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Aurizon submission on the ARTC 2024 Draft Interstate Access Undertaking

23 February 2024

Dear Matthew,

Aurizon welcomes the opportunity to provide a submission to the Australian Competition & Consumer Commission (**ACCC**) in response to ARTC's proposed 2024 Interstate Access Undertaking (**Proposed IAU**).

Aurizon is Australia's largest rail operator, with its operations extending across Australia, including the large scale bulk haulage of coal and iron ore, integrated supply chain services for other bulk products and the recent introduction of inter-city containerised freight services. Aurizon has recently introduced a range of new services across ARTC's interstate network, including inter-city containerised freight services extending over the national rail network, as well as coal haulage services in the Illawarra district. Aurizon has strong ambitions to grow its containerised freight and bulk supply chains, which can only be achieved by driving new freight volumes to rail. Accordingly, the ability to efficiently access the national rail network – including ARTC's portion of the interstate network – is crucial to Aurizon's ability to offer attractive rail haulage services to its customers.

At the outset, Aurizon would like to highlight its appreciation of the assistance provided by ARTC as we have commenced new services on its network. Throughout these processes, ARTC has been unfailingly constructive in its dealings with us and proactive in helping identify solutions to issues that have arisen. However, these experiences have highlighted instances in which the IAU could provide a more effective suite of tools for ARTC to manage access. Our submission sets out our views on amendments that could be made to the Proposed IAU to address these issues.

Aurizon's submission contains a limited amount of confidential information. A redacted version of this submission has also been provided, which is in a form suitable for publication by the ACCC. Should you have any questions or require further information, please do not hesitate to contact [REDACTED]

Kind regards,

[REDACTED]

[REDACTED]

Manager Commercial Development & Integration
Coal Customers

ARTC Draft 2024 Interstate Access Undertaking

Submission to ACCC

Version for public release



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Overview

Aurizon welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission (ACCC) in response to ARTC's Draft 2024 Interstate Access Undertaking (Proposed IAU). Aurizon is Australia's largest rail operator, with operations extending across Australia, including the large scale bulk haulage of coal and iron ore, integrated supply chain services for other bulk products and the recent introduction of inter-city containerised freight services across the national rail network. Aurizon has strong ambitions to grow its containerised freight supply chain, with an objective of increasing from its initial installed capacity of ~200,000 TEU pa to ~500,000 by 2030,¹ which can only be achieved by attracting new freight volumes to rail. We aim to drive modal shift on the current national interstate network (particularly ARTC's north-south corridor), as well as on other corridors such as Brisbane to Perth, Brisbane to Darwin and Perth to Darwin, by offering efficient service linkages including with Aurizon's existing Bulk Central service offering. We are also actively seeking new markets to drive additional rail volumes, such as land-bridging from Port of Darwin and bulk products such as those for new economy minerals. Achieving efficient access to the national rail network, crucially including ARTC's portion of the interstate network, is essential to realising these ambitions.

At the outset, Aurizon would like to highlight its appreciation of the assistance provided by ARTC as we have commenced new services on its network. Aurizon set itself a challenging program for the introduction and rampup of inter-city containerised freight services across the national network, with services now operating between Brisbane, Sydney, Melbourne, Adelaide and Perth, and service frequency on these routes continuing to increase. Further, following a successful tender to the Tahmoor coal mine, Aurizon recently commenced operating coal haulage services across ARTC's rail network in the Illawarra district. Throughout these processes, ARTC has been unfailingly constructive in its dealings with us and proactive in helping identify solutions to issues that have arisen. However, these experiences have highlighted to us that there are instances in which the Proposed IAU could provide a more effective suite of tools for ARTC to manage access.

This submission sets out Aurizon's view on amendments that could be made to the Proposed IAU to address these issues. These include:

- 1. Harmonised approach to national rail access regulation:** Given our presence in nearly all Australian rail networks, and the complexity of managing access to these various networks, Aurizon strongly supports the case for improved interoperability and harmonisation nationally. Harmonisation in rail access regulation – in terms of how operators' interface with rail infrastructure managers (RIMs) in the negotiation and management of access – is integral. Aurizon notes that ARTC's shareholders expect it to take a leading role in facilitating improved performance over the interstate rail network in its entirety, and that encouraging a consistent approach to access regulation represents one of the objects of Part IIIA of the Competition and Consumer Act. Accordingly, Aurizon recommends that, wherever possible, ARTC and the ACCC should pursue improved harmonisation of access regulation, with a focus on increased consistency in the approach to access negotiation and management across jurisdictions.
- 2. Path management and schedule optimisation:** Unlike bulk freight markets, the timing of paths for inter-city containerised freight is critical to meet the preferred service requirements of freight customers and to compete effectively with road freight. Premium paths are those with an efficient transit time combined with a late evening departure and an early morning arrival, with only a limited number of paths able to be scheduled within these windows. In Aurizon's view, paths within the premium windows should be prioritised to services that are consistently run at high utilisation (train

¹ Aurizon 1HFY2024 Results; 12 February 2024; p.23-24

length and loading) and high reliability. Non-premium paths can be used to provide a more flexible option for use for non-time sensitive, overflow or seasonal services. However, the access agreement provisions typically adopted by Australian RIMs, including ARTC, provide only limited accountability on rail operators in the way that they use contracted paths. This causes difficulty for new entrants seeking access to suitable train paths, as they need to be 'fitted around' existing contracted paths, even if those paths are not consistently or reliably used by the rail operator. Further, existing operators are able to use these arrangements to limit new entrants' access to premium paths, reducing competition for the time-sensitive component of the haulage market.

There are a range of mechanisms that can be used to incentivise the use of premium paths for high utilisation and high reliability services, including pricing and non pricing approaches. Some of these mechanisms may require material adjustment to ARTC's contracting approach and as a result may not be able to be fully developed within the planned timeframe for finalising the Proposed IAU. But Aurizon has identified in this submission a number of mechanisms that can be readily incorporated into ARTC's Proposed IAU and ITAA to improve ARTC's ability to manage its MTP to promote better utilisation of premium paths and improved opportunities for new entrants to gain access to premium paths – we consider these to be the minimum changes that should be made to the Proposed IAU. These include:

- Enabling improved opportunity for schedule optimisation, including by modifying ARTC's ITAA to ensure that ARTC's right to reschedule train paths where an operator has consistently poor on-time performance can work effectively across network boundaries, by incorporating an obligation for rail operators to negotiate with adjoining RIMs to accommodate a varied schedule;
- More effectively managing the potential for path hoarding by strengthening ARTC's ITAA path resumption trigger and, where resumption is triggered for a path, allowing ARTC the option of either resuming the path or rescheduling it to the nearest otherwise available time; and
- Providing operators with real time data on the actual operation of all train services compared to schedule, creating transparency of performance which will enable parties to identify where modified scheduling or path resumption may enable them to achieve improved pathing outcomes.

In addition, we urge ARTC to engage with operators and other stakeholders to identify further mechanisms that can be used to ensure that premium paths are prioritised to high utilisation and high reliability services, which may be introduced into ARTC's contracting framework at a later date.

Aurizon also considers that including in the Proposed ITAA a customer initiated transfer provision to apply where bulk freight services are provided for a single end customer will help in facilitating the transition of tendered services from one operator to another, and will aid in promoting competition in this market.

3. **Pricing methodology:** Aurizon supports the use of standing offers for reference services as a stand-alone price cap mechanism. We have contemplated whether there would be merit in separate reference services being defined for premium and non-premium paths, with the standing offer for premium paths not only reflecting the higher market value of those paths, as well as imposing greater accountability on operators in terms of their utilisation of those paths. In contrast, the standing offer for non-premium paths could apply a lower access charge and support more flexible utilisation levels, thereby providing a lower cost point of entry for new operators as well as a more attractive pathing option for non time sensitive, overflow or seasonal freight. While we believe there is considerable merit in this model, we acknowledge that this would represent a significant change in ARTC's contracting approach, and could take some time to develop. As such, we do not propose that this be pursued for the Proposed IAU given its planned commencement in mid 2024. Instead, we consider that the many of these benefits can be achieved where:

- The standing offer for “freighter” services is available for all paths, including premium paths, however, ARTC confirms its willingness to negotiate away from the standing offer for non-premium paths, reflecting their lower market value (as is contemplated in CI 4.2); and
- ARTC’s enhanced ability to optimise its train schedules (as discussed above) is used to apply greater accountability for the utilisation of premium paths.

Beyond this, Aurizon urges ARTC to review its access charges on the north-south route to support increased rail mode share, and considers that tariff escalation should be capped at annual CPI.

Aurizon does not consider that ARTC’s proposed approach of publishing negotiated prices for non-reference services provided the service can be de-identified is feasible. Instead, Aurizon suggests that ARTC include, in its Proposed IAU and ITAA, an ability for an access seeker/operator to request ARTC provide it with an independent assessment of whether its proposed/actual access charge is consistent with the access charges applied by ARTC for like train services.

4. **Dispute resolution and arbitration:** As a general statement, Aurizon considers that the factors that the arbitrator should take into account should reflect the overarching intent of the Proposed IAU, and directly align with the Proposed IAU provisions where relevant. While we are satisfied that the Proposed IAU refers disputes to a commercial arbitrator rather than the ACCC, we do not consider that this justifies a requirement that an arbitrator consider a narrower (or different) set of criteria in resolving a dispute than ARTC is required to consider when negotiating for access. Accordingly, Aurizon recommends some modifications to the factors that an arbitrator must consider in making an award.
5. **Annual reporting and performance indicators:** Aurizon appreciates ARTC’s commitment to providing financial and performance information, and proposes some refinements to the reporting requirements to improve the clarity and usefulness of the information. Aurizon also proposes a set of core common KPIs that should be reported by all RIMs for both aggregate system performance and individual service performance. The most significant proposed change to ARTC’s performance reports is the inclusion of additional network availability information, including train cancellations by cause.
6. **Interstate Network Development Strategy:** Aurizon welcomes and supports ARTC’s proposal to annually develop an Interstate Network Development Strategy (INDS), and endorses ARTC’s vision to make rail the transport mode of choice in the national supply chain. However, in order to fully capitalise on the benefits that the INDS offers, Aurizon recommends that it have a broader scope, including investments to promote interoperability, productivity and coordination with adjoining networks, and that ARTC provide a stronger commitment to ongoing engagement with relevant stakeholders, including network operators, end customers, adjoining infrastructure owners and the Rail Operators Group (**ROG**), to input into the development of the annual INDS. Project “close out reports” should also include an assessment of project outcomes against the anticipated benefits, as well as a commitment to rectifying any identified performance gaps, together with identifying the available options and preferred approach to achieve this.

1. Harmonised approach to national rail access regulation

Aurizon provides a broad range of rail haulage services, including the large scale bulk haulage of coal and iron ore, integrated supply chain services – including rail, road and port – for a range of mineral, industrial and agricultural bulk products and the recent introduction of inter-city containerised freight services. Aurizon also operates and manages 5,100km of track infrastructure including the Central Queensland Coal Network and the Tarcoola to Darwin railway.

Promoting improved inter-operability and harmonisation across Australia’s fragmented rail networks has been identified as a national priority. The National Rail Action Plan has been developed to create a more seamless, productive and safe national rail network, including through better aligning train control and signalling technology across networks, harmonising a number of critical standards and rules, streamlining rollingstock approval requirements and reducing the interoperability burden from a driver, crew and maintenance perspective.² This is supported by a Memorandum of Cooperation to support National Rail System Interoperability for future major rail investments.³ The Memorandum of Cooperation specifically highlights inconsistent access regulation as a concern that needs to be addressed through partnership between the rail industry and governments.

Since competition policy reforms were developed and implemented in Australia in the 1990s, the most significant infrastructure sectors have been subject to detailed reviews of the objectives and performance of their economic regulatory frameworks. In some cases this has seen significant institutional and statutory changes to infrastructure regulation, for example in electricity and gas, which are (each) now subject to a consistent national framework.

In contrast, the approach to rail access regulation in Australia is highly fragmented, characterised by state-based regimes and regulators, alongside voluntary arrangements within the national access regime. A variety of regulatory instruments are used, including generic access regimes with business specific undertakings, code-based approaches and network specific regimes.

To date, there has not been a comprehensive, cross-jurisdictional review of rail access regulation in Australia. Where reviews have been undertaken, the issues with Australia’s fragmented approach to transport and rail regulation has been a recurring theme, including in:

- The Productivity Commission’s Review of National Competition Policy Arrangements (2005)⁴;
- The Prime Minister’s Export and Infrastructure Taskforce (2005)⁵;
- The Competition and Infrastructure Reform Agreement (**CIRA**) signed by the Council of Australian Governments (**COAG**) in 2006;
- The Productivity Commission’s Review of the National Access Regime (2013)⁶;
- The Competition Policy Review (2015)⁷.

