AURIZON

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Aurizon
ACCC Issues Paper

ACCC review on The Regulatory Framework for ARTC's Interstate Network

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Overview

Aurizon welcomes the opportunity to respond to the Australian Competition and Consumer Commission's (**ACCC's**) on The Regulatory Framework for ARTC's Interstate Network (**the Issues Paper**). As the ACCC notes, while the focus of the Issues Paper is on the Interstate Network, given the differences in the rail access regimes currently applying across Australia there may be a case for wider reform. As will be outlined in this submission, with a presence in nearly all rail access regimes in Australia, Aurizon strongly supports the case for a nationally consistent approach to economic regulation.

Aurizon's Bulk business provides integrated supply chain services, including rail and road transportation, port services and material handling for a range of mining, metal, industrial and agricultural customers throughout Queensland, New South Wales and Western Australia. Aurizon also intends to be an active participant on the East-West corridor in the future.

The key points that are outlined in this submission are as follows:

1. **The case for regulation:** Aurizon supports the application of economic regulation where there is a clear economic problem that requires a regulatory solution and there are demonstrated economic benefits to society that outweigh the costs. However, it must be well-designed, targeted and consistently applied to reduce the costs of government intervention in the operation of a market, including the commercial transactions that occur in that market.

   In this regard, while the ability and incentive to exercise market power may be considered to be more evident where the rail supply chain faces limited competition from alternative transport modes, this is not the only circumstance where regulation may be required. Where an access provider is vertically separated, and prices cannot be set to recover full economic costs, it is incentivised to exercise market power to capture as much share of profit as it can while remaining within the ceiling constraint (i.e. the hold-up problem). This becomes a competition problem where it could deter entry and/or stifle investment incentives for above-rail operators.

   In addition, excessively high, or poorly structured access charges have the potential to raise barriers to entry thereby materially reducing competition in the rail haulage market.

2. **The form of regulation:** Overall, rail access regimes should incentivise and support negotiated settlements. Of most relevance in this context (currently) are the following two cases:
   - *Where there is a structurally separated network owner pricing between floor and ceiling limits:* The key focus here is an effective negotiation framework that has appropriate and relevant information disclosure in relation to the costs of providing the relevant service and guidelines for arbitration.
   - *Where above- and below-rail services operating on certain rail corridors are unable to levy a (combined) price that would recover the network owner's efficient costs and deliver a return to above-rail operators that enables workable competition:* With the provision of these services likely to require a government contribution, pricing is a matter for government policy, having regard to public interest requirements.

3. **The regime needs to remain effective if ownership changes:** Aurizon endorses the ACCC's view that ARTC should be constrained from exercising market power irrespective of ownership. The potential for change in ownership needs to be contemplated, which may necessitate specific legislation.

4. **A nationally consistent approach is required:** The fragmented nature of rail access regulation in Australia creates uncertainties and inconsistencies in the terms and conditions of access across regimes. This ultimately undermines productivity, efficiency and investment incentives, to the detriment of end customers.

Aurizon's response is targeted to those questions in the Issues Paper that relate to the above points.

The Case for Regulation

Overall, Aurizon supports the application of economic regulation where there is a clear economic problem that requires a regulatory solution and there are demonstrated economic benefits to society that outweigh the costs. However, it must be well-designed, targeted and consistently applied to reduce the costs of government intervention in the operation of a market, including the commercial transactions that occur in that market.

ARTC's ability to exercise market power in the absence of regulation

The key issue for this review is whether all or part of the Interstate Network should be subject to regulation. This requires a forward-looking assessment of the case for regulation based on ARTC's ability and incentive to exercise market power. Given there is an existing voluntary Access Undertaking (AU) in place, the question regarding ARTC's current ability to exercise market power under the current regime (Question 4) is considered more relevant to the effectiveness of the regulatory framework, rather than the case for regulation itself.

ARTC's ability to exercise market power (Question 5)

Aurizon agrees with the ACCC that the network owner has an ability to exercise market power where rail transport has a higher share of the market and hence lower exposure to intermodal competition. This includes bulk products, as well as intermodal freight over longer distances. The East-West corridor is a key example of where this would apply[1].

However, the risk relating to the exercise of market power is not limited to the ability of the network owner to levy a price above the full economic cost of delivering the service (or extracting monopoly rents). It could also use that market power to expropriate a higher share of available rents, even in circumstances where it continues to set prices below the ceiling.

