8
1.3 Indicative timeline for assessment	8
1.4 Making a submission	9
1.5 Further Information.....	10
1.6 Structure of this decision	10
2 Background	11
2.1 Industry context	11
2.2 ARTC’s Interstate Access Undertaking.....	11
2.3 The Southern Sydney Freight Line	12
2.4 Public consultation process.....	13
3 Decision-making framework	14
3.1 Legislative framework under Part IIIA.....	14
4 Should the SSFL be included in the IAU?.....	15
4.1 Contestable nature of the SSFL service	15
4.2 Preliminary view on whether the SSFL should be included in the IAU.....	17
5 Is the proposed Indicative Access Charge appropriate?	18
5.1 ARTC’s Proposal	18
5.2 Preliminary view on whether the Indicative Access Charge is appropriate	22
6 Are the proposed drafting changes appropriate?.....	23
6.1 ARTC’s proposed drafting changes	23
6.2 ACCC preliminary view	23
6.3 ACCC preliminary view on whether the proposed drafting changes are appropriate	25
7 Conclusion.....	26
Appendix A – Summary of submissions	27

Glossary

Capitalised terms used in this paper and not listed in this glossary are terms as defined in Part 9 of the accepted access undertaking for ARTC's Interstate network (15 July 2008), available on the ACCC's website.

ACCC	Australian Competition and Consumer Commission
Act	The <i>Competition and Consumer Act 2010</i> (Cth)
ARTC	Australian Rail Track Corporation
Asciano	Asciano Limited
IAU	ARTC's Interstate Access Undertaking accepted by the ACCC on 30 July 2008
IPART	Independent Pricing and Regulatory Tribunal (NSW)
MFN	Sydney Metropolitan Freight Network
MRN	Sydney Metropolitan Rail Network
Proposed Variation	ARTC's proposed variation to the IAU to implement the SSFL, submitted on 4 September 2012
NSWRAU	NSW Rail Access Undertaking
Qube	Qube Logistics Holdings Limited
RAB	Regulatory Asset Base
SSFL	Southern Sydney Freight Line
Sydney Ports	Sydney Ports Corporation

Summary

This Draft Decision sets out the reasons for the Australian Competition and Consumer Commission's (ACCC) preliminary view to consent to the Australian Rail Track Corporation's (ARTC) application to vary the 2008 Interstate Rail Access Undertaking (IAU) submitted on 4 September 2012 (the **Proposed Variation**). The Proposed Variation seeks to incorporate the Southern Sydney Freight Line (SSFL) and the associated Indicative Access Charge into the IAU.

ACCC preliminary view

In forming its preliminary view to consent to the Proposed Variation the ACCC has considered the following issues:

1. Whether it is appropriate to include the SSFL in the IAU;
2. Whether the Indicative Access Charge is appropriate; and
3. Whether the drafting changes are appropriate.

In reaching its preliminary view on the Proposed Variation, the ACCC has had regard to the matters listed in subsection 44ZZA(3) of the *Competition and Consumer Act 2012* (the Act).

Should the SSFL be included in the IAU?

A key consideration for the ACCC in assessing the Proposed Variation is determining whether it is appropriate for the SSFL to be included in the IAU (and thereby, subject to access regulation). This is because, given that the SSFL is adjacent to RailCorp's Main South Line, access seekers have an alternative to the SSFL available to them. Further, access seekers also have the option of utilising road-based transportation. It is therefore unclear that there is any market failure creating a need for access regulation to apply to the SSFL.

However, ARTC argues that the key reason for including the SSFL in the IAU is that:

- The SSFL will be covered by access regulation *even if* the ACCC does not accept the Proposed Variation (due to an agreement between ARTC and the NSW Government). The NSW Rail Access Undertaking (NSWRAU), overseen by IPART, will apply to the SSFL unless and until the SSFL becomes subject to an access undertaking accepted by the ACCC.¹
- If the SSFL were not covered by the IAU, and thus subject to oversight by the ACCC, it would be covered by the NSWRAU, and thus subject to oversight by IPART. This would mean that access seekers could be seeking access to different parts of ARTC's network pursuant to two different regulatory arrangements, overseen by two different economic regulators. Having one

¹ Transport for NSW, *Review of NSW Rail Access Regime: Issues Paper*, November 2012, p. 4.

access regime apply to the entirety of the IAU would streamline the pathway to access.

The ACCC considers that it would be anomalous for the whole of ARTC's interstate network in NSW aside from the SSFL to be covered by the ACCC's IAU, and for the SSFL to be covered by alternative access arrangements.

Given that ARTC is required to have an access undertaking for the SSFL, the ACCC's preliminary view is that including the SSFL in the IAU will facilitate consistent access regulation of ARTC's network. In forming this view the ACCC has had regard to the object of providing a framework and guiding principles to encourage a consistent approach to access regulation in each industry in accordance with subsection 44ZZA(3)(aa). Further, the IAU specifically provides for inclusion of the SSFL once it is commissioned. On balance, the ACCC considers that coverage of the SSFL under the IAU will promote certainty for both access seekers and ARTC regarding the process for negotiating the terms and conditions of access, in accordance with subsections 44ZZA(3)(a) and (c).

Is the proposed Indicative Access Charge appropriate?

In terms of the proposed Indicative Access Charge itself, ARTC is not expecting to recover the economic cost of its \$1 billion investment over the first five years. In fact, the revenue expected to be generated by ARTC's proposed Indicative Access Charge is substantially below even a conservative ceiling based on the original \$242 million forecast cost of the SSFL. The ACCC notes that based on modelling provided by ARTC, the proposed Indicative Access Charge will at least recover the incremental costs of the SSFL service.

In this respect, therefore, the Indicative Access Charge complies with the floor and ceiling limits stipulated in the IAU, which is a matter the ACCC considers relevant pursuant to sub-section 44ZZA(3)(e).

The main concern expressed by stakeholders, however, was that the proposed Indicative Access Charges are too high relative to the charges for access to the adjacent RailCorp line (or to the effective price for utilising road transport). A number of stakeholders indicated that they would not utilise the SSFL at the price offered by ARTC.

These submissions served to reinforce the ACCC's view that the service offered by ARTC is likely to be contestable, and that it is the market (rather than regulation) that will set the efficient price for the service.

In practice, what the Indicative Access Charge will do is to essentially provide an 'upper limit' on the price ARTC will offer parties wishing to use the SSFL. In this respect it will offer certainty to ARTC and access seekers, in accordance with subsections 44ZZA(3)(a) and (c). However, it remains open to access seekers to further negotiate with ARTC on the charge for the SSFL. In particular, given the competitive dynamics of the relevant market, access seekers may be able to negotiate a charge for the SSFL that is lower than the Indicative Access Charge.

A number of stakeholders have expressed concern at the prudence of the \$1 billion expenditure by ARTC on the SSFL. In this respect it is important to note that the

ACCC also has not approved the \$1 billion cost of the SSFL for inclusion in the Regulatory Asset Base (**RAB**) for the IAU. In order to include the cost of the SSFL in its RAB in the future, ARTC would need to seek a prudence assessment of this expenditure by the ACCC. For the purposes of assessing the Proposed Variation it has not been necessary for the ACCC to assess the prudence of the \$1 billion cost.

Are the proposed Drafting Changes appropriate?