These inconsistencies in approach are most problematic where individual services operate across multiple jurisdictions, with each rail infrastructure manager (RIM) discretely managing its component of

² National Transport Commission, National Rail Action Plan, see <https://www.ntc.gov.au/transport-reform/national-rail-action-plan>

³ Memorandum of Cooperation to support National Rail System Interoperability for future major rail investments; Between Infrastructure and Transport Ministers, Australian Rail Investors, Owners, Network Builders, Major Manufacturers, Rail Infrastructure Managers and Rail Operators

⁴ Productivity Commission (2005); Review of National Competition Policy Reforms, Report no. 33

⁵ Exports and Infrastructure Taskforce (2005); Australia’s Export Infrastructure, Report to the Prime Minister

⁶ Productivity Commission (2013); National Access Regime, Inquiry Report no. 66

⁷ Competition Policy Review Panel (2015); Competition Policy Review, Final Report

access, requiring different terms and conditions and applying different access management approaches. This is a major issue for operators on ARTC's interstate network, as there are very few services that operate purely within this network – in almost all cases, operators also need access to one or more adjoining networks to complete their journey. As a case in point, Aurizon's inter-city containerised freight services now traverse infrastructure managed by seven separate RIMs, regulated under seven discrete rail access regimes, with six different regulators.⁸

However, these inconsistencies are also problematic for all access seekers with operations extending across multiple jurisdictions, and can result in quite different outcomes (in the form of terms and conditions of access, and investment risk) for comparable services operating in different locations. This is the case faced not only by Aurizon, but by all rail freight operators on ARTC's rail network who provide services across a national footprint, including Pacific National, Qube and SCT.

Aurizon acknowledges the inevitable complexity of operating train services across a national footprint, given different rail gauges, and inconsistent technical and operating requirements across network boundaries. However, as has been highlighted by the Future of Freight reports,⁹ Australia's fragmented approach to rail access regulation exacerbates this complexity and further reduces efficiency and increases the cost of providing rail haulage services. While some of these constraints (such as different rail gauges) are unavoidable, Aurizon considers that improved harmonisation of regulatory, technical and operating requirements, wherever feasible, is critical to the future performance and productivity of the rail industry.

In the absence of a substantive cross-jurisdictional review of rail access regulation, Aurizon considers that reviews of specific jurisdictional frameworks – such as ARTC's 2024 IAU review – should take the opportunity to promote improved national harmonisation wherever possible. Importantly though, this does not mean a 'one size fits all' approach - different networks have very different characteristics in terms of volume and type of traffic, established pricing methodologies and the relevance of the ceiling price constraint, and the extent of vertical integration, and these differences should continue to be accommodated in varied regulatory requirements. However, even allowing for these differences, there is significant opportunity to improve national consistency and harmonisation in aspects of the regulatory frameworks. This will enable operators to conduct a more efficient process for negotiating and managing access across their entire operating footprint.

ARTC has a critical role to play in promoting improved national harmonisation. Not only is ARTC's commercial ability to provide access to its network dependent on operators' also gaining suitable access from adjoining RIMs who control key links in the national rail network, but ARTC's shareholders expect it to take a leading role in facilitating improved performance over the interstate rail network in its entirety. ARTC was originally established as a consolidated interstate rail track owner, with the purpose of creating a single process for access and improving the performance and efficiency of the interstate rail infrastructure. The objectives of ARTC under the Intergovernmental Agreement that created it, include providing efficient and seamless access by promoting operational efficiency and uniformity on the interstate network. The intention was clearly to harmonise technical and operational requirements to remove barriers to productivity for rail operators and the rail freight industry.

ARTC's 2023 Statement of Expectations (which outline its shareholders' objectives) not only requires ARTC to operate, manage, maintain and improve the track infrastructure that it owns or controls, but

⁸ These include: QR regulated by the QCA, ARTC regulated by ACCC; Sydney Trains and UGL Linx regulated by IPART; Arc Infrastructure regulated by ERAWA; VicTrack regulated by the ESC/Victoria Department of Transport and Aurizon Bulk Central Network regulated by ESCOSA separately under the AustralAsia Rail Access Code and the SA Rail Access Regime

⁹ Australian Railway Association (ARA) and Freight on Rail Group (FORG) (2023); The Future of Freight Summary Report; October 2023; p.18.

continue to reflect the expectation that ARTC promote improved outcomes across the broader interstate rail network. In particular, ARTC's shareholders expect it to:

- provide safe, efficient and effective access to the interstate rail network; and
- pursue a growth strategy for interstate rail and rail's share of the interstate freight market.¹⁰

Accordingly, the extent to which its Proposed IAU framework for negotiating and contracting access supports improved harmonisation for access negotiation and management will clearly be an important consideration for ARTC.

While Aurizon acknowledges that the ACCC does not have the power to compel network providers to align the terms on which they offer access to their respective networks,¹¹ encouraging a consistent approach to access regulation represents one of the objects of Part IIIA of the Competition and Consumer Act¹². There is currently a unique opportunity to better align Australia's rail access regimes, with Queensland Rail's (QR's) 2025 Draft Access Undertaking currently being considered by the QCA, the NSW Government currently considering its response to IPART's review of the NSW rail access regime, and recent changes to the WA Rail Access Code triggering a range of regulatory processes over the next two years, including the ERA's approval of standard access terms. Further, as the adjoining RIM for the Tarcoola-Darwin rail network, Aurizon commits to continue working with ARTC, within the structure of our rail access regulatory framework,¹³ to create an efficient access negotiation and management process for rail operators that also require access to our network.

Consequently, the extent to which the IAU promotes a nationally harmonised approach to rail access regulation – with a focus on achieving efficient arrangements for negotiating and managing access across adjoining networks – should be a key factor to be considered by the ACCC in reviewing the Proposed IAU.

Aurizon has sought to identify opportunities within the Proposed IAU to improve national consistency in aspects of the access negotiation frameworks where this will provide benefits to operators and customers, in particular in the access negotiation framework, the standard terms and conditions for access, and in access management methods applied.

Aurizon has sought, and will continue to seek, a similar approach in other concurrent regulatory reviews, such as the QCA's review of QR's 2025 Draft Access Undertaking, regulatory processes to be undertaken in accordance with the amended WA Rail Access Code and in the further development of the NSW rail access framework.

Recommendation

Aurizon recommends that:

- the Preamble (CI 1.1(e)) should recognise that seeking to stimulate customer confidence, competition and market growth in the rail industry requires not only that ARTC adopt concepts of pricing equity and transparency, but also:

¹⁰ ARTC Statement of Expectations 2023

¹¹ As noted by the ACCC in its 2022 guidance paper on ARTC's Interstate Access Undertaking, p.24

¹² Competition and Consumer Act 2010 (Commonwealth); CI 44AA

¹³ The AustralAsia Railway (Third Party Access) Code 1999

- recognising that as ARTC usually only provides a component of the access required by operators for their total journey, it must operate and contract in a way that assists operators in efficiently negotiating and managing access across multiple RIMs; and
- more generally, that ARTC manage its rail infrastructure in a way that promotes improved inter-operability and harmonisation across the national rail network; and
- the Proposed IAU be amended where this can improve national consistency and harmonisation in the access negotiation frameworks, the standard terms and conditions for access, and in access management methods applied. A number of specific amendments are recommended throughout this submission to achieve this.

2. Path management and schedule optimisation

At the outset, Aurizon would like to highlight its appreciation of the constructive engagement and assistance provided by ARTC in our recent introduction of inter-city containerised freight services across the interstate network. Aurizon set itself a challenging program for the introduction and ramp-up of services across the national network, with services now operating between Brisbane, Sydney, Melbourne, Adelaide and Perth, and service frequency on these routes continuing to increase. To achieve this Aurizon has needed to rapidly piece together synchronised access entitlements across multiple rail networks and terminal locations in each capital city.

Throughout this process, ARTC has been unfailingly constructive in its dealings with us, and has been proactive in helping identify solutions to issues as they arose. Nevertheless, this experience has highlighted the capacity limitations that currently exist within the broader interstate network (including beyond ARTC's network boundaries). Unlike bulk freight markets, the timing of paths for inter-city containerised freight is critical to meet the preferred service requirements of freight customers and to compete effectively with road freight. Premium paths are those with an efficient transit time combined with a late evening departure and an early morning arrival, with only a limited number of paths able to be scheduled within these windows. Further, these paths need to be co-ordinated across all mainline rail networks (including providing suitable connections between services to enhance national service coverage), and connect into available terminal slots at all terminal locations.

Even with ARTC's valuable assistance, it has been challenging to secure suitable train paths across the broader interstate network to support an efficient rail service offering. This arises as, as is generally the case for scheduled networks, a new service will usually need to be 'fitted around' existing scheduled services. Not only does this mean that it may not be possible for the train to achieve the preferred network entry time, it may also have to accept far greater crossing delays than existing services.

To date, Aurizon has been willing to initially accept less desirable pathing in order to quickly commence operations, but we will seek to continually improve our pathing as opportunities arise over time. However, this experience has highlighted some critical issues that we consider are not currently well managed in Australia's rail access regimes generally, and we consider that the Proposed IAU could provide a more effective suite of tools for ARTC in its management of access.

In Aurizon's view, paths within the premium windows should be prioritised to services that are consistently run at high utilisation (train length and loading) and high reliability. Non-premium paths can be used to provide a more flexible option for use for non-time sensitive, overflow or seasonal services. This would reflect the most efficient allocation of paths, with limited premium path capacity being allocated to its most valued use.

The concept of prioritising path allocation for high performing services is not new. In the Sydney Trains network, where there is high demand for paths in passenger peak periods, the idea of developing 'gold paths' for gold graded freight services has been previously raised, with broad support from rail operators.

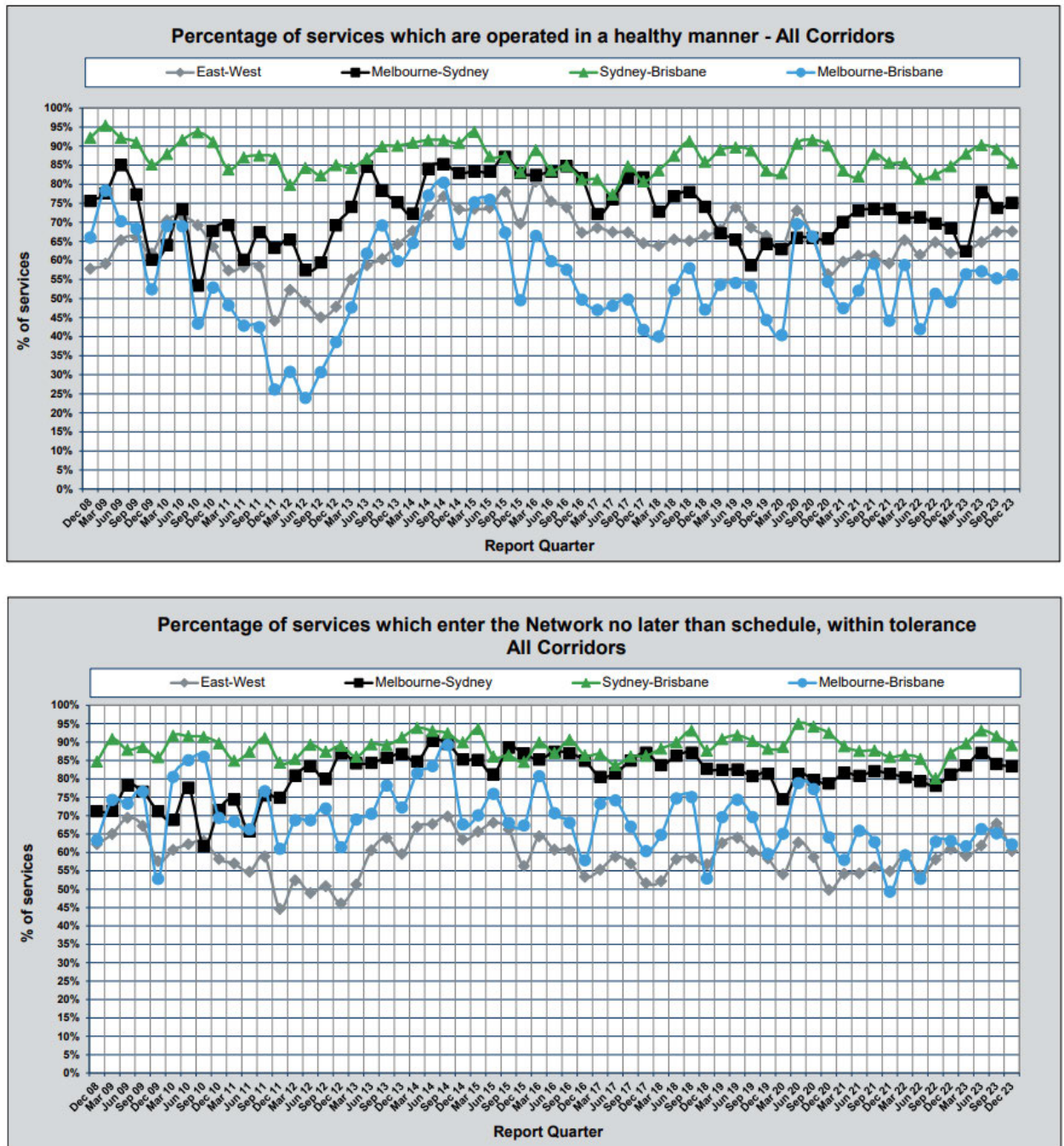
Under this approach, freight services able to demonstrate superior on-time performance could qualify for a path through the metropolitan network during passenger peak times. The disciplined reliability required to obtain and retain such a path would, arguably, manifest in high utilisation and on-time performance. While this remains just a concept, it suggests one way to differentiate otherwise alike or similar freight paths.