For example, if intermodal competition (or other economic factors) constrained the total cost of delivering freight by rail, the network owner could use its market power to maximise its share of available rent, even if that did not give rise to the earning of monopoly rents. Indeed, if it is unable to price at or near the ceiling, it not only may perceive that it has a greater ability to exercise market power, but it also potentially has a stronger incentive to do so to ensure that it can maximise returns to its shareholders. In reducing the rents that can be captured by above-rail operators, this could make sunk investments uneconomic.

Stephen King describes the hold-up problem as arising where:[2]

- "it is economically efficient for a party to contract to make a sunk, relationship-specific investment prior to some other party to the contract completing its obligations, and
- the contract is incomplete in the sense that it does not cover all possible future situations and leaves scope for dispute or renegotiation when such a situation arises."

This issue is primarily relevant where the network owner is vertically separated. As King describes:[3]

[1] Bureau of Infrastructure and Transport Research Economics (BITRE), 2020, *Trainline 8, Statistical Report*, BITRE, Canberra, p.3

[2] King, S. (2021). Part IIIB – Why there is no economic case for additional access regulation. Productivity Commission Conference Paper, July. p.12.

[3] King, S. (2021). p.5.

> "The owner of a vertically separated essential facility has the same dual objectives as the owner of a vertically integrated facility: to maximise industry profits from final consumers and then to seize as large a share of those profits as possible."

In other words, while the network owner is strongly incentivised to ensure that rail captures as much market share from other transport substitutes as it can, requiring the total price (and service quality offering) to be competitive with those substitutes, it is also incentivised to then maximise its share of the available profit.

The source of market failure here is not the transfer of wealth between the network owner and other supply chain participants – it must give rise to a competition problem. Hold-up has the potential to become a competition problem where it deters entry, as new entrants are concerned about the extent to which any 'relationship specific' investments they will need to make to enter the market become uneconomic. That is, there is a risk that key assumptions underpinning the business case for entry, including future access charges and expected returns, change to the extent that the investment fails to deliver an adequate return to shareholders (or even becomes NPV negative).

For above-rail operators, the investment required to enter a new market can be significant, including rollingstock and the associated maintenance, storage and provisioning facilities. Further, this infrastructure cannot necessarily be readily deployed elsewhere. In Australia, there are limitations in the interoperability of rollingstock across different networks, which also reflects the lack of harmonisation of operations and infrastructure. These can include:

- diversity of infrastructure capability limiting higher mass operations and operational flexibility, with underutilisation of rollingstock;
- a lack of alignment in operating performance requirements between adjacent network providers; and
- different wheel profile standards.

This risk is not limited to investments required to enter the market – the risk of hold-up could also deter future investments in innovation and service improvements because the operator does not have confidence that it will be able to capture an adequate share of profits to compensate it for the risks involved.

In contrast to other monopoly services that transport homogonous units of a commodity (gas, water, electricity), railway operations need to dynamically respond to changes in market conditions and the optimisation of the entire contract portfolio. There is substantial heterogeneity in the nature of railway operations and this gives rise to substantial contractual and operational complexity.

For example, assume a rail operator has identified operational changes, investments and/or improvements needed to support a bulk commodity project development or promote modal shift for an existing freight task. However, these changes cannot be implemented incrementally in response to incremental volumes. Changes to the rail operator's operating plan are also needed to accommodate the changes for the incremental volumes. This potentially requires renegotiation or variation to existing access arrangements, which exposes the rail operator to the risk of hold-up.

Aurizon disagrees with King that it can be assumed that in the absence of regulation, the hold-up problem can be resolved between the businesses. He argues that there are a number of ways that this can be addressed, including integrating the parties into a single business (which is the opposite trend to the vertical separation that has occurred in Australia), or by long-term contracts. At the same time, he acknowledges that "there are practical limits to contract length and complexity."[4]

[4] King, S. (2021). p.12.

In the first instance, it is unlikely (nor is it necessarily desirable) to be able to write contracts that match the term of the investment commitment by an above-rail operator, with the typical contract term being ten years compared to an expected useful life of rollingstock of at least 20/25 years (and around 25/30 years for wagon classes). This will result in the re-opening and renegotiation of terms as contracts expire.

Second, as King notes, contracts are likely to be incomplete as they cannot contemplate all possible situations that could arise, which could necessitate renegotiation. This could be required for a number of reasons, including variations to accommodate productivity improvements.