ARTC has proposed several drafting changes in the Proposed Variation, which are discussed in Chapter 6. These changes provide for the SSFL to be included in the scope of the IAU and set out the proposed Indicative Access Charge and Indicative Service characteristics for the SSFL. The ACCC considers that these drafting changes are likely to be appropriate.

Conclusion

On balance, the ACCC's preliminary view is that the Proposed Variation is likely to be appropriate having regard to the matters in section 44ZZA(3) of the Act. The Proposed Variation:

- facilitates consistent regulation of ARTC's interstate rail network (having regard to subsection 44ZZA(3)(aa));
- complies with the pricing provisions of the IAU (which is a matter relevant pursuant to subsection 44ZZA(3)(e)); and
- provides certainty for access seekers and ARTC by stipulating an 'upper limit' on the price ARTC must offer access seekers (having regard to subsections 44ZZA(3)(a) and (c)).

Stakeholder views

The ACCC is seeking comments on its preliminary views regarding the Proposed Variation lodged by ARTC. Submissions by interested parties are due on **Friday 22 February 2013**. The ACCC will make a final decision on the Proposed Variation by April 2013.

1 Introduction

On 4 September 2012, ARTC submitted to the ACCC the Proposed Variation to the IAU. The Proposed Variation, which would incorporate the SSFL and the applicable Indicative Access Charge into the IAU, was foreshadowed pursuant to clause 2.1(c) of that IAU.

Subsection 44ZZA(7)(b) of the Act allows an access provider to vary an accepted access undertaking with the consent of the ACCC.

1.1 The ACCC's preliminary view

Having regard to the matters listed in subsection 44ZZA(3) of the Act, it is the ACCC's preliminary view to consent under subsection 44ZZA(7)(b) of the Act to the Proposed Variation.

The ACCC's reasons for this preliminary view are set out in chapters 4 to 6.

1.2 Proposed effect of the ARTC's application

If the ACCC accepts ARTC's Proposed Variation:

- The scope of the IAU will extend to include coverage of the SSFL – that is, the Network as defined in Schedule E will include the SSFL;
- The terms and conditions contained in the IAU will apply to those access seekers negotiating for access to the SSFL with ARTC;
- The Indicative Access Charge for the SSFL in clause 4.6(b) of the IAU will apply to the SSFL; and
- ARTC will be able to annually vary the Indicative Access Charge in accordance with clause 4.6(d) of the IAU (i.e. with reference to increases in the CPI).

Access charges for non-indicative services are not subject to formal ACCC approval as part of the Proposed Variation. Access charges for non-indicative services would be determined with reference to (i) the Indicative Access Charge if it is endorsed by the ACCC and (ii) the Pricing Principles in the IAU. Although non-indicative access charges are negotiated between ARTC and the access seeker, access seekers have recourse to the dispute resolution provisions in the IAU if a dispute arises.

1.3 Indicative timeline for assessment

Under subsection 44ZZBC(1) of the Act, the ACCC must make a decision in relation to an access undertaking application within the period of 180 days starting at the start of the day the application was received (referred to as 'the expected period').²

² Under subsection 44ZZA(7) of the Act, a request made to the ACCC for a variation of an access undertaking is an access undertaking application.

The Act provides for ‘clock-stoppers’, meaning that some days will not count towards the 180 days of the expected period in certain circumstances. For example, the clock is stopped where the ACCC publishes a notice inviting public submissions in relation to an undertaking application (subsection 44ZZBD(1)).

The ACCC is calling for further submissions on the ACCC’s draft decision by 22 February 2013. Under subsection 44ZZBD(1), this has the effect of extending the timeframe by which the ACCC is required to make a decision on the Proposed Variation by 17 days. The ACCC will be required to make a decision on the Proposed Variation by 17 April 2013.

The NSWRAU will apply to the SSFL in the interim period unless and until the SSFL becomes subject to the IAU.³

1.4 Making a submission

Submissions on ARTC’s Proposed Variation should be addressed to:

Matthew Schroder
General Manager
Fuel, Transport & Prices Oversight Branch
Australian Competition and Consumer Commission

GPO Box 520
Melbourne Vic 3001

Email: transport@accc.gov.au

1.4.1 Due date for submissions

Submissions **must** be received by **22 February 2013**. It is in your interest that the submission be lodged by this date, as section 44ZZBD of the Act allows the ACCC to disregard any submission made after this date.

1.4.2 Confidentiality

The ACCC strongly encourages public submissions. Unless a submission, or part of a submission, is marked confidential, it will be published on the ACCC’s website and may be made available to any person or organisation upon request.

Sections of submissions that are claimed to be confidential should be clearly identified. The ACCC will consider each claim of confidentiality on a case by case basis. If the ACCC refuses a request for confidentiality, the submitting party will be given the opportunity to withdraw the submission in whole or in part.

For further information about the collection, use and disclosure of information provided to the ACCC, please refer to the ACCC publication “*Australian Competition and Consumer Commission / Australian Energy Regulator Information Policy – the collection, use and disclosure of information*” available on the ACCC website.

³ Transport for NSW, *Review of NSW Rail Access Regime: Issues Paper*, November 2012, p. 9.

1.5 Further Information

The ACCC's Draft Decision, ARTC's Proposed Variation and other relevant material, including supporting submissions from ARTC and the currently accepted IAU, are available on the ACCC's website at the following link:

<http://www.accc.gov.au/content/index.phtml?itemId=1077623>

Alternatively, go to the ACCC's homepage at www.accc.gov.au and follow the links to 'For regulated industries' and 'Rail' and 'ARTC Interstate Rail Access Undertaking 2008.'

Public submissions made during the current process will also be posted at this location.

If you have any queries about any matters raised in this document, please contact:

Sarah Sheppard
Director
Fuel, Transport & Prices Oversight Branch
Phone: +61 3 9290 1992
Email: sarah.sheppard@acc.gov.au

1.6 Structure of this decision

This remainder of this Draft Decision document is structured as follows:

Chapter 2 – Background

Chapter 3 – Decision-making framework

Chapter 4 – Should the SSFL be included in the IAU?

Chapter 5 – Is the proposed Indicative Access Charge appropriate?

Chapter 6 – Are the proposed drafting changes appropriate?

Chapter 7 – Conclusion

Appendix A – Summary of submissions

2 Background

This chapter describes the access arrangements and the context for including the SSFL into the IAU.

2.1 Industry context

ARTC is a Commonwealth Government owned corporation, established in 1998 for the purpose of managing and providing access to the National Interstate Rail Network. ARTC is vertically separated, providing ‘below-rail’ track access services and not ‘above-rail’ services such as haulage.

The interstate network covers the mainline standard gauge track linking Kalgoorlie in Western Australia; Adelaide, Wolseley and Crystal Brook in South Australia; Melbourne and Wodonga in Victoria; Cootamundra, Albury, Macarthur, Moss Vale, Unanderra, Newcastle (to the Queensland border) and Parkes in New South Wales. The IAU does not cover access to the rail network in the Hunter Valley, which is covered by the Hunter Valley Access Undertaking accepted by the ACCC on 29 June 2011.

The interstate network is used by both general freight services (such as manufactured goods) and bulk freight services (such as mining and agricultural products), as well as long distance and regional passenger services.

