

23 February 2024

Mr Matthew Schroder
General Manager
Infrastructure and Transport – Access and Pricing Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Mr Schroder

ARTC DRAFT INTERSTATE ACCESS UNDERTAKING

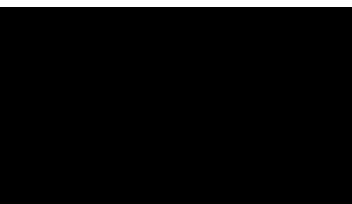
I refer to the Australian Competition and Consumer Commission's request for comments on the Australian Rail Track Corporation draft interstate access undertaking.

Qube appreciates the opportunity to make a submission regarding the draft undertaking and a copy of Qube's submission is attached.

Qube would welcome the opportunity to be involved in any further consultation.

If you have any queries regarding the submission, please contact me on [REDACTED] or by email at [REDACTED]

Yours sincerely

A large black rectangular redaction box covering the signature area.

National Rail Access Manager



**SUBMISSION TO THE AUSTRALIAN COMPETITION AND
CONSUMER COMMISSION**

**REVIEW OF THE AUSTRALIAN RAIL TRACK CORPORATION
DRAFT INTERSTATE ACCESS UNDERTAKING**

FEBRUARY 2024



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1. Introduction

Qube Logistics is part of Australia's largest integrated provider of import and export logistics services and operates services covering road and rail transport, warehousing and distribution, container parks and related services, and intermodal logistics hubs including rail terminals and international freight forwarding.

Nationally, Qube holds rail safety accreditation in all mainland states and operates cross-metropolitan, intrastate and interstate rail services in the container and bulk freight markets. Qube rail operations include narrow gauge services in North Queensland, standard gauge operations in Queensland, New South Wales, Victoria and South Australia, and broad gauge operations in Victoria.

In addition to key rail freight customers including BlueScope Steel, Qube is the largest import-export (IMEX) rail freight operator in Australia and operator of the metropolitan and regional intermodal terminals in New South Wales, Victoria and South Australia, including the Moorebank intermodal terminal in Sydney.

Qube also operates open-access export bulk grain terminals at Port Kembla (Quattro terminal) and the Port of Newcastle (the National Agri Terminal).

More information on Qube can be found at www.qube.com.au and www.qube.com.au/logistics.

Qube appreciates the opportunity to comment on the Australian Rail Track Corporation (ARTC) draft interstate access undertaking. Qube is a member of the Rail Operators' Group and supports the submission being made by the group.

It is noted that the draft interstate access undertaking generally reflects a 'light touch' change from the current undertaking.



2. Background

Qube and most other large rail freight operators contributed to the Australian Competition and Consumer Commission (ACCC) review of the interstate rail access regulatory framework in 2021¹. During that review, a significant number of issues relating to ARTC's role in the national rail network were identified.

Many of these issues remain unaddressed in the draft 2024 interstate access undertaking despite the work of ARTC's shareholder, the Australian Government, to undertake strategic reform in the rail sector.

Recently, rail freight operators also contributed to reviews of the New South Wales rail access undertaking by the Independent Pricing and Regulatory Tribunal² (IPART) and the Queensland Competition Authority's (QCA) current review of the Queensland Rail access undertaking³.

Common themes across each of the rail operator submissions to the reviews include the lack of accountability demonstrated by networks in supporting the delivery of Government strategy and policy – to deliver an inter-operable rail network, grow rail mode share and build network resilience. These themes are highlighted through numerous Government strategy and policy documents including the National Freight and Supply Chain Strategy, the National Rail Action Plan, state-based strategies and plans, and form part of the National Cabinet agenda⁴.

As the rail freight sector seeks to address a number of the significant issues which have constrained its ability to compete with road freight in the interstate and regional freight markets, it is critical that ARTC play a leading role (see section 4). Across the sector there is significant desire and appetite for reform, with significant impetus coming from ARTC's

¹ <https://www.accc.gov.au/by-industry/rail-shipping-and-ports/interstate-rail-network-access-undertaking/the-regulatory-framework-for-artcs-interstate-network>

² <https://www.ipart.nsw.gov.au/Home/Industries/Transport/Reviews/Rail-Access/Review-of-third-party-access-to-Rail-infrastructure-in-NSW>

³ <https://www.qca.org.au/project/queensland-rail/queensland-rails-2025-draft-access-undertaking/>

⁴ <https://federation.gov.au/sites/default/files/2022-11/national-cabinet-priorities.pdf>



shareholder, the Australian Government. A new interstate rail undertaking provides an opportunity to establish a platform for growth.