In Aurizon's experience network owners can tend to rely on 'boilerplate' agreements with standard terms and conditions. Further, those standard terms do not necessarily allow for, or incentivise, innovation or investment in initiatives that might improve productivity (including mutual above- and below-rail investment). While there may be negotiations around price, amendments to non-price terms can be more difficult to achieve, particularly where there is an imbalance in negotiating power. While King suggests that the hold-up problem is faced in a range of other industries where it is able to be successfully resolved between the businesses, the key issue in this context is that one of the parties is a natural monopoly with the potential to exercise market power in those negotiations.

Efforts of the rail operator to improve the productivity and competitiveness of its operations can also provide opportunities for the access provider to expropriate those efficiency gains. It can do this by seeking to vary the price substantially more than is necessary to reflect any changes in cost or risk, or to offset any loss of revenue that might accrue as a consequence of the rail operator's proposed improvements.

Aurizon also does not agree with King that arbitration principles provide sufficient protection. This assumes that the network owner does not exercise market power in relation to ensuring that the contract terms are favourable to it, including retaining as much discretion and control as it can. That is, in the absence of regulation, there is likely to be an imbalance in negotiating power between the network owner and access seeker in agreeing these terms in the first place. As noted above, this imbalance in negotiating power can see the network owner taking more of a 'take it or leave it' approach based on boilerplate agreements, rather than being willing to negotiate around non-standard terms and alternative approaches to the allocation of risk.

In conclusion, the ACCC's assessment of the ability and incentive for ARTC to exercise market power (under public or private ownership) should therefore not be driven the presumption that the misuse of that market power only manifests in the potential for it to levy access charges above the economic costs of providing the service. It must also have regard to the hold-up problem and the potential for ARTC to increase access charges (even if they remain within the floor and ceiling limits) to expropriate available rents and adversely impact competition in a dependent market.

The above analysis assumes that the 'captive' customer or service is above-rail operators. It has not considered the extent to which other supply chain participants could also be captive customers as Aurizon does not have detailed insight into the options available to those participants or how those decisions are made.

Future considerations (Questions 8 and 9)

The framework that is applied to assess the case for regulation, as well as the regulatory framework, needs to be able to adapt and respond to change. While there is some uncertainty as to how it might impact the future competitive landscape, the completion of the Inland Rail is one such change that can be considered now, with one project already in operation. This will give ARTC, its potential future customers, investors and other stakeholders with more certainty as to the likely regulatory treatment of the below-rail services that use this network.

This assessment would apply the same criteria used to assess the existing Interstate Network, including the ability of ARTC to exercise market power to extract a greater share of available rent to the detriment of competition, even if access charges are likely to remain at or below full economic cost (including where there is intermodal competition).

The Issues Paper also identifies potential future policy changes, particularly where they could alter the competitive dynamics between rail and alternative transport modes. As Aurizon has outlined, the case for regulation can still exist in the presence of intermodal competition due to the hold-up problem. Changes in these competitive dynamics may therefore not fundamentally change the case for regulation. However, depending on how the regulatory framework is designed in response to the economic problem/s it is designed to solve, it could have implications for the form of regulation.

There may still be benefit in allowing for periodic reviews of the case for, and application of, regulation, and/or a mechanism that could trigger a review if there is a material change in the business or industry environment. However, this needs to be sufficiently limited to ensure that it does not undermine the stability and predictability of the regulatory framework. There also needs to be clarity and consistency in how any assessment criteria are applied, noting the uncertainty that has been associated with the interpretation of declaration criteria in national and State-based regimes historically.

Aurizon also considers that a change in ARTC's ownership could alter the incentive for it to exercise market power. It agrees with the ACCC that the "regulation should ensure ARTC is adequately constrained from exercising market power, irrespective of ownership structure."[5] Aurizon also notes the recent comments by the ACCC Chair, Rod Sims, that governments should not agree to privatise assets unless there has been a prior regulatory and competition assessment.[6] Providing stakeholders with certainty in the event of privatisation is likely to require legislative change, as discussed below.

The ACCC's preliminary view (Question 10)

The ACCC's preliminary view is that:[7]

> "The case for regulating ARTC's Interstate network appears to be stronger today in areas where there do not appear to be strong or effective substitutes (potentially on the East-West corridor) and where there are customers that are captive to the Interstate network.
>
> Conversely, the case for regulation appears to be weaker where ARTC faces strong constraints, particularly on the Sydney–Brisbane and Melbourne–Sydney routes (except, as noted above, for captive customers that use these routes)."