2.2 ARTC’s Interstate Access Undertaking

The ACCC accepted ARTC’s IAU under Part IIIA of the then *Trade Practices Act 1974* (now known as the *Competition and Consumer Act 2010* (Cth)) on 30 July 2008. The IAU came into operation on 20 August 2008.

The Proposed Variation to include the SSFL under the IAU was foreshadowed by clauses 2.1(c) and 2.4(b) of the IAU. Clause 2.1(c) of the IAU states:

the Undertaking will extend to include the Southern Sydney Freight Line when (i) the line is completed and commissioned for rail operations and (ii) the applicable Indicative Access Charge has been accepted by the ACCC in accordance with clause 2.4(b).

Clause 2.4(b) of the IAU states:

at least six (6) months prior to commissioning for operations of the Southern Sydney Freight Line, ARTC intends to develop and submit to the ACCC the Indicative Access Charge that will apply to the Southern Sydney Freight Line.

During the assessment of the IAU, the ACCC considered that including provisions for the future coverage of the SSFL in the IAU was ‘reasonable as they provided certainty for access seekers about the process for covering the line, and do not protect the SSFL

against declaration unless the ACCC is satisfied that the charges proposed for the line are appropriate'.⁴

The ACCC also considered that the inclusion of the SSFL in the scope of the IAU was appropriate 'given that the SSFL was already under construction at the time the Undertaking was submitted and that ARTC will own and control the SSFL upon its completion'.⁵

2.3 The Southern Sydney Freight Line

The SSFL is a bi-directional, non-electrified, dedicated freight line for a distance of 35 kilometres between Sefton and Macarthur in southern Sydney.⁶ The SSFL is adjacent to the current RailCorp Main South Line and provides a third track in the rail corridor specifically for freight services (i.e. in addition to the two existing RailCorp tracks shared with passenger services). The SSFL will connect with the MFN⁷ at Sefton and provide direct freight only access to intermodal terminals along the line and to and from Port Botany.

The NSW Government has set a target of doubling the proportion of container freight movements by rail through NSW ports by 2020.⁸ Sydney Ports is developing the Enfield Inland Logistics Centre (intermodal terminal) which will assist in achieving this objective. Enfield, which is 18km from Port Botany, will be serviced by the MFN. In April 2012 the Commonwealth Government committed to develop the Moorebank Intermodal, which will use the SSFL and the MFN to connect to Port Botany, increasing Sydney's rail freight capacity.

The SSFL was constructed by ARTC to alleviate the major bottleneck in the rail freight network in Sydney. The bottleneck is caused by freight trains currently sharing the existing rail lines with the Sydney metropolitan passenger services operated by Railcorp. The Main South Line curfews do not permit freight trains to run during morning and afternoon peak periods due to passenger priority which restrict the efficiency and cost-effectiveness of freight services in and out of Sydney.

At the time of submitting the Proposed Variation, ARTC forecast the final cost of the SSFL project to be around \$1 billion.⁹ The SSFL was completed and commissioned

⁴ ACCC, *Final Decision – Australian Rail Track Corporation Access Undertaking – Interstate Rail Network*, July 2008, p. 22.

⁵ ACCC, *Final Decision – Australian Rail Track Corporation Access Undertaking – Interstate Rail Network*, July 2008, pp. 22-23.

⁶ For further information see:
<http://www.ssfl.artc.com.au/docs/cc/general/Southern%20Sydney%20Freight%20Line%20Background%20Doc.pdf>.

⁷ The lease for management and operation of the MFN was transferred to ARTC from Railcorp on 5 August 2012. ARTC has acquired the lease until 2064. For further information see:
<http://www.artc.com.au/Article/Detail.aspx?p=6&id=367>

⁸ Transport for NSW, *Discussion Paper: NSW Long Term Transport Master Plan*, 2012, p.77.

⁹ ARTC, *Supporting Submission, Variation to incorporate the Southern Sydney Freight Line and applicable Indicative Access Charges*, September 2012, p. 9.

for rail operations in January 2013, and the ACCC understands the total cost to be approximately in line with this forecast.¹⁰

2.4 Public consultation process

The Act provides that the ACCC may invite public submissions on an access undertaking application.¹¹

The ACCC published a Consultation Paper on 18 September 2012 inviting submissions on the Proposed Variation. The ACCC received public submissions from the following parties:

- Asciano Limited (Asciano)
- Qube Logistics Holdings Limited (Qube)
- QR National
- Sydney Ports Corporation (Sydney Ports)

A summary of all public submissions received in relation to the Proposed Variation is at Appendix B. All public submissions are available on the ACCC's website at:

<http://www.accc.gov.au/content/index.phtml/itemId/1086447>.

¹⁰ Minister for Infrastructure and Transport, Joint media release with ARTC CEO John Fullerton, 'New Line to Reduce Congestion on Sydney Rail Network Opens', 21 January 2013, http://www.minister.infrastructure.gov.au/aa/releases/2013/January/aa007_2013.aspx

¹¹ s. 44ZZBD(1) of the *Competition and Consumer Act* 2010.

3 Decision-making framework

This chapter provides an overview of the framework under which the ACCC has made its decision on ARTC's Proposed Variation.

3.1 Legislative framework under Part IIIA

Under subsection 44ZZA(7)(b) of the Act, an access provider may withdraw or vary an access undertaking at any time after it has been accepted by the ACCC, but only with the consent of the ACCC.

If the ACCC consents to the variation, the provider is required to offer third party access in accordance with the varied access undertaking. An access undertaking is binding on the access provider and can be enforced in the Federal Court upon application by the ACCC.¹²

Subsection 44ZZA(7) allows the ACCC to consent to a variation of an accepted access undertaking if it thinks it appropriate to do so, having regard to the matters contained in subsection 44ZZA(3), which are:

- the objects of Part IIIA of the Act,¹³ which are to:
 - promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and
 - provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry;
- the pricing principles specified in section 44ZZCA of the Act;
- the legitimate business interests of the provider of the service;
- the public interest, including the public interest in having competition in markets (whether or not in Australia);
- the interests of persons who might want access to the service;
- whether the undertaking is in accordance with an access code that applies to the service;¹⁴ and
- any other matters that the ACCC thinks are relevant.

¹² Section 44ZZJ of the Act

¹³ Section 44AA of the Act

¹⁴ There is currently no access code that applies to services provided under the IAU.

4 Should the SSFL be included in the IAU?

A key consideration for the ACCC in assessing the Proposed Variation is determining whether it is appropriate for the SSFL to be included in the IAU (and thereby, subject to access regulation).

4.1 Contestable nature of the SSFL service

The SSFL is adjacent to RailCorp's Main South Line and provides a second option in the rail corridor specifically for freight services. All four stakeholders who responded to the ACCC's issues paper noted that they considered that the SSFL was going to face competitive pressures from road transport and RailCorp's Main South Line.¹⁵

Sections 4.1.1 and 4.1.2 below summarise the competitive constraints posed by road transport and RailCorp's Main South Line.

4.1.1 Competition posed by road transport

ARTC and stakeholders have submitted that ARTC's pricing for services utilising the SSFL is in general constrained by road transport prices. For example:

- The North-South long haul freight market segments (Melbourne-Sydney, Melbourne-Brisbane, Sydney-Brisbane) are competitive, and price increases may result in marginal business shifting to road.¹⁶
- Stakeholders have also submitted that there is relatively close alignment between road and rail pricing in the short haul bulk markets between south-west Sydney and Port Botany.¹⁷

The ACCC considers that the availability of road transport poses a competitive constraint on ARTC's charges for SSFL services by providing a close substitute for the transportation of freight into the relevant markets.