However, the path management tools typically used by Australian RIMs, and reflected in ARTC's Proposed IAU, do not support the prioritisation of premium paths to high utilisation/high reliability services. This reflects that typical access agreements do not distinguish between premium and non-premium paths, and create only limited accountability on operators for how their contracted paths are used, both in terms of their level of path utilisation and their performance in reliably operating to schedule.

On the interstate network, the low reliability of existing operators' path utilisation is apparent from ARTC's quarterly performance reports. As can be seen from the graphs below, over the last two years:

- Only ~60% of East-West services and ~62% of Melbourne-Brisbane services enter ARTC's network on time; and
- Only ~64% of East-West services and ~52% of Melbourne-Brisbane services operate in a healthy manner (i.e. running on time or late only due to causes outside the operator's control).

Figure 1 ARTC Interstate network operator reliability



Source: ARTC quarterly performance reports, see <https://www.artc.com.au/customers/access/access-interstate/performance-indicators/reporting/>

Anecdotally, Aurizon understands that there are numerous paths where the trains rarely run to schedule. While Aurizon is not aware of the reasons for such poor on-time performance (and in particular the very low on-time network entry performance on these routes), on-time network entry on the Sydney-Brisbane route, where operators need to apply high levels of performance discipline in order to navigate through the congested Sydney Trains network, is much higher at around 90%. The proportion of trains operated in a healthy manner is also much higher on this route, at 85-90%. This indicates that significantly higher on-time performance can be achieved where there is a sufficiently strong incentive on operators to do so.

ARTC does not currently report on train cancellations, and so there is no public data showing the level of operator cancellations on the interstate network. Again, anecdotally, Aurizon understands that there are some paths that are operated on an irregular basis.

Aurizon acknowledges that the irregularly operated services (i.e. the services that are consistently cancelled by operators) are likely to be largely outside the premium windows and will be paths that are retained by operators for overflow or seasonal services. However, poor schedule reliability occurs across a broad range of services, with many examples of consistently poor on-time performance for train services operating on premium paths.

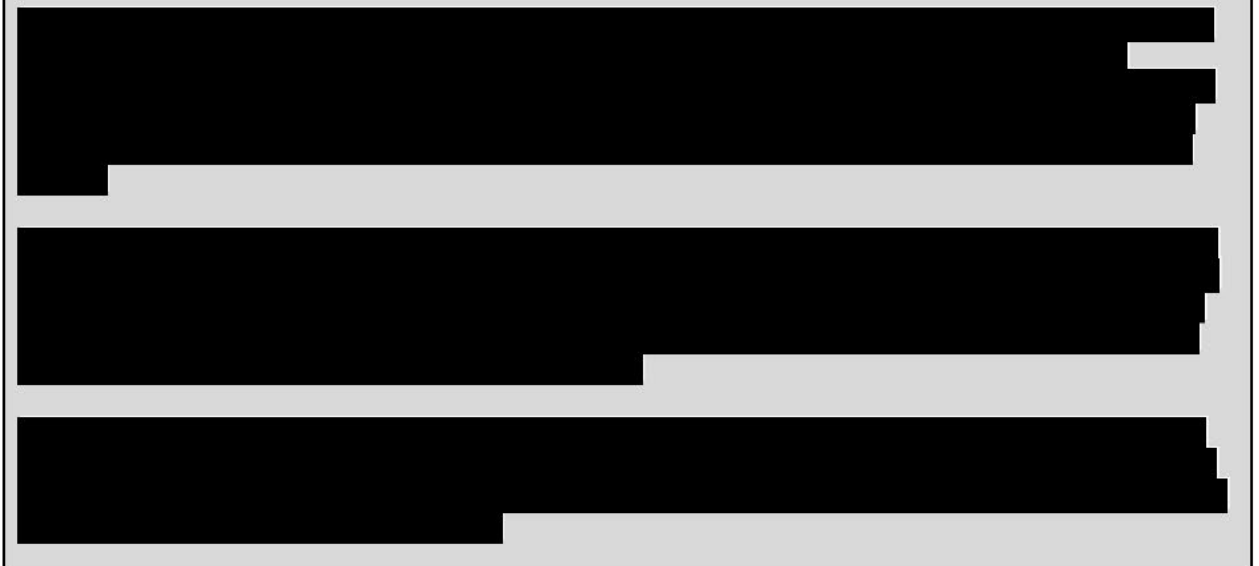
These issues cause particular difficulty for a new entrant seeking access to suitable train paths as a result of two separate, but related, issues:

- Inflexibility in the ability for RIMs to adjust existing MTP scheduled paths to allow for the introduction of a new service of comparable quality – which remains the case regardless of how consistently the incumbent operators reliably operate to schedule; and
- In some cases, an incumbent operator may continue to hold contracted paths, notwithstanding that it may not have sufficient demand to consistently utilise them.

While it may not be the case that a new entrant could directly use a path that is not consistently or reliably used by an existing operator, the removal or adjustment of paths in the MTP can create opportunity for significant improvements in paths available to that new entrant. The box below provides an example of the benefits that can be achieved.

Box 1 Opportunities for improved pathing through MTP optimisation [CONFIDENTIAL]





The difficulty in accessing new premium paths is not a major issue for existing operators with existing premium path services in place. To the extent that freight demand increases, they are able to prioritise time-sensitive freight onto these existing premium path services, and secure additional non-premium paths, which can be used for non-time sensitive freight diverted from the premium path services.

However, this is not an option for a new entrant. Without access to any premium paths, they are simply unable to provide a service that is suitable for the needs of the more time-sensitive component of the market, significantly limiting the scope of the freight market for which they can compete. This also reduces the potential to drive modal shift, as new competition is not able to provide a service with an appropriate schedule and reliability to convince trucking companies and/or end customers to move their freight to rail.

As noted above, Aurizon considers that paths within the premium windows should be prioritised to services that are consistently run at high utilisation (train length and loading) and high reliability, with non-premium paths used to provide a more flexible option for use for non-time sensitive, overflow or seasonal services. However, with this limited accountability on operators in terms of how they use their contracted paths, it remains open to existing operators to retain their contracted premium paths, even though they may not have a critical requirement around the timing of that path – or may not even need to consistently operate on that path at all – in order to prevent a competitor from gaining access to improved pathing. In particular, if an existing operator is able to prevent a new entrant from gaining access to paths within the premium window, this will effectively exclude the new entrant’s ability to compete for time-sensitive freight, and further entrench the dominant market position of the existing operator.

Accordingly, in order to ensure that the Proposed IAU and ITAA can more effectively support competition in the rail haulage market for intercity freight, Aurizon considers that it is essential that ARTC has the necessary tools to effectively manage the MTP to ensure it supports high utilisation of capacity and to reduce opportunities for existing operators to limit competition in the rail haulage market. Aurizon considers that these tools should be consistently defined and applied across Australia’s rail networks to provide a common path management framework and to reduce opportunities for gaming. This is one of the most direct ways in which the Proposed IAU can better achieve the Part IIIA objectives¹⁴ to promote

¹⁴ *Competition and Consumer Act 2010*, Part IIIA section 44AA

the economically efficient operation or, use of and investment in infrastructure thereby promoting effective competition in upstream and downstream markets.

There are a range of mechanisms that can be used to incentivise the use of premium paths for high utilisation and high reliability services, including pricing and non pricing approaches. We acknowledge that some of these mechanisms may require material adjustment to ARTC's contracting approach for inter-city freight and as a result may not be able to be fully developed within the planned timeframe for finalising the Proposed IAU.

Nevertheless, there are a number of mechanisms that can be readily incorporated into ARTC's Proposed IAU and ITAA that can improve ARTC's ability to manage its MTP to promote better utilisation of premium paths and improved opportunities for new entrants to gain access to premium paths. In this submission, we have identified a number of such options, and consider these to be the minimum essential changes that should be made to the Proposed IAU and ITAA.

However, we urge ARTC to engage with operators and other stakeholders to identify additional mechanisms that can be used to ensure that premium paths are prioritised to high utilisation and high reliability services. As discussed in section 7, this could be done in the context of a more broadly defined Interstate Network Development Strategy (**INDS**). Strategies identified through this process could either be incorporated into the Proposed IAU, or may be further developed for incorporation in ARTC's contracting approach at a later time.

2.1 Tools to enable schedule optimisation

RIMs generally provide a strong path commitment to operators, including a specific network entry and exit time for each operator.¹⁵ In the MTP, they may also provide for specific en-route dwells for operational purposes, e.g. en-route terminals, crew changes or refuelling.

While access agreements often include a firm obligation on operators to comply with their train schedule, there are generally few, if any, effective consequences for an operator's late running except a loss of priority at train crosses.¹⁶ Most Australian access frameworks – including CI 9.6 of ARTC's Proposed ITAA – include an entitlement to reschedule services where an operator/access holder has consistent poor reliability performance, with the intention of more closely aligning the schedule to actual performance.¹⁷ This is a form of 'use it or lose it' provision, while retaining a focus on minimising any actual detriment to the existing operator by ensuring that any revised path provided to it will enable it to continue to achieve its actual service operation. This entitlement, provided it were to work effectively, can provide an important tool in enabling schedule optimisation, as if an existing scheduled path is not used reliably, it creates an opportunity to modify that path to facilitate the introduction of an efficient new scheduled path.

However, the typical approach in Australian access frameworks is for this entitlement to apply to each network in isolation, with ARTC's ITAA operating in this way. But in doing so, this limits – and likely eliminates – the usefulness of this provision in aligning schedules to actual performance where services operate over two or more adjoining networks.

¹⁵ See ARTC's ITAA, Schedule 2

¹⁶ This is the case under the ARTC ITAA

¹⁷ Similar arrangements are included in Arc Infrastructure Train Path Policy CI 3.2; Aurizon Bulk Central Time Path Allocation and Reallocation Policy CI 16

Using ARTC's Proposed ITAA as an example of this problem, under CI 9.6, if an examination of three month's history shows actual train performance departing from the scheduled train path in a material respect, the parties are required to negotiate in good faith to amend the scheduled train path so that it reflects, as closely as reasonably possible, the three month history. However, CI 9.6(e) of ARTC's ITAA provides that an operator is not compelled to accept an alternative train path offered by ARTC if contractual obligations owed to any person would prevent it from doing so. This would, for example, allow the operator to refuse an alternate train path on the basis of a contracted entry or exit time to/from an adjoining network or terminal, notwithstanding that it does not consistently meet that time and that the revised path more closely resembles actual practice.

A further potential constraint on the application of this provision will occur if there is a high degree of inconsistency around the actual path used by an operator. This may mean that it is difficult to establish an alternate path that 'reflects, as closely as reasonably possible, the three month history'.

As noted above, there are a number of ways in which increased operator accountability around on-time operation on paths could be achieved, including through financial penalties. However, improvements can be made while minimising disruption to ARTC's contracting framework, and therefore minimising the flow on implications to operators' contracting frameworks with their customers, by modifying the existing 'use it or lose it' provisions to ensure that they work more effectively – including across network boundaries.

This could be achieved by:

- allowing the RIM some greater flexibility around what the alternate path needs to reflect, while preserving the principle that it intended to not disadvantage the existing operator given its typical actual practice; and
- providing that an existing operator's obligations regarding network entry and exit times are not automatically a valid reason for it to refuse a different train path. Instead, there should be a positive obligation on the operator to use its best endeavours to negotiate a varied entry or exit time that aligns with a revised schedule offered by ARTC.

Further, time limits should be applied to this process, similar to those applied in CI 9.2 in relation to variation of paths by agreement, in order to limit the opportunity for an operator to frustrate the process through delay.

Recommendation

Aurizon recommends that, in order to improve opportunities for ARTC to optimise its MTP and introduce new services if required, the Proposed IAU be amended to:

- Modify CI 9.6 of ARTC's Proposed ITAA, which provides for ARTC to reschedule train paths where an operator has consistent poor reliability performance, to provide that in doing so,
 - ARTC has greater flexibility around what the alternate path needs to reflect, while preserving the principle that it intended to not disadvantage the existing operator given its typical actual practice; and
 - a rail operator should have an obligation to use its best endeavours to negotiate variations to agreements defining network entry and exit times to accommodate that varied schedule;
- Time limits should be included in CI 9.6 (similar to those applied in CI 9.2) in order to limit the opportunity for an operator to frustrate the process through delay.