Aurizon agrees that there is a clear case for regulation where there are limited substitutes, particularly on the East West Corridor. However, for the reasons outlined above, it does not agree that the case for regulation is necessarily weakened where there is stronger intermodal competition. Where the total price of rail transport is constrained by competition, ARTC has a strong incentive to maximise profits by securing as much of the available rent as it can. To the extent that this distorts competition in downstream markets (such as above-rail) by deterring entry and/or diluting investment incentives, it is a competition problem that needs to be addressed by targeted and effective regulation.

[5] Australian Competition and Consumer Commission (2021). Issues Paper: The Regulatory Framework for ARTC's Interstate Network, p.13.

[6] https://www.accc.gov.au/media-release/privatise-for-efficiency-or-not-at-all

[7] Australian Competition and Consumer Commission (2021). p.14.

Form of regulation

Approaches to regulation (Questions 11, 12 and 13)

Aurizon supports the objectives of the negotiate-arbitrate model as it is based on the presumption that the most effective commercial outcomes – for the businesses and end-customers – are achieved through commercial negotiation. However, if the framework is not appropriately designed, it can reduce the incentives for parties to engage in those negotiations. It also risks second-best outcomes if regulatory intervention is not appropriately targeted to addressing the economic problem and/or it is ineffective in solving that problem. As a general rule, Aurizon considers that the outcomes from negotiated settlements provide a more constructive basis to regulate infrastructure compared to direct regulatory control and prescription.

Aurizon also notes that the case for structured collective negotiated settlements is greater where rail infrastructure provides a common service and is able to achieve revenue adequacy equivalent to the full economic costs. Recent examples of negotiated settlements for coal carrying train services in Central Queensland and the Hunter Valley demonstrate the efficacy of the collective negotiation model in these circumstances. However, there is a strong case for improvements in regulatory design to support these processes as an alternative to overly prescriptive regulatory-determined tariffs and to appropriately clarify the bargaining procedures and the role of the regulator.

The bilateral negotiate-arbitrate models that were implemented in State-based access regimes were originally developed to address the access problems that could potentially arise under vertical integration, noting that most network owners were vertically integrated when access regimes were developed and introduced early in the 2000s. However, as structural separation has subsequently occurred, experience across different regimes has revealed deficiencies in the negotiate-arbitrate model where prices are negotiated within (what can be quite wide) floor and ceiling limits. This relates to the potential for hold-up, as described above.

Overall, there can be considered to be four main sets of circumstances when assessing the approach to regulation. These are:

1. **Rail networks with vertically integrated network owners pricing between floor and ceiling limits.** As ARTC is not vertically integrated, this is not a focus of this submission.

2. **Rail networks with network owners that are able to set prices to recover the full economic costs.** This can be either vertically or structurally separated owners where the focus is largely on determining the efficient ceiling price and revenue requirements. As noted above, there is scope for improvements to this model via a structured collective bargaining framework, including clarifying the specific role of the regulator in this process.

3. **Rail networks with structurally separated network owners pricing between floor and ceiling limits.** There are a number of considerations in effectively designing the negotiation framework in this circumstance.

4. **Rail networks that cannot support the recovery of the network owner's marginal costs of service provision, as well as sustain a workably competitive above-rail market.** In this case, the rail network is likely to be only sustainable through government contribution. In this case, pricing is a government policy consideration, having regard to the public interest.

The third case is most relevant in this context. Some of the key areas for improvement are discussed further below.

Improvements in information provision and transparency

It is well known that one of the key impediments to effective negotiation with a monopoly service provider is information asymmetry, that is, where access seekers do not have access to adequate information regarding the costs of providing the below-rail service. This can exacerbate the imbalance in negotiating power between the network owner and access seekers and makes it difficult to determine if the proposed access charges are fair and reasonable.

This could also lead to inefficient pricing outcomes, including price discrimination that distorts competition in one or more downstream markets. However, there may be forms of price discrimination that are efficient, particularly if it recognises innovations or alternative approaches to the allocation and management of risk. This underlines the importance of ensuring that there is sufficient information to support the negotiation of efficient commercial solutions, including (but not limited to) the case where the access seeker is looking to commit to investments to support entry into the market or improve rail productivity.

In practice, the deficiency does not lie with the wide gap between floor and ceiling limits but the lack of information regarding the costs of providing the below rail service between those limits. The provision of floor and ceiling prices can provide limited guidance, as this is not necessarily providing sufficient information to enable an assessment of the economic costs of providing the service. The relevant costs here is not necessarily a DORC-based economic ceiling, which can also reflect the legacy of government-funded assets that would not require replacement, but rather the costs that would be avoided if the service was not provided (ignoring sunk costs).