4.1.2 Competition posed by RailCorp's Main South Line

RailCorp's Main South Line provides another substitute for the SSFL, and thus poses a competitive constraint on ARTC's charges for the SSFL service.

ARTC submitted that based on its own estimates, its charges for the SSFL were only 20 per cent above RailCorp's charges for the adjacent Main South Line (N.B. These charges are confidential).¹⁸ ARTC submitted that it is seeking to set the Indicative Access Charge at a level above current market prices in recognition of the added

¹⁵ Qube, *Submission*, October 2012, p. 2; Sydney Ports, *Variation to Interstate Rail Network Access Undertaking: Submission to the ACCC*, 16 October 2012, p. 4; Asciano, *Submission to the ACCC Consultation Paper on the ARTC's Proposed Variation to the Interstate Rail Network Access Undertaking to include Southern Sydney Freight Line Indicative Access Charges*, October 2012, pp. 4, 9; QR National, *Submission*, 9 November 2012, p. 1.

¹⁶ Asciano, *Submission*, p. 12; ARTC, *Supporting Submission*, p. 10.

¹⁷ ARTC, *Supporting Submission*, p. 11; Sydney Ports, *Submission*, p. 3.

¹⁸ ARTC, *Supporting Submission*, p. 4.

value that the SSFL provides to the North-South Corridor freight task in conjunction with the expected cost savings for rail users.¹⁹

Stakeholders disagreed with ARTC's estimate that its charges are 20 per cent above RailCorp's, suggesting that ARTC's charges are substantially higher than RailCorp's charges (for example, a 50-120 per cent differential between Main South Line and SSFL charges).²⁰ Stakeholders have also submitted that the benefits of the SSFL are not as significant as suggested by ARTC. For example QR National and Asciano have submitted that the curfew will continue to affect trains travelling through the northern section of the RailCorp network.²¹

The ACCC recognises that there may be a number of key benefits that will be provided by the SSFL to potential access seekers when compared to using RailCorp's Main South Line.²² The ACCC understands that capacity on the RailCorp main line is completely utilised by freight and passenger services for parts of the day, which means that there may be increasing benefits accruing to users of a dedicated freight line.²³ The ACCC also recognises that some of those benefits may be diminished where users of the SSFL also transit the Main South Line and are thus affected by the peak curfews.

The ACCC considers that the Main South Line poses a competitive constraint on ARTC's charges for SSFL services by providing a relatively close substitute for the transportation of freight in the relevant markets. While there are some differences between the services provided by RailCorp and ARTC, the ACCC considers that access seekers can weigh up the relative costs and benefits of using the Main South Line or the SSFL and determine which option is preferable given their particular circumstances.

4.1.3 Facilitating consistent access regulation of ARTC's interstate network

Given the contestability of the services to be provided over the SSFL, it is unclear that there is any market failure creating a need for access regulation to apply to the SSFL. That is, in the absence of market power, commercial negotiations are likely to lead to market-driven terms of access, which will promote allocative efficiency and thereby promote competition in upstream and downstream markets. However, ARTC argues that there are a number of reasons for including the SSFL in the IAU, outlined below.

The control of the NSW interstate standard gauge network has been transferred to ARTC under a 60 year lease. The ACCC understands that ARTC is required to submit an undertaking to the ACCC in respect of the SSFL to comply with an obligation in the lease agreement.

¹⁹ ARTC, *Supporting Submission*, p. 13.

²⁰ Asciano submitted that the RailCorp charges are 50-100 per cent less (Submission, p. 7); Sydney Ports submitted that the RailCorp charges are around 120 per cent less, (Submission, p. 9).

²¹ Asciano, Submission, p. 11. QR National, Submission, p. 1.

²² ARTC, 2012 Annual Report, p. 24.

²³ Transport for NSW, *Review of NSW Rail Access Regime: Issues Paper*, November 2012, p. 15.

The NSWRAU applies to the SSFL until the SSFL becomes subject to the IAU. Under the IAU, the SSFL becomes subject to the IAU once the ACCC accepts an indicative access charge and once the SSFL is completed and commissioned for rail operations. The ACCC considers that ARTC's lease obligation is a matter relevant to the current decision for the purpose of subsection 44ZZA(3)(e) of the Act.

It is a key policy objective that ARTC, through its management of the interstate network, can provide greater inter-state harmonisation and a more unified strategic direction, essential to support a national rail freight market. Where supply chains involve a number of rail networks which are subject to different regulatory access regimes, network interface management is likely to become more complex for operators and network owners, and end-to-end efficiency in these supply chains may be adversely affected. The ACCC considers that it would be anomalous for the whole of ARTC's interstate network in NSW (around 3300 kilometres of track) aside from the SSFL (a distance of only 35 km between Sefton and Macarthur in southern Sydney) to be covered by the ACCC's IAU, and for the SSFL to be covered by alternative access arrangements such as the NSWRAU.

Given that ARTC is required to have an access undertaking for the SSFL to comply with an obligation in its lease, the ACCC considers that including the SSFL in the IAU will facilitate consistent access regulation of ARTC's interstate network. This will also promote the object of Part IIIA of the Act to provide '*a framework and guiding principles to encourage a consistent approach to access regulation in each industry*', in accordance with subsection 44ZZA(3)(aa) of the Act.

The consistency of regulation of ARTC's rail networks in NSW will be especially important should ARTC incorporate the MFN into the IAU as is proposed to occur at a later date. The ACCC considers that consistency of regulation of ARTC's interstate rail network would reduce complexity and help facilitate end-to-end efficiency of NSW rail freight networks.

The ACCC considers that coverage of the SSFL under the IAU will promote certainty for both access seekers and ARTC regarding the process for negotiating the terms and conditions of access. In this regard, including the SSFL in the IAU may reflect the interests of access seekers and the legitimate business interests of ARTC, in accordance with subsections 44ZZA(3)(a) and (c).

An additional benefit of including the SSFL in the IAU is that it would require ARTC to publish performance indicators for the SSFL. The ACCC considers that publishing performance indicators can reduce information asymmetry in negotiations between parties, by providing clarity and transparency to stakeholders about ARTC's performance in relation to the Indicative Service over the SSFL. The ACCC considers that this will promote the interests of access seekers, in accordance with subsection 44ZZA(3)(c) of the Act.

4.2 Preliminary view on whether the SSFL should be included in the IAU

Based on the above, the ACCC's preliminary view is that including the SSFL in the IAU is appropriate having regard to the matters in section 44ZZA(3) of the Act.

5 Is the proposed Indicative Access Charge appropriate?

5.1 ARTC's Proposal

Clause 2.4(b) of the IAU requires ARTC to submit to the ACCC the Indicative Access Charges for the SSFL.

ARTC has proposed that the charge in the table below will form the Indicative Access Charge for the SSFL.

