

Ms Margaret Arblaster
General Manager - Transport
Regulatory Affairs Division
Australian Competition and Consumer Commission
GPO Box 520J
MELBOURNE VIC 3001

Dear Ms Arblaster,

Thank you for the opportunity to comment on the access undertaking submitted to the Australian Competition and Consumer Commission by Australian Rail Track Corporation Limited.

The submission of the New South Wales Government is set out in the attached document.

Yours sincerely,

Roger Wilkins
Director-General

AUSTRALIAN RAIL TRACK CORPORATION ACCESS UNDERTAKING - ISSUES PAPER

SUBMISSION FROM THE NSW GOVERNMENT

NSW has reviewed the ARTC access undertaking and the Issues Paper prepared by the ACCC. In general terms, NSW has no objections to the approach taken by ARTC.

NSW's comments on specific issues referred to in the Issues Paper, but not limited to the questions posed in that Paper, are as follows.

3.1 Part 1 'Preamble'

The access undertaking states at 1.1 that ARTC has been established pursuant to the Intergovernmental Agreement between the Commonwealth, New South Wales, Victoria, Queensland, Western Australia and South Australia in order to create a single process of access to the Interstate Rail Network consistent with the Competition Principles Agreement and the National Rail Summit Heads of Agreement.

Interstate rail freight concerns transporting freight from origin to destination, for example, from Sydney to Melbourne, Melbourne to Perth, Melbourne to Brisbane. The limited area covered by the ARTC undertaking in the definition of "Network" cannot achieve true interstate rail access as it cannot provide access for these train paths. This difficulty inherent in the ARTC undertaking should be recognised as something that cannot be addressed by ARTC alone, or by individual states or territories, but rather as a matter that will be dealt with in the long term by ARTC and the States and Territories working together.

The rail access provider in NSW, Rail Infrastructure Corporation, is currently working with ARTC in order to see whether the interface between the ARTC network and the NSW network can be improved.

3.2 Part 2 'Scope and Administration'

The term of five years for the undertaking proposed by ARTC appears reasonable, particularly given that it is the first undertaking lodged with the ACCC in relation to rail and the undertaking process is so far untested in rail.

3.3 Part 3 'Negotiating for Access'

NSW supports the negotiate/ arbitrate model of the ARTC undertaking, an approach that has also been adopted by NSW in the NSW Rail Access Regime.

The detailed approach taken by ARTC in setting out very specific steps to be taken at each stage of the negotiation and dispute resolution processes may have the effect of making those processes slower and more cumbersome.

Arbitration is to be conducted in accordance with the Commercial Arbitration Act 1986 (SA) (clause 3.11.4). The South Australian jurisdiction may not be suitable to all applicants, and may result in an arbitration being carried out some distance from an area of track that may be in dispute. It may be better to have some flexibility in the jurisdiction for arbitration.

3.4 Part 4 'Pricing Principles'

NSW supports the floor/ceiling approach to pricing taken by ARTC, an approach that has also been taken in the NSW Rail Access Regime.

The NSW approach to rail access pricing, as set out in the reports of the Independent Pricing and Regulatory Tribunal Report on *Aspects of the NSW Rail Access Regime* and the current draft report, *Valuation of Certain Assets of the Rail Access Corporation*, would appear to contain more constraints on pricing than that of ARTC. For example, the mechanism for calculating ARTC's DORC valuation allows ARTC to include formation value such as earthworks which includes cuttings and embankments, whereas the valuation of NSW rail assets does not. Further, it is not clear how the access charges referred to in Part 4 relate to the floor and ceiling.

However, as NSW pricing in the Hunter Valley may be closer to the ceiling than that of ARTC it may be that in the case of ARTC a more rigorous approach is not as necessary. In any event, so long as pricing meets the necessary competition objectives, consistency between different regimes should not be an issue.

Some comments on the ability of ARTC to invest in new infrastructure are set out below.

3.5 Part 6 'Network Connections and Additions to Capacity'

The provisions of Part 6 concerning Network Connections and Additions are very general.

Clause 6.1 provides that ARTC will consent to other owners of track connecting to its network where, among other things, other track owners ensure that users of such track comply with the directions of ARTC's train controllers regarding entry to and exit from ARTC's network. The provision is not clear on how the changeover to following directions from the train controllers of the other track is to be managed, and the provision is unlikely to reflect how things work in practice, which NSW understands involves a more co-operative approach between train controllers of track owned by different owners.

It is noted that under the pricing arrangement, where ARTC proposes to only recover return on capital and no economic depreciation, ARTC would not have adequate funds to repay the principal on any debt raising. There is consequently little scope for ARTC to raise funds to invest in new assets.

3.6 Part 7 'Network Transit Management'

ARTC's objective in train management is to exit trains according to their contracted exit time. Conflicts between trains in transit are to be managed according to the Network Management Principles in Schedule F.

The Network Management Principles appear reasonable as far as ARTC is concerned. It is noted that ARTC does not need to deal with issues of priority for passenger services, which is a legislative requirement in NSW.

