LOGISTICS ON THE RIGHT TRACK

20 July 2007

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

Dear Ms Arblaster,

Thank you for the opportunity for SCT Logistics ("SCT") to provide comments to the ACCC on the draft Access Undertaking submitted by the ARTC.

SCT Credentials

The Commission will be aware of the credentials of SCT from our previous submissions to and discussions with members the Commission and staff. Accordingly, I have not dwelled on these in this submission.

However, we would note several relevant details.

SCT is a major rail operator on the East/West corridors (Melbourne/Perth and Parkes/Perth), accessing track controlled by the ARTC and the subject of the draft Undertaking. It does not presently operate on the North/South corridor (also the subject of the draft Undertaking.) SCT has, however, invested in terminal facilities and land that will allow it to operate North/South services at some time in its development. SCT has also ordered a number of locomotives and additional rolling stock that will give it the capacity to increase its present rail volumes.

Of particular concern to SCT is that our past and planned investments have been predicated on a general continuation of the 2002 Undertaking. The draft Undertaking however has the effect of **substantially** increasing access prices on the East/West corridor and of not

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

providing any mechanism that encourages or drives the ARTC to achieve productivity improvements over time. SCT has no North/South volumes. It is SCT's belief that the proposed pricing changes will decrease the competitiveness of rail on the East/West corridor and cause rail to lose market share, particularly to sea.

SCT is a member of the Freight Rail Operators Group and generally supports the separate submission made by this group. We have made this separate submission to identify our particular concerns and to provide further information to the Commission.

General Concerns

Before specifically addressing the draft Undertaking and the issues raised by the Commission, we would offer three points to put the Undertaking into a contextual relationship between the ARTC and its users.

1. Firstly, we would advise that in our opinion, the ARTC has not undertaken any true consultation with SCT (as a major customer) regarding the draft Undertaking now lodged with the ACCC. Rather, the ARTC has merely provided several opportunities for SCT to talk to the ARTC but there has been no subsequent addressing by the ARTC of the issues raised by SCT; there has been no response nor feedback; there has not even been any specific, formal acknowledgement of the issues raised by SCT and there has been no relevant change to ARTC's original draft Undertaking. We understand that other users have experienced a similar lack of response to issues raised by them. Accordingly, we would ask that the ACCC take into account that the Undertaking before the ACCC is not the product of discussions and negotiations with users and potential users but is a document prepared in isolation and against the wishes of the users..

   On page 23 of its Explanatory Guide, the ARTC records its perception of the "industry consultation" carried out and states that this consultation "... resulted in substantial changes to many of ARTC's initial proposals." This is not the users' perception of the process nor the outcome.

MELBOURNE DEPOT 7 Westlink Court, Altona, Vic. 3018 P.O. Box 373, Laverton, Vic 3028 Phone: (03) 9931 5333 Fax: (03) 9369 9745 OPS. Fax: (03) 9369 9747 Office.

HEAD OFFICE 7 Westlink Court, Altona, Vic. 3018 P.O. Box 373, Laverton, Vic 3028 Phone: (03) 9931 5333 Fax: (03) 9369 9746

ADELAIDE DEPOT 608 Grand Junction Road, Regency Park S.A. 5010 Phone: (08) 8260 7800 Fax: (08) 8260 6092

BRISBANE DEPOT 30 Bellrick Street, Acacia Ridge, QLD 4110 Phone: (07) 3345 8333 Fax: (07) 3345 8881

SHEPPARTON DEPOT 417 Benalla Road P.O. Box 7279 Shepparton 3632 Phone: (03) 5829 2661 Fax: (03) 5829 2712

SYDNEY DEPOT Building 2a, Yennora Distribution Park Loftus Road, Yennora N.S.W. 2161 Phone: (02) 9721 5444 Fax: (02) 9721 5455 Office. Fax: (02) 9721 5499 OPS.

PERTH DEPOT 800-820 Abernethy Road Forrestfield Distribution Park, Locked Bag 31, Cloverdale, W.A. 6105 Phone: (08) 9352 8111 Fax: (08) 9352 8475 Office. Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

We have attached a copy of our original letter submission to the ARTC – dated 25 January 2007. This remains SCT's considered position and is forwarded herewith as part of SCT's formal response to the Commission's request for comments on the draft undertaking.

2. Secondly, despite words to the contrary in the ARTC covering Explanatory Guide, the draft 2007 Undertaking does differ substantially from the former, 2002 one. In particular, all of the issues raised by SCT in its original letter of 25 January 2007 to the ARTC (as noted in 1. above and as attached) are differences between the original, now-expired, 2002 Undertaking and the new draft.

3. Thirdly, we believe that the wording used in the Explanatory Guide (justifying the draft Undertaking as reasonable and in the interests of the rail industry) is inconsistent with the actual content of the draft Undertaking.

   For example, pages 5 and 12 both note *"... the ARTC sees no compelling reason to substantially adjust the formula for access to the network to that created by the 2002 ARTC Access Undertaking. ..."* Please contrast that statement with the issues raised by SCT in its letter to the ARTC.

   Further, page 15 notes that in the 2002 Undertaking the "... greater of 2/3rds CPI and CPI-2% ...provide(s) pricing certainty ... and result(s) in real ongoing price reduction" yet in the new draft Undertaking the pricing structures proposed by the ARTC allow for full CPI escalation and an immediate real increase of 10% that largely recovers the "real ongoing price reduction." It would seem rather contradictory to claim a benefit from reducing real access prices through the 2002 Undertaking duration and then claim it was necessary to lift the access charges back up to their previous real level through the 10% real appreciation proposed in the 2007 Undertaking.

