



David Hatfield

14 July 2023

Director

Australian Competition and Consumer Council

Via email: exemptions@accg.gov.au

Dear David

RE: application for revocation of authorisation AA1000425 and substitution of AA 1000644 – interested party consultation

The Transport Asset Holding Entity of New South Wales (**TAHE**) welcomes the opportunity to provide comment on the application for re-authorisation (revocation and substitution) (the **Application**) from One Rail Australia, Manildra Group, Pacific National, Qube, Southern Shorthaul Railroad, Sydney Rail Services, Linx Rail Pty Ltd and Aurizon (together, the **Applicants**).

TAHE was established as a statutory State Owned Corporation (**SOC**) on 1 July 2020 under Part 3 of the *State Owned Corporation Act 1989 (NSW)*, to own and hold railway network assets used by the NSW transport cluster, and freight operators. TAHE was formed from its predecessor RailCorp, which owned railway network assets. RailCorp's rail operations and maintenance functions were transferred to Sydney Trains and NSW Trains in 2013 and they continue to be responsible for rail operations and maintenance functions across the NSW rail network.

TAHE has interacted with the Applicants since TAHE's inception and has found the authorisation has enabled a valuable forum for engaging with, and listening to, a significant group of access seekers, facilitating cost effective negotiations for all parties. While TAHE recognises the valuable role played by the group of Applicants, we also recognise it remains a subset of all access seekers for TAHE networks and we need to treat all access seekers fairly and take the views of all access seekers into account.

TAHE supports¹ the Australian Competition and Consumer Council (**ACCC**) granting an authorisation to the Applicants in relation to the TAHE-owned networks following ACCC consideration of additional clarity being provided:

¹ TAHE notes that the Application correctly suggests TAHE indicated *in principle* support for an application to extend the authorisation (p. 11). However, it also implies TAHE supported the Application (footnote 3) prior to TAHE being provided a copy of the Application or indicating formal support for the particulars of the Application.

- » That TAHE is a counterparty within the authorisation in relation to the NSW rail networks alongside Transport for NSW (**TfNSW**); and
- » Of what is, and is not, included as an 'actual price' to avoid potential for misunderstanding, noting there may be some benefit for collective discussions on the price structures or appropriate price transition pathways within the NSW Standard Track Access Agreement (**STAA**).

TAHE notes the Applicant's desire to drive improved commercial and operational interoperability across networks. TAHE supports improved interoperability between rail networks, but makes no comment on the appropriateness of the scope of the authorisation to extend to networks owned by other parties outside NSW named in the Application.

TAHE should be clearly identified as a counterparty in the authorisation

As acknowledged in the Application, the NSW Rail Network is primarily owned by TAHE with TfNSW owning the remainder. The Australian Rail Track Corporation (**ARTC**) currently has long term leases over and operates significant parts of the NSW Rail Network.

TAHE is owner of the following networks:

- » Metropolitan Rail Network (**MRN**) –operated & managed by Sydney Trains/TfNSW;
- » Country Regional Network –operated & managed by UGL Regional Linx/TfNSW;
- » Metropolitan Freight Network –leased by and managed/operated by ARTC; and
- » Southern Sydney Freight Line –leased by and managed/operated by ARTC.

TfNSW is the owner of the following networks:

- » Defined Interstate Rail Network -leased by and managed/operated by ARTC; and
- » Hunter Valley Coal Network² -leased by and managed/operated by ARTC.

TAHE is therefore the predominant regulated network owner under the NSW Rail Access Undertaking, which sets out the process and requirements for providing and negotiating access for rail operators.

TAHE is the counterparty to the Standard Track access Agreement. TAHE engages TfNSW as its agent to administer requirements under the NSW Rail Access Undertaking on TAHE's behalf. In practical terms

² Note that a small 25 km section of the Hunter Valley Coal Network continues to fall under the MRN owned by TAHE and operated by Sydney Trains.

this results in access seekers negotiating non-price terms and conditions for rail access with TfNSW, and negotiating price terms and conditions for rail access with TAHE.³

In contrast to this current structure, some of the wording in the Application either excludes TAHE or implies TfNSW will be negotiating pricing principles (for example section 1.5c of the application).

On this basis, given the broadened scope of the Application and potential for future variation of agency agreements, we consider that TAHE should be clearly named as a counterparty to the Applicants within the authorisation and be clearly identified as the counterparty with which the Applicants will discuss and negotiate pricing principles for the relevant networks.

Clarity on 'actual prices' within the STAA

TAHE notes that the final STAA (as identified in the Application) will be available to all access seekers seeking a similar 'standard' type of access. One potential outcome might include a set of 'standard' public prices associated with those terms. This does not prevent any individual access seeker negotiating away from the STAA terms and the associated 'standard' prices.

The authorisation should clarify the extent of the exclusion relating to prices negotiated between the rail networks and the individual Applicants. TAHE considers that this exclusion should be limited to actual price levels. This would avoid potential for hesitation to discuss pricing elements relevant to a STAA which, under some interpretations, might be considered under the umbrella of 'actual prices' such as:

- » Standard price structures, including:
 - The price bands used for grouping similar customer together; and
 - The form of charging - for example, dollars per kilometre, dollars per gross tonne kilometre, dollars per net tonne kilometre, fixed charge (in dollars per annum or per month), a combination of each, or some other measure deemed efficient or cost reflective; and
- » Appropriate transition arrangements that may apply to move from current price levels to any newly established prices derived from new pricing methodologies.

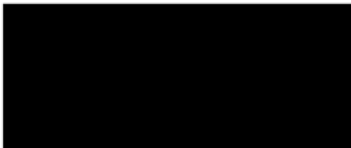
Other regulatory pricing processes, such as in energy networks, often drive networks toward consulting on price structures that drive efficient outcomes, taking customer impact into account when transitioning toward these.

³ TAHE has a Licence, Agency and Maintenance (LAM) Deed with TfNSW that, amongst other things, sets out that TfNSW will act as TAHE's agent to manage and administer negotiating, approving and executing extensions of variations to Track Access Agreements. The LAM deed also sets out that TAHE must actively approve any matters related to access charges, rescue charges, incidental charges (or concessions to these) as well as the form and amount of security to be provided under a Track Access Agreement. This retains an active role for TAHE in the negotiation process for the Standard Track Access Agreement.

TAHE supports the ACCC granting an authorisation to the Applicants in relation to the TAHE-owned networks but seeks that the authorisation clarify several matters identified in this response.

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

Sincerely yours,

A large black rectangular redaction box covering the signature area.

Benedicte Colin
Chief Executive Officer
TAHE