2.2 Tools to prevent path hoarding

The potential for slot hoarding to be used in the airline sector for anti-competitive purposes has been well recognised, with incumbent airlines having an incentive to maintain bookings for attractive airport runway

slots, and cancel services where they have insufficient demand, in order to limit new entrant access to the market. Accordingly, there are established worldwide guidelines¹⁸ to ensure that slots at capacity constrained airports are allocated neutrally and fairly amongst airlines using consistent policies, principles and processes, including 'use it or lose it' policies for continued access to slots.

Similar concerns apply in rail, where an incumbent may have an incentive to maintain contracted access to premium paths simply to prevent a competitor from gaining access to them, notwithstanding that it may not have sufficient demand to fully utilise these paths, or that it could satisfactorily operate train services on non-premium paths to meet its actual demand. While the incumbent will bear the take or pay path cost for any contracted path, it may be willing to accept this cost if this means that it can prevent a competitor from offering a premium service into the market.

Most Australian rail access regimes, including ARTC's Proposed ITAA, include mechanisms to address the risk of path hoarding. However, there are significant differences in how these are applied across regimes, and the utilisation requirement can be quite low (with utilisation requirements ranging from 50% to 75%) compared to the 80% use-it-or-lose-it requirement applied to airlines.

In Aurizon's view, the Proposed ITAA path resumption provisions should be amended to improve ARTC's ability to effectively address path hoarding, if this were found to be the case.

ARTC's Proposed ITAA provides, in CI 9.5, that ARTC may delete a scheduled path from an agreement by notice, where the access holder fails to operate all train services on scheduled train paths for seven or more out of any twelve consecutive weeks (where a train service is treated as not operating where it does not present at its scheduled entry point onto the network or does not complete its full journey).

These provisions reflect a relatively low utilisation threshold, as an operator can fail to use its paths for 50% of the time without ARTC having any ability to intervene. This low utilisation threshold is applied only by QR and ARTC¹⁹, with Arc Infrastructure,²⁰ Sydney Trains²¹ and ABCN²² applying a higher utilisation threshold of around 75%, more consistent with that applied in the airline industry, although Arc and ABCN assess utilisation over 6 months compared to ARTC's and QR's three month assessment period. Given the capacity limitations on premium paths, Aurizon considers that it is more appropriate to apply a higher utilisation threshold of 75%, although in order to protect the interests of access holders who may be subject to short term operational variability, it would be reasonable to assess this over the longer six month period. However, there is also merit in allowing resumption to be considered within a shorter time if utilisation is excessively low. As a result, we consider that the utilisation threshold specified in CI 9.5(a) of ARTC's Proposed ITAA should be amended to provide that path resumption processes are triggered where an access holder either:

- fails to utilise its scheduled path for 50% or more occurrences, measured over 3 months; or

¹⁸ International Air Transport Association (IATA), Worldwide Airport Slot Guidelines (WASG)

¹⁹ ARTC ITAA, CI 9.5(a) provides that if a service using any scheduled path is not operated 7 or more out of any 12 consecutive times, the scheduled path can be deleted from the agreement.

²⁰ Arc Infrastructure Train Path Policy, CI 4.1.3(c) provides that if a scheduled path has not been consistently used over a 3 month monitoring period, if the operator then fails to utilise that path more than 6 times in a six month period (i.e. 23% of the time), then the train path may be confirmed as being underutilised, with Arc then allowed to withdraw the contractual entitlement to the path in accordance with CI 4.2.

²¹ Aurizon's Railcorp Access Agreement, covering access to the Sydney Trains Network, applies a trigger of 70% utilisation over one month, however, there is complexity in practice in using this trigger as the monitoring period resets at the start of each new month.

²² Aurizon Bulk Central Time Path Allocation and Reallocation Policy, CI 8.2(a) provides that if a scheduled path has not been operated 3 consecutive times, if the operator then fails to utilise that path more than 6 times in a six month period (i.e. 23% of the time), then the train path may be confirmed as being underutilised, with Aurizon Bulk Central then allowed to withdraw the contractual entitlement to the path.

- fails to utilise its scheduled path for 75% or more occurrences, measured over 6 months.

Consistent with the approach used by Arc, the opportunity for this trigger to be gamed by an operator periodically running short trains should be removed, with a path only be measured as 'utilised' where it is used for a train service of at least 50% of its usual length/weight.

Further, in order to allow a more efficient path resumption process where services operate over multiple networks, the loss of a connecting path on an adjoining network should be introduced as an additional path resumption trigger, except only if the operator has continued to operate a modified train service not reliant on that connecting path.

Notwithstanding the introduction of more effective rights to manage path hoarding, there is a risk that ARTC may be disincentivised to use such powers in some circumstances. This is particularly the case where there are capacity constraints within a premium window, but capacity is available at other times on the network. While we acknowledge ARTC's practice is to prioritise actions that promote efficient utilisation of its network, ARTC would financially be better off if it were to keep an incumbent's access agreement for a premium path on foot (and receive take or pay for paths not used) and only offer a new entrant a less attractive path. In order to address this risk, Aurizon suggests that, when the underutilisation threshold is triggered, ARTC has the option of either resuming the path or rescheduling the path to the nearest otherwise available time.

Recommendation

Aurizon recommends that, in order to reduce the opportunity for anti-competitive path hoarding, the path resumption provisions in CI 9.10 of ARTC's Proposed ITAA be amended to:

- modify the resumption utilisation threshold to be either at least 50% utilisation over 3 months or at least 75% utilisation over 6 months, with a path only measured as 'utilised' where it is used for a train service of at least 50% of its usual length/weight;
- add a new resumption trigger, being the loss of a connecting path on an adjoining network, except only if the operator has continued to operate a modified train service not reliant on that connecting path;
- allow ARTC the option of either resuming a path or rescheduling it to the nearest otherwise available time.

2.3 Information on network utilisation

Transparency of information on the overall performance of operators, compared to schedule, is an important tool in promoting understanding of the reasons for poor network performance and utilisation, and the opportunities for improvement. Accordingly, greater transparency of operating performance, including real time performance reporting accessed via a customer portal, is a feature in both Aurizon Network's central Queensland coal network and ARTC's Hunter Valley coal network. The availability of comprehensive, real time operational information is important for capacity constrained networks, where improved operational performance is often the most cost effective means of enabling increased throughput.

Given the premium window capacity constraints evident on the interstate network, Aurizon considers that the potential efficiency benefits from a better understanding of overall system performance and opportunities for more efficient path allocation warrants this information being more broadly available (on

a de-identified basis if necessary).²³ Accordingly, Aurizon considers that ARTC should provide all operators on its network with real time data on the actual operation of all train services compared to schedule. This data should be provided via a software format that allows the data to be readily dissected and analysed by all recipients.

It will be necessary to ensure that ITAA confidentiality provisions do not prevent this information sharing. While ARTC's Proposed ITAA currently treats information on actual train performance as confidential to the relevant operator, this is not the case under all access frameworks. For example, QR has the right to provide information on actual train performance against schedule to access seekers and operators.²⁴

We also acknowledge that the efficient provision of real time performance data may require enhancement to ARTC's information systems, and there may be delays in ARTC's ability to implement this. Further, while this information is particularly critical for access seekers to be able to understand the opportunities for path rescheduling or resumption, and the extent to which this may be used to create the opportunity for them to secure a new or varied path, Aurizon acknowledges that there may be only limited instances where access seekers are actively seeking new or varied paths that cannot be accommodated given existing scheduling constraints.

As a result, if necessary as an interim solution, ARTC's Proposed IAU should at minimum provide a mechanism for this information to be provided to an access seeker, in the relevant circumstances. While it remains important to provide this in a format that allows the access seeker to dissect and analyse the data, this could be as simple as providing a 'data dump' in an excel format for the nominated services.

Recommendation

Aurizon recommends that, ARTC's Proposed IAU be amended to:

- include a requirement to provide operators with real time data on the actual operation of all train services compared to schedule (on a de-identified basis if necessary);
- in the event that there may be delays to ARTC's ability to do so, it should at minimum:
 - include in its Proposed IAU a process for an access seeker to signal their desire to acquire a new or varied train path if it were able to be made available as a result of path rescheduling or resumption; and
 - where an access seeker has registered such an interest, ARTC should then provide the access seeker with data on recent past performance of operators against their scheduled paths, so that the access seeker can assess the extent to which ARTC's opportunities for path resumption or schedule modification may assist it in securing its required path; and
- amend the Proposed IAU and ITAA, where necessary, to ensure that ARTC's confidentiality obligations do not prevent the disclosure of this information.

2.4 Customer initiated transfers

In addition to the issues discussed above, Aurizon considers that the Proposed IAU should include additional tools to facilitate path access to support competition in the haulage market for bulk freight. Bulk

²³ Aurizon notes that on networks with little or no capacity constraints, there is unlikely to be sufficient benefit in ongoing disclosure of operating performance to warrant the cost of doing so.

²⁴ QR's Access Undertaking includes an obligation to provide capacity information, defined as including the MTP, the DTP and train control diagrams showing actual performance against the DTP to an access seeker, either as part of preliminary information provided prior to them submitting an access application or during negotiations.

freight services, such as for coal and mineral products, are provided for a single customer with access rights usually held specifically to provide services for that customer.²⁵

Large bulk customers will often directly contract for the capacity necessary for their freight task. The use of a split contracting model with a separate 'capacity agreement' (held by the end customer) and 'operating agreement' (held by the rail operator) is the typical contracting arrangement in ARTC's Hunter Valley coal network, Aurizon Network's central Queensland coal network and for much of the bulk traffic operating on Arc Infrastructure's WA rail network. QR offers customers a tripartite access agreement model, where both the end customer and the rail operator are parties to the access agreement. These contracting structures, while more complex than a simple access agreement, allow a bulk customer to directly hold the entitlement to the train paths required for their freight task, and to separately contract with its rail operator to provide services over those paths. Accordingly, these contracting structures support greater flexibility and competition in the rail haulage market, enabling the end customer to switch rail operators, or to split their freight task between multiple rail operators, while retaining security over their access entitlement.

Recognising that there is only limited demand for bulk freight services on ARTC's interstate network (which, apart from grain, is primarily coal services from Illawarra to Port Kembla), ARTC has not adopted either of these more complex contracting structures. Instead, ARTC's Proposed IAU provides an opportunity for end customers to hold their required access entitlement by providing that an access agreement may be held either by the rail operator or the end customer.

Aurizon notes that this contracting structure is significantly less attractive for an end customer, as unlike the split and tripartite models, this approach requires the end customer to assume all obligations and liabilities of the rail operator, and then seek to 'back to back' these requirements in an agreement with its chosen rail operator. When this was the mechanism available for end customers to contract capacity in Aurizon Network's central Queensland coal network (prior to the adoption of a split contracting model), not even the largest end customers were willing to contract on this basis. The task of directly contracting for access is further complicated where – as is the case for most services on ARTC's interstate network – access entitlements need to be pieced together across multiple networks. Accordingly, bulk customers on ARTC's interstate network have preferred to have their rail operators hold the access entitlement required for their services.

A downside of this contracting model, however, is that it allows access to potentially create a barrier to competition in the rail haulage market. This occurs because the existing rail operator holds the paths required to provide the bulk freight services, and even at the expiry of its access agreement, CI 2.9 of the ITAA provides it with the ability to renegotiate access to those paths. The only way that the incumbent rail operator can be required to release these paths (and allow them to be contracted by the new rail operator) is through the path resumption process, which requires the incumbent to fail to operate the service on 7 out of 12 consecutive occasions and would take a minimum of three months to finalise.

These provisions recently played out when Aurizon took over the operation of rail haulage services for the Tahmoor coal mine in July 2023. The paths required for these services (over both the Sydney Trains and ARTC networks) were held by the previous operator. In order for Aurizon to commence from the transition date, it needed to operate services using ad hoc capacity, scheduled in the DTP, until such time that the previous operator either released the paths or the paths were resumed. While ARTC was very helpful in facilitating this transition, it remained necessary for Tahmoor to accept the risk of operational disruption (either on the Sydney Trains or ARTC networks) during this transition period, given it no longer

²⁵ Note, this model may not apply for bulk grain services, where multiple grain handlers may be involved in the contracting of bulk grain train services, and access is often held under ad hoc pathing arrangements reflecting the variability in service requirements.

had access to scheduled MTP paths. Had Tahmoor been unwilling to accept this operational risk, it would have had little option but to continue with its previous operator. In order to genuinely promote rail haulage competition for bulk customers, there would be real benefit in ensuring that an incumbent rail operator cannot use path access to prevent effective competition without forcing the end customers to take on the complex and commercially unattractive task of directly contracting for access.

Accepting that this issue arises in only limited instances on ARTC's interstate network, Aurizon considers that it is not necessary for ARTC to move to the more complex split or tripartite agreement structure. A more straightforward way of addressing this can be implemented under the standard single agreement structure used on ARTC's interstate network. This involves introducing a 'tap on the shoulder' provision that has long been a feature of the QR and Aurizon Network access frameworks, which applies where services on specified train paths are provided for a single end customer. In that case, the end customer has the right to request the access provider to transfer those paths to a different rail operator from a defined date. In order to implement this arrangement, the ITAA would need to provide ARTC with the right to resume paths where such notification is given by the end customer.²⁶ This may also need to be supported by specific provisions in the Proposed IAU that commits ARTC to triggering this clause when requested by an eligible end customer.

