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Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

via email: transport@acc.gov.au

15th October 2021

RE: ACCC review of the proposed ARTC interstate undertaking

Dear Matthew,

Thankyou for the opportunity to make a submission with respect to your review of the proposed ARTC interstate access undertaking.

ECHR is a small rail service operator, operating in the heritage passenger rail sector on various main line railways, including those managed by the ARTC. We are operated almost exclusively by volunteers.

We offer comments and experiences that may be representative of a) passenger service operators and b) small railway service operators (as opposed to large freight users of the network). There are a number of similar companies to us (being either passenger carriers or small operators) though our views may not necessarily represent theirs.

We have answered your questions in the table on the subsequent pages.

We are happy to discuss any elements of this should you wish to explore our answers further.

Yours sincerely,

James Bushell
General Manager (acting)

ACCC Question	ECHR response
<p>1. Do stakeholders agree with, or have any comments on, the observations set out in sections 2.2.1 and 2.2.2 on the competitive conditions for short and long-haul freight?</p>	<p>Whilst we do not have current freight operations (which may change in the future given the nature of the market), we are accredited to operate freight services. What you note about road competition is broadly correct however as a small operator investigating freight options, the cost of entry to rail is (much?) higher than road given the large number of different access agreements, interface agreements, accreditation requirements and other regulatory burdens imposed on rail. See question 15 for more context on this.</p> <p>Road transport does not have anywhere near the burden that rail wears and in addition incurs much greater externality costs on society (congestion, environmental, road safety etc) compared to rail.</p>
<p>2. To what extent are passenger services on the Interstate network constrained by competition or effective transport substitutes? Why?</p>	<p>Our passenger services are tourism products using heritage railway rollingstock, marketed with the express purpose of using rail and to deliver those services for people to appreciate the historic nature of rail transport. For our tours specifically, we promote the fact that people can see things they wouldn't otherwise see as some locations we travel through are not accessible to road transport operators.</p> <p>Whilst we may from time-to-time incorporate road sectors in our tours due to lack of rail infrastructure between points, road transport is <u>absolutely not a substitute</u> for our tours and our business would be impossible to operate should passenger services be priced off the network.</p> <p>In particular to ECHR, we use a section of ARTC track that is inaccessible to road traffic and provides a unique experience given the views provided. This is valuable to our passengers who are willing to buy tickets on our train. We cannot offer this access in any other way.</p>
<p>3. Do stakeholders have any views on the current regulatory framework for the Interstate network and its effectiveness?</p>	<p>For ECHR, the current access framework to the ARTC network works well for us, where published pricing and open access to track capacities give us a known basis to plan with. We enjoy a good relationship with ARTC and it staff who work with us to solve problems we have and to achieve our goals. Whilst we do not foresee any change, these informal relationships are not certain in the long run. And if ARTC is privatised in some form in the future, we cannot say that new motives for new shareholders would be a positive for us.</p> <p>We are not in a position to conduct an appropriate and effective negotiation with ARTC over the specific dollar value of access given the resources we would need to do so are relatively costly to us. We are always open to discussing</p>

	<p>how we may work better with ARTC to lower costs to both of us, and would welcome a mechanism in our contracts to allow for this, however do not see any immediate avenues that we could investigate along these lines.</p>
<p>4. Is ARTC currently able to exercise market power? Why and how, or why not?</p>	<p>From our perspective, given the regulated prices are what we pay, we view that ARTC is not able to exercise any excessive power over our current operations. However, in the absence of price regulation and a change in ARTC motives, it is unclear if ARTC could or not exercise market power.</p>
<p>5. In the absence of regulation, could ARTC exercise market power on the Interstate network (for example, due to the lack of competitive alternatives)? If so, in which geographic areas is ARTC able, or unable, to exercise its market power?</p>	<p>Potentially. For the purposes of example, with respect to the Moss Vale-Unanderra line that we use for its unique passenger experience attributes, this line is a shared one with grain traffic and in peak seasons is quite busy. Absent regulation, there could be future scenario where our use of the line is made difficult in preference to grain traffic, particularly if shareholders (current or future) want greater returns. As a small passenger operator we would have less power to counter this.</p> <p>Similar decisions could be made on other parts of the interstate network.</p>
<p>6. Who are the captive customers or services on the Interstate network?</p>	<p>We believe that our business is a captive customer to rail, including the interstate network. Rail is integral to our purpose of being. We are like coal, without rail our business just wouldn't be possible. We are less like intermodal or grain where there is an alternative in road.</p> <p>Should rail pricing increase excessively, we would be forced to cease trading as the point of our being would not translate to road-based transport options.</p>
<p>7. In the absence of regulation, what is the likelihood of ARTC being able to exercise market power in relation to captive customers or services on the Interstate network?</p>	<p>We are unsure - see above responses. But as a small operator we would be very much a price taker and would have difficulty in challenging any price increase given the resources to do so would be relatively costly to us.</p>

