

14 March 2019

Clara Cuevas

Manager, Regulatory Reform

Department of Treasury

Locked Bag 11 Cloisters Square

Perth WA 6850

By email: regulatoryreform@treasury.wa.gov.au

Dear Clara,

Re: Review of the WA Rail Access Regime

Thank you for the opportunity to comment on the Government of Western Australia's Draft Decision paper following its review of the Western Australian Rail Access Regime and for the opportunity to participate in the process to date.

ARTC owns and operates the interstate rail line which connects to the Arc Infrastructure assets at Kalgoorlie at which point it passes control for train operations to Arc. For train paths to and from Western Australia, ARTC therefore charges its above rail customers a tariff from their departure points to Kalgoorlie (and vice versa), underpinned by the Interstate Access Undertaking approved by the Australian Competition and Consumer Commission (ACCC) which commenced in August 2008 and was recently extended to 29 February 2020. Given the end market for this freight is Perth, those above rail customers must also negotiate access terms with Arc Infrastructure to complete the journey. The complete tariff paid by above rail interstate freight into Perth is therefore the sum of the ARTC tariff and the tariff negotiated with Arc Infrastructure.

ARTC is therefore an interested party in the development of the WA Access Regime given that the competitiveness of its below rail offering is dependent upon the competitiveness of the Arc offering.

ARTC has been an active participant in your process and has appreciated the opportunity to voice its position in respect of the proposed changes.

ARTC supports the high-level principles that underpin the recommendations identified in the Draft decision and believes that these principles will enhance the strengths of the WARAR whilst addressing most of the issues raised through the process. ARTC therefore believes that the proposal will provide for a more transparent, balanced and efficient regulatory system which promotes a strong emphasis on commercial negotiation and flexibility whilst imposing a low regulatory burden on participants. ARTC does note that those recommendations imply a further level of detail, and transition costs, required to meet them which will require further definition. ARTC is happy to defer to more active participants for discussion in respect of these issues.

In recent times, decisions by the National Competition Council in respect of revocation of coverage of the Port of Newcastle and the Productivity Commission in respect of the economic regulation of airports have identified the key points of:

- Economic regulation imposes a cost on the economy;
- Economic regulation must provide a welfare benefit to the overall economy – where the allocation of rents between users and owners of infrastructure does not constitute an overall welfare benefit unless it is directly passed through to consumers; and
- Where there is no welfare benefit to offset the costs of regulation, commercial negotiation should resolve all access disputes provided there is transparency of information and certainty of access.

The recommendations of the WARAR are therefore entirely consistent with these stated goals for economic regulation by the key Economic policy agencies of the Commonwealth Government of Australia. In particular the recommendations promote:

- greater transparency of offer terms and conditions;
- certainty in respect of the negotiation framework given the introduction of the competitive imputation scheme;
- greater efficiency in the regulatory process; and
- specific acknowledgement of the impact of different risk profiles as a price discriminator – for instance via the allowance of price discrimination of foundation customers.

By developing an access regime that promotes the use of standing offers and DORC based ceiling limits on the standard gauge corridor, the proposed changes to the WARAR increases the alignment with ARTC's Interstate Access Undertaking. This consistency is important as it meets the guideline within the Competition Principles Agreement for consistency of regulatory regimes for services which are subject to multiple jurisdictional models; like those for use of the east-west standard gauge rail corridor into Perth.

The changes to the WARAR therefore place a priority on the role of commercial negotiation in determining access conditions and provide a balanced framework to achieve this aim. They provide clarity that the role of regulator is to ensure that those negotiations occur as efficiently as possible and not to offer an alternative (or preference) to those negotiations. Finally, they provided consistency across regulation of rail services on the east-west corridor; a key requirement of the Competition Principles Agreement.

ARTC believes that these recommendations support a regulatory regime that addresses an overarching objective of promoting commercially negotiated outcomes within a transparent, and low burden, process that allows both sides the opportunity to seek mutually beneficial outcomes in exchange for value; and importantly allows them the freedom to define that value themselves.

The recommendations of the Draft Decision are therefore strongly supported by ARTC and we welcome the opportunity to engage in any further discussions to finalize the matter.

Please do not hesitate to contact me on 08 8217 4248 if you have any further questions in respect of this submission.

Yours sincerely



Jonathan Teubner

Manager Economic Regulatory Development