Aurizon notes that, in its review of the NSW Rail Access Regime, IPART has similarly recommended that this 'tap on the shoulder' provision be adopted by NSW rail access managers, in order to facilitate transferability of access rights and promote competition for these services.²⁷

Recommendation

Aurizon recommends that, ARTC's Proposed IAU be amended to:

- Include in the Proposed ITAA a customer initiated transfer provision to apply where services on specified contracted paths are provided for a single end customer.

3. Pricing methodology

Aurizon agrees that the floor and ceiling price limits specified in ARTC's 2008 IAU (Existing IAU) provide little useful guidance around the reasonableness of access charges on ARTC's interstate network, and that ARTC's proposed standing offer arrangements for defined reference services offer a preferable mechanism for providing regulatory and pricing certainty for operators on the interstate network. However, we consider that there are a number of aspects of ARTC's proposed pricing arrangements where clarification or amendment is warranted.

3.1 Definition of reference services

The Proposed IAU includes eight service categories, defined as reference services, which are subject to standing offer charges for applicants seeking access to those services. Those reference services are defined in Schedule J primarily based on a description of the train characteristics (eg maximum train speed, maximum axle load), and market served (eg long distance passenger, express freight, intermodal/landbridging freight or mineral products).

²⁶ The early QR standard access agreements provides a good example of this – see Clause 3.2(f) of the QR 2006 SAA.

²⁷ IPART (2023); Review of the NSW Rail Access Undertaking, Final Report; May 2023; p.83, 91.

In its discussion paper, the ACCC has sought stakeholder views on the inclusion of the eight reference services to which standing offers will apply, and has questioned whether any additional services should be included in reference services.

Recognising that, with the exception of coal services in the Illawarra area, ARTC's defined reference services cover all services that operate on its interstate network, in responding to this question Aurizon has focused on instances where there may be a reasonable basis for price differentiation within a defined category of reference services.

a) Premium and non-premium path for freighter services

Inter-city containerised freight services are largely used for the transport of a broad range of consumer goods. As discussed in section 2, there is a strong demand from freight customers for rail services that depart in the evening, and arrive at their destination early morning, allowing efficient distribution to store networks, with the limited number of paths able to be scheduled within these windows generally described as premium paths. If a new entrant to this market is unable to gain access to a premium paths, this will cause significant competitive disadvantage for that entrant, both due to its poorer service offering in the market, as well as any longer than average transit time imposing higher operating costs. As a result, the non-premium paths have a materially lower market value than premium paths. In these circumstances, the application of a standardised charge for these paths (covering both premium and non-premium paths) could unintentionally inhibit the entry of new operators in the market, as the new entrant will face the same access cost, but with a path that imposes higher operating costs (due to its longer transit time) and enables poorer market access (due to its operations outside customers preferred departure and arrival times).

Aurizon has contemplated whether there would be merit in separate reference services being defined for premium and non-premium paths, with the standing offer for premium paths not only reflecting the higher market value of those paths, but also – for the reasons discussed in section 2 – imposing greater accountability on operators in terms of their utilisation of those paths. In contrast, the standing offer for non-premium paths could apply a lower access charge and support more flexible utilisation levels, thereby providing a lower cost point of entry for new operators and/or a lower cost pathing option for use for non time sensitive, overflow or seasonal freight.

There is considerable merit in this model, which better reflects the market requirements for inter-city containerised freight services. However, we acknowledge that this would represent a significant change to ARTC's approach to defining and contracting paths for intermodal/landbridging freight, and that there would be a need for ARTC to work closely with the relevant rail operators both in defining what would constitute a premium path, and in differentiating the standing offers between the two types of services. As such, we do not propose that this be pursued for the Proposed IAU.

Instead, we consider that many of these benefits can be achieved where:

- The standing offer for "freighter" services is available for all paths, including premium paths, however, ARTC confirms its willingness to negotiate away from the standing offer for non-premium paths, reflecting their lower market value (as is contemplated in CI 4.2);
- ARTC's enhanced ability to optimise its train schedules (as discussed in section 2) is used to apply greater accountability for the utilisation of premium paths.

We consider that these outcomes can largely be achieved within the pricing arrangements included in the Proposed IAU. However, it is ambiguous in terms of whether ARTC can negotiate different prices for services that meet the definition of a reference service, where CI 4.2 provides flexibility for price differentiation to be applied. Accordingly, CI 4.2 should be amended to confirm ARTC's willingness to negotiate away from standing offer rates to reflect the circumstances in CI 4.2. This would then

clearly permit ARTC to negotiate differentiated prices for “freighter” services that operate on non-premium paths (where these paths have a materially lower market value than premium paths) notwithstanding that they also meet the definition of the “freighter” reference train.

While it may ultimately become appropriate to replace this approach with separate reference services (and standing offers) for premium and non-premium paths, this will provide stakeholders with sufficient time – and additional information flowing from the outcomes of any negotiations – to consider whether and how separate reference services should be defined and standing offers applied.

b) Promoting freight growth

Similarly, one of ARTC’s key objectives (as defined by its shareholding ministers²⁸) is to pursue a growth strategy for interstate rail and rail’s share of the interstate freight market. While Aurizon agrees that the standing offers have been set at a level which is intended to support rail’s ability to compete for mode contestable freight, there may be instances where the total cost for a rail service (including access charges from ARTC and other RIMs) is too high to provide an attractive freight charge.

In this case, the intent of CI 4.2 is to enable ARTC to offer differentiated access charges in order to grow rail volumes, either through supporting and incentivising emerging demand, maintaining vulnerable freight on rail or promoting ‘road to rail’ modal conversion. The clarification sought by Aurizon, clearly providing that ARTC may negotiate away from standing offer rates to reflect the circumstances in CI 4.2, would also assist in this regard.

Notably, Aurizon does not consider that our recommended proposal reflects a change to the policy intent of the Proposed IAU, which creates sufficient flexibility to allow our recommended form of price differentiation. However we consider that, with the introduction of standing offers, clarification of the Proposed IAU is required in order to ensure the expectation of price differentiation in these circumstances is preserved. This approach is consistent with the ACCC’s 2022 guidance on ARTC’s interstate access undertaking, which contemplated the IAU including a set of acceptable initial prices or price caps, leaving room for negotiation and lower actual prices.²⁹

Recommendation

In response to the ACCC’s question 1, Aurizon recommends that:

- ARTC’s proposed reference services be accepted by the ACCC, however ARTC’s Proposed IAU be clarified to confirm ARTC’s willingness to negotiate access charges for a service that differs from a standing offer for a reference service, in the circumstances set out in in CI 4.2.

3.2 Price levels for standing offers

As noted above, Aurizon agrees that the floor and ceiling price limits specified in ARTC’s Existing IAU provide little useful guidance around the reasonableness of access charges on ARTC’s interstate network, and that ARTC’s proposed standing offer arrangements for defined reference services provide a preferable mechanism for providing regulatory and pricing certainty for operators on the interstate

²⁸ ARTC Statement of Expectations 2023

²⁹ ACCC (2022); Guidance Paper – ARTC’s Interstate network access undertaking 2023; July 2022; p.15

network. Accordingly, Aurizon supports the use of a stand alone price cap mechanism in the Proposed IAU.

In terms of the level of ARTC's proposed standing offers, ARTC's access charges form a significant component of the cost structure for rail operators providing inter-city containerised freight services, and materially influence the ability of railway operators to compete with road. The difficulty for rail operators to offer attractive haulage rates, and win freight from road hauliers, is most acute on the north-south corridor where rail's share of the contestable freight market is estimated at only 11%.³⁰ On this corridor, while rail service performance (in terms of transit time, frequency and reliability) is much poorer than road, the cost of moving freight by rail (including Pickup and Delivery (PUD)) is estimated to remain at 80-90% of road freight cost. Rail's price discount to road is only marginally greater than the discount required to compensate for the additional "hassle factor" of rail.³¹ This contrasts with other corridors where rail is able to offer a far more competitive service quality/cost trade off, and as a result achieve higher mode share:³²

- the east-west corridor, where rail offers a significantly lower total cost than road (estimated at 60-70% of road freight costs), and achieves a mode share of 65%; and
- the Queensland north coast corridor, where rail offers a moderately lower total cost than road (estimated at 70-80% of road freight costs) and achieves a mode share of 53%.

While, until such time that Inland Rail is complete, the transit times achievable on the north-south corridor mean that rail is unlikely to be considered a viable option for time-sensitive freight, there remains a substantial opportunity for rail to increase its share of non-time sensitive freight. However, rail's ability to provide a greater price discount to road will be important for rail to capitalise on this opportunity. Accordingly, Aurizon encourages ARTC to review its access charges on the north-south route, considering the potential for reductions in access charges to support increased mode share. This will be important in building rail's share of the market in anticipation of Inland Rail's completion.

A further consideration is the escalation arrangements to be applied to standing offers. ARTC's proposal is to apply CPI escalation to its standing offers, although at any review date, ARTC may choose to adopt a less-than-CPI escalation rate and, in this event, it can 'catch up' any resulting shortfall in future price reviews.³³

Aurizon supports the use of CPI as a price indexation method. While the basket of goods used to calculate CPI is unrelated to ARTC's actual costs, it remains a robust and well accepted measure of economy wide inflation. However, Aurizon would prefer that the standing offers escalate at annual CPI (or lesser amount at ARTC's election) without the ability to 'catch up' any past shortfalls. This reflects that Aurizon will enter into term agreements with its customers, including provision for rate reviews. In doing so, Aurizon's intent will be for the haulage charge escalation to incorporate ARTC's increase in access charges. Any 'above CPI' escalation of ARTC access charges may be difficult to reflect in haulage rate reviews, even where this is a 'catch up' of prior less-than-CPI escalation, particularly for haulage agreements whose term does not span both the less-than-CPI review date as well as the above-CPI review date.

Recommendation

Aurizon recommends that:

³⁰ Synergies Economic Consulting (2023); The Future of Freight – Improving Modal Share (Workstream 1); October 2023; p.3

³¹ Synergies Economic Consulting (2023); The Future of Freight – Improving Modal Share (Workstream 1); October 2023; p.8

³² Synergies Economic Consulting (2023); The Future of Freight – Improving Modal Share (Workstream 1); October 2023; p.3,8

³³ ARTC Proposed IAU, CI 4.5(b)

- In response to the ACCC’s question 2, Aurizon supports the use of standing offers for reference services as stand-alone price cap mechanism, however, considers that ARTC should review its standing offer access charges on the north-south route, considering the potential for reductions in access charges to support increased rail mode share; and
- In response to the ACCC’s question 3, ARTC’s Proposed IAU be amended to provide that standing offers will escalate each year at annual CPI, or lesser amount at ARTC’s discretion, but with no ability to 'catch up' any less-than-CPI escalation at future price reviews.

3.3 Accountability for non-discrimination

ARTC’s Proposed IAU includes a general obligation in CI 4.3(b) that ARTC will not differentiate between applicants in circumstances where the characteristics of the services are alike and the applicants are operating within the same end market. This obligation is matched in CI 5.6(a) of the Proposed ITAA, with CI 5.6(b)-(d) going on to provide a process where, if ARTC sells a like train path to another party for a lesser charge, an operator may apply for a reduction in its access charge. However, CI 5.6(b) provides that this process can only be triggered where the operator actually has evidence to suggest that the other party is paying a lesser charge, a requirement that is very difficult to fulfill where negotiated charges remain confidential.

ARTC has provided, in CI 4.6, that it will publish on its website both the standing offers for reference services and prices for which access has been granted to a customer for services other than reference services, together with a general description of the services to which such prices relate. If ARTC had applied different charges to two parties operating like train services, this provision could create transparency around this, and also provide the evidence that would be necessary for an operator to fulfill the requirements of CI 5.6(b) of the ITAA. However, the Proposed IAU CI 4.6(b) effectively excludes ARTC’s obligation to provide specific pricing information on non-reference services if ARTC cannot de-identify the customer from this information. Instead, ARTC will publish the pricing or equivalent information that it can reasonably do so in the circumstances.

There are only a limited number of participants in the rail market on ARTC’s interstate network, with rail operators usually having a good understanding of all operations on the network, including their competitor’s services. Given this, Aurizon considers that it will rarely – if ever – be possible for ARTC to effectively ‘de-identify’ the customer in relation to any non-reference services.

As a result, Aurizon considers that the information disclosure requirement in CI 4.6(a)(ii) will have limited, if any, actual application. Nevertheless, Aurizon agrees that it is appropriate to treat the outcomes of specific individual negotiations as confidential to the parties, as to do otherwise may inadvertently cause the disclosure of a party’s confidential business strategies or operational arrangements.

Accordingly, Aurizon considers that an alternate approach is required to achieve the policy intent of this disclosure. Not only should this alternate approach reduce any disadvantage faced by infrastructure users when negotiating terms of access, as sought by the ACCC³⁴, it should also enable operators to have confidence in ARTC’s application of its non-discrimination obligations, and to allow CI 5.6(b)-(d) of the ITAA to be applied in practice.