   On page 17, the ARTC Explanatory Guide seeks to limit changes to the 2002 Undertaking to "address the market and legislative circumstances on the expanded ARTC network." None of the issues raised by SCT in its letter to ARTC relate to the "expanded" network. All address fundamental issues relating to existing operations and activities where the ARTC has proposed changing the 2002 "model". Similarly, on page 22 of the Explanatory Guide, the ARTC again states that the 2007 Undertaking

MELBOURNE DEPOT 7 Westlink Court, Altona, Vic. 3018 P.O. Box 373, Laverton, Vic 3028 Phone: (03) 9931 5333 Fax: (03) 9369 9745 OPS. Fax: (03) 9369 9747 Office.

HEAD OFFICE 7 Westlink Court, Altona, Vic. 3018 P.O. Box 373, Laverton, Vic 3028 Phone: (03) 9931 5333 Fax: (03) 9369 9746

ADELAIDE DEPOT 608 Grand Junction Road, Regency Park S.A. 5010 Phone: (08) 8260 7800 Fax: (08) 8260 6092

BRISBANE DEPOT 30 Bellrick Street, Acacia Ridge, QLD 4110 Phone: (07) 3345 8333 Fax: (07) 3345 8881

SHEPPARTON DEPOT 417 Benalla Road P.O. Box 7279 Shepparton 3632 Phone: (03) 5829 2661 Fax: (03) 5829 2712

SYDNEY DEPOT Building 2a, Yennora Distribution Park Loftus Road, Yennora N.S.W. 2161 Phone: (02) 9721 5444 Fax: (02) 9721 5455 Office. Fax: (02) 9721 5499 OPS.

PERTH DEPOT 800-820 Abernethy Road Forrestfield Distribution Park, Locked Bag 31, Cloverdale, W.A. 6105 Phone: (08) 9352 8111 Fax: (08) 9352 8475 Office. Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

follows the 2002 Undertaking except to "satisfactorily address the market or legislative circumstances on the expanded ARTC network."

Finally, the Explanatory Guide has been very selective in how it addresses changes from the 2002 Undertaking. It is more of a "selling" document rather than a clinical listing of the changes and their significance. Little has been made of the issues raised by SCT and the casual reader would be left thinking that the changes were minor.

In summary then, there is now greater distrust generally of the ARTC than existed at the commencement of the 2002 Undertaking. We would refer the Commission to the judgement of Gillard J dated 27 September 2007 in "Twentieth Super Pace Nominees Pty Ltd v Australian Rail Track Corporation Ltd" – particularly pages 21, 24 and 49-67. This case provides just one example of what we perceive as the recalcitrance of the ARTC and its preparedness to act unreasonably.

Accordingly, we would request that the ACCC ensures that the Undertaking serves to limit the ability of the ARTC to be "creative" within any Undertaking confines. In particular, we are concerned that whilst the "reference service" (which in itself is relatively loosely defined) may be controlled within the Undertaking, there will be excessive freedom for the ARTC to use any variation in the operating parameters of a service as an excuse to apply terms and conditions substantially outside the Undertaking.

General Overview and Considerations

The ARTC is just not any other corporation. It occupies a special role in Australia as an arm of Government and is the custodian of a major portion of the country's infrastructure. As such it occupies a similar position for the public and in the economy of the interplay of the road authorities and Government funding. Use of rail also competes with road use. Any review of the 2007 Undertaking must take these factors into consideration and not just consider the economic performance of the ARTC entity.

Many of the proposals put forward by the ARTC in its draft 2007 Undertaking (compared to the 2002 Undertaking) will damage rail's ability to compete equitably with road – particularly those related to the increased pricing. The draft 2007 Undertaking proposes to

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

lift East-West access charges by a once-off increase of 10% followed by full-CPI increases. Both changes to the 2002 Undertaking should be rejected by the ACCC.

The Explanatory Guide comfortably informs us that the decreased real access rates have contributed to the increase in market share of rail to the west but then proposes to increase the East-West access rates dramatically. If a lowering of the rates increases market share, then will not the proposed increase damage market share? In truth, both road and rail have had effective real decreases in access and operating costs over the past decade such that this has kept the playing field somewhat level. It is usual for businesses generally to be expected to have prices that decrease over time to reflect expected and achieved productivity improvements. Our understanding is that it is generally a requirement of the ACCC that some productivity improvement expectation should be built into pricing limits and we would request the ACCC to require that in this instance.

Further, in SCT's letter of 25 January 2007 to ARTC, we outlined our concerns with the proposed DORC approach to pricing limits. In addition to the more technical argument therein, it should be noted that rail competes directly with road, sea and, to a lesser extent, with air. In determining what is an acceptable economic return for the ARTC, one needs to have consideration of the returns on capital achieved by the Government for each of the provision of road, sea and air infrastructure. Corporatisation of the provision of rail infrastructure but not of the competing infrastructure should not be allowed to confuse or cloud the issue. The ARTC has proposed that it use a corporate cost-of-capital in determining pricing ceiling. We would submit that this is not appropriate. The appropriate return on capital invested should be that which the competing services of road, sea and air experience.

There is also the public interest test as to how access pricing and terms and conditions will impact on use of rail for freight and accordingly, particularly, congestion and drama on our roads.

