



Wednesday, 20 February 2013

Matthew Schroder
General Manager
Fuel, Transport & Prices Oversight Branch
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Vic 3001

By Email: transport@acc.gov.au

Dear Mr Schroder

Asciano Submission to ACCC Draft Decision on the ARTC's Proposed Variation to its Interstate Access Undertaking to Include the SSFL

Background

Asciano welcomes the opportunity to make this submission in response to the Australian Competition and Consumer Commission (ACCC) Draft Decision in relation to the Australian Rail Track Corporation (ARTC) proposed variation of the interstate rail network Access Undertaking to include the Southern Sydney freight Line (SSFL).

Asciano has previously made a submission to the ACCC on this issue in October 2012 noting that the ARTC's proposed pricing for the SSFL is not competitive with Railcorp's rail alternative or road alternatives.

This submission is public.

ACCC Draft Decision

The ACCC Draft Decision is to approve:

- the inclusion of the SSFL in the network covered by the Interstate Access Undertaking;
- the Indicative Access Charge proposed for the SSFL; and
- the mechanism to vary the Indicative Access Charge proposed for the SSFL.

Of these decisions Asciano only has concerns relating to the decision to approve the Indicative Access Charge proposed by ARTC for the SSFL.

In relation to the decision to approve the Indicative Access Charge the ACCC Draft Decision notes that as the SSFL is adjacent to a rail alternative (Railcorp's network) then access seekers can use the existence of this alternative to further negotiate on price with ARTC and that it is this market, rather than ACCC price regulation, that will set the price paid for the SSFL service. Thus the ACCC position is that the Indicative Access Charge approved by the ACCC will provide an upper limit to any negotiated price on the SSFL but the actual price negotiated by an access seeker is likely to be set by reference to Railcorp access charges.

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Asciano recognises that this conclusion is in itself reasonable, however Asciano has concerns as to what may occur if circumstances change.

Asciano Concerns

Asciano is concerned that the Indicative Access Charge if approved may determine the actual price paid in certain circumstances.

The current ACCC position is predicated on the assumption that Railcorp continue to offer access services. This assumption is not guaranteed due to the potential for the Railcorp main south route to become congested in the future. If this occurs then any new freight traffics will have to use the SSFL as there is no longer any feasible alternative route. (In the event that the Railcorp main south route becomes congested in the future there may also be substantial political pressure for existing freight traffics on the Railcorp main south route to move to the SSFL to make these paths available for commuter trains).

The Draft Decision (page 16) recognises that “capacity on the Railcorp main line is completely utilised by freight and passenger services for parts of the day”. Given the ACCC recognises that capacity on the Railcorp main line may be restricted Asciano believes that the ACCC should reconsider its Draft Decision in relation to the level of the SSFL indicative access charge, as competition from Railcorp may not be a factor in setting the SSFL access charge in the medium to longer term.

Asciano recognises that the indicative access charge has not been subject to a prudence test by the ACCC as it is well below a conservative ceiling cost (Draft Decision page 19). Asciano remain concerned that the costing details relating to the indicative access charge have not been more transparently outlined in the Draft Decision and have not been subject to efficiency and prudence tests. To the extent that the indicative access charge acts as the SSFL access charge in the medium to longer term Asciano believes that the access charge should be based on capital and operational expenditure that has been deemed as prudent and efficient. Furthermore, the SSFL capital expenditure must be subject to a prudence test prior to it being incorporated into the Regulated Asset Base at some future date.

In addition to the concerns raised above Asciano believes that the ACCC should recognise that any ACCC approved indicative access charge will be viewed by both the access provider and access seeker as a price that has been set by an independent body and which will be the price if there is any dispute between the parties as to the access charge for the SSFL. As such the indicative access charge will act as a strong benchmark price in access negotiations. Thus a high indicative access charge approved by the ACCC is likely to impact on the negotiated pricing of both indicative and non-indicative services. This should be considered by the ACCC in making its Final Decision. This point will particularly become a major concern if ongoing price competition from Railcorp reduces such that it is not a factor in setting the SSFL access charge in the medium to longer term.

Further to the issue of SSFL access pricing Asciano believes that many of the issues raised in its submission of October 2012 remain valid concerns in relation to SSFL pricing. In particular the high SSFL access charges are unlikely to encourage growth on other relevant sections of the ARTC network and this may act to the broader detriment of ARTC.

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Overall Asciano supports the ACCC decision to extend the Interstate Access Undertaking to include SSFL, the mechanism to vary the Indicative Access Charge proposed for the SSFL and the other general drafting changes associated with including the SSFL in the Interstate Access Undertaking. However, Asciano believes that the indicative access charge should not be approved at its current level. Asciano is seeking that the ACCC reconsider its Draft Decision in relation to the level of the SSFL indicative access charge, as competition from Railcorp may not be a factor in setting the SSFL access charge in the medium to longer term.

Feel free to contact Stuart Ronan on 02 8484 8056 to discuss this submission.

Yours faithfully,



Dr Tim Kuypers
General Manager Regulation

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