

12 February 2019

Our Ref: DNSW2019/272

Mr Matthew Schroder
General Manager
Infrastructure & Transport — Access & Pricing Branch
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

By email: transport@acc.gov.au

Dear Mr Schroder

RE: ARTC 2018 Interstate Access Undertaking

NSW Trains refers to the ACCC's Consultation Letter dated 30 January 2019 and provides the following submissions in relation to the January 2019 application by ARTC to vary the 2008 Interstate Access Undertaking (IAU).

These submissions adopt the headings and numbering from the Consultation Letter.

Extension to 29 February 2020

1. *Is an extension to 29 February 2020 appropriate?*

NSW Trains submits that an extension to 29 February 2020 is appropriate so as to provide for regulatory certainty whilst the replacement for the 2008 IAU is being finalised.

Proposed Indicative Access Charges for 2019/2020

2. *Are the proposed Indicative Access Charges set out in section 4.6 of the January 2019 Variation appropriate?*

To the extent that they maintain the existing pricing structure adjusted in accordance with the agreed annual increment of CPI, NSW Trains submits that they are appropriate.

Reconciliation mechanism

4. *Are the timeframes for undertaking the reconciliation process clear and appropriate?*

5. *Is the proposed approach to reconciling 2019/2020 Indicative Access Charges against a subsequent undertaking clear and appropriate?*

6. *Is it appropriate that the ACCC verifies the reconciliation calculation?*

In response to questions 4, 5 and 6, NSW Trains submits that the reconciliation mechanism proposed by ARTC will retrospectively charge customers the prices as set out in the future IAU, to apply from February 2020. Notwithstanding February 2019 prices will be current IAU plus CPI, these charges will be adjusted on commencement of the new IAU as if it had been in place from February 2019. From a NSW Trains point of view it is a timing difference in that it may over-pay/underpay in the meantime and receive an adjustment next year.

So in effect NSW Trains will pay the new (yet to be determined) price for Feb 2019-2020.

Indeed, this reconciliation assumes that a new IAU is approved and in place, and so the requisite standards of transparency on ARTC costs and performance have been met in the next 12 months to allow the new IAU to proceed. If the ACCC is minded to approve this proposed reconciliation process, it should only do so on that basis should a retrospective adjustment be considered; following another review and a further consultation process with customers to address whether these standards have been met.

To encourage ARTC to complete its obligations in this respect, in the event that the reconciliation facility is approved, it should be limited to one year only – it should not accumulate over multiple years if there are further delays to the approval of the new IAU into subsequent years.

In this context, it is all the more important that the reconciliation calculation to be utilised is validated by the ACCC to ensure compliance with the new pricing methodology on transition.

NSW Trains also has a number of other concerns in relation to this proposal which are set out in more detail under “other matters”.

Indicative Track Access Agreement (ITAA)

7. Is ARTC’s proposed approach to varying Charges under the ITAA clear and appropriate?

NSW Trains relies on its submissions in relation to the IAU and proposed reconciliation mechanism in relation to ARTC’s approach to varying charges under the ITAA.

Other matters

8. *Does ARTC’s proposed changes to the 2008 IAU and ITAA have any implications for other parts of the IAU and/or ITAA that are not proposed to be varied under this application?*

NSW Trains is concerned that the proposed reconciliation mechanism could act as a 'blank cheque' entitling the ARTC to charge higher access fees without providing access seekers an opportunity to budget for additional costs and have transparency in relation to where any future investment is made. It could also serve as an unwelcome precedent for any future agreements and would still not require the ARTC to take into account the experience of access seekers in determining where maintenance investment should be directed. It is trite to observe that generally there should be a direct link between the price of a service (including pricing increase provisions) and its quality (including meeting KPIs).

Accordingly, NSW Trains submits that any changes to the pricing mechanism that have the potential to increase the cost by an amount greater than provided in the 2008 IAU and ITAA could only be considered following demonstrated improvements to quality such as the delivery of track conditions and meeting KPIs. This would provide access seekers with greater transparency and allow them to at least maintain their current competitive standing with other forms of transport and, hopefully, deliver a better service to their customers.

Notwithstanding these observations, and as previously submitted in relation to the 2018 IAU application, NSW Trains has little to no capacity to absorb and/or recover any additional costs primarily due to its regulated fare regime and relatively small customer base (particularly when compared to freight operators). As a result, and depending on the size of any increase, this could place NSW Trains in the unwelcome position of having to consider whether or not it can maintain its current number of services. This would have the potential to negatively impact on its customers, particularly those in regional areas, who rely on NSW Trains to provide much needed links with essential services, such as travel to medical appointments and educational institutions, not to mention interstate travel facilitating trade between the states.

It is worth noting that the existing fee structure in the 2008 IAU and ITAA does not provide a link between maintenance investment and an uplift in access fees and therefore NSW Trains opposes the reconciliation mechanism until the shortcomings of service KPIs and customer outcomes have been addressed and demonstrated, hopefully in the approved IAU and ITAA once complete.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Allaway', with a long horizontal flourish extending to the right.

Peter Allaway

Chief Operating Officer NSW TrainLink