3. ARTC network

The ARTC interstate network is only part of the “Interstate Rail Network” (as defined in the draft Interstate Access Undertaking, page 38⁵), with the Interstate Rail Network linking each of the mainland capital cities. As the ARTC network does not connect each of the capital cities, operators are reliant on also using other networks. This lack of end-to-end connectivity means that rail freight operators must negotiate access with adjoining network managers to provide a viable rail transport solution for customers.

Rail freight operators accessing the Interstate Rail Network (as defined in the ARTC undertaking) also require access to the ARTC, Sydney Trains, Queensland Rail, Arc, Aurizon Central, Metro Trains Melbourne and V/Line networks, as well as the private networks and sidings at supporting freight terminals. A sample train operating from Melbourne’s Dynon terminal to the Port of Brisbane’s multi-modal terminal requires network access agreements for the ARTC, Sydney Trains and Queensland Rail managed networks plus access arrangements with VicTrack and the Port of Brisbane.

While the need for consistency of access arrangements is self-evident, rail network managers have developed bespoke, stand-alone access arrangements within different regulatory frameworks. This has resulted in a series of non-aligned networks, with different systems and standards, which act as a significant barrier to entry and constrain expansion by existing operators. Examples of the inefficiencies include the need for each individual operators liaising with multiple networks to align train paths across different networks, leading to a lack of train path optimisation and trains staging at network borders as a result of timetable misalignments. Operators are also confronted with different contractual terms relating to requesting, contracting and cancelling train paths, and contract periods.

A consequence of having multiple network owners managing the Interstate Rail Network is that ARTC charges rail operators a cancellation charge, generally the flagfall component of

⁵ ARTC defines the interstate rail network in its undertaking that the Interstate Rail Network as extending to locations off the networks it manages, locations including Kwinana (WA), Port Kembla (NSW) and Westernport (Vic).



the access fee, when a train is unable to operate due to a possession on another network. This charge acts as a further deterrent for freight owners to use rail and is not a charge that would be faced if the end customer elected to use road transport.

The revenue generated from trains cancelled due to a track possession on another network may also act as a disincentive for networks to align possessions with other networks along a rail corridor.

This demonstrates a clear example of where owners have little incentive to harmonise outcomes across the Interstate Rail Network. Some rail operators and freight customers experience a double-hit, incurring road freight costs during the period of the same track possession if freight cannot be stockpiled prior to the possession.

Operators also incur a penalty when moving across network boundaries in a live-run environment. ARTC, as a network manager, records a train in its key performance indicator metrics as being on-time if it leaves the ARTC network within 15 mins of the timetabled time. Adjoining network owners (e.g. Sydney Trains) use tighter metrics for trains entering the network, meaning a train moving from the ARTC network to an adjoining network may be recorded as 'on-time' but the adjacent network manages the train as an 'unhealthy' service which results in the service having reduced priority under the network management principles.

4. ARTC Charter, objectives and commitments

The need for an integrated interstate rail network was identified over 20 years ago with the development of the AusLink and National Land Transport Network⁶s, which identified key rail freight routes, including the Defined Interstate Rail Network. Most of this network is managed by the ARTC.

ARTC's charter, as stated in its draft Interstate Access Undertaking, is to (with emphasis added in italics):

- Provide *seamless and efficient access to users of the interstate rail network.*

⁶ [https://investment.infrastructure.gov.au/resources-funding-recipients/national-land-transport-network#:~:text=The%20National%20Land%20Transport%20Network%20\(the%20Network\)%20is%20a%20network,National%20Land%20Transport%20Act%202014.](https://investment.infrastructure.gov.au/resources-funding-recipients/national-land-transport-network#:~:text=The%20National%20Land%20Transport%20Network%20(the%20Network)%20is%20a%20network,National%20Land%20Transport%20Act%202014.)



- *Pursue a growth strategy for interstate rail* through improved efficiency and competitiveness.
- *Improve interstate rail infrastructure* through better asset management and coordination of capital investment.
- *Encourage uniformity in access*, technical, operating and safe working procedures.
- Operate the business on commercially sound principles.