Further, the ARTC has a responsibility to ensure that Australia's use of rail moves into the 21st century and beyond – or at least to ensure that there is an environment that allows or encourages operators to do so. Accordingly, we believe that a fundamental pricing concept should be for the ARTC to price its reference service as a desired service with all other services (faster or slower) incurring additional charges that reflect directly the additional costs or consumption of assets incurred by the ARTC relative to the reference service

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

(possibly plus a margin). The two desirable concepts being proposed are (a) that the desired, standard service may be modified over time and (b) that additional charges are controlled on a direct cost-plus basis. It is interesting to contemplate what would be today's rail picture if the ARTC Undertaking model were applied from the early 1900's. We would possibly have track speeds consistent with Puffing Billy.

SCT recently applied for an increased axle loading and speed combination that was consistent with present locomotive track loadings. This application was supported by technical reports. Despite this, the application was rejected and the 2002 Undertaking model gave SCT little alternative but to accept this rejection. A new Undertaking should provide a mechanism for such technological improvement to be pursued. This has happened in road – for example, higher mass limits with road-friendly suspension and the introduction of B-doubles and B-triples with B-quadruples being mooted.

Specific Issues

Firstly, we would submit the points and detail raised in our letter of 25 January 2007. In summary, these are as follows.

(a) The ARTC has not recognised its responsibility as the holder for Australia of public infrastructure. In our letter, we have offered four specific points for inclusion in the Undertaking.

(b) SCT supports some of the new pricing initiatives proposed as measures that will reward better performance by operators. However, any revenue raised by these measures should be seen as trade-offs with the existing revenue base - not as additional measures to raise additional revenue for the ARTC.

(c) It is generally accepted practice that in an efficient world and particularly one where best practice is a requirement, that prices should decrease in real terms. The less-than-CPI escalation formula in the 2002 Undertaking should be retained.

(d) Clawback of less-than-maximum price increases should not be allowed in the Undertaking.

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

(e) The Undertaking should not allow discretion with respect to additional charges for non-reference services. Any charges for differences should be restricted to the actual cost incurred by the ARTC (plus possibly a margin.) Without such a restriction, the ARTC has unreasonable freedom to judge services as non-reference and charge additional fees without practical limit.

(f) We have also noted a number of concerns with the calculation of floor and ceiling limits. Please refer to the letter for details.

Of particular concern is the use of DORC. In affect, by bringing the cost of the track up to today's cost, the methodology increases the asset base by inflation for each year between the date of the investment and the date of the valuation. Thus, if a track is re-valued at (say) five year intervals then the track value will have increased by five years of inflation (less five years depreciation). Putting aside the depreciation effect, this automatically increases the ceiling by five years of inflation. There are three ways of considering this. Either, one should include the increase in value of the track as one of the returns earned by the track owner as would, for example, be the similar increase in value earned by a superannuation fund (or unit trust) when the shares held by it increase in value or, alternatively, a real cost of capital rather than a nominal cost of capital should be applied or, again alternatively, the actual non-escalated investment by the owner should be taken as the capital base. The ARTC appears to have re-valued the track and then applied a nominal cost of capital. This is incorrect.

Given the role of the ARTC in providing national infrastructure, we would support the use of the actual, historical investment or cost as the asset base with the application of the similar returns-on-capital earned by roads, marine and air to determine revenue ceilings.

Specific Queries raised in the Issues Paper

Section 5.1 Does the Undertaking provide sufficient clarity about the broad approach to negotiating access and the proposed terms and considerations of access?

No! The Undertaking only restricts the ARTC for services that are considered **unilaterally by the ARTC** as reference services. ("Trust me") Any non-reference service is not

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

similarly restricted. It is, for example, possible that the use of some of SCT's wagons that differ from the more standard container flats used by others, could result in a service being classified as non-reference with the ARTC then being relatively free to charge different and/or excessive rates. This was the experience when SCT sought to include its new, to-be-delivered AC locomotives in its services. The ARTC initial approach was that as these were different locomotives with different technology (even though they are more track-friendly), then additional fees would be charged. This was subsequently argued away but remains indicative of the freedom that may be open to the ARTC with the Undertaking being limited to a reference service with variations at its discretion. SCT accepts that if a service consumes additional ARTC resources then additional fees are reasonable. However, such fees should be limited to the actual additional costs of the ARTC (plus possibly a margin.)

Accordingly, the Undertaking should be amended to specifically state that any additional charges for non-reference services should be limited to ARTC's additional costs or consumption of resources.

Section 5.1 Does the Undertaking provide the basis for outcomes that balance the interests of ARTC, potential access seekers and the public interest?

No! There is little or no consideration of the Public Interest. Such consideration should recognise the benefits to, and the public perception of the benefits of using rail to lessen road congestion, trauma and costs.

The proposed pricing will act against the Public Interest.

Section 5.2 Is the proposed term for the Undertaking appropriate, given the nature of the services covered by the Undertaking and the industry more generally?

The five year period is too short – as has been demonstrated to some extent now that the 5-year 2002 Undertaking is up for review. The investment time-frame for a rail operator owning terminals, locomotives and rolling stock is some ten to twenty years. Within that time span, the ARTC is essentially in an absolute monopoly position. SCT has invested substantially in the above assets. This has been done generally on the basis that the terms of the 2002 Undertaking would prevail long-term. Despite the proposed dramatic increases in access prices being sought by the ARTC, SCT has little option but to continue to operate

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

its rail activities. Much of the increase will immediately go against SCT's bottom line although it will seek to ameliorate that over time. The ability of the ARTC to raise its prices in such a pre-emptory fashion without the ability of the user to walk away is indicative of its monopoly characteristics – a monopoly position that creates the need for ACCC intervention and control.