Table 1: Indicative Access Charge for SSFL

Variable \$/kgtkm²⁴ (exclusive of GST)	Flagfall \$/km (exclusive of GST)
8.564	3.426

ARTC proposes that the Indicative Access Charge will be based on the following characteristics:

1. Maximum axle load of 21 tonnes;
2. Maximum speed of 110 km/h; and
3. Length not exceeding 1800m.²⁵

5.1.1 Compliance with the IAU

The ACCC considers that the terms of the IAU are a matter relevant to the assessment of the Proposed Variation under subsection 44ZZA(3)(e). In relation to its assessment of the proposed Indicative Access Charge, the ACCC has had particular regard to the following provisions of the IAU:

- the revenue limits in clauses 4.4(a) to 4.4(c), and
- the principles for the structure of charges in clause 4.5.

The ACCC's consideration of each of these provisions is outlined below.

5.1.1.1 Compliance with revenue limits in the IAU

The revenue limit provisions are contained in clause 4.4(a) of the IAU, and require that charges:

²⁴ 'kgtkm' refers to one thousand gross tonne kilometres.

²⁵ ARTC, *Application by ARTC to vary the ARTC Interstate Access Undertaking to include the Southern Sydney Freight Line (SSFL)*, section 2.2.

not be lower than the Floor Limit for that Segment or group of Segments (unless otherwise agreed by ARTC); and

not be higher than the Ceiling Limit for that Segment or group of Segments.

The floor limit is defined in the IAU as the incremental cost²⁶ of the segment or group of segments, whereas the Ceiling Limit is equal to the economic cost of the segment or group of segments.²⁷

In support of this application, ARTC has provided to the ACCC confidential financial modelling to demonstrate that the proposed Indicative Access Charge will comply with the revenue limits in clause 4.4 of the IAU. The ACCC notes that the ceiling limit used in the confidential modelling is based upon ARTC's forecast cost of the SSFL of approximately \$1 billion.²⁸

Submissions have raised queries about the quantum of ARTC's ceiling limit and its underlying asset base. For example, Asciano has queried whether the capital and operating costs are efficient costs.²⁹ Sydney Ports also suggested that the ACCC should consider aspects of the ceiling prices, including whether the \$1 billion valuation is appropriate, and whether the economic benefit to end users is commensurate with a \$1 billion asset base.³⁰

However, ARTC has submitted that it is not seeking a prudency assessment of the project cost at this time because the results of a prudency assessment would be unlikely to impact the Ceiling Limit to such an extent that it would affect the proposed Indicative Access Charge.³¹ In terms of the proposed Indicative Access Charge itself, ARTC is not expecting to recover the economic cost of its \$1 billion investment over the first five years. Indeed, the revenue expected to be generated by ARTC's proposed Indicative Access Charge is substantially below even a conservative ceiling based on the original \$242 million forecast contained in Schedule H of the IAU.

Given that the revenue for the SSFL is likely to be substantially below even a very conservative ceiling, the ACCC considers that it is unnecessary to assess the prudency of the \$1 billion cost of the SSFL in order to assess the appropriateness of the Indicative Access Charge. Accordingly, at this time the ACCC has not approved the \$1 billion actual cost of the SSFL for inclusion in the RAB. In order to include the cost of the SSFL in its RAB in the future, ARTC would need to seek a prudency assessment of this expenditure by the ACCC.

²⁶ Incremental costs are defined in the clause as the costs that could have been avoided if a Segment was removed from the Network. These costs include: (i) track and signalling and communication maintenance; (ii) maintenance contract support, administration and management and project management; (iii) train control and communication; (iv) train planning and operations administration; and (v) system management and administration but exclude Depreciation and return on assets relating to Segment Specific Assets and Non-Segment Specific Assets, such return being determined by applying a real Rate of Return to the value of these assets.

²⁷ See clause 4.4(b) of the IAU.

²⁸ ARTC, *Supporting Submission*, p. 9.

²⁹ Asciano, *Submission*, p. 8.

³⁰ Sydney Ports, *Variation to the Interstate Rail Network Access Undertaking: Supplementary Submission*, 13 November 2012, pp. 2-3.

³¹ ARTC, *Supporting Submission*, p. 18.

In assessing ARTC's compliance with the floor limit, the ACCC considered ARTC's modelling of the incremental cost of the SSFL and considers that the proposed Indicative Access Charge is likely to at least recover those costs.

Consequently, the ACCC's preliminary view is that the proposed Indicative Access Charge is likely to be within any reasonably determined floor and ceiling limit under the IAU. The ACCC notes that the floor and ceiling limits would have been satisfied by a wide range of charges, but not all of these would be supported by the market given the contestability of the service.

5.1.1.2 Compliance with structure of charges requirements in the IAU

Clause 4.5 of the IAU requires that ARTC set charges which comprise: (i) a variable component; (ii) a flagfall component; and (iii) an excess network occupancy component.

The Indicative Access Charge for the SSFL comprises a variable component (\$/gtkm) and a flagfall component (\$/km). ARTC, however, has proposed *not* to include an excess network occupancy component in the proposed Indicative Access Charge as contemplated at clause 4.5(a)(iii) because ARTC considers that:

an excess network occupancy component already applies to the Melbourne – Macarthur Segment and the inclusion of this component for the SSFL is unlikely to result in any significant intended incentives, and there is little opportunity or reason for spending excess time on this part of the Network.³²

As discussed in chapter 6 of this document, ARTC is proposing to vary the drafting of the IAU so that the excess network occupancy component will no longer be a *strict* condition of the structure of access charges.

Submissions in response to the ACCC's consultation paper have supported ARTC's view that the excess network occupancy charge is unnecessary given the short distance travelled on the SSFL.³³

The pricing principles in section 44ZZCA of the Act provide that access price structures should allow multi-part pricing when it aids efficiency. Accordingly, the ACCC considers that it is appropriate for ARTC to have discretion to apply this charge where it will assist the efficient operation or use of the network. The ACCC considers it is likely to be appropriate for ARTC not to apply an excess network occupancy charge for the SSFL given that it is unlikely to assist efficient operation or use of the network.

5.1.2 The Indicative Access Charge as a starting point for negotiation

Stakeholders responding to the ACCC's issues paper expressed concerns that the Indicative Access Charge was too high. The key concerns were that:

³² ARTC, *Application by ARTC to vary the ARTC Interstate Access Undertaking to include the Southern Sydney Freight Line (SSFL)*, 4 September 2012, p. 5.

³³ Asciano, *Submission*, p. 13; QR National, *Submission*, p. 2.

- The proposed Indicative Access Charge does not achieve the necessary balance between the interests of access providers and access seekers and holders;
- ARTC has not fully taken into account the competitive pressures of road and the parallel Railcorp network segment, and that the SSFL charges are not competitive with either of those options, and
- The benefits for users of using the SSFL will be lower than claimed by ARTC.

These submissions served to reinforce the ACCC's view that the service offered by ARTC is likely to be contestable, and that it is the market (rather than regulation) that will set the efficient price for the service.

In practice, what the Indicative Access Charge will do is to essentially provide an 'upper limit' on the price ARTC will offer parties wishing to use the SSFL.³⁴ In this respect it will offer certainty to ARTC and access seekers, in accordance with sub-sections 44ZZA(3)(a) and (c). However, it remains open to access seekers to further negotiate with ARTC on the charge for the SSFL. In particular, given the competitive dynamics of the relevant market, access seekers may be able to negotiate a charge for the SSFL that is lower than the Indicative Access Charge.