Aurizon notes that the ACCC is undertaking a review of the RAB for ARTC's Interstate Network using a DORC-based approach concurrent with this review. It has recognised that some costs within the DORC, such as earthworks, are effectively sunk assets that do not require replacement. The relevant costs to the negotiate-arbitrate model are necessarily those costs the service provider will be required to incur to continue to provide the expected level and quality of service for that route. An effective information disclosure regime would seek to improve transparency and accountability regarding past and projected costs and performance standards to reduce information asymmetry.

Improvements to arbitration guidelines

In a negotiate-arbitrate framework the role for the regulator needs to be targeted to the situation where agreement cannot be reached. The regulatory framework also needs to contain a clear set of arbitration guidelines to ensure that it has adequate information to enable it to make its assessment. This includes ensuring there is adequate information to enable an assessment of the economic costs of providing the service, as outlined above.

These guidelines could also expand the key matters considered by the arbitrator to include:

- **Promoting a contestable market for rail operations:** This ensures alignment with the overarching objective of the access regime and requires the network owner to consider whether the proposed access charge and structure could represent a barrier to entry for an efficient rail operator.

- **Must not exceed a price that can be fairly asked:** A fair price is one that would allow an efficient rail operator to sustain profitable rail operations. A fair price would also balance the interests of the network owner by ensuring it is able to recover the efficient costs of providing the service, including a return on capital.

This would also necessitate the provision of information to the arbitrator that is necessary for it to assess the impact of the proposed below-rail access charges on the potential profitability of above-rail operations, particularly where overall prices are constrained by intermodal competition.

Issues with other regimes

While Aurizon operates in a number of different regimes, one of the most challenging has been the WA Rail Access Regime. In Aurizon's experience, the more light-handed approach to regulation, governed by the *Railways (Access) Code 2000* and accompanying Part 5 instruments, has not adequately addressed the imbalance in negotiating power and is not conducive to effective negotiations.

For example, the regime still provides the network owner with considerable discretion, including pricing within very wide floor and ceiling limits. An inherent difficulty with the regime is the need to establish the floor and ceiling limits to allow for the commencement of a negotiation where the parties recognise that the final price is unlikely to be dependent on those limits. Access seekers will then typically seek to negotiate outside of the Code but this lacks protections in respect of information provision, timelines and recourse to dispute resolution.

The voluntary nature of Code participation can also result in inconsistent conduct and outcomes, which could be to the detriment of effective competition. On balance, there should be no distinction between the access provider's bargaining power where an access seeker negotiates inside or outside of the Code. To the extent that there is an imbalance in bargaining power between the two processes, this can be attributed to poor regulatory design in terms of information provision, procedures and arbitration guidelines.

Overall, Aurizon supports the adoption of a nationally consistent approach to rail access regulation, as discussed further below. This should include the development of a consistent negotiate-arbitrate model comparable to the proposed strengthening of the negotiate-arbitrate model in Part 23 of the National Gas Rules.[8]

Implementing a new framework (Question 14)

Aurizon considers that in order to provide all stakeholders with sufficient certainty and provide greater confidence in the stability and predictability of the regulatory regime in the future, this will necessitate legislative change. This is particularly important if ARTC is subject to future privatisation. As noted by the ACCC, while legislative change could take some time to implement, as an interim step the new regime could be addressed by amendments to the voluntary undertaking, which could be introduced upon expiry of the current undertaking.

The legislation should address the criteria used to assess the case for regulation having regard to the risks to competition as outlined above, including the extent to which there are periodic reviews and/or review triggers in the event of material changes that could impact competition in a dependent market/s.

Broader changes to rail regulation (Question 15)

Aurizon supports a nationally consistent approach to rail regulation.

The need for a nationally consistent approach

Since competition policy reforms were developed and implemented in Australia in the 1990s, the most significant infrastructure sectors have been subject to detailed reviews of the objectives and performance of the regulatory frameworks governing those sectors. This in some cases has seen significant institutional and statutory changes to infrastructure regulation, for example in electricity and gas, which are (each) now subject to a consistent national framework.

[8] Energy Ministers (2021) Options to improve gas pipeline regulation: Regulation Impact Statement for Decision, available at https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/Pipeline%20Decision%20Regulation%20Impact%20Statement_1.pdf

Currently, the approach to rail access regulation in Australia is highly fragmented, characterised by:

- State-based regimes and regulators, alongside voluntary arrangements within the national access regime
- generic access regimes, undertakings and code-based approaches; and
- inconsistent technical and operating requirements across network boundaries, resulting in barriers to achieving productivity and innovation in rail operations.