It should be noted that it is the sudden end of the 2002 Undertaking that is as problematical as the duration per se. Typically, freight contracts run for several years. If costs are known to be rising at some time in the future, then to some extent this can be built into renew/review negotiations with customers and potential customers. It would thus be sensible for the Undertaking to note that any step changes to pricing (i.e. apart from allowing the 2/3CPI or CPI-2 annual increases) can only be implemented after at least five years advice.

Section 5.2 Are the arrangements in the Undertaking related to the new Line appropriate?

No! The concept of upgrading part of a service and then charging cost-of-capital returns to use that conflicts with the approaches generally used on all competing infrastructure. With road infrastructure, there are some toll roads that use a similar model but otherwise the infrastructure access provider has a general responsibility to upgrade the infrastructure where considered necessary. Even with toll roads, alternative pathways are always available to an operator. This is not expected to be the case with the Southern Sydney Freight Line. Taking the Southern Sydney Freight Line model to its extreme, if the whole track from Melbourne to Sydney were rebuilt or refurbished, then the access price would be that necessary to give a cost-of-capital return on full replacement cost – a price that would mean no traffic, no return and damage to the public interest. The proposed Southern Sydney Freight Line model is merely a small example of a model which in extreme leads to a silly outcome.

The above conundrum really demonstrates that the provision of essential infrastructure (national railways) does not lend itself to an ROI model as the alternatives are not ROI driven and the objective is not ROI. The public interest and the environmental issues need to be considered.

Section 5.3 *Does the Undertaking provide ARTC an appropriate level of discretion in applying the prudential criteria?*

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

No! The Undertaking is unreasonably loose in allowing the ARTC full discretion in these areas. This moves the balance of power unreasonably toward the ARTC in this, and many other, negotiations.

It is recognised that the there will be many instances where it is sensible for the ARTC to apply discretion rather than, say, appeal to an independent party. However, there needs to be a check to prevent that discretion being used unreasonably. We would suggest that as a minimum, whenever the ARTC exercises discretion, it be required to inform the other party in writing of its decision and the reasons for that decision giving the other party in turn the right to challenge this in a court or arbitration forum.

Section 5.4 Is there sufficient clarity about the way that the various components of access charges are intended to be applied?

No! The Issues paper states that "all elements of the access fee are subject to negotiation between ARTC and train operators". This should not be seen as acceptable. Given that one of the stated intents is that all operators and potential operators will be treated equally, then it follows that it is necessary for all stated charges to be applied exactly as specified. It would not be acceptable for one operator to negotiate a lower access rate than another operator for whatever reason. This would unreasonably place that operator in an advantageous competitive position. The only allowable variation between operators should be if it can be demonstrated that one operator gives a cost saving to the ARTC. It would then be reasonable for that cost saving to be shared between the ARTC and the operator with the same option on the same terms being made available to all operators and potential operators.

For reference, one should consider the road model. Legislation determines road use (access) prices. All pay it. There is no negotiation. It ensures a level playing field.

Section 5.2 Does the proposed application of the new fixed access price relating to network occupancy, the Excess Network Occupancy charge, encourage efficient provision and use of capacity in the network by train operators for all types of rail traffics?

As noted earlier, such a **concept** whereby inefficient users are charged more than efficient users, is supported by SCT. However, it appears to have been introduced by the ARTC as a

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

source of additional revenue rather than as a driver towards more efficient use of the network. Introduction of such charges should be accompanied by a commensurate reduction in the base charges for standard access. Thus, an operator who did not change its ways would end up paying the same total $ whereas an operator that responded would have a lower charge which would be matched by a commensurate reduction in ARTC's costs.

And yes, operators will always respond to lower charges for changed behaviour (provided the benefits outweigh the costs).

Section 5.2 Does the proposed level and structure of indicative access charges promote effective and sustainable competition among operators as well as between rail freight operators and road and sea haulage companies?

No! The present east/west market shares of rail, road and sea is the result of five plus years of their respective pricing and there has been a degree of stabilisation in the market shares in the latter part of that period. On balance, it is probable that we are already seeing a small movement towards sea freight at the expense of rail.

We would define stability in rail access pricing as the pricing and escalation formula in the 2002 Undertaking (i.e. that base and the real price decrease over time). The draft 2007 Undertaking proposes to immediately lift east/west access rates by 10% **and** to escalate those inflated prices at full inflation and to introduce additional charges such as for excess occupancy and pathway reservation. Thus, compared to today's stability for intermodal competition, rail will go up significantly (in an industry were the overall profit margin is of the order of 4% to 7%) and will continue to escalate at a faster rate than the alternatives (which have generally experienced a real decrease over time). This will significantly decrease sustainable competition between rail freight operators and road and sea haulage and will see past trends reverse.

Section 5.4 Is the method for setting non-indicative rail services clearly set out? Is there sufficient guidance about how deviations from the indicative service will be taken into account in setting access prices? Does the Undertaking provide access seekers with an appropriate level of certainty about how non-reference services will be priced?

No! No! No! Any variation in pricing for a service that varies from a reference service should only recognise any additional (or saved) costs to the ARTC. Non-reference services

MELBOURNE DEPOT 7 Westlink Court, Altona, Vic. 3018 P.O. Box 373, Laverton, Vic 3028 Phone: (03) 9931 5333 Fax: (03) 9369 9745 OPS. Fax: (03) 9369 9747 Office.