³⁴ ACCC (2022); Guidance Paper – ARTC’s Interstate network access undertaking 2023; July 2022; p.20

Aurizon considers that these objectives can be achieved by including, in both the Proposed IAU and ITAA, a right for an access seeker/operator to request that ARTC procure and provide to it an independent review of whether:

- ARTC currently provides any like train services (as defined in the ITAA); and
- Whether the access seeker's proposed access charge (or operator's actual access charge) is consistent with the charge for that like train service and, if not, the modification in access charge that would be required to achieve such consistency.

Under this approach, the confidentiality of individual negotiations is maintained to the extent possible, while still ensuring that ARTC remains accountable for its non-discrimination obligations, and that access seekers can gain the benefit of information on ARTC's previously negotiated access charges for like services, hence lessening the disadvantage that they face when negotiating terms of access.

Recommendation

Aurizon recommends that:

- In response to the ACCC's question 4, Aurizon does not consider that ARTC's proposed approach of publishing negotiated prices for non-reference services provided the service can be de-identified is feasible. Instead, Aurizon suggests that ARTC include, in its Proposed IAU and ITAA, any ability for an access seeker/operator to request from ARTC an independent assessment of whether its proposed/actual access charge is consistent with the access charges applied by ARTC for like train services.

4. Dispute Resolution and Arbitration

Some of the more significant changes adopted in ARTC's Proposed IAU relate to the dispute resolution and arbitration arrangements to apply where ARTC and an access seeker fail to reach agreement on the terms and conditions to apply to the proposed access.

4.1 Dispute resolution processes

ARTC proposes a sensible process for the escalation of disputes, allowing multiple opportunities for resolution of the dispute, including the use of mediation, prior to resorting to arbitration. This process is largely consistent with the Existing IAU, except that the Proposed IAU refers disputes to a commercial arbitrator rather than the ACCC. Aurizon has no concern with this change – in our view provided that binding arbitration is available to resolve disputes, we are satisfied that this be undertaken by a commercial arbitrator rather than the ACCC, provided that the guidance to that arbitrator remains appropriate (as discussed below).

However, Aurizon has a general concern around the timeframes embedded in the dispute resolution process, and the potential for delay prior to an access seeker having access to arbitration if it is of the view that the dispute will not be resolved through other means. In this regard, we note that ARTC's process provides:

- 20 business days from the dispute notice for senior representative and chief executive resolution, prior to the access seeker being able to refer a dispute to formal dispute resolution processes (mediation or arbitration);
- In the event that mediation is attempted, if an access seeker forms the view that the dispute is unlikely to be resolved through this process, it cannot terminate the mediation and refer the dispute to

arbitration until 35 business days after the appointment of the mediator (no time limit applies in the Existing IAU); and

- If the dispute is to be referred to arbitration, the party referring the dispute must include an executed arbitration agreement with that notice, with the other party (most likely ARTC) then having 20 business days to execute the arbitration agreement.

While Aurizon has never required dispute resolution in access negotiations with ARTC, in our broader experience, a dispute will only be formally invoked following genuine attempts to resolve issues, including escalation to senior representatives. By the time a party has issued a dispute notice, there is only a limited likelihood of being able to resolve the issues through continued informal means. Accordingly, while the dispute resolution process should provide the opportunity for informal dispute resolution mechanisms, it is important that it does not create unnecessary delay in the ability of an access seeker to access arbitration.

Accordingly, we encourage ARTC and the ACCC to review the timeframes embedded in the dispute resolution process, and shorten timeframes where possible, to ensure that access to arbitration cannot be unnecessarily delayed.

Recommendation

Aurizon recommends that:

- In response to the ACCC's questions 5, 6 and 7, Aurizon considers that ARTC's proposed processes are reasonable, but urges ARTC and the ACCC to review the embedded timeframes to ensure that access to arbitration cannot be unnecessarily delayed.

4.2 Matters to be considered by arbitrator

CI 3.12.5(a)(xii) sets out the range of factors that the arbitrator must take into account in making an award. Aurizon has some concerns with the way in which these factors are described, and considers that they may inappropriately narrow the matters to be considered by an arbitrator in making an award, and in some cases introduce unnecessary ambiguity into how an arbitrator should interpret other provisions in the Proposed IAU.

As a general statement, Aurizon considers that the factors that the arbitrator should take into account should reflect the overarching intent of the Proposed IAU, and directly align with the Proposed IAU provisions where relevant. While we are satisfied that the Proposed IAU refers disputes to a commercial arbitrator rather than the ACCC, we do not consider that this justifies a requirement that an arbitrator consider a narrower (or different) set of criteria in resolving a dispute than ARTC is required to consider when negotiating for access.

Accordingly, in the box below, we have included proposed amendments to the list of factors that the arbitrator must take into account in making an award (showing markups to the Proposed IAU). We consider that this modified list better reflects the overall objectives of the Proposed IAU, and better balances the interests of ARTC and the access seeker. Further explanation of these proposed modifications is provided below.

Box 2 Proposed amendments to factors to be considered by an arbitrator

(xii) In making an award the Arbitrator must take into account:

(A) the objectives, principles, methodologies and provisions set out in this Undertaking;

- (B) ARTC's objectives as set out in its Charter and Statement of Shareholder Expectations, legitimate business interests and investment in the Network;
- (C) the Applicant's legitimate business interests and investment in the Services;
- ~~(D)~~(G) any additional investment that the Applicant or ARTC has agreed to undertake;
- ~~(E)~~(D) the interests of all persons who have rights to use the Network;
- ~~(F)~~(E) the operational and technical requirements necessary for the safe and reliable operation of the Network;
- ~~(G)~~(F) the economically efficient operation of the Network;
- ~~(H)~~(G) the avoidable costs of providing the Services requested, including the particular characteristics of the relevant Service, ~~which includes axle load, speed, wheel diameter, Train length, origin and destination, number and length of intermediate stops, departure and arrival times and days of the week~~;
- ~~(H) the commercial and logistical impacts on ARTC's business of the Services requested compared to the Standing Offer for Reference Services~~;
- (I) formal offers tabled and rejected by the parties;
- (J) the factors listed in clause 4.2 (as applicable);
- ~~(K) factors relating to the industry, including:~~
 - ~~(aa) comparative rates of return;~~
 - ~~(ab) risks to the rail industry; and~~
 - ~~(ac) relativity of price to overall supply chain costs; and~~
- ~~(K)~~(L) any other matters that the arbitrator thinks are appropriate to have regard to.

Aurizon considers that it is critical that, in forming its view, the arbitrator have regard to the objectives of the Proposed IAU together with ARTC's own objectives as specified in its Charter and in its Statement of Shareholder Expectations. These provide critical context to the arbitrator in terms of the broader outcomes that are sought through the provision of access, including in relation to promoting market growth, enhancing inter-operability and efficiency of the broader interstate rail network, and promoting competition in the dependent rail haulage market. While ARTC's explanatory guide indicates that this subparagraph is intended to encompass these things,³⁵ Aurizon considers that the drafting is unclear on this point.

The legitimate business interests of the access seeker, including its investment in the services, is a critical commercial consideration in relation to the reasonableness of an access proposal, and should be explicitly included as a factor to be taken into account by the arbitrator.

When the arbitrator is specifically directed to consider the costs of providing the services, Aurizon believes that this should be limited to consideration of the avoidable costs of the services. As ARTC has clearly established through the development of the Proposed IAU, the floor and ceiling costs associated

³⁵ ARTC (2023); IAU Submission Explanatory Guide; p. 23

with the interstate network are not a factor that ARTC has regard to in setting access charges on this network. A requirement for the arbitrator to have regard to “the costs” of providing the services could require it to place greater weight on the total costs incurred by ARTC in providing the interstate network than what ARTC itself would do. Consideration of the avoidable cost of providing the services is undoubtedly important in forming an arbitration award, including how the avoidable cost varies for different types of services. However, as has been clearly articulated by ARTC, consideration of costs beyond this is not directly relevant to the assessment of the access charge. In any case, the broader requirement that the arbitrator have regard to ARTC’s legitimate business interests and investment in the network should address concerns around ensuring that the arbitrator has regard to ARTC’s broader cost base.

Aurizon considers that the additional wording in ARTC’s proposed subparagraphs (G) and (H) is ambiguous. These factors reflect modified drafting of matters that are listed in CI 4.2, and which are required to be considered by the arbitrator under subparagraph (J). The separate inclusion of these factors, using modified drafting, appears to indicate that they should be considered in a different way by the arbitrator. Aurizon does not consider this to be necessary, and is likely to cause confusion.

Finally, the rationale for the inclusion of the items in ARTC’s subparagraph (K) is unclear. In its explanatory guide, ARTC states that this is on the basis that the arbitrator should be cognisant of industry issues. While Aurizon agrees with this in principle, it is unclear why ARTC has called out the specific issues listed in this subparagraph, with a range of other issues also likely to provide relevant industry context. However, listing these three issues appears to elevate the importance of these matters for an unclear purpose. Instead, we believe factors relating to the rail industry would be considered by the arbitrator as a matter of course under ARTC’s subparagraph (L).

The Proposed IAU also includes, in CI 3.12.5(a)(xiii), a list of things that the arbitrator may or must not do. This list is drawn from CI 44V and 44W of the CCA, and Aurizon agrees that this list is reasonable.

Recommendation

Aurizon recommends that:

- In response to the ACCC’s question 8, the factors that an arbitrator must take into account in making an award should be amended as set out in Box 2.

4.3 Confidentiality of arbitration award

ARTC’s Proposed IAU provides, in CI 3.12.5(b), that ARTC will notify the ACCC of disputes referred to arbitration and provide the ACCC, on a confidential basis, a copy of any award made by an arbitrator. This is in contrast to the Existing IAU which provides that the arbitrator (the ACCC) may publish its determination at its discretion, subject to consideration of submissions by either party as to commercially sensitive or confidential information.

Aurizon considers that the publication of arbitration awards (with commercially sensitive information redacted as necessary) provides important transparency and balance to the negotiation framework, giving access seekers an understanding of how disputes have been considered by an arbitrator, and the outcomes of that assessment. This information is valuable for an access seeker in evaluating ARTC’s access proposals and, in particular, the benefit that it may achieve from pursuing arbitration.

Accordingly, Aurizon considers that the Proposed IAU should continue to provide for the ACCC to publish arbitration awards, subject to redaction of commercially sensitive or confidential information.

Recommendation

Aurizon recommends that:

- CI 3.12.5(b) be amended to provide that ACCC may publish arbitration awards, subject to redaction of commercially sensitive or confidential information.

5. Annual reporting and performance indicators

5.1 Financial information

ARTC has proposed to regularly report a suite of financial information, in Schedule G and I of its Proposed IAU. Aurizon appreciates ARTC's commitment to providing transparency around the financial performance of the interstate rail network, and considers that the proposed financial reporting is generally fit for this purpose. We would like to see some refinements to this reporting requirement to further improve the clarity of information provided by ARTC, as follows:

- ARTC's Proposed IAU includes, for the first time, reporting on traffic volumes over its network, with ARTC committing to reporting gross tonne kilometres (gtk) and train kilometres (tkm) by track segment (Schedule I CI 1(a)(iii)). Aurizon considers that there would be merit in reporting on traffic volume by freight type, similar to the approach taken in QR's Access Undertaking.³⁶ QR commits to reporting traffic volumes in terms of train paths, net tonnes (nt) and gtk, broken down by commodity where appropriate. In applying this commitment in its annual performance report, QR disaggregates freight volumes into coal, industrial products & metals, minerals concentrates, agriculture and general containerised freight.³⁷ Disaggregation of volumes in this way provides a valuable understanding of the nature of the freight task across the network;
- The Proposed IAU provides for ARTC's annual report to include rail infrastructure capital for each segment of the network (Schedule I CI 1(a)(vi)). While the drafting of this is not entirely clear, Aurizon anticipates that this will require ARTC to report on the annual value of capital investment in rail infrastructure assets for each segment. For completeness, Aurizon considers that the annual report should also include reporting of other capital expenditure for the interstate network as a whole; and
- To improve the clarity of these reporting requirements, Aurizon suggests that ARTC include definitions for the various categories of costs, e.g. how ARTC categorises maintenance costs to corridor fixed, corridor variable and shared, and how capital costs are categorised as rail infrastructure or other.

Recommendation

Aurizon recommends that:

- In response to the ACCC's questions 11 and 12, in order to improve the clarity of ARTC's financial reporting, the requirements be refined to:
 - Report traffic volumes (gtk and tkm) by commodity type;

³⁶ QR Access Undertaking, CI 5.2.2(i)-(j)

³⁷ QR Annual Performance Report, see <https://www.queenslandrail.com.au/business/access/Compliance%20and%20reporting/2022-23%20QCA%20Annual%20Performance%20Report.pdf>

- In addition to rail infrastructure capital by segment, also report other (non rail infrastructure) capital investment for the interstate network as a whole; and
- Specify how cost categories are defined.