This charter clearly establishes a leadership role for the ARTC in the development of an access framework for its network which is integrated with adjoining networks. It also places some onus on ARTC to support the adopt of uniform standards and procedures for operators as well as implanting a growth strategy for interstate freight.

This vision for seamless access is reinforced in the 2004 Memorandum of Understanding⁷ which the ARTC and Commonwealth Government signed with the NSW Government, which (amongst other priorities) committed the parties to work towards:

- (c) a competitive and efficient national rail system to transport the ever increasing tonnage of freight goods for domestic consumption and export;
- (f) creation of a “one-stop-shop” for freight movements across Australia;
- (g) a national open access regime for rail.

More recently, the Commonwealth Government has sought to drive industry reform to improve the operation of the rail freight market through the National Freight and Supply Chain Strategy (currently under review) with particular focus on the initiatives set out in the National Rail Action Plan. The areas of greatest focus relate to the need for increased alignment of rail network managers, with inter-operability now a standing item on the agenda for National Cabinet and the Infrastructure and Transport Ministers Meeting.

⁷ https://www.artc.com.au/uploads/Final_Tripartite_Agreement.pdf



ARTC's shareholder ministers have also issued a Statement of Expectations⁸ which identifies the pursuit of "a growth strategy for interstate rail and rail's share of the interstate freight market."

Despite the above, the draft interstate access undertaking does not commit ARTC to outcomes which address its charter; to work with other networks or adopt a growth strategy, however it includes a proposal to increase access charges for new freight which uses expansion capacity.

5. ARTC performance

ARTC's statement of corporate intent 2022-23⁹ contains a graph (page 11) which shows interstate rail use of the ARTC network peaked in FY17 and has declined to volumes below FY13. This indicates that a continuation of the current ARTC service offering and access arrangements across network will not deliver the growth objectives set out in ARTC's charter and Statement of Expectations.

The current and proposed undertakings place no obligations on ARTC to support delivery of these growth objectives and offer little investment incentive for freight operators to invest further in rolling stock or terminals.

The most notable change in the draft undertaking is the proposed development of an annual Interstate Network Development Strategy, noting that ARTC previously developed strategies such as the North-South Corridor Strategic Investment Outline¹⁰ and failed to deliver the objectives set out in the plan. Since publication of the previous strategy there has been minimal improvement, if any, to transit times on interstate corridors and many lines currently have numerous speed restrictions due to infrastructure condition.

During the same period rail freight operators have invested heavily in new locomotives and wagons to support business growth and renewal of assets in interstate, regional and IMEX freight operations. However, without meaningful reductions in transit times, and elimination

⁸ <https://www.infrastructure.gov.au/sites/default/files/documents/australian-rail-track-corporation-interim-statement-of-expectations.pdf>

⁹ <https://www.artc.com.au/uploads/ARTC-2022-23-Statement-of-Corporate-Intent.pdf>

¹⁰ <https://www.artc.com.au/library/North-South%20Corridor%20Strategic%20Investment%20Outline.pdf>



of known bottlenecks, operators are constrained when seeking to grow mode share from road transport operators.

In recent years, in addition to new rolling stock rail freight operators have also delivered significant private investment in freight terminals, including interstate freight facilities in Sydney (Qube and Aurizon), Melbourne (Qube and SCT), Adelaide (Aurizon) and Brisbane (SCT, Bromelton) and expansion of operations at existing sites. Operators and third parties have also invested in new and expanded regional and metropolitan IMEX terminals, with trains from these locations also accessing the ARTC interstate network.

Despite this private investment, without meaningful improvement in the following areas under the direct control of ARTC, many of the Government objectives will not be met:

- Network resilience;
- Transit times;
- Track condition and maintenance standards (with resultant reductions in speed restrictions);
- Network reliability;
- Train pathing and timetabling; and
- Network interoperability.

Current under-performance by ARTC in each of these areas results in a transfer of cost to rail operators, to which operator and customers have no recourse. A consequence of this under-performance is that rail operators are losing customers due to this poor reliability, which is a likely explanation for the downward trend in network usage and rail mode share. Interstate rail has also a poor reputation for reliability across the broader freight sector.