HEAD OFFICE 7 Westlink Court, Altona, Vic. 3018 P.O. Box 373, Laverton, Vic 3028 Phone: (03) 9931 5333 Fax: (03) 9369 9746

ADELAIDE DEPOT 608 Grand Junction Road, Regency Park S.A. 5010 Phone: (08) 8260 7800 Fax: (08) 8260 6092

BRISBANE DEPOT 30 Bellrick Street, Acacia Ridge, QLD 4110 Phone: (07) 3345 8333 Fax: (07) 3345 8881

SHEPPARTON DEPOT 417 Benalla Road P.O. Box 7279 Shepparton 3632 Phone: (03) 5829 2661 Fax: (03) 5829 2712

SYDNEY DEPOT Building 2a, Yennora Distribution Park Loftus Road, Yennora N.S.W. 2161 Phone: (02) 9721 5444 Fax: (02) 9721 5455 Office. Fax: (02) 9721 5499 OPS.

PERTH DEPOT 800-820 Abernethy Road Forrestfield Distribution Park, Locked Bag 31, Cloverdale, W.A. 6105 Phone: (08) 9352 8111 Fax: (08) 9352 8475 Office. Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

are essentially not covered by the draft Undertaking with the ARTC having relatively free licence as to how to price them. Inclusion of the cost-plus limitation would immediately bring all services under the Undertaking umbrella.

Section 5.4 Is there sufficient clarity about how the proposed access prices escalation approach will work in practice? To the extent that the proposed escalation formula allows ARTC to maintain the real level of access prices and to accumulate increases over time, does this represent an acceptable balance of interests, as required under Part IIIA?

Yes, (only to the first question), there is sufficient clarity about how the escalation approach will work. No (to the second question), the proposed escalation formula does not represent an acceptable balance!

Please see our letter of 27 January to ARTC for our critique of the new escalation and application approach. It is a radical departure from that which has successfully operated in the 2002 Undertaking. The proposed approach does not recognise the requirement for some productivity improvements. **It also does not recognise that the ARTC volumes have gone up substantially over the past five years**. It does not recognise that businesses have difficulty with pricing "shocks". (If an increase were warehoused by the ARTC and then several CPI increases applied all at once, there would be little or no opportunity in the short term for an operator to recover part or all of that increased cost. Also, it is completely within the ARTC's control as to whether in any period it seeks an increase to which it is entitled. If, in any year, it decides not to seek an increase then that should be its decision.)

Section 5.4 Is it appropriate to "reserve" capacity from the date the access agreement is executed?

The answer to this is not straight forward. In concept, if the ARTC is giving up capacity that could otherwise be used (sold) then it is reasonable that the "reserver" make some recompense to the ARTC. Also, the planning and implementation of a service can take some considerable time. Further, by definition, plans are uncertain. In SCT's case, there have been times when it has not been sure as to whether a service would "take off" or not. If not, then no additional pathways would be required. If so, then an additional pathway might be required.

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

The issue is further complicated by consideration as to whether the ARTC is being denied revenue or not. (i.e. would another operator have used the path as an additional path rather than as a substitute path.)

On balance, we would suggest that the primary consideration should be that it be seen as an allocation of existing revenue rather than as additional revenue to the ARTC and at whatever level it is set, then base access rates should be adjusted downwards accordingly.

We doubt if there is any sound theoretical methodology for developing the appropriate level or timing of a reservation fee and would suggest the following. The reservation fee should commence (say) four weeks after contract signing at (say) 10% of the flagfall rate and progressively increase to 100% of the flagfall rate by (say) 12 months. The ARTC should be free to offer the path to others for use at full payment with the reservation fee being refunded to an applicant to the extent that the ARTC had otherwise sold it. The applicant would be required to give (say) four weeks notice of "intention to run" at which point (from the fourth week) the ARTC would not be free to sell to others but the applicant would then have to pay the full flagfall.

In all instances, the ARTC should be required to reduce base rates so that this allocated its revenue rather than was a source of additional revenue otherwise the introduction of these additional fees becomes a de-facto price increase. (Any additional revenue by the ARTC also moves the competitive balance between sea and road users and rail users.)

Section 5.6 Is it appropriate for ARTC to earn a return on capacity funded by an operator?

No! We would add that it is equally not appropriate for the ARTC to earn a return on capacity that has been paid for by others – whether operator, Government or others. In particular, much of the infrastructure has been paid for by the Government as gifted infrastructure and/or general or specific-task grants. It is not appropriate for the ARTC to earn a return on these assets.

Finale

Once again, thank you for the opportunity to make this submission. We have found the timing tight given the detail to be covered and have not completed our review of some of

MELBOURNE DEPOT 7 Westlink Court, Altona, Vic. 3018 P.O. Box 373, Laverton, Vic 3028 Phone: (03) 9931 5333 Fax: (03) 9369 9745 OPS. Fax: (03) 9369 9747 Office.

HEAD OFFICE 7 Westlink Court, Altona, Vic. 3018 P.O. Box 373, Laverton, Vic 3028 Phone: (03) 9931 5333 Fax: (03) 9369 9746

ADELAIDE DEPOT 608 Grand Junction Road, Regency Park S.A. 5010 Phone: (08) 8260 7800 Fax: (08) 8260 6092

BRISBANE DEPOT 30 Bellrick Street, Acacia Ridge, QLD 4110 Phone: (07) 3345 8333 Fax: (07) 3345 8881

SHEPPARTON DEPOT 417 Benalla Road P.O. Box 7279 Shepparton 3632 Phone: (03) 5829 2661 Fax: (03) 5829 2712

SYDNEY DEPOT Building 2a, Yennora Distribution Park Loftus Road, Yennora N.S.W. 2161 Phone: (02) 9721 5444 Fax: (02) 9721 5455 Office. Fax: (02) 9721 5499 OPS.

