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Dear Mr Schroder

## **Submission to the ACCC Issues Paper: The regulatory framework for the ARTC Interstate network**

Thank you for the opportunity to make a submission on the ACCC's issues paper on the regulatory framework for ARTC's Interstate network (**Issues Paper**).

The Arc network consists of 5,500km of standard, dual and narrow gauge track and rail infrastructure located within Western Australia. The Arc network connects to:-

- ports at Kwinana, Fremantle, Bunbury, Geraldton, Albany and Esperance;
- interstate freight terminals including the Forrestfield/Kewdale freight terminal, Kalgoorlie, Picton and Avon Yard; and
- the ARTC interstate network, providing a rail connection to the eastern states.

The Arc network provides rail services for the haulage of iron ore, alumina, caustic, bauxite, nickel and related inputs, woodchips, interstate and intrastate freight, grain, lime, coal and fuel. Passenger services such as the TransWA Prospector, Australian and Avon Link, and the Indian Pacific also traverse the Arc Network. All of these journeys on the Arc network are less than 1000km.

The Arc network is subject to the *Railways (Access) Act 1998 (WA)* and *Railways (Access) Code 2000 (WA)*, collectively the WA Rail Access Regime (**WARAR**). Arc interacts with the ARTC Interstate network where the railway transitions from ARTC territory to Arc territory.

### **Market conditions and modal competition**

Competition from other forms of transport are a significant commercial pressure for Arc, and presumably other below and above rail operators. Road transport, coastal shipping and air freight in particular contribute to the significantly competitive environment within which Arc operates. It is also the case that Arc has encountered competitive pressures from alternative infrastructure supply chain solutions such as slurry pipelines and conveyor belts.

Arc frequently conducts commercial negotiations where the viability of an operation as a rail task hinges on highly efficient outcomes from all supply chain participants – which can be complex and multi-faceted. This competitive environment is further heightened by market distortions such as publicly funded and maintained roads, fuel price subsidies and government subsidised port infrastructure. Arc is of the strong view that modal competition is a very real threat to the viability of tasks on rail and that such pressure

forms a significant constraint on any ability to exercise market power. Ultimately, all stakeholders in the rail transport system have an incentive to maximise the safe and efficient utilisation of rail infrastructure, and no party is well served by the exercise of market power which prices participants out of the market and in turn reduces the use of that infrastructure.

### **The case for regulation**

Arc understands the case for regulation in contexts where a participant has the opportunity to exercise market power, particularly in the absence of competitive pressures and where there is no incentive to maximise the efficient use of railway infrastructure. However, it is Arc's strong view that, in practice, owners of open access, multi-user railway networks do not typically experience such conditions due to significant competitive pressures from other transport modes such as road transport, coastal shipping and air freight as well as other civil infrastructure supply chain solutions.

Arc believes the most effective rail regulatory regime to be one that facilitates and encourages efficiently negotiated commercial outcomes between participants, whilst also minimising the regulatory burden for all. Conversely, Arc believes that heavy-handed and highly prescriptive regulation does not sufficiently facilitate dynamic market conditions and is likely to lead to inefficient and over-burdened outcomes. Similarly, Arc does not support the application of a national regime which would fail to account for the differing economic and commercial contexts facing participants across Australia's varied railway networks. Notwithstanding, Arc does support the harmonisation of regulatory regimes where the direction is toward a light-handed, market-appropriate commercial negotiate-arbitrate model. Arc supports the negotiate-arbitrate model implemented by the WARAR, including the use of the DORC valuation methodology, and believes that this type of regulation best facilitates fair and efficient market outcomes.

### **The nature of regulation**

Arc's rail network is subject to the WARAR, a primary component of which is the negotiate-arbitrate model of regulation. Arc's view is that this model facilitates efficient market outcomes that are reflective of the particular task. The parties (who are usually sophisticated commercial entities in their own right) are free to make commitments to one another regarding the provision and use of infrastructure, against a background of competing alternatives, which allows them to achieve their commercial objectives to their satisfaction and, where that is not possible, parties have recourse to regulatory mechanisms including arbitration with binding outcomes on both parties.

Arc would support the replacement of the existing regulatory regime for ARTC's Interstate network with a commercial negotiate-arbitrate regime.

Arc does not consider the content of this submission confidential and consents to the ACCC publishing this submission on its website.

Kind regards,



Tim Cooling  
Head of Commercial & Regulatory