Individual rail operators do not have the commercial leverage to drive the inclusion of performance obligations on ARTC into individual access agreements, including the commitments made by ARTC to State Governments through leases. Furthermore, as the State Government agencies leading lease negotiations often had a view to Government-owned passenger operations, the key performance indicators (if any) are not indicative of the needs freight operators and input was not sought from the freight sector.

A robust performance monitoring regime within the Interstate Access Undertaking would provide surety for new market entrants and facilitate greater competitive tension for freight



owners contracting with rail freight operators. ARTC needs clear, accountable obligations to deliver a growth strategy which are underpinned by network resilience and reliability, measured through objective key performance indicators. Without accountability to deliver the right market outcomes for operators, performance will not improve and Governments will not achieve mode shift.

This dilemma is further complicated by State Governments which have leased parts of the New South Wales, Victorian and Queensland rail network and have little effective control over the ARTC in its management of the network. This is most evident in New South Wales, where ARTC has consistently failed to meet the numerous key performance indicators relating to track condition and operational performance for sections of the New South Wales rail network it leases.

As the standard track access agreement is attached to the access undertaking, this leaves rail operators little scope to negotiate access terms or performance obligations with the ARTC.

6. Regulatory Framework

A further complicating factor for rail operators is that with numerous networks nationally there is a lack of alignment in regulatory frameworks. Furthermore, some network managers, including ARTC, manage networks under more than one undertaking and/or economic regulator.

As noted earlier, this means rail operators deal with multiple network managers across the Interstate Rail Network, often operating under different undertakings and different regulators. The train paths have non-aligned reservation and cancellation frameworks, contract terms and conditions and are subject to different access agreement termination dates.

This regulatory arrangement has resulted in the focus of each network manager being entirely internal, with broader Government strategy, economic outcomes and the Interstate Rail Network subservient to the needs of the individual network. Without an undertaking by a network to engage with other networks on the development of train paths, standards, track possessions, network strategies and systems the objectives of the National Rail Action Plan and supporting Memorandum of Cooperation will continue to be undermined.



Furthermore, given the ARTC network is a subset of the broader Interstate Rail Network, it is opportune that the ACCC review of the draft ARTC interstate rail access undertaking is being undertaken at the same time that Transport for New South Wales is reviewing the recommendations from the IPART review of the New South Wales Rail Access Undertaking and the QCA is reviewing the QR access undertaking. The access framework in Victoria is due for a review.

This provides a rare opportunity for regulatory frameworks to be aligned. This would be consistent with the objective of ARTC (as stated above) and, with appropriate obligations on all networks, support delivery of the National Rail Action Plan and the inter-operability outcomes sought by National Cabinet.

7. Investment decisions

As noted above, ARTC has not delivered on the outcomes set in previous corporate strategies. While a number of other investments have been driven by ARTC, the Commonwealth or State Governments and been delivered without proper operator consultation. Operators must be assured meaningful input into the development of projects and ARTC must be held to account for delivery to ensure scarce resources are appropriately allocated.

In addition to consulting on new projects, ARTC should also be required to consult with operators on any proposals to rationalise infrastructure, including the removal of crossing loops and sidings. The removal of assets, such as sidings and loops, may reduce the maintenance burden for ARTC, but the consequence of removing the infrastructure may adversely impact restoration of full operations following degraded operations or an incident. Without such network assets, operators can incur significantly greater operational and reliability costs following an incident on the network, such as a weather event, infrastructure failure or mechanical issue.

With this in mind, support for the Interstate Network Development Strategy is qualified, pending an enforceable obligation on ARTC to deliver on the strategy. This obligation protects private investments by operators in new rolling stock and terminals, as individual operators would be unable to negotiate assurances through access agreements (in the case of rail operators) or connection agreements (in the case of terminal operators). It also



protects operators from Government decisions to re-prioritise resources to other projects without consultation.

The proposed model for rail operator investment outlined in the draft undertaking is unlikely to attract significant operator-led investment as new network capacity is available to all users. There are few 'new' growth freight tasks, with most growth in interstate freight coming from organic, population-driven growth or mode shift. Operators that are successful in winning new contracts from an existing operator (i.e. not new tonnes to rail, but potentially a new service) face issues associated with transferring capacity (as noted below in section 9).

Additionally, the short-term nature of many contracts means that the additional infrastructure many not be available during the term of the contract. It is not uncommon for new infrastructure projects which provide a small step change in capacity to take around four to five years from inception to delivery, and operators do not have the margins to support the investment risk for growth projects on competitive corridors.