PERTH DEPOT 800-820 Abernethy Road Forrestfield Distribution Park, Locked Bag 31, Cloverdale, W.A. 6105 Phone: (08) 9352 8111 Fax: (08) 9352 8475 Office. Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

the technical issues. We would appreciate being able to make a further submission should other issues come to light.

We would be most pleased to discuss this submission further and to offer additional information and assistance to the Commission should this be desired.

I can be contacted through SCT or directly on 0418 271 876 or masonblack@bigpond.com.

Yours faithfully,

Peter Mason
Director

MELBOURNE DEPOT
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS.
Fax: (03) 9369 9747 Office.

HEAD OFFICE
7 Westlink Court,
Altona, Vic. 3018
P.O. Box 373,
Laverton, Vic 3028
Phone: (03) 9931 5333
Fax: (03) 9369 9746

ADELAIDE DEPOT
608 Grand Junction Road,
Regency Park S.A. 5010
Phone: (08) 8260 7800
Fax: (08) 8260 6092

BRISBANE DEPOT
30 Bellrick Street,
Acacia Ridge, QLD 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881

SHEPPARTON DEPOT
417 Benalla Road
P.O. Box 7279
Shepparton 3632
Phone: (03) 5829 2661
Fax: (03) 5829 2712

SYDNEY DEPOT
Building 2a, Yennora
Distribution Park Loftus
Road, Yennora N.S.W. 2161
Phone: (02) 9721 5444
Fax: (02) 9721 5455 Office.
Fax: (02) 9721 5499 OPS.

PERTH DEPOT
800-820 Abernethy Road
Forrestfield Distribution Park,
Locked Bag 31,
Cloverdale, W.A. 6105
Phone: (08) 9352 8111
Fax: (08) 9352 8475 Office.
Fax: (08) 9352 8273 OPS.

Twentieth Super Pace Nominees Pty. Ltd. (ACN 005 855 327) T/As **SCT LOGISTICS** (ABN 37 757 194 158)

LOGISTICS ON THE RIGHT TRACK

25 January 2007

Attention: David Marchant
ARTC
PO Box 10343
Gouger Street
Adelaide SA 5000

Dear David,

RE: Australian Rail Track Corporation
2007 Access Undertaking for ARTC's Interstate Rail Network

We refer to your correspondence dated 18 December 2006 and in order for you to take into consideration our views as a customer to ARTC we submit the following points:

SCT is a member of the Freight Rail Operators' Group ("FROG") and generally supports the submission made by that group. However, this separate submission is made to raise additional issues and to note a difference with the FROG submission. In particular, SCT supports the FROG proposal to workshop the many issues arising from the draft ARTC Undertaking.

We note that the original schedule was for the draft Undertaking to be released in September 2006 whereas it was finally released in late-December 2006. Whilst this decreases the elapsed time before the present Undertaking expires, the late release should not become an excuse to compress the discussion and review process with stakeholders. The ARTC may care to seek an extension of the present Undertaking to cover any gap between the expiry date of the present Undertaking and a reasonable start date for a new Undertaking. SCT would support such an extension.

1. Role and responsibilities of the ARTC

The draft Undertaking appears to have been prepared simply on the basis that the ARTC is a commercial organization owning a monopoly asset. Such an approach is probably acceptable within the Trade Practices Act. However, in addition, the ARTC has a role as an arm of Government somewhat

MELBOURNE DEPOT	HEAD OFFICE	PERTH DEPOT	SYDNEY DEPOT	BRISBANE DEPOT	ADELAIDE DEPOT
P.O. Box 373 Laverton, Vic, 3028 7 Westlink Court., Altona, Vic, 3018 Phone: (03) 9931 5333 Fax: (03) 9369 9745 OPS Fax: (03) 9369 9747 Off	PO Box 373 Laverton, Vic, 3028 7 Westlink Court., Altona, Vic, 3018 Phone: (03) 9931 5333 Fax: (03) 9369 9746	Locked Bag 31, Cloverdale, W.A. 6105 Forrestfield Distribution Park, Forrestfield, W.A. 6058 Phone: (08) 9352 8111 Fax: (08) 9352 8273 OPS. Fax: (08) 9352 8475 Off.	P.O. Box 257, Toongabbie, N.S.W. 2146 13 Rowood Rd., Prospect, N.S.W. 2145 Phone: (02) 9896 4844 Fax: (02) 9896 4862	30 Bellrick St., Acacia Ridge, Qld. 4110 Phone: (07) 3345 8333 Fax: (07) 3345 8881 OPS. Fax: (07) 3344 2987 Off.	145 Railway Terrace Mile End, S.A. 5031 Phone: (08) 8351 8422 Fax: (08) 8351 8433

Twentieth Superpace Nominees Pty. Ltd. (ACN 005 855 327) T / As
SPECIALIZED CONTAINER TRANSPORT

similar to the road-owning authorities, to make railway infrastructure available on an equitable basis, bearing in mind so-called externalities (such as public interests, road costs and congestion and the benefits to the nation of efficient and effective rail infrastructure.

The draft Undertaking has not recognised such a responsibility.

By way of reference, the preamble to the lease by the ARTC of the NSW track includes an agreed objective of "maximisation of the environmental benefits of rail transport and alleviation of road congestion",

We accept that it is not the role of the ACCC in accepting or rejecting the draft, to consider this and whether the ARTC has a role to encourage use of rail. However, if such a basis is not fundamental to the Undertaking then SCT would seek to have the owners of the ARTC intervene.