Further, the IAU provides that the Indicative Access Charge will not increase by more than CPI on an annual basis during the term of the IAU.³⁵ The ACCC considers that in this respect the Indicative Access Charge will offer certainty to ARTC and access seekers, in accordance with sub-sections 44ZZA(3)(a) and (c).

The ACCC notes the concern raised by Asciano in its submission that an Indicative Access Charge approved by the ACCC will act as a benchmark in negotiations and will impact on pricing for non-indicative services.³⁶ The ACCC considers that this may be a concern if parties had no alternatives to the SSFL service. However, given that the SSFL service is contestable, the ACCC considers it is in ARTC's interests to negotiate appropriate charges with access seekers in order to maximise freight volumes on its network. The ACCC also considers it is likely that access seekers will be able to further negotiate charges for non-indicative services.

The ACCC also notes Asciano's concern that ARTC has not had regard to the market value of the train path sought (clause 4.2(c) of the IAU), because the freight access services provided by RailCorp are provided at a substantially lower price than the proposed Indicative Access Charge.³⁷ The ACCC considers that quantifying the benefits of using the SSFL compared to RailCorp and road transport is likely to vary between access seekers. For this reason, it would be appropriate for individual users to resolve these issues through commercial negotiation under the IAU.

³⁴ Section 4.6(a) of the IAU provides that ARTC will offer the Indicative Access Charge to access seekers wishing to use the Indicative Service.

³⁵ Clause 4.6(d) of the IAU sets out a formula for calculating the maximum amount by which ARTC can vary the Indicative Access Charge that is based on changes in the CPI.

³⁶ Asciano, *Submission*, p. 6.

³⁷ *Ibid.*, p. 10.

The ACCC notes stakeholder submissions that the Indicative Access Charge should be lower in order to reflect the competitive pressures posed by RailCorp's network and road transport.³⁸ The ACCC considers that such competitive pressures will provide an incentive for ARTC to commercially negotiate alternative (lower) charges with access seekers.

5.2 Preliminary view on whether the Indicative Access Charge is appropriate

Based on the above, the ACCC's preliminary view is that the Indicative Access Charge is appropriate having regard to the matters in section 44ZZA(3) of the Act. It is noted that the Indicative Access Charge will, in practice, form an 'upper limit' of what ARTC will offer access seekers. It remains open to access seekers to further negotiate with ARTC on the charge for the SSFL. In particular, given the competitive dynamics of the relevant market, access seekers may be able to negotiate a charge for the SSFL that is lower than the Indicative Access Charge.

³⁸ Asciano, *Submission*, pp. 8-9, Sydney Ports, *Submission*, p. 8.

6 Are the proposed drafting changes appropriate?

6.1 ARTC's proposed drafting changes

ARTC has proposed a number of drafting changes in the Proposed Variation to incorporate the SSFL and give effect to the proposed Indicative Access Charge applicable to the SSFL. In addition ARTC has also proposed several other minor drafting changes to address consequential matters including:

- Removal of the process for determination of the SSFL from the IAU;
- Inclusion of the SSFL network boundaries and illustrative map in Schedule E of the IAU;
- Inclusion of the SSFL network boundaries into the Indicative Access Agreement;
- Removal of the separate definition of the SSFL from the IAU; and
- Recognition of the SSFL for the purposes of Performance Indicator reporting.

The proposed drafting amendments can be viewed in the marked up version of the IAU at Appendix B to ARTC's Supporting Submission, which is available on the ACCC's website.³⁹

6.2 ACCC preliminary view

6.2.1 Inclusion of the Indicative Access Charge for the SSFL

ARTC has proposed amendments to clause 4.6 to expressly prescribe the Indicative Access Charge for the SSFL and the characteristics upon which the Indicative Access Charge will be based.

In particular, ARTC has proposed to insert the words "*and Southern Sydney Freight Line*" to subclause 4.6(a)(iii)(c) to clarify that the train length of 1800 metres will apply to the Indicative Service on the SSFL. ARTC has also outlined the SSFL Indicative Access Charge and the 1 March 2013 date of effect in clause 4.6(b).

For the reasons outlined in Chapter 5 of this Draft Decision, the ACCC does not object to ARTC's proposed Indicative Access Charge and proposed Indicative Service characteristics for the SSFL. Therefore the ACCC considers that the proposed drafting changes in clause 4.6 are likely to be appropriate.

6.2.2 Other minor drafting changes

ARTC has proposed several other minor drafting changes in the Proposed Variation. The ACCC considers that these changes are likely to be appropriate.

³⁹ ARTC, *Supporting Submission*, Appendix 2: Proposed Amendments to the 2008 IAU.

6.2.2.1 Removal of the process for determination of the SSFL

ARTC has proposed to delete clauses 2.1(c), (d) and (e) and the words “*Except as provided for by clause 2.1(c)*” from clause 2.1(b). Similarly, ARTC has proposed to delete clause 2.4(b) from the IAU and renumber the remaining subclauses. These clauses outlined the process by which the SSFL and associated Indicative Access Charge would be determined and incorporated in the undertaking.

The ACCC’s preliminary view is that this drafting amendment is appropriate because, if the ACCC consents to the Proposed Variation, ARTC will have fulfilled these requirements. Retaining the clauses in the varied IAU would be of limited value as they would no longer be in operation and would have the potential to create confusion regarding ARTC’s ongoing obligations under the IAU.

The ACCC notes that ARTC’s drafting change contains one minor oversight in the renumbering of clause 2.4. Clause 2.4(b) does not need to be included as part of this Proposed Variation, as it was deleted as part of ARTC’s previous variation to include the capital expenditure forecasts in Schedule H.

6.2.2.2 SSFL definitions

Inclusion of the network boundaries of the SSFL

ARTC has proposed to amend Schedule E to include the SSFL in the network boundary definitions of the New South Wales lease and renumber the remaining definitions. ARTC has also reflected this change in Schedule 1 of the Indicative Access Agreement.

For illustrative purposes ARTC has also included a new Annexure 4 to Schedule E which incorporates an illustrative map of the SSFL into the undertaking.

Removal of the separate definition of the SSFL

ARTC has deleted the “Southern Sydney Freight Line” definition from clause 9.1 of the 2008 IAU. ARTC has stated that the definition is no longer relevant nor necessary given that the SSFL is now defined in Schedule E of the varied IAU.

Recognition of the SSFL as a separate segment

ARTC has also amended Schedule I of the 2008 IAU to recognise the SSFL as separate Segment for the purpose of setting the relevant access charge.

The ACCC’s preliminary view is that these amendments are appropriate because they provide certainty and transparency to access seekers about the definition of the SSFL and its use in the calculation of access charges.

6.2.2.3 Excess network occupancy charge clarification

As discussed in Chapter 5, ARTC has proposed drafting changes to clause 4.5 to clarify that the Indicative Access Charge for the SSFL will not include an excess network occupancy component in the access charge because this component already exists on the Melbourne to Macarthur Segment and would not result in any significant incentives. The drafting changes will also provide ARTC with the discretion to *not*

apply the excess network occupancy component to other Indicative Service access charges.

The ACCC's preliminary view is that the drafting is appropriate as the excess network occupancy component will no longer be a strict condition of the structure of access charges (see section 5.1.1.2 of this Draft Decision).