Where a rail operator wins a new contract, either from another operator or a new freight task, the need to invest capital in new rolling stock in the short term also reduces the ability of an operator to invest in network capacity. It is also likely that the rolling stock will be delivered and operational before ARTC is able to deliver the necessary growth capacity.

Capacity analysis on the Interstate Rail Network needs to review the customer needs across all networks and not solely analyse the needs of each network individually. In assessing network capacity, ARTC needs to consider the impact of potential growth in non-freight activities on the network, to minimise the impact of maintenance functions, additional passenger services and acknowledge the impact of passenger priority to freight operations.

8. Inland Rail

A significant omission in the draft access undertaking is the lack of discussion relating to Inland Rail. ARTC has delivered some brownfield sections of the corridor and is working on other brownfield and greenfield sections of the Inland Rail project. ARTC has not given rail freight operators any indication of the proposed access and pricing arrangements for the line despite operators investing in new rolling stock which is aligned to the proposed service offering which was originally proposed to come on line in 2026.



In keeping with its growth strategy, ARTC should be working with operators to build business on this corridor in anticipation of Inland Rail being delivered soon after the end of the proposed undertaking.

In building freight on the Melbourne – Brisbane corridor, ARTC needs to offer assurances to rail operators and freight owners using rail regarding the proposed pricing arrangements for the end-to-end traffic to avoid price shock on the line once it is completed. Similarly, an assurance is needed for traffic using the brownfield sections along the corridor, that there will no step change in access charges.

9. Market structure

In the current market structure, ARTC, as a monopoly provider, is not sufficiently incentivised through commercial arrangements with rail operators to support operators who compete with road freight operators. ARTC current seeks to optimise network infrastructure and maintenance to reflect current demand on its network, while freight operators seek capacity for reliability and to enable business growth across the Interstate Rail Network.

Under this model, ARTC is incentivised to maximise internal commercial outcomes over whole-of-network outcomes on the Interstate Rail Network or other adjoining networks. From an operators' perspective, many of the network boundaries which have been created by ARTC and adjoining networks are not optimal for whole-of-network productivity, but are driven by the interests of one or both network owners.

Within the rail freight haulage market, there are several major non-coal contracts. The network management structure with train paths across multiple, non-aligned networks with different access frameworks and agreements acts as a barrier to competition. With inconsistent capacity transfer policies, access to train paths can be difficult on constrained segments of the network. As noted above in section 3, there a number of efficiency and commercial penalties rail operators experience moving between non-aligned rail networks.

10. Project costs and benefits

In the draft access undertaking, ARTC has committed to the development of an annual Interstate Network Development Strategy. Given the scope of the document will address investments in the interstate network, ARTC should be required to include projects from all



funding sources, the source of the funding, the type of funding (grant, equity etc) and the defined network benefit.

11. Other network uses

The scope of the current access undertaking and access agreement is focussed on the operation of trains across the network. There are, however, a range of other associated activities which are incidental to accessing the network, including access to the rail corridor to repair wagons which are located on ARTC tracks or sidings.

ARTC currently imposes additional charges and different conditions (insurance, indemnity etc) when operators need to access wagons within the ARTC corridor.

As these form part of normal rail operations, it is proposed that these regular, incidental activities be covered by the same insurance and indemnity arrangements as the access agreement.

12. Conclusion

In summary, Qube finds the proposed ARTC interstate undertaking lacking and the proposed 'light touch' approach to updating the existing undertaking will not deliver the growth strategy set out in the ARTC charter, objectives or Statement of Expectations, nor will it address the priorities set out in the National Rail Action Plan or by National Cabinet.

A new interstate access undertaking needs to:

- commit ARTC to a growth strategy;
- commit to delivery of infrastructure in advance of demand to achieve the growth strategy;
- make ARTC accountable for the delivery of the infrastructure to support the growth strategy;
- make ARTC accountable for the performance obligations and achievement of performance indicators;
- remove the penalties operators face from dealing with multiple network managers across the Interstate Rail Network;



- commit ARTC to working with other network managers to streamline delivery of access, consistent with its charter; and
- commit to the delivery of inter-operability outcomes.

Qube supports the Rail Operators' Group submission to the ACCC.