In particular, we would wish to see :-

(a) recognition that one of the ARTC's fundamental and key objectives is to treat all access seekers and users equally without regard to the type of train or traffic being carried with each part of the Undertaking being tested against that objective;

(b) deletion of the statement that "prices have been set to stimulate above rail competition". They have not and pricing cannot and will not stimulate competition;

(c) elimination of techniques that seek to increase real access rates by stealth (ie the application of add-on charges);

(d) elimination of all references to the ARTC having a role to consider and/or intervene and/or interfere in the above-rail market.

2. <u>New Charges</u>

The draft Undertaking proposes a new set of charges including "excess network occupancy charges", "prime path charges" and "reservation fees". SCT is not opposed to such concepts as a way of recognising those that use prime resources and/or more resources should reasonably be expected to contribute a greater share. However, they should not be a source of additional revenue to the ARTC. Rather, they should only be a reallocation of the revenue that would otherwise be earned by the ARTC. The benefit to the ARTC should be in the changed behaviour of operators such that capacity and/or utilisation of the track would increase – particularly utilisation at off-peak times.

> As presently presented in the draft Undertaking, the effect of the new and additional charges will be to lift the effective access fee paid by SCT (and other operators) significantly. We would strongly oppose such (by stealth) increases.

Rather, we would suggest that the flagfall and gtk reference rates should be reduced to reflect the expected additional use of the track and additional revenue from the new charges. As stated above, without such a commensurate reduction, we would strongly oppose the new and additional charges.

3. <u>Escalation</u>

It is generally-accepted practice that in an efficient world and particularly one where best-practice is a requirement, that prices should decrease in real terms. In other words, escalation should occur at a lower rate than inflation.

This was embodied in the present Undertaking by limiting escalation to 2/3 of CPI or CPI-2%, whichever gave the better return to the ARTC.

However, the less-than-inflation cap has been dropped from the revised undertaking.

The new Undertaking should include the capping provisions that are in the present Undertaking.

4. Clawback

The present Undertaking prevents clawback and the banking of inflation increases if they are not taken by the ARTC in any period. The new draft Undertaking has dropped such provision.

The concept of being able to bank inflation increases and then apply them (perhaps en masse) at a later date is not acceptable.

Firstly, it is within the ARTC's absolute discretion as to whether to apply increases (within the Undertaking limits) at any review date. Thus, an available increase not applied, is a conscious decision by the ARTC at the time to forego such an increase. In other words, if the ARTC wishes to obtain each and every allowable increase, then the mechanism in the present Undertaking (with its no clawback provision) allows this. There is no need to allow for clawback.

Secondly, businesses in general and SCT in particular, would be damaged by large and lumpy (and possibly unexpected) increases in costs.

In summary, allowing clawback is not acceptable and there should be no need for an efficient ARTC to require this anyway.

5. Calculation of non-reference charges and applicability

The draft Undertaking is vague as to how the quantum of variations from the Indicative Access Charges will be determined. Implicitly, this will be left to the discretion of the ARTC. Additionally, the ARTC has sought discretion to vary when the new and additional charges (including "excess network occupancy charges", "prime path charges" and "reservation fees") will be applied.

The Undertaking should not allow such discretion.

The Undertaking should specifically limit any additional charges to any additional costs incurred by the ARTC plus an allowable margin and limit the ARTC's discretion in varying the other parameters.

6. Determination of a Floor and Ceiling

As noted above, the draft Undertaking proposes a starting set of prices for various track segments and limits escalation of those prices. In addition, the draft proposes some potential for the ARTC to apply other additional charges. SCT has already recorded above that it believes that there needs to be much tighter limitations in the Undertaking as to what can be charged for and how this is to be determined.

In addition, the Undertaking proposes to determine floor and ceiling calculations and to use these to control the minimum and maximum cumulative charges for each segment.

Such an approach is not considered relevant for the ARTC and the methodology proposed is flawed.

MELBOURNE DEPOT	HEAD OFFICE	PERTH DEPOT	SYDNEY DEPOT	BRISBANE DEPOT	ADELAIDE DEPOT
P.O. Box 373 Laverton, Vic, 3028 7 Westlink Court., Altona, Vic, 3018 Phone: (03) 9931 5333 Fax: (03) 9369 9745 OPS Fax: (03) 9369 9747 Off	PO Box 373 Laverton, Vic, 3028 7 Westlink Court., Altona, Vic, 3018 Phone: (03) 9931 5333 Fax: (03) 9369 9746	Locked Bag 31, Cloverdale, W.A. 6105 Forrestfield Distribution Park, Forrestfield, W.A. 6058 Phone: (08) 9352 8111 Fax: (08) 9352 8273 OPS. Fax: (08) 9352 8475 Off.	P.O. Box 257, Toongabbie, N.S.W. 2146 13 Rowood Rd., Prospect, N.S.W. 2145 Phone: (02) 9896 4644 Fax: (02) 9896 4662	30 Bellrick St., Acacia Ridge, Qld. 4110 Phone: (07) 3345 8333 Fax: (07) 3345 8881 OPS. Fax: (07) 3344 2987 Off.	145 Railway Terrace Mile End, S.A. 5031 Phone: (08) 8351 8422 Fax: (08) 8351 8433

Twentieth Superpace Nominees Pty. Ltd. (ACN 005 855 327) T / As
SPECIALIZED CONTAINER TRANSPORT

We have noted briefly some of the issues that need to be addressed.