6.2.2.4 Performance indicators to apply to SSFL

ARTC has made a minor amendment to Schedule G to clarify that the service quality performance reporting will extend to the SSFL for the transit time performance indicators. ARTC has removed the reference to "Macarthur" and replaced it with "Sefton Park East Junction", which is the end point of the SSFL.

The ACCC considers that this drafting amendment is likely to be appropriate, particularly having regard to subsection 44ZZA(3)(c), because it provides clarity and transparency to stakeholders about ARTC's obligation to publish performance indicators in relation to the Indicative Service for the SSFL.

6.3 ACCC preliminary view on whether the proposed drafting changes are appropriate

Based on the above, the ACCC's preliminary view is that the proposed drafting changes are appropriate having regard to the matters in section 44ZZA(3) of the Act.

7 Conclusion

On balance, the ACCC's preliminary view is that the Proposed Variation is likely to be appropriate having regard to the matters in section 44ZZA(3) of the Act. The Proposed Variation:

- facilitates consistent regulation of ARTC's interstate rail network (having regard to subsection 44ZZA(3)(aa));
- complies with the pricing provisions of the IAU (which is a matter relevant pursuant to subsection 44ZZA(3)(e)); and
- provides certainty for access seekers and ARTC by stipulating an 'upper limit' on the price ARTC must offer access seekers (having regard to subsections 44ZZA(3)(a) and (c)).

The ACCC is seeking submissions on its preliminary view and intends to make a final decision on the Proposed Variation in April 2013.

Appendix A – Summary of submissions

The ACCC published a Consultation Paper on 18 September 2012 inviting submissions on the Proposed Variation. The ACCC received public submissions from Asciano, Qube, QR National⁴⁰ and Sydney Ports. Below is a summary of each of the submissions.

Asciano

Asciano submitted that it has a strong interest in the SSFL and SSFL access charges via its Pacific National subsidiaries. These subsidiaries carry both containers and bulk goods by rail through the rail corridor served by the SSFL. Asciano stated that Pacific National is the largest freight rail operator and freight rail access holder through this rail corridor.⁴¹

Competitive pressure on charges for the SSFL

Asciano submitted ARTC's proposed Indicative Access Charge is of particular concern to Asciano as 'these charges do not appear to have undergone detailed market testing to ensure that they can be borne by the market'.⁴² Asciano submitted that pricing at the proposed level will not be competitive with either other rail network access options (RailCorp) or road transport.⁴³

Asciano submitted that ARTC has not had regard to the market value of the train path sought (as required by clause 4.2(c) of the IAU), because the freight access services provided by RailCorp are provided at a substantially lower price than the proposed Indicative Access Charge.⁴⁴

Asciano submitted that users of the SSFL would be at a competitive disadvantage when compared to users of the Railcorp network because of the pricing relativities between the SSFL and the Railcorp network.⁴⁵

Asciano submitted that the SSFL Indicative Access Charge should be capped by competitive pressures from both competing networks and road transport competition, but that these competitive pressures have not been fully taken into account by ARTC.⁴⁶ To support this position, Asciano stated that:

- if the Indicative Access Charges are not competitive there will be few users of the SSFL, and the substantial fixed costs of the SSFL would need to be carried by a small user base resulting in increased charges to remaining users in the future and increased government subsidy to cover these costs. Asciano considered that this

⁴⁰ Since providing its submission to the ACCC's 18 September 2012 Consultation Paper, QR National has changed its name to Aurizon Limited.

⁴¹ Asciano, *Submission*, p. 4.

⁴² Ibid., p. 9.

⁴³ Ibid., pp. 4, 9.

⁴⁴ Ibid., p. 10.

⁴⁵ Ibid., pp. 10-11.

⁴⁶ Ibid., p. 9.

scenario may result in other users withdrawing from the SSFL, creating a spiral of diminishing usage and increasing per unit costs and prices.⁴⁷

- if the Indicative Access Charges are not competitive then freight on road will increase. Asciano considered that rail freight transport provides a level of unquantified but real benefits to the community in the form of reduced road congestion, increased road safety and reduced pollution levels.⁴⁸

Asciano considered that the competitive position of rail in both market segments that are expected to use the SSFL (long haul intermodal market and short haul bulk market) would be negatively impacted by the proposed SSFL Indicative Access Charges, and that this would be to the detriment of both ARTC and access holders.⁴⁹

Appropriateness of ceiling price and regulatory asset base

Asciano submitted that it has not seen ARTC's modelling so cannot comment on whether the Indicative Access Charge is between floor and ceiling cost levels. Asciano also noted the final costs of the SSFL are not yet available. As a result, Asciano queried how any cost based pricing can be determined at the current time with any degree of certainty.⁵⁰ In any event, Asciano referred to the fact that the range between the floor and ceiling cost levels as outlined in the ARTC documentation is very large, and as such other factors need to be taken into account in determining the Indicative Access Charge. In particular, demand factors, as well as cost factors, should be considered in proposing an access charge for the SSFL.⁵¹

The proposed Indicative Access Charge

Asciano submits that it has undertaken an analysis based on a broad range of trains that may use the SSFL and its analysis shows that the proposed SSFL Indicative Access Charges are between 50 per cent and 100 per cent greater than the current RailCorp access charges for Asciano.⁵² Asciano submitted that ARTC's claim that its proposed Indicative Access Charges are approximately 20 per cent above RailCorp prices for the Macarthur to Sefton Park Junction corridor is incorrect.⁵³

Asciano considered that reducing the Indicative Access Charge to be only 20 per cent above the RailCorp prices would be a more reasonable starting position, although at this level the benefits of the SSFL and market demand factors would need to be taken into account before such a position could be supported.⁵⁴

Balancing the interests of ARTC and access seekers

Asciano submitted that the proposed Indicative Access Charge does not achieve the necessary balance between the interests of access providers and access seekers. Asciano submitted that in setting Indicative Access Charges at the level proposed,

⁴⁷ Ibid., p. 9.

⁴⁸ Ibid.

⁴⁹ Ibid., p. 6.

⁵⁰ Ibid., p. 8.

⁵¹ Ibid.

⁵² Ibid., p. 7.

⁵³ Ibid., p. 8.

⁵⁴ Ibid.

ARTC is not meeting the interests of access seekers (as the prices are not reasonable or efficient given the alternative rail access options available) or the public (as the prices do not promote efficient use of the network and do not promote a shift of traffic from road to rail). Asciano submitted that this does not comply with the pricing principles in Part 4 of the IAU, and the matters in Part IIIA of the Act.⁵⁵

Asciano states that it recognises that the SSFL will provide benefits, but notes that these benefits will not be as large as claimed as the RailCorp curfew remains for trains travelling through the northern section of the RailCorp network.⁵⁶

Asciano notes that, while negotiated access charges are not subject to ACCC approval, it should be recognised that any ACCC approved Indicative Access Charge will act as a benchmark in such negotiations and as such the Indicative Access Charge will impact on the negotiated pricing of non-indicative services.⁵⁷

Qube

Qube submitted that it is the largest potential user of the line for rail traffic moving to and from Port Botany.⁵⁸

Qube submitted that ARTC's proposed pricing will make metropolitan rail movements for import and export containers uncompetitive against road. Qube noted that while this is not necessarily a competition issue, as road will always be a competitive constraint on rail, it would be inconsistent with both Commonwealth and State Government policy and targets for modal shift from road to rail.⁵⁹

Qube submitted that a number of Government and private entities have made or will be making considerable investments in order to achieve modal shift from road to rail. Qube submitted that the pricing policy proposed by ARTC could have the unintended consequence of rendering these investments redundant.⁶⁰

Qube stated that Metropolitan port shuttles are restricted to 600 metre length trains by ARTC and other regulatory stakeholders.⁶¹

Qube noted that it has the option of remaining on RailCorp's Main South Line, which would add to congestion and conflicts with passenger transport, or using road transport which 'defeats the purpose of building the SSFL'.⁶²

QR National

QR National submitted that it is the largest rail freight haulage operator in Australia by tonnes hauled, operating in key freight sectors and supply chains across the

⁵⁵ Ibid., pp. 5, 10.