5.2 Performance indicators

At present, most RIMs are required to report on performance, either publicly³⁸ or to operators/access holders on their network³⁹, however each report on a different set of indicators. In some cases, individual indicators are well aligned across RIMs, but in other cases different indicators are used to provide similar, but not identical, performance information. For Aurizon Network and ARTC Hunter Valley, performance reporting requirements have been developed in close consultation with users in order to meet their specific requirements. However, there is no clear rationale for the different performance indicators reported by other networks, notwithstanding that operators on these networks have largely common information needs given their predominant operation of scheduled freight services. Aurizon believes that considerable benefit can be provided from improved harmonisation of the performance metrics used by Australia's freight rail networks.

The use of a consistent suite of core KPIs is important where individual trains operate over multiple networks (such as is the case for most services operating over ARTC's interstate rail network), as this will provide information on train/network performance for the whole service. However, a consistent suite of core performance indicators is also of value regardless of the operation of multi-network services. This is because:

- Most rail operators, including Aurizon, operate over a national footprint, and this would allow operators to take a more consistent approach to assessing the performance of similar services in different jurisdictions, and to make valid comparisons of performance across jurisdictions – improving their ability to negotiate effectively with RIMs around service quality, and ultimately with benefits in promoting the efficiency of rail services; and
- Many freight customers – including both bulk and containerised freight customers - also operate across a national footprint. An aligned approach to reporting rail network performance will allow operators to present consistent information to their customers on the performance of their freight services, including the reasons for any disruptions to service, in the same way that can occur for road freight.

On this basis, Aurizon has identified a set of core, common KPIs that it considers should be reported by all RIMs. These include KPIs on aggregate system performance (as publicly reported by ARTC in accordance with its access undertaking) and on individual service performance (which would be reported under individual access agreements).

Aurizon will be requesting these same KPIs be included in performance reporting regimes for all RIMs that manage primarily scheduled networks, and has already sought for their inclusion in QR's DAU3. For clarity, we do not propose that these core KPIs replace the bespoke reporting arrangements agreed in relation to Aurizon Network and ARTC Hunter Valley.

5.2.1 Aggregate system performance KPIs

ARTC currently reports on aggregate system performance (by geographic zone), based on the KPIs specified Schedule G of the Proposed IAU. QR also reports publicly on aggregate system performance in

³⁸ QR, ARTC Interstate, Arc Infrastructure

³⁹ Aurizon Network, ARTC Hunter Valley, Aurizon Bulk Central Network

accordance with its Access Undertaking, and Arc Infrastructure will soon be required to publicly report on aggregate system performance under recent changes to the WA Railways (Access) Code 2023. Aurizon Bulk Central Network's (ABCN) requirements for reporting on aggregate system performance of the Tarcoola to Darwin Railway (TDR) are set out in its Service Quality Policy. These KPI suites generally cover similar core aspects of performance, but with slightly different information provided - each with its strengths and weaknesses. Aurizon has reviewed these KPI suites to identify how they can be harmonised in a way that provides the most useful form of performance information. Our proposed core common KPIs are set out in the table below. Indicators that vary from ARTC's current proposal are shown in bold italics, and all relate to reporting of network availability, including in relation to train cancellations (by cause) and impact of track possessions.

Table 1 Proposed common aggregate system performance KPIs

Category	Proposed common KPI	Explanation
Reliability Measures related to no and % of services performing according to schedule Should be specific to freight services (and to freight categories where appropriate)	No and % of healthy services exiting within tolerance	Reported by ARTC and ABCN. NSW MRN and CRN also use consistent healthy/unhealthy terminology. QR reports similar information in a slightly different format. Arc uses the same terminology but with different definitions of healthy/unhealthy. There would be benefit in applying consistent approach across networks. Of the options currently used, the ARTC/ABCN indicator provides the clearest understanding of network performance.
	No and % of unhealthy services not deteriorating further	Reported by ARTC and ABCN. Provides valuable information for understanding of overall network performance.
	No and % of services that are healthy	Reported by ARTC and ABCN, with QR and Arc required to report information on similar aspects of performance. Of the options currently used, the ARTC/ABCN indicator provides the clearest understanding of network performance.
	No and % of services that exit no later than schedule within tolerance	Reported by ARTC, ABCN and QR (CI 5.1.2(a)(ii)(A)). Will also be required to be reported by Arc.
Network Availability Measures relating to availability of network Should be specific to freight services (and to freight categories where appropriate)	<i>No and % of services rescheduled for the purpose of RIM possession</i>	Reported under ITAA by ARTC. Partially reported by QR. Provides valuable information on overall reliability of the train schedule, given the demand for network possessions.
	<i>No and % of services cancelled and not rescheduled due to RIM</i>	Reported by QR and will be required to be reported by Arc. In aggregate these KPIs should provide information on all MTP services not operated. Provides valuable information on network availability and reasons for MTP services not run and should be added to ARTC's KPIs.
	<i>No and % of services cancelled and not rescheduled due to operator/access holder</i>	Note for clarity, for multi-network trains, where a RIM caused service cancellation means that the operator is required to cancel that same service on an adjoining network, the adjoining network owner should categorise the reason for this cancellation as 'other reasons'.
	<i>No and % of services cancelled and not rescheduled for other reasons</i>	
	<i>% of time network available for services</i>	Similar information reported by ARTC (HVCN) and AN. Provides information on extent of RIM's possession demands on network.

<i>Possible additional indicator</i>	% of maintenance work (hours) delivered in planned possessions	<i>Similar information reported by ARTC (HVCN) and AN. Provides valuable information on performance in maintenance planning and execution.</i>
Transit times/delays Measures relating to network delays Should be specific to freight services (and to freight categories where appropriate)	Average scheduled speed	Reported by ARTC only (under network availability category). Provides valuable information on whether network capability is improving or degrading over time (including due to congestion causing new trains to achieve slower transit times), particularly when in conjunction with delay KPIs below.
	No and % of Services which transit the Network no later than scheduled transit, within tolerance	Reported by ARTC, ABCN, and would need to be added to QR's existing reports. Provides valuable information for understanding of overall network performance
	The average above rail delay, in minutes per transit hour	Information reported by ARTC, ABCN and QR, although QR presents the information in minutes per 100 train kilometres. Arc will also be required to provide information on number of delays by cause. Presenting the information in minutes per transit hour will more readily enable comparison across networks.
	The average below rail delay, in minutes per transit hour	
	The average unallocated delay, in minutes per transit hour	
Speed restrictions	KM and % of track under TSR	Reported by ARTC, ABCN and QR. Arc will also be required to report KM under TSR.
Track condition	Track Quality Index	Reported by ARTC, ABCN and QR.

Recommendation

Aurizon recommends that:

- In response to the ACCC's question 13, ARTC should modify the performance indicators listed in Schedule G of the Proposed IAU, and which are included in ARTC's published quarterly performance reports, to include Aurizon's proposed common KPIs, as set out in Table 1. Aurizon will request that these be consistently applied by all RIMs providing access to regularly scheduled services on Australian rail networks.

5.2.2 Individual service KPIs

Schedule 5 of ARTC's ITAA includes a list of KPIs relevant to individual services, which are intended to be reported to access holders on a regular basis. Additional service specific KPIs may be negotiated on a case by case basis, in accordance with ARTC's negotiation framework. As a general proposition, Aurizon considers that it would be relevant and useful to provide information similar to the aggregate system performance indicators, but specific to each train service specified in an individual access agreement. Not only would this provide a consistent approach to assessing performance, it would enable operators to understand the performance of their train services relative to the performance of the system as a whole.

Accordingly, we propose that the list of performance indicators in ARTC's ITAA Schedule 5 be amended to include the following service specific KPIs. Indicators that are in addition to those specified in Schedule 5 are again shown in bold italics. The additional information currently provided by ARTC also remains relevant to individual access agreements, and it would be appropriate for this information to continue to be reported.

Table 2 Proposed common service specific KPIs

Category	Proposed common indicator	Explanation
Reliability Measures related to no and % of services performing according to schedule	No and % of healthy services exiting within tolerance	Consistent with reliability measure in proposed common indicators for system reports. Reported under ITAA by ARTC.
	No and % of unhealthy services not deteriorating further	Consistent with reliability measure in proposed common indicators for system reports. Reported under ITAA by ARTC.
	No and % of services that are healthy	Consistent with reliability measure in proposed common indicators for system reports. Reported under ITAA by ARTC.
Network Availability Measures relating to availability of network	No and % of services rescheduled for the purpose of RIM possession	Reported under ITAA by ARTC.
	<i>No and % of services cancelled and not rescheduled due to RIM (potentially separately reported for planned possessions and other unplanned reasons)</i>	Consistent with network availability measure in proposed common indicators for system reports, but with greater detail re impact of possessions
	<i>No and % of services cancelled and not rescheduled due to operator/access holder</i>	
	<i>No and % of services cancelled and not rescheduled for other reasons</i>	
Transit times/delays Measures relating to network delays	<i>No and % of Services which transit the Network no later than scheduled transit, within tolerance</i>	Consistent with transit time/delay measures in proposed common indicators for system reports.
	<i>The average above rail delay, in minutes per transit hour</i>	Consistent with transit time/delay measures in proposed common indicators for system reports, and generally consistent with proposed Freight Lost Time measure (by cause) for Sydney Trains
	<i>The average below rail delay, in minutes per transit hour</i>	
	<i>The average unallocated delay, in minutes per transit hour</i>	
Speed restrictions	Impact of TSRs on train running (measured in total minutes)	Reported under ITAA by ARTC.
Track condition	n/a	Included in public reports by geographic zone. Not specific to individual access agreement.

Recommendation

Aurizon recommends that ARTC:

- Amend the list of KPIs in Schedule of 5 of ARTC's ITAA to include the performance indicators listed in Table 2, which are consistent with Aurizon's proposed common KPIs for reporting on aggregate system performance.

6. Interstate Network Development Strategy

Aurizon welcomes and supports ARTC's proposal to annually develop the INDS, and endorses ARTC's long term vision to develop a network that enables rail to become the transport mode of choice in the national supply chain. We consider that, with some enhancements, this has the potential to be a valuable tool for informing and guiding future development of the interstate network.

6.1 Whole of network considerations

In its description of the purpose and scope of the INDS in CI 6.1(b)-(c), ARTC has focused on the identification of capacity expansion options to meet future operator demand on its network. However, we consider that this scope for the INDS is overly narrow, and risks missing investments and initiatives that will provide the greatest benefit to customers, and the rail industry more generally. These include strategies aimed at promoting the following outcomes:

a) Network interoperability and harmonisation

ARTC's network forms only part of the interstate rail network that operators need to access in order to provide rail services to their customers. As previously highlighted, there are only a small number of services that can operate within ARTC's interstate network alone – most services will also require access to adjoining networks in order to complete their journey. And beyond this, rail operators provide services over ARTC's network in the context of managing a broader portfolio of services. The ability for operators to nimbly shift resources across the network in response to shifting demand is important in order to promote productivity and reduce investment risk, and accordingly in promoting competition in the haulage market. It is therefore crucial that ARTC plan for future investment in its own network, having regard to how it most efficiently forms part of the broader national rail network.

Improving inter-operability and harmonisation of rail standards and interface requirements across Australian rail networks is a key priority not only for the rail industry, but for all Australian Governments. The National Rail Action Plan has been developed to create a more seamless, productive and safe national rail network, including through better aligning train control and signalling technology across networks, harmonising a number of critical standards and rules, streamlining rollingstock approval requirements and reducing the interoperability burden from a driver, crew and maintenance perspective.⁴⁰ This is supported by a Memorandum of Cooperation to support National Rail System Interoperability for future major rail investments.⁴¹ Given the importance of improved interoperability and harmonisation across Australia's rail networks, Aurizon considers that it is critical that this be an explicit objective for ARTC's INDS.