(a) Many of the assets have been gifted to the ARTC and/or are leased from Governments at nominal fees. Such assets should not be included in any asset base that is valued– whether Segment Specific or Non-segment Specific. The economic rationality of not including these assets (or giving them a negligible value which has the same effect) is further supported by the fact that there are several ex-state railway tracks which have been sold/leased to private enterprise. In these instances the track value has been set at a nominal value and such an approach has, at least in the case of the Victorian Access Regime, been accepted as effective by the National Competition Council.

(b) In several instances, the ARTC has been given Government grants for nominated or un-specified capital works (eg a Federal Government grant of $450 million in 2003/2004). To the extent that others (in this instance the Federal Government) have paid for assets, then these should not be included in any asset base used by the ARTC.

(c) The Undertaking proposes to add both depreciation and a commercial return on assets. There is some double counting under the generally-accepted definition of "return on assets" where "return on assets" is the amount in cents that must be returned each year to the owner from owning a dollar's worth of assets.

(d) The Undertaking proposes to escalate the base values each year and to apply a return on capital rate. This is also double counting. In essence, such an approach would enable the ARTC to add an inflation return to the return on capital. Capital Asset Pricing Models presume that, once spent, the initial capital value is fixed and not inflated each year. This is, of course, why P/E ratios for publicly-listed companies give a lower implied return to capital than does a cost-of-capital calculation. Earnings growth is added to the inverse of the P/E ratio whereas cost-of-capital is applied only to the initial investment.

(e) The Undertaking proposes that the valuation of assets that have a periodic replacement should be forward-looking. As with sub-points (a) and (b) above and given the high level of Government funding necessary, it is not appropriate for the ARTC to anticipate how these assets would be funded in the future. Only assets historically and actually funded by the ARTC should be included in any asset base.

(f) The ARTC uses Directors' Valuations to determine the value of many of the assets on its books. The Annual Report states that such valuations have been determined based on the expected future earnings of those assets. This is a circular approach and any valuation used in determining an asset base for the purposes of floor and ceiling calculations should be limited to the actual historical dollars spent.

(g) Depreciation should not be included as a cost in the calculation of the floor. Depreciation is associated with the return on an asset and the assets remain fixed, irrespective of whether the segment is used or not.

(h) It would appear erroneous to determine the marginal cost based on removing a segment of the track – as proposed by the Undertaking. In practice, the track is fixed and whilst there, does incur standing and environmental charges. The marginal cost should be limited to the cost that would be saved by the ARTC if there were no operators running on it in a period. In other words, the marginal cost is the difference in cost between the track standing idle but ready for use and it being in use.

(i) The Undertaking proposes the use of the Depreciated Optimised Replacement Cost approach for determining asset bases. SCT does not believe that such an approach is appropriate when considering access charges. The assets are principally National Infrastructure assets where the Government(s) have elected to corporatise the ownership of the assets. In such an instance, the value of any asset to be used in determining access charges should be based on its historical, depreciated cost. There should be no return on assets allowed since depreciation enables the owner to recoup the total actual cost.

6. Roll-over of paths

The draft Undertaking appears to propose that where an existing operator elects roll its paths into a new contract, then it is a requirement that all of that operator's paths be rolled en bloc. It is probable that an operator and/or the ARTC may seek some amendments and/or at that time. Accordingly, it would be sensible for the Undertaking to allow the operator to select which paths to roll, to allow changes to others and the cancellation of others.

7. Difference with FROG submission

With respect to the ARTC draft proposing a move to higher flagfalls and lower gtk rates in NSW, we would support and encourage the ARTC's position as a sensible and economic rational one.

It needs to be recognised that paths are a scarce commodity and therefore the move towards a higher flagfall and a lower gtk proportion is a sensible and economically-rational move.

Overall, it would make most sense for the balance between flagfall and gtk rates to move in favour of lower gtk rates and higher flagfalls. Such a move would recognize that paths are generally the scarce resource with sound economic theory proposing that pricing on the basis of use of scarce resource is the best driver for most efficient use of that resource.

Also, the gtk rate is much higher than the marginal cost to the ARTC of additional gtk's.

Kind Regards,

N Ramsey

Noel Ramsey
General Rail Manager

MELBOURNE DEPOT
P.O. Box 373
Laverton, Vic, 3028
7 Westlink Court.,
Altona, Vic, 3018
Phone: (03) 9931 5333
Fax: (03) 9369 9745 OPS
Fax: (03) 9369 9747 Off

HEAD OFFICE
PO Box 373
Laverton, Vic, 3028
7 Westlink Court.,
Altona, Vic, 3018
Phone: (03) 9931 5333
Fax: (03) 9369 9746

PERTH DEPOT
Locked Bag 31,
Cloverdale, W.A. 6105
Forrestfield Distribution Park,
Forrestfield, W.A. 6058
Phone: (08) 9352 8111
Fax: (08) 9352 8273 OPS.
Fax: (08) 9352 8475 Off.

SYDNEY DEPOT
P.O. Box 257,
Toongabbie, N.S.W. 2146
13 Rowood Rd.,
Prospect, N.S.W. 2145
Phone: (02) 9896 4844
Fax: (02) 9896 4862

BRISBANE DEPOT
30 Bellrick St.,
Acacia Ridge, Qld. 4110
Phone: (07) 3345 8333
Fax: (07) 3345 8881 OPS.
Fax: (07) 3344.2987 Off.

ADELAIDE DEPOT
145 Railway Terrace
Mile End, S.A. 5031
Phone: (08) 8351 8422
Fax: (08) 8351 8433

Twentieth Superpace Nominees Pty. Ltd. (ACN 005 855 327) T / As
SPECIALIZED CONTAINER TRANSPORT