⁵⁶ Ibid., p. 4.

⁵⁷ Ibid., p. 6.

⁵⁸ Qube, *Submission*, p. 1.

⁵⁹ Ibid., p. 1.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid., p. 2.

country. QR National stated that its interest in the SSFL is as a potential user for intermodal traffic on the Brisbane to Melbourne and Sydney to Melbourne corridors.⁶³

QR National submitted that it was concerned that pricing the SSFL above the existing RailCorp access charges is contrary to a position of supporting volume growth on the interstate freight network, and incentivises the continued use of RailCorp's shared passenger-freight line running parallel to the SSFL.⁶⁴

QR National submitted that the benefits of the SSFL over the RailCorp network referred to by ARTC are a result of the SSFL not being subject to peak curfews. QR National stated that it will not obtain those benefits because it will still need to use the RailCorp network to access the SSFL from its intermodal terminal at Yennora, and will therefore still be exposed to the curfews. As such, QR National submits that it does not consider the benefits of the SSFL as being an offset to the access premium over RailCorp charges.⁶⁵

QR National submitted that it supports setting the IAC below the ceiling limit under the IAU. QR National also submitted that recovery of ARTC's economic costs on the network must be achieved through volume growth.⁶⁶

QR National submitted that it did not have any concerns about ARTC not including an excess occupancy charge for the SSFL.⁶⁷

QR National submitted that it did not have any concerns about the proposed drafting amendments to the IAU (other than the proposed Indicative Access Charge).⁶⁸

Sydney Ports

Port Botany volume forecasts

Sydney Ports submitted that one of its objectives under NSW legislation is improving 'productivity and efficiency in its ports and the port-related supply chain'.⁶⁹ Sydney Ports noted that it has established and resourced the Port Botany Landside Improvement Strategy and that the NSW Government has adopted a target of doubling the proportion of container freight by rail through NSW ports by 2020, which would equate to a tripling of rail volumes in absolute terms.⁷⁰

Sydney Ports submitted that the current competitive position for port rail freight against road is marginal, particularly in metropolitan Sydney. Sydney Ports noted that two smaller intermodal terminals have closed within the past two years, and until the larger proposed terminals at Enfield and Moorebank come on-stream, there will be no

⁶³ QR National, *Submission*, p. 1.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid., p. 2.

⁶⁸ Ibid.

⁶⁹ *Ports and Maritime Administration Amendment (Port Competition and Co-ordination) Act 2008* No 89 (NSW).

⁷⁰ Sydney Ports, *Submission*, p. 5

step change to increasing rail volumes and generating economies of scale to support sustainable port rail freight.⁷¹

ARTC's proposed Indicative Access Charges

Sydney Ports submitted that quantifying the following would assist assessment of the proposed Indicative Access Charge:

- The actual operating benefits to users including improved asset turnaround and Train Crew shifts avoided as a function of any transit time reductions and reliability improvements.
- Impact of the increased quantum of access charges (where access charges already constitute a significant portion of end user costs) in modal contestable markets (both interstate and port freight).
- The role of the submitted ceiling price in consideration of the appropriate Access Charge and in this respect, the quantum of the ceiling price submitted and its underlying asset base structure.

Sydney Ports submitted that it would support an increase in Access Charges where there is a demonstrable benefit to users such as being able to use paths at times of day not currently available and there is demand for that time of day.⁷²

Impact of charges on interstate and port freight markets

In respect of the floor and ceiling levels proposed by the ARTC, Sydney Ports noted that in a modal contestable non-bulk market though, the proposed ceiling price is not a conceivable proposition as it would price the rail mode out of the market. It submitted that there is a risk that attempting to link an access charge to this ceiling price, even at a large discount, may create unintended consequences.⁷³

Sydney Ports suggested that any changes to the relative economics of rail and road should be considered in the context of improving rail's competitive position (from a low base) against road, and to maximise total supply chain efficiencies.⁷⁴

Sydney Ports warned that where performance levels are comparable to existing paths, increases to rail freight access charges in a modal contestable environment may have negative impacts on rail and Sydney Ports' container volumes, and contribute to congestion on major roads around Port Botany and the Airport.⁷⁵

Appropriateness of ceiling price and regulatory asset base

Sydney Ports also suggested that the ACCC should consider the following aspects of the ceiling prices:

- whether the \$1 billion asset base valuation is appropriate;

⁷¹ Ibid., p. 4.

⁷² Ibid., p. 3.

⁷³ Ibid., pp. 8-9.

⁷⁴ Ibid., p. 5.

⁷⁵ Ibid., pp. 3-4.

- whether ARTC's asset base and charging model for the SSFL is consistent across its various access regimes;
- whether the economic benefit to end users is commensurate with the \$1 billion asset base; and
- that other appraisals for the asset base might yield a different asset valuation (such as applied for ARTC's Hunter Valley network).

Sydney Ports also noted that if volumes used in modelling the price were underestimated, this could lead to increased unit rates and hence revenues. Any projected volumes should be carefully reviewed.⁷⁶

In a supplementary submission, Sydney Ports submitted that the aim of the SSFL is not to ease capacity constraints but as an imperative to remove rail commuter conflicts with freight services and to increase time of day options for users. Sydney Ports notes that ARTC's proposed revenue has been set at around 700 per cent of the revenue floor and 5 per cent of the stated revenue ceiling. It suggests ways in which the ACCC could assess the SSFL asset base, including by estimating the optimised replacement cost of the network, benchmarking using the Hunter Valley Coal Network, and industry consultation.⁷⁷

Differential Pricing

Sydney Ports proposed that it may be appropriate to provide a differentiated price for Port Botany shuttles (i.e. metropolitan and regional NSW trains servicing Port Botany) on the SSFL consistent with pricing on the Metropolitan Freight Network, in order to not further erode port rails' competitive position compared to road. It suggested that differential pricing for port shuttles on the SSFL (or a segment of the SSFL) at a competitive price with road may be a suitable compromise to assist both port freight rail growth and ARTC charging/revenue.

In a supplementary submission to the ACCC, Sydney Ports submitted that opportunity pricing could increase the efficiency of the SSFL on the following basis:

- longer freight services typically have loads matched to their motive power, providing slower acceleration curves;
- conversely Metropolitan Port traffic trains are shorter with motive power potentially in excess of loads; and
- Metropolitan Ports traffic trains may therefore be slotted in between other freight services on an opportunity basis.

Sydney Ports submitted that it may promote network efficiency to price differentially to encourage fulfilment of these opportunities.

⁷⁶ Ibid., pp. 8-9.

⁷⁷ Sydney Ports, *Supplementary Submission*, pp. 2-3.