

Our reference: 14/645

Contact Jessica Robinson
T (02) 9290 8405
E jessica_robinson@ipart.nsw.gov.au

11 October 2021

Matthew Schroder
General Manager, Infrastructure & Transport – Access &
Pricing Branch
Australian Competition and Consumer Commission
Via email: transport@acc.gov.au

Dear Matthew

Thank you for the opportunity to comment on your Issues Paper on the regulatory framework for ARTC's Interstate network.

IPART is responsible for regulating the part of the NSW rail network that is not subject to voluntary undertakings which have been accepted by the ACCC under Part IIIA of the *Competition and Consumer Act 2010*.

IPART is currently reviewing the arrangements governing third-party access to rail infrastructure in NSW. We settled the final terms of reference for this review with the Minister on 22 August 2021 and are due to provide a Final Report to the NSW Government in August 2022.

As part of IPART's review, we will be considering some of the issues outlined in the ACCC's paper. We will also be considering the interaction between the NSW rail access undertaking, and the Commonwealth regime.

Differences in market dynamics across the rail network

Like ARTC's Interstate network, the NSW rail network has varying levels of relative competitiveness with the road network.

The current NSW undertaking applies both a floor and ceiling test to access revenues. The flexibility created by a pricing band between floor and ceiling allows the one set of pricing rules to deal with a wide range of situations, including the Hunter Valley Coal Network (where coal traffic must use rail and the ceiling is most relevant), and the Non-Hunter Valley Coal Network (where competition from road transport makes the floor test most relevant). In the Non-Hunter Valley Coal network, access revenues are relatively low and unlikely to breach the ceiling test.

For the Non-Hunter Valley Coal Network, our ceiling test approach is streamlined. It includes assessing:

- Detailed ceiling test information on a 5-yearly basis
- More frequent ceiling test information where access revenue is approaching the 80% threshold
- Otherwise, we rely on statements confirming that there have been no significant changes in the intervening years.

A key part of our review will be to consider whether this approach is continuing to meet the needs of rail access seekers and rail infrastructure owners and allows sufficient flexibility to account for the different market dynamics across the network.


There is value in having consistent regulatory arrangements

One of the issues we are considering as part of our review is how the NSW regime integrates with access regimes in other jurisdictions. We have previously identified that the current framework gives operators some choice as to which regime to be regulated under. This could allow operators to select regulatory outcomes in order to maximise returns.

We have also heard from access seekers that, in the past, the ARTC has used the threat of allowing its voluntary undertaking with the ACCC to lapse and revert to the NSW regime as part of its negotiations with access seekers. Stakeholders have previously also raised concerns around unnecessary duplication of regulatory effort, uncertainty, the potential for interface problems and complexity of access of all participants when dealing with multiple access regimes.

IPART's contact officer for this matter is Jessica Robinson, Director, contactable on (02) 9290 8405.

Yours sincerely



11/10/2021

Liz Livingstone
CEO
Signed by: Liz Livingstone