

18 March 2020

2020 South Australian Rail Access Regime Review

ESCOSA

GPO Box 2605

Adelaide SA 5001

By email: escosa@escosa.sa.gov.au

Dear ESCOSA,

Re: 2020 South Australian Rail Access Regime Review

Thank you for the opportunity to comment on ESCOSA's 2020 South Australian Rail Access Regime Review.

ARTC owns and operates the interstate rail network which runs through South Australia from both New South Wales and Victoria and into West Australia. Whilst this network is excluded from coverage under the South Australian Rail Access Regime Review, the operation of the regional rail networks, as well as access to the yards and sidings which connect into ARTC's network, are of critical importance to maximizing the use of rail for freight transport in Australia.

ARTC is therefore an interested party in the development of South Australian Rail Access Regime (SARAR) Review.

As defined in the Issues paper, the SARAR is based on a negotiate-arbitrate framework to facilitate access on fair commercial terms. ARTC strongly supports the focus of the SARAR on the commercial aspects of rail access, and the provision of a clear framework to support the arbitration of any disputes which arise in these commercial aspects.

The transport of freight is a highly contestable market across multiple modes where rail services actively compete with road and sea transport. This competition constrains the pricing for rail services and, in turn, frames the pricing which can be charged for rail access. The negotiation of access charges is therefore a determination of the appropriate commercial returns which access owner and access seeker should earn within an overall pricing level constrained by modal competition.

As highlighted in recent decisions by the Productivity Commission on access to Australian Airports and the National Competition Council in respect of the Port of Newcastle, the purpose of economic regulation is to ensure that access to infrastructure is not unreasonably curtailed to the detriment of Australia's economic efficiency. It is clearly not, however, to resolve commercial disputes and determine the allocation of economic rent between counterparties. The SARAR strikes the right balance in this respect and ensures commercial issues are resolved via commercial arbitration.

These decisions highlight the focus of access regimes for infrastructure in providing clear guidelines for the treatment of access requests in a transparent manner which ensures that access is provided in a transparent, non-discriminatory manner such that parties in the contestable section of the industry

can compete fairly. Importantly, the regime should provide access to both parties for dispute resolution procedures that reflect the commercial nature of the agreements. Finally, the regime must ensure that any regulatory burden imposed on the parties is consistent with this commercial focus and, critically, is balanced in its impact on all parties.

The regulatory burden of access can be extensive, especially given it is typically incurred only by the access owner; especially in prescriptive regulatory regimes. The best public information of this cost is seen in Queensland Rail's 2018-19 Annual Performance report where they highlighted (at p7) that "an additional \$2 million of expenditure was incurred which included the costs of preparation of the Draft Access Undertaking 2 (DAU2) and other QCA compliance activities." This is for one year only, and given the competitive constraints of road ensures freight networks cannot recover their full economic costs, is unrecoverable from users of the network highlighting the imbalance in the imposition of regulatory costs.

ARTC believes that the SARAR meets the above priorities in that it:

- Ensures the ability for users to seek access to rail infrastructure based upon clear guidelines;
- Provides clear access to commercial arbitration of commercial disputes; and
- Ensures minimal, but balanced, regulatory burden on all parties.

In the absence of the SARAR, it is difficult to forecast whether the declaration tests defined within the Commonwealth Act would be satisfied. However, based on the examples of declaration requests made to date, it is possible to forecast that such a process would be lengthy and extremely costly and inconsistent with the value of the services. In the absence, therefore, of a national transport access regime, ARTC believes that the SARAR performs a valuable function of delivering certainty on access guidelines and dispute resolution. Importantly it delivers this in a balanced way that does not impose unreasonable regulatory burdens on either access owner or seeker.

ARTC therefore supports the continuation of the SARAR. However, given that all states have specific legislated access regimes, as well as the coverage of the Commonwealth Competition and Consumer Act provisions which ARTC voluntarily utilizes for coverage of its networks, there is a preponderance of State and Federal access regimes; all of which operate with different mechanisms and different approaches to such fundamental questions as the efficient return a railway owner should earn. This inconsistency adds cost to the operations of national rail companies and the development of a consistent national access regime would provide significant productivity benefits to the Australian economy. In the absence of such a national regime, however, ARTC believes that the SARAR provides valuable benefits to the SA economy and should remain in place.

ESCOSA has asked for input in respect of the degree with which rail services compete with road. Given the lack of available road data, it is difficult to quantify the exact nature of such competition; especially in SA. However, it is clear that road transport competes strongly with rail transport and has a number of substantial benefits that confer a significant competitive advantage, especially in respect of regional transport. These advantages include, inter alia:

- The lack of a commercial access framework for roads such that, unlike rail, there are no limitations nor controls on the access of trucks to the road network;
- The lack of locational, cost-based pricing for roads such that road transport does not pay for the damage incurred on roads, nor the capital costs required to deliver a road network capable of supporting the needs of trucks;
- The lack of cost recovery of the substantial externalities that increased road transport incurs on the economy through increased accidents, emissions and congestion;
- Substantial regulatory benefits arising from significantly lower training and licensing requirements (especially given that trucks operate in shared corridor but, aside from level crossings, trains do not).

The impact of this in a regional sense is seen most clearly with the shift of regional grain transport from rail to road in SA and WA resulting in the closure of grain lines that are no longer economic; because rail must pay its costs and road does not.

Government regulatory policy between road and rail is therefore not neutral and, in fact, confers a substantial advantage on road. This is a primary determining factor in the permanent shift of freight from rail to road and should be addressed by government as a critical policy issue.

Given the focus of this review on rail access regimes and the competitive impact of road on rail, the absence of road access regimes is a key and relevant issue. The failure to commercially manage heavy vehicle access to road capacity ensures the treatment of road capacity as a public good and results in a permanent shift of freight to road whilst this distortion persists. This shift leads to excessive and inefficient consumption of road capacity by heavy vehicles; imposing significant externality costs on the Australian economy. This creates extensive market failure across the freight market; which failure is exacerbated by the under recovery of the costs which heavy vehicles impose on the road network; especially in a regional context. This market failure, and the consequent extensive externality costs imposed on the economy by excessive consumption of the road network by trucks, could be avoided by ensuring policy and regulatory neutrality between road and rail.

ARTC would therefore support a consistent national access regime for transport infrastructure covering road and rail. In the absence of such a regime, the SARAR provides a balanced approach to resolving commercial rail access negotiations through delivering certainty, clarity and transparency on the negotiation and dispute resolution process in a manner which does not impose unreasonable regulatory burdens on any one party.

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

Yours sincerely

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

Jonathan Teubner
Manager Economic Regulatory Development