<p>8. Will the introduction of Inland Rail potentially allow ARTC to exercise market power on the Melbourne–Brisbane corridor?</p>	<p>We have no comment on Inland Rail except to note that whatever regulation applies to the current interstate network with respect to our operations should incorporate the Inland Rail sectors as integral parts of the defined interstate network. This sector of the network would also be attractive to heritage/tourist passenger services and so the Inland Rail sectors need to be treated similarly in this respect.</p>
<p>9. Would any of the policy changes set out in section 4.3.3 significantly alter the competitive environment of the Interstate network? Are there any other changes that are likely to do so?</p>	<p>We have no comment on these measures except to note that changes to road user charging and coastal shipping regulations should be made so as to ensure that subsidisation of transport is avoided.</p>
<p>10. Do stakeholders agree with our preliminary view on the case for regulation (as set out in section 4.4)?</p>	<p>As a captive customer, we agree that some form of regulation is required to ensure that we are not priced out of the market and our business can continue. We otherwise agree in general.</p>
<p>11. Would a uniform level of regulation be appropriate for the Interstate network, or would a targeted regulatory framework be more suitable?</p>	<p>Perhaps. We would welcome specific consideration of the heritage rail sector of the industry to ensure our ability to use the ARTC network the same as we do now or better is preserved.</p> <p>Additionally, some form of regulation for smaller freight operators may be needed to ensure that they can enter the market in an efficient manner and that the high costs of entry are not a barrier to entry.</p>
<p>12. Do stakeholders think any of the regulatory approaches set out in section 5.2 are suitable for the Interstate network?</p>	<p>We have no comment on the specific methods set out given their complexity. We view that whatever methodology is used should be ACCC reviewed for appropriateness before being used to develop pricing that would impact heritage operators and small freight operators. We note that these approaches are quite complex and we do not have the resources to be able to investigate them and provide reasonable comment. We see that the ACCC has a natural role to do this on behalf of the industry, or at least the smaller operators in the industry.</p>
<p>13. Are there other approaches (not mentioned in section 5.2 or drawing on State regimes) that</p>	<p>What we would like to come out of this is an agreed price for operations such as ours so that we may continue to have certainty when planning train routings (both heritage passenger and freight)</p>

<p>could be appropriate for regulating the Interstate network?</p>	<p>As a small operator we do not believe we would be able to manage a negotiate-arbitrate model and see that this would favour larger operators with the resources to negotiate. We would be forced to take whatever price the operator wanted which may in theory be all of our margin. We point to the Adelaide-Darwin corridor and submissions to the SA ECOSA inquiries for experiences with negotiate-arbitrate.</p>
<p>14. Do stakeholders support changes to the regulatory framework being made through a revised voluntary access undertaking, or do stakeholders consider legislative change is required?</p>	<p>The current undertaking has appeared to work for us and at a minimum we would accept continuation of the current regulatory mechanisms. Though if improvements can be made then we welcome those.</p> <p>Legislation may be required if the shareholders of ARTC change to be private sector shareholders.</p>
<p>15. Are there any other issues that stakeholders would like to raise?</p>	<p>There are.</p> <p>Given we understand that the ACCC wishes to understand more about the broader issues impacting the Australian rail industry though this question, we wish to note the following.</p> <p>We could go on for pages with a response here about how structural elements of the rail industry may hinder competition and as a smaller operator we feel that these are more problematic for us than they are the larger, better resourced, and longer standing rail operators.</p> <p>These current structural issues stand in the way of rail being more efficient than it currently is. And as a small operator we question whether larger operators really want to change this status quo given the benefit they seem to derive from it. Some of these are perhaps more suitable from a Productivity Commission enquiry but some have relevance to a competition inquiry.</p> <p>The fragmented nature of the network harms productivity. Aside from the perennial issue of gauges, multiple network owners across the country have similar but different rules and always have different access agreements. On road, there is more or less one rule for them all with minor deviations such as driver licensing. Road transport operators have far fewer requirements in safety terms (e.g., the legal requirement for a safety management system is lower than in rail).</p> <p>This increases the burden for small operators to enter markets. We are currently negotiating an access agreement with V/Line and have had to provide substantial amounts of documentation. Some of this might be understood on</p>

safety grounds and due to network specific issues such as inconsistent platform engineering between states, however some is related to rolling stock which already operates on their network under other operators, and that has operated on their network in the past in the days before V/Line. This is before the hundreds or thousands of private sidings that all require separate access agreements, safety interface agreements and other agreements that all place a burden on our sector (which is not borne by road).

Some of these requirements are needed from a safety perspective, which we have less of an issue with, but some are administrative given the nature of the fragmented rail industry (however some of these safety issues could be done away with if more standard processes were adopted across jurisdictions, reducing the need for separate safety assessments, again for example platform engineering). The presence of multiple network operators with similar but different and almost always duplicative processes and requirements further increases the costs of operating on the network. This is exacerbated for smaller operators who do not have economies of scale and access to incumbent systems and processes to reduce the cost burdens.

To have ended up in this situation when the road sector is not subject to the same requirements is not productive and possibly anticompetitive.

This applies also to ONRSR regulatory processes where even small variations can be burdens on small operators to complete. We completed one variation in 2021 to gain access to the ~8kms of track in the ACT, which is more or less an extension of the NSW network operating under the same rules as the NSW network (where we can travel to Albury, Broken Hill, Moree and Brisbane) but for this small extension of track, we had to go through an excessively long process to provide documentation over and above what we viewed was logically required.

It appears that political decision-making favours road transport over rail, and that the fragmented nature of rail and a lack of leadership mean that very little change is made to enhance its competitiveness. This myopia and associated pricing distortions (e.g. subsidies to road not afforded to rail) continues to miss out on the substantial benefits that rail could deliver. Addressing some of these issues from a competition perspective may provide motivation for them to be addressed and perhaps solved.