



6 August 2009

Mr Peter Lim
Senior Regulatory Analyst
Essential Services Commission of SA
GPO Box 2605
ADELAIDE SA 5001

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

Dear Peter,

2009 SA Rail Access Regime Inquiry: Draft Inquiry Report

Asciano welcomes the opportunity to provide comments on the 2009 SA Rail Access Regime Inquiry: Draft Inquiry Report. Please find below further clarification on an earlier issue raised in our submission to the Issues Paper, along with comments on the Essential Services Commission's ("the Commission") Draft Inquiry Report conclusions and recommendations.

Comments on the Issues Paper

Asciano believes the Commission has misinterpreted our comments in our submission to the Issues Paper, under the heading "Regulatory Approval of Standard Terms and Conditions" (paragraphs 1 and 2)¹. To clarify our position, Asciano is not implying that the terms and conditions in Genesee and Wyoming Australia's (GWA) Information Brochure are not sufficiently detailed, but rather the fact some of the conditions contained in it are unreasonable.

In other major regulatory regimes regulators like the ACCC and the QCA spend a significant amount of time scrutinising access providers' terms and conditions to ensure they are fair and reasonable. Asciano believes the South Australian access regime (SA Regime) should be amended to allow the Commission to review and approve GWA's Information Brochure to ensure the standard terms and conditions on which it is prepared to make its railway infrastructure available are fair and reasonable. In our opinion requiring an operator to operate "at owners risk" without the network provider committing to provide a safe network able to meet path requirements is one example of an unreasonable term currently contained in GWA's Information Brochure.

Comments on the Draft Inquiry Report

Including the concept of economic efficiency into section 3(c), and expanding the bounds of arbitration to include pricing principles relating to the price of access to a service in section 38(1) of the *Railways (Operations and Access) Act 1997* (ROA Act) in our opinion will achieve greater consistency with clause 2.4 of the Competition and Infrastructure Reform Agreement (CIRA).

¹ As noted under the heading "Information Requirements" on page 25, part 4.2.2, paragraph 3 of the Commission's Draft Inquiry Report.



The inclusion of a confidentiality provision into Part 5 of the ROA Act to prevent the disclosure of commercially sensitive information to any third party without prior consent of all parties, along with the introduction of an “advice and directions” provision² into the ROA Act is supported. Asciano believes there is still merit in the Commission further considering the inclusion of a mediation process to allow a dispute to also be referred to the chief executive officers of both parties in an attempt to resolve a dispute prior to going to arbitration.

Asciano supports the Commission’s draft conclusion that there is no reason to change the list of services that are currently covered by the regime. Asciano agrees with the Commission’s findings that the introduction of a six-month timeframe to the conciliation-arbitration process set out under the ROA Act to resolve access disputes will improve the effectiveness of the SA Regime. This amendment will also make the ROA Act more consistent with clause 2.6 of CIRA.

Reducing the unnecessary administrative burden of regulation on the industry is important, therefore Asciano supports the proposed amendments to the definition of “access contract” under the ROA Act.

Asciano is still of the opinion that there is a need for some transparency in the operation of the unfair discrimination provision in section 23 of the ROA Act. A statement from the Commission noting each year that GWA has complied with its audit and/or if any non-compliance had been found would provide access seekers with greater comfort that the regime is operating effectively.

Although Asciano’s suggestion to have reference prices published for the major tasks on the network (similar to the ARTC’s access undertaking) has not been addressed in the Draft Inquiry Report, we do however, welcome the Commission’s proposal to undertake a review of the South Australian Rail Access Regime Information Kit (Information Kit) in parallel with this inquiry. Asciano will provide detailed comments to the Commission on what amendments should be made to the Information Kit in the coming weeks.

Should you have any questions in relation to this submission please contact me on (02) 8484 8043, or alternatively Philip Dixon-Flint, Manager Access and Regulation on (02) 8484 8066.

Yours sincerely,

A handwritten signature in blue ink that reads "Tim Kuypers". The signature is stylized and includes a long horizontal stroke at the end.

Dr Tim Kuypers
Group General Manager
Access & Regulation

² Similar to that contained in section 12(B) of the *Australasia Railway (Third Party Access) Act 1999*.