To date, there has not been a comprehensive, cross-jurisdictional review of rail access regulation in Australia. Where reviews have been undertaken, the issues with Australia's fragmented approach to transport and rail regulation has been a recurring theme, including in:

- the Productivity Commission's Review of National Competition Policy Arrangements (2005)[9];
- the Prime Minister's Export and Infrastructure Taskforce (2005)[10];
- the Competition and Infrastructure Reform Agreement (CIRA) signed by the Council of Australian Governments (COAG) in 2006;
- the Productivity Commission's Review of the National Access Regime (2013)[11]; and
- the Competition Policy Review (2015).[12]

These inconsistencies in approach are more evidently problematic where an access seeker is negotiating access across multiple jurisdictions, which could see quite different outcomes (in the form of terms and conditions of access) for comparable services. This reduces efficiencies and increases costs. It also discourages investment in initiatives that could improve rail productivity for the benefit of customers. These disparate approaches are also challenging for investors in rail infrastructure, not only in terms of the uncertainty of outcomes but also the assessment of regulatory risk.

Despite recommendations that have been made to date regarding the need for a nationally harmonised approach, there has been no real progress in addressing these inconsistencies. This requires a more substantive cross-jurisdictional review that examines the performance and productivity of the rail sector and within that context, the need for, and design of, economic regulation to address identified market failures and improve the sector's performance in supporting the economy.

Application of common regulatory standards

Regulatory harmonisation would promote a consistent national approach to access and price regulation through the application of common regulatory standards, including:

- **Objective standards:** The regulatory objectives are consistent with the economic problem regulation is intended to address and the objectives provide clear guidance to regulators and stakeholders to inform how regulation is applied.
- **Procedural standards:** The procedures used by the regulator are aligned to achievement of the regulatory objectives and include matters such as evidentiary requirements, transparency, consistency, accountability, performance and statutory requirements.
- **Methodological standards:** Effective methods are employed to give effect to the regulatory objective, including:
  - regulatory instruments;
  - how the regulator facilitates and promotes either collective or bilateral negotiated settlements; and

[9] Productivity Commission (2005). Review of National Competition Policy Reforms, Report no. 33, Canberra.

[10] Exports and Infrastructure Taskforce (2005). Australia's Export Infrastructure, Report to the Prime Minister, Canberra, May.

[11] Productivity Commission (2013). National Access Regime, Inquiry Report no. 66, Canberra.

[12] Competition Policy Review Panel (2015). Competition Policy Review, Final Report, March.

– how matters will be resolved where collective or bilateral negotiations are unsuccessful.

Of more fundamental importance is that procedural and methodological standards will not be appropriate where the objective standards are mis-specified or are not sufficiently clear. In this regard, the current objectives of access regulation in the rail sector may not be relevant to the current industry structure, economic conditions and the direct contractual relationship between providers of monopoly services and the end customers of those services.

Achieving consistency in the application of these standards does not require the details of the access framework (such as access undertakings) to be the same. However, it does require consistency in the process that is applied in designing, implementing and monitoring the access framework. The inconsistencies evident across the existing regimes in Australia are resulting in a material divergence between the objectives of regulation and its implementation in practice, which ultimately impacts incentives to invest and innovate. This lack of standardisation also increases uncertainty for all industry stakeholders, including investors, operators and end customers.

To be clear, Aurizon considers that this consistency is more likely to be achieved through effective negotiated settlements that occur under a common regulatory framework. This will not preclude the development and implementation of unique or bespoke arrangements. Instead, it will create an environment where any divergence in outcomes reflects the creation of commercial value arising from negotiated outcomes (to the ultimate benefit of customers), rather than reflecting the application of regulator discretion or differences in the design and application of the regulatory framework.

In terms of the design and implementation of this framework, this needs to be undertaken by Government. While regulators will provide necessary input and perspectives based on their practical experience with rail access regulation, they should not have responsibility for the design and implementation of a nationally consistent framework. It should also not commence from a presumption that the current national access regime is the preferred model or starting point, as originally recommended by the CIRA reforms. Achieving regulatory harmonisation requires a more fundamental review of the regulatory institutions and their adopted design to access regulation through the Transport and Infrastructure Council, in the same manner as energy market reform has been progressed through the Ministerial Council of Energy.