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30 July 2021

Independent Pricing and Regulatory Tribunal
(IPART)
PO Box K35
Haymarket Post Shop, NSW, 1240

Terms of Reference - IPART Review of the NSW Rail Access Undertaking

Pacific National (PN) welcomes this opportunity to provide the following in response to IPART's request for submissions in relation to the proposed Terms of Reference for the Review of the NSW Rail Access Undertaking.

As Australia's largest private rail freight operator, PN transports bulk commodities and containerised freight across Australia. PN employs 3,200 people at more than 70 locations across Australia and operates 580 locomotives.

PN looks forward to working with IPART in its Access Undertaking review and believes it can offer valuable insights into matters covered by the Access Undertaking and the associated Access Agreements.

Rail freight confers several benefits over other freight modes. For example, a Deloitte Access Economics study found that *"road freight produces 14 times greater accident costs than rail freight per tonne kilometre and 16 times as much carbon pollution as rail freight per tonne kilometre"*¹.

Given the NSW Rail Access Undertaking was drafted in 1999 and there have been several changes to the responsible organisations, and the relevant Commonwealth and State legislation, there is a demonstrable need for it to be reviewed and revised.

PN shares IPART's concern that despite RailCorp (now TAHE) exceeding its Hunter Valley Coal Network (HVCN) revenue cap in 2017-2018 (and apparently in other years), it took until July 2020 for IPART and TAHE to address the overcharged amounts². PN would welcome a review of IPART's powers to address overcharged amounts.

PN notes the Access Undertaking requires TAHE to negotiate in good faith with Access Seekers for the purpose of entering agreements³. In early 2018, TfNSW (as RailCorp's agent) provided a copy of a draft access agreement, containing unacceptable terms, to Access Seekers and required them to execute it within a short period of time. These Access Seekers formed the Rail Operators' Group (ROG), which sought and obtained, a five-year, ACCC Authorisation to collectively bargain with RailCorp, the non-price

1 *Value of Rail; the Contribution of Rail in Australia*, Deloitte Access Economics, Page IV (November 2017)

2 *"This is not the first compliance review where we have found that revenue for the HVCN has exceeded the ceiling amount. We share the concerns of stakeholders that the NSW regime has not been effective in dealing with this"*. IPART Fact Sheet, Rail access: Compliance statement RailCorp HVCN 2015-16 to 2017-18

3 Clause 3.1, NSW Rail Access Undertaking

terms of the Standard Track Access Agreement (STAA)⁴. After three-years, the ROG and TAHE are approaching mutually acceptable terms for the STAA. Without this ACCC Authorisation, it is unlikely rail operators would have been able to achieve this.

PN would welcome a permanent forum to be set up for Access Seekers to jointly discuss matters relating to rail Access Agreements. This should assist in providing a balance of negotiating power between ARTC, TAHE, TfNSW, and Access Seekers. Such a forum could be facilitated by IPART and would require ACCC Authorisation.

PN strongly supports the objectives of Part IIIA of The Competition and Consumer Act (CCA) to

“(a) promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and

(b) provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry.”⁵

To this end, as part of IPART’s review of the Rail Access Undertaking, PN would like to explore with IPART, how the key terms of the Rail Access Undertaking, and Rail Access Agreements, could be harmonised with similar terms of other regulated infrastructure agreements, such as financial security requirements and other terms not specific to rail.

In addition, to facilitate rail efficiency, PN would also like to explore with IPART whether the Access Undertaking could be used to encourage standardisation of rail operating rules and technology across Australia.

Once again, thank you for this opportunity to contribute to the review of the NSW Rail Access Undertaking. PN looks forward to discussing the Access Undertaking in more detail when the review commences. Please contact me if you need any further information.

Yours sincerely

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4 ACCC Authorisation number AA1000425; Application for authorisation lodged by a group of rail operators in NSW in respect of NSW track access collective bargaining

5 S.44AA, Part IIIA, *Competition and Consumer Act* 2010 (Cth)