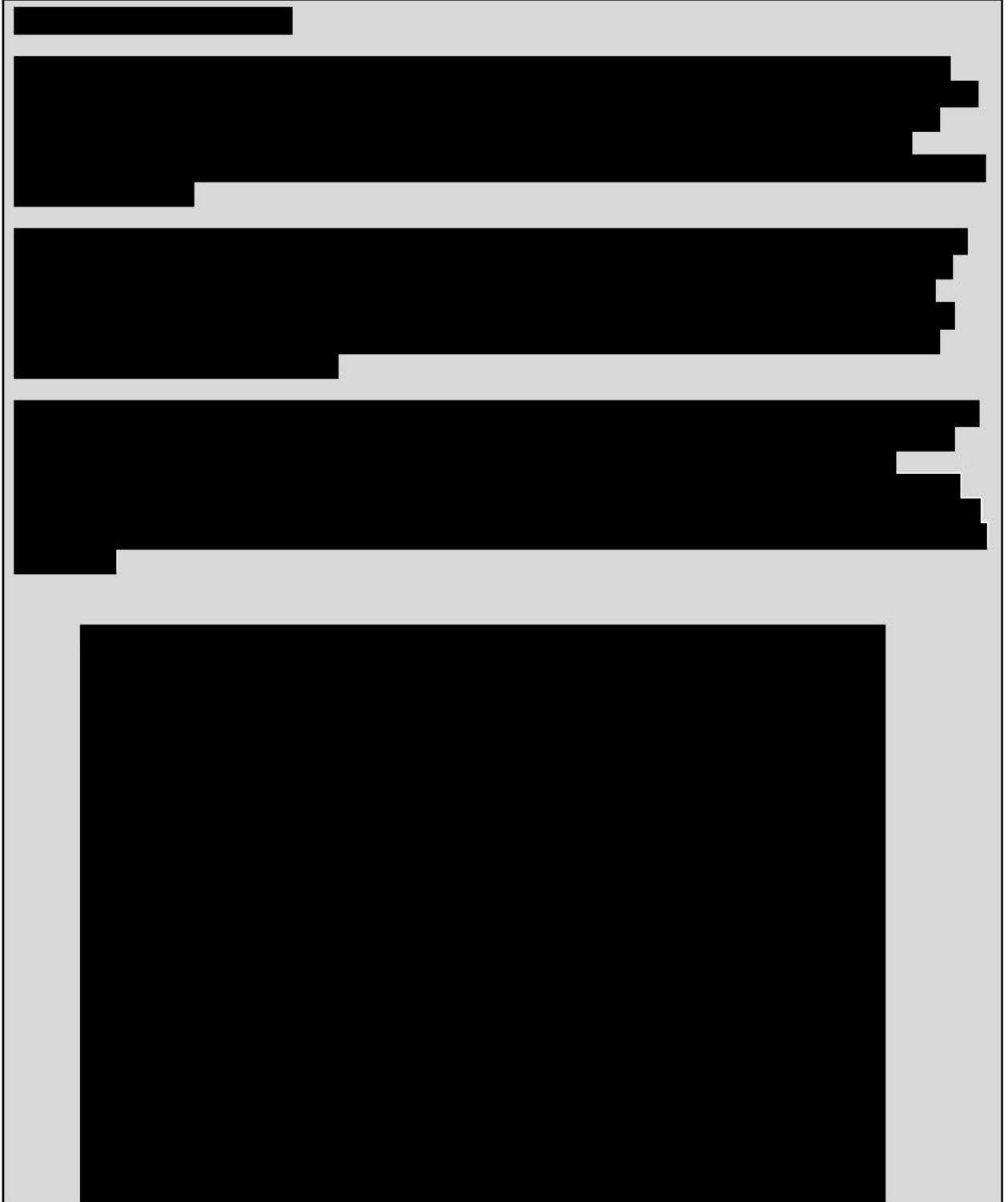
⁴⁰ National Transport Commission, National Rail Action Plan, see <https://www.ntc.gov.au/transport-reform/national-rail-action-plan>

⁴¹ Memorandum of Cooperation to support National Rail System Interoperability for future major rail investments; Between Infrastructure and Transport Ministers, Australian Rail Investors, Owners, Network Builders, Major Manufacturers, Rail Infrastructure Managers and Rail Operators

b) Promoting productivity

Beyond the direct considerations of interoperability and harmonisation, we consider that it is crucial that ARTC also consider and prioritise opportunities for investment in ARTC's network to facilitate the operation of more efficient rail services. There are a range of instances where investment in the network can reap significant improvements in rail service productivity, rather than necessarily improving capacity. An example is provided in the box below:

Box 3 Opportunities where network investment may facilitate improved efficiency [CONFIDENTIAL]





c) *Co-ordination with adjoining networks*

In addition, ARTC should also ensure that its investment program is, to the extent possible, developed in co-ordination with the investment programs of adjoining RIMs. This reflects that the effectiveness of investment in ARTC's network to address capacity constraints, improve performance standards and promote productivity will be impacted by the performance of adjoining networks and the planned investment programs on those networks.

d) *Non-capital initiatives*

In addition to ARTC's capital program, there is opportunity for non-capital initiatives to be used to enhance the performance of the interstate network. Non-capital initiatives covers a broad range of potential improvement strategies, including for example operational issues such as maintenance and possession strategies, through to commercial matters such as the issue identified earlier in this submission around changing ARTC's service offering to delineate between premium and non-premium paths and applying stronger incentives to prioritise the use of premium paths for high utilisation, high reliability services.

Aurizon considers that adopting a broader scope for the INDS, encompassing investments to support interoperability and harmonisation, productivity initiatives, improved interaction with adjoining networks and non-capital initiatives would better align the INDS to ARTC's shareholder objectives of providing safe, efficient and effective access to the (broader national) interstate rail network and growing interstate rail and rail's share of the interstate freight market.⁴² While ARTC advises in its Explanatory Guide that it expects the INDS to address a similarly broader scope of issues,⁴³ Aurizon considers that this commitment is more appropriately made in the Proposed IAU itself which establishes ARTC's commitment to the INDS, rather than in the Explanatory Guide.

Recommendation

Aurizon recommends that ARTC's Proposed IAU be amended to:

- Expand the objectives of the INDS to include, in addition to capacity expansion options, assessment of investments and other initiatives with the objective of:
 - Promoting interoperability and harmonisation of standards across the national rail network;
 - Facilitating the operation of more efficient train services;
 - Co-ordinating with the investment programs of adjoining RIMs; and
 - Identifying non-capital initiatives to improve the performance of the network.

⁴² ARTC's Statement of Shareholder Expectations 2023

⁴³ ARTC (2023); IAU Submission Explanatory Guide; p.11, 15, 17

6.2 Consultation arrangements

ARTC has proposed that, as part of its annual development of the INDS, ARTC will:

- Hold an annual meeting with operators;
- Publish a draft INDS on its website and invite comments on the options from all users of the network; and
- Consider those views in finalising the INDS.

Aurizon cautions that an annual meeting and document review is not a sufficient level of stakeholder engagement to develop a high quality network development strategy. The benefit of the INDS will crucially depend on the quality of stakeholder engagement and information provided in advance of this process. Importantly, this engagement should not only involve operators and users of ARTC's network, but should include the adjoining infrastructure owners, whose performance and investment programs directly impact the service quality outcomes achieved by ARTC's customers.

Aurizon notes from ARTC's Explanatory Guide that it offers a broad range of customer engagement opportunities,⁴⁴ however it is not clear that this covers engagement with all of the relevant stakeholders, nor how these will effectively cover issues at an appropriate level of detail to support the INDS development. Our key concern is the limited anticipated engagement with adjoining RIMs. While ARTC highlights industry forums such as the ALC and Freight on Rail Group (FORG) as providing engagement opportunities, Aurizon is not convinced that these will provide a suitable forum for the type of co-ordination required. In addition, Aurizon considers that the ROG will provide a valuable opportunity for ongoing engagement with users on a collective basis.

Aurizon considers that the INDS may benefit from a more structured ongoing stakeholder engagement process, including where appropriate, a mechanism for resolving disagreements on preferred network investments. In this regard, Aurizon highlights the requirement of QR's Access Undertaking,⁴⁵ where QR commits to convening regional network user groups, being a co-operative group involving operators, end customers and other supply chain participants (e.g. port operators and adjoining rail network owners), to provide a forum for analysis, discussion and consensus building to identify resolutions to performance issues and productivity or efficiency initiatives. While there have been delays in establishing some of these user groups, the South West User Group, focused on the West Moreton rail system, has been effectively operating over an extended time frame and provides a valuable platform for QR to engage on these issues.

Alternatively, the Proposed IAU should include a stronger commitment from ARTC for ongoing engagement with the relevant stakeholders, including adjoining infrastructure owners as well as operators, end customers and the ROG, with the INDS clearly specifying the engagement processes undertaken in its development.

Recommendation

Aurizon recommends that ARTC's Proposed IAU be amended to:

- Provide a stronger commitment to ongoing engagement with relevant stakeholders, including network operators, end customers, adjoining infrastructure owners and the ROG, to input into the development of the annual INDS.

⁴⁴ ARTC (2023); IAU Submission Explanatory Guide; p.27

⁴⁵ QR Access Undertaking 2, Cl 4.4

6.3 Project review

ARTC's Proposed IAU provides that, on completion of a preferred capacity expansion option, ARTC will prepare and publish on its website a 'close out report' which will detail a summary of project deliverables, capital expenditure incurred and a review against the initial budget, timeline and scope.

It is important to recognise that the identification of preferred projects within the INDS will establish operator and customer expectations of future network capability and performance standards. When ARTC commits to proceed with those projects, this creates a legitimate expectation from operators that the anticipated benefits will be realised. Ideally, operators will in turn invest to take advantage of the expected improvement in network capability and performance standards once available.

Unfortunately, there are many instances across Australia where investments made by RIMs in their networks have not ultimately provided the benefits originally cited. Where operators enter markets, and invest in acquiring rollingstock and other resources, in anticipation of a network standard that is not ultimately delivered, this has real consequences. In the short term, not only does the RIM's investment fail to achieve its expected benefits, this also causes operators to be unable to achieve the expected benefits of their consequential investments. In the longer term, operators will be unwilling to invest in rollingstock and service improvements to take account of planned infrastructure improvements. Ultimately, the rail sector will not achieve the productivity gains essential to compete with road.

For operators to be willing to invest in anticipation of the benefits that will be delivered through the INDS, it is critical that they have confidence that expected project benefits will, in fact, be achieved. Accordingly, Aurizon believes that it is important that ARTC's 'close out report' also include an assessment of project outcomes against the anticipated benefits – that is, has the project generated the benefits expected. If not, the report should identify the rectification steps that ARTC will take to ensure that the benefits are ultimately delivered. This may, for example, include further investment to address any remaining capability shortfall.

A commitment to including in the 'close out report' an assessment of benefits achieved and an obligation to address any shortfalls will clearly demonstrate ARTC's commitment to achieving real gains through this process, and will improve the transparency of ARTC's performance in improving the quality of the interstate network.

Recommendation

Aurizon recommends that ARTC's Proposed IAU be amended to:

- Expand the range of issues addressed in the project 'close out reports' to include an assessment of project outcomes against the anticipated benefits; and
- Include a commitment to rectifying any identified performance gaps, with the project 'close out report' to set out the available options and preferred approach to achieve this.

7. Other issues

7.1 Insurance

It is important that the insurance provisions in ARTC's ITAA realistically reflect the circumstances and current practices of this market, given insurance is increasingly more difficult to procure. Accordingly, Aurizon requests the following amendments be made:

- The ITAA should recognise the use of captive insurance companies by rail operators, by expanding CI 16.1(b)(i) to include the following:
 “Any insurance policy required to be effected and maintained by the Operator pursuant to clause 16.1, may at any time, be placed in whole or in part with a wholly owned captive insurance company, reinsured with various insurers in Australia and London (Lloyds and company markets) with a minimum Standard & Poor’s rating of A-.”
- In order to reflect an insurance market in which capacity is harder to secure and becoming more expensive, other rail network providers have recently agreed to reduce ‘chunky’ liability insurance limits. Aurizon recommends ARTC reduce the limit of liability in CI 16.1(b)(ii) from \$250m to \$150m. This would bring ARTC more in step with other rail network providers including Aurizon Network.
- The requirement in CI 16.1(c) for an operator to provide a copy of insurance policies to ARTC should be deleted. We are required to treat our actual policies of insurance as commercially confidential and are not in a position to release these policies to external parties. A requirement for evidence of insurance by way of Certificates of Currency should be sufficient.

Recommendation

Aurizon recommends that ARTC’s Proposed ITAA be amended to:

- Modify ARTC’s insurance requirements set out in CI 16.1 to better reflect current practices and conditions in the insurance market, to incorporate Aurizon’s proposed amendments.

7.2 Timeframes for negotiation

For many of the haulage opportunities where access to ARTC’s interstate network is required, a rapid market response is required with timeframes for tender preparation measured in weeks. This particularly the case for customers for whom road transport is a viable alternative, with road hauliers able to provide proposals in short timeframes.

The timeliness of ARTC’s information on access terms is not usually a problem, particularly given the standing offer arrangements cover almost all services on ARTC’s interstate network. However, in the event access to a non-reference service is required, or a variation to a standing offer is sought, ARTC’s standard response timeframes are not compatible with the market demand for these services, with the Proposed IAU providing ARTC with one week to acknowledge an access application (CI 3.7(a)) and a further six weeks to provide an Indicative Access Proposal (IAP), with the ability to extend this timeframe in some circumstances (CI 3.8(a)-(b)). In the event that an access seeker raises any concerns with the IAP, ARTC has a further six weeks to respond (CI 3.9(b)).

In Aurizon’s experience, ARTC’s practice is to be far more responsive than indicated by these timeframes, however the continued application of these extended IAP timeframes in the Proposed IAU creates uncertainty around how long ARTC may take to respond to a non standard service. Accordingly, Aurizon urges ARTC to review these timeframes to better align both with market demand and its actual practice.

Recommendation

Aurizon recommends that:

- ARTC review the IAP related timeframes established in CI 3.7-3.9 to better align both with market demand and its actual practice.