



**Matthew Schroeder**

20 February 2024

**General Manager**

**Infrastructure and Transport – Access and Pricing Branch**

Australian Competition and Consumer Commission

GPO Box 3131

Canberra ACT 2601

**Email:** [transport@acc.gov.au](mailto:transport@acc.gov.au)

**Dear Mr Schroeder**

**Re: Australian Rail Track Corporation's 2024 Interstate Rail Network Access Undertaking**

The Transport Asset Holding Entity of New South Wales (**TAHE**) welcomes the opportunity to provide comment on the Australian Competition and Consumer Commission's (**ACCC**) December 2023 Consultation Paper on the Australian Rail Track Corporation's (**ARTC**) proposed Interstate Rail Network Access Undertaking (**IAU**).

TAHE was established in July 2020 to own and hold various heavy rail network assets and infrastructure in New South Wales. These TAHE assets are regulated by the NSW Rail Access Undertaking and include rail network assets used by freight and passenger operators who also operate on the ARTC network.

Many of these TAHE network assets directly adjoin rail network assets controlled by ARTC. Consequently, TAHE has a strong interest in facilitating increased rail network inter-operability and regulatory consistency, which will benefit rail network owners (such as TAHE and ARTC) and freight and passenger rail operators.

TAHE notes that the timing of the current ACCC review of the ARTC proposed IAU coincides with a recently announced NSW Freight Policy Reform Program.<sup>1</sup> The focus of this program is benefitting NSW communities by improving connections across the supply chain to optimise freight transport outcomes in NSW. This freight policy reform program will consider the outcomes from the recently completed Independent Pricing and Regulatory Tribunal (**IPART**) Review of the NSW Rail Access Undertaking.<sup>2</sup>

The ARTC, and the ACCC's assessment of the proposed 2024 ARTC IAU, should recognise that relevant outcomes arising from the NSW Freight Policy Reform Program may trigger a need for future revisions to the IAU prior to the end of the proposed term. Incorporating outcomes from these regulatory and policy processes may provide an opportunity for timely harmonisation improvements across rail networks.

TAHE's specific comments on the draft IAU are set out below.

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<sup>1</sup> Details of this reform program are at [Freight Policy Reform Program | Transport for NSW](#).

<sup>2</sup> Detail of this IPART review are at [Review of third-party access to Rail infrastructure in NSW | IPART](#).



## **Network harmonisation and inter-operability**

The ability of different rail networks to co-ordinate their operations and allow rail operators to efficiently operate across multiple networks is a major issue in the Australian rail industry, particularly the freight rail industry.

The ARTC Explanatory Guide for the 2024 IAU recognises ARTC's need to coordinate its activities with other rail network managers (such as TAHE). This Explanatory Guide also recognises ARTC's commitment to removing barriers to efficient rail operations between networks.

TAHE strongly supports improved engagement and co-ordination between rail networks leading to greater harmonisation across these networks. Several industry and government forums are currently progressing initiatives related to inter-operability and network resilience. In particular, TAHE is actively involved in increasing alignment between the ARTC interstate network and TAHE networks on approaches to network resilience and train condition monitoring.

TAHE recognises that the challenges of harmonisation across networks will not be resolved by the proposed ARTC IAU<sup>3</sup>, but in progressing the proposed IAU TAHE seeks that the ACCC and ARTC remain mindful of the benefits of network harmonisation and inter-operability and seek to ensure that the IAU is consistent with a move towards increased network harmonisation.

## **Reporting and transparency**

The current 2008 ARTC IAU requires ARTC to report certain cost information. The proposed 2024 ARTC IAU proposes to retain these reporting obligations and introduce additional reporting requirements, including reporting additional revenue, cost, and volume information.

TAHE supports improving the transparency of rail network costs and performance. TAHE is willing to work with ARTC in the future to more closely align both definitions of network information, and reporting requirements (within the constraints of the network's respective regulatory instruments). Improved alignment of rail network information should assist both rail network owners, and freight and passenger rail operators in undertaking planning and operations across multiple networks.

## **Network development**

Section 6.1 of the proposed 2024 ARTC IAU introduces a new Interstate Network Development Strategy. This strategy is an annual capacity planning document which includes forecast network volumes, capacity, capital, and performance. Section 6.1(e) of the proposed 2024 ARTC IAU requires ARTC to consult with train operators annually prior to finalising the strategy. TAHE believes that ARTC should also consult with adjoining networks prior to finalising the strategy, as network volumes, capacity, capital, and performance may all be impacted by activities on adjoining networks.

TAHE believes that adjoining network interactions with ARTC in developing the Interstate Network Development Strategy may contribute to aligning network development more broadly across adjoining networks where appropriate.

## **Dispute resolution**

The current 2008 ARTC IAU sets out a dispute resolution process with the ARTC's regulator, the ACCC, as the arbitrator. The proposed 2024 ARTC IAU now proposes the use of a commercial arbitrator rather than the ACCC.

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<sup>3</sup> The ARTC Explanatory Guide for the 2024 IAU recognises interoperability is not within the scope of the IAU.

TAHE supports the proposed use of a commercial arbitrator. The TAHE February 2023 submission to the IPART Review of the NSW Rail Access Undertaking<sup>4</sup> sets out in detail TAHE support for commercial conciliation and arbitration as the preferred access undertaking dispute resolution mechanism, as this approach ensures the parties approach disputes from a commercial perspective.

### **Pricing principles**

TAHE supports clear and simple pricing principles being developed as part of the NSW Freight Policy Reform Program.

Pricing principles should recognise the relatively low risk of access providers exercising market power when there are opportunities for competition in the provision of rail infrastructure services. In these instances, simplification can improve certainty and lead to compliance cost savings for rail network owners, freight and passenger rail operators, and regulators.

The current NSW Rail Access Undertaking, which applies to TAHE, regulates access pricing via floor and ceiling revenue limits, where these limits are based on an assessment of relevant costs. TAHE supports the economic principles underlying these revenue limits. However, we recognise:

- » A focus on these revenue limits is most appropriate in circumstances when there is potential for revenue to fall outside these limits, resulting in revenue over-recovery or cross-subsidisation.
- » There are costs and practicality considerations to establish these limits for some networks, which might outweigh the benefits. For example, there is limited benefit in establishing a ceiling when revenue is clearly insufficient to exceed the floor.

Any pricing principles outcomes from the NSW Freight Policy Reform Program, may be relevant for NSW rail undertakings going forward.

TAHE's contact for this submission is [REDACTED], Head of Regulatory & Pricing, who is available to discuss further on [REDACTED] or at [REDACTED]

Yours sincerely,

[REDACTED]

**Lyndal Punch**

Acting CEO

Transport Asset Holding Entity

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<sup>4</sup> The TAHE 2023 submission to the NSW rail Access undertaking Review is at [https://www.ipart.nsw.gov.au/sites/default/files/cm9\\_documents/Online-Submission-Transport-Asset-Holding-Entity-TAHE-Name-suppressed-10-Feb-2023-115908038.PDF](https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Online-Submission-Transport-Asset-Holding-Entity-TAHE-Name-suppressed-10-Feb-2023-115908038.PDF).