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Ms Melanie Mitchell
Review of the NSW Rail Access Undertaking
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop, Sydney NSW 1240

Re: Review of the NSW Rail Access Undertaking

Dear Ms Mitchell

I refer to the Independent Pricing and Regulatory Tribunal's (IPART) review of the NSW Rail Access Undertaking.

Qube Logistics Rail Services welcomes the opportunity to provide input to the IPART's review and I have attached Qube's submission for your consideration.

Qube notes that the IPART will make the submission publicly available on its website as part of the review process.

If you would like to discuss any aspects of the submission, please contact Nicholas Angelos, National Access and Accreditation Manager on [REDACTED]

Yours sincerely

[REDACTED]
Greg Sprod
General Manager, Rail and Agri



SUBMISSION TO THE INDEPENDENT PRICING AND REGULATORY TRIBUNAL (IPART) REVIEW OF THIRD-PARTY ACCESS TO RAIL INFRASTRUCTURE IN NSW

December 2021

1 Background

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.

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

2 Introduction

Qube notes that this review is being undertaken at the same time as the Australian Competition and Consumer Commission (ACCC) is reviewing the Australian Rail Track Corporation (ARTC) Interstate Access Undertaking and a copy of a Qube's submission to the ACCC is attached.

As argued in Qube's submission to the ACCC, the policy and regulatory framework for the national rail network needs to be integrated to enable positive economic stimulus rather than delivering singular outcomes for discrete, non-aligned government-owned organisations. With this in mind, Qube supports a framework which delivers meaningful reform and meets the needs of the broader rail industry, not a series of government-owned enterprises.

The current regulatory framework, which includes multiple voluntary undertakings with different jurisdiction-based economic regulators, hampers rail freight productivity and investment. Despite IPART and ACCC oversight, since the current undertakings in NSW came into effect (NSW Rail Access Undertaking (RAU) in 1999 and ARTC interstate access undertaking in 2008) the numerous, non-aligned governance and policy changes have had a significant, detrimental impact on rail freight.

Within the broader policy and regulatory setting, operators have incurred further cost from the inability of network owners to align on operational and safety issues. This has occurred despite significant government rhetoric in relation to delivering greater alignment on rules and standards, resulting in operations on the NSW rail standard gauge rail network moving from one to three discrete operating rule books and three, inconsistent, rolling stock registration processes. For a rail operator, the only recourse is to consider an expensive, and potentially unsuccessful, access dispute.

Similarly, each of the three mainline network owners in NSW deliver separate and, largely, non-aligned maintenance strategies which directly affect freight operations. With maintenance delivered through separate out-sourcing strategies, drawing on a small pool of contractors, results in an excessive number of non-aligned possessions disproportionately affecting freight movements in comparison to passenger services.

Qube acknowledges the need for all rail access undertakings to be reviewed given the needs of the sector nationally. However, from an operator's perspective, reviewing the NSW RAU in isolation is unlikely to deliver the improved economic outcome needed for industry or the community. This review is more likely to identify, and be constrained by, the structural issues in the NSW government sector.

The proliferation of NSW Government-owned entities has added cost and red tape for those accessing the network, and hidden the legislative obligation to promote access for third party operators with an organisation (the Transport Asset Holding Entity or TAHE) which does not hold any rail safety accreditation and does not actively engage with rail freight operators or in the provision of rail services. Meanwhile, Sydney Trains¹ and the contractor for the Country Regional Network have no clear obligation to support or enable rail freight operations and are not party to TAHE's undertaking.

Rather than supporting rail freight in providing an economically viable and environmentally sustainable alternative to road freight, the multiple government agencies and complex regulatory arrangements add cost, discourage investment, blur accountabilities and hide inefficiencies. As a result, the industry's reputation is one of under investment, poor reliability and lower environmental commitment as older locomotives are retained to serve low axle load rail lines, while competing on corridors where road operators are subsidised by Government despite higher emissions and road safety outcomes.

3 Industry Changes

Since 1999, when the current NSW Rail Access Undertaking came into effect, the provision of access for freight operators has changed significantly. This is demonstrated in the tables 1 and 2 below, which show the change from a single standard gauge network owner, which provided access and contracted out maintenance, to a network which is managed by multiple non-aligned parties. The constant structural changes to access providers has, unsurprisingly, coincided with a fall in rail's mode share of the general freight task and there has been significant growth road freight productivity.

Table 1: 1999 Rail access arrangements in New South Wales (as interpreted by Qube)

Network	Network owner / lessee	Access provider	Rail Infrastructure Manager	Access regime	Regulator
ARTC Interstate network	Rail Access Corporation	Rail Access Corporation	Rail Access Corporation ²	NSWRAU	IPART
ARTC intrastate and metropolitan freight networks	Rail Access Corporation	Rail Access Corporation	Rail Access Corporation ¹	NSWRAU	IPART
ARTC Hunter Valley	Rail Access Corporation	Rail Access Corporation	Rail Access Corporation ¹	NSWRAU	IPART
Sydney metropolitan network	Rail Access Corporation	Rail Access Corporation	Rail Access Corporation ¹	NSWRAU	IPART
TAHE Hunter Valley sectors	Rail Access Corporation	Rail Access Corporation	Rail Access Corporation ¹	NSWRAU	IPART
Country Regional Network	Rail Access Corporation	Rail Access Corporation	Rail Access Corporation ¹	NSWRAU	IPART
Victorian lines – Oaklands, Denilquin and Tocumwal	Freight Victoria	Freight Victoria	Freight Victoria	Unknown	Unregulated or ESC
Port Kembla - Inner and Outer Harbour	Rail Access Corporation	Rail Access Corporation	Rail Access Corporation ³	NSWRAU	IPART

¹ See Appendix – Legislative obligations for Sydney Trains

² Rail Access Corporation contracted infrastructure maintenance to Rail Services Australia (a state-owned corporation) and network control to the State Rail Authority

³ Rail Access Corporation contracted infrastructure maintenance to Rail Services Australia (a state-owned corporation) and network control to the Freight Rail Corporation (a state-owned corporation)

Table 2: 2021 Rail access arrangements in New South Wales (as interpreted by Qube)

Network	Network owner / lessee	Access provider	Rail Infrastructure Manager	Access regime	Regulator
ARTC Interstate network	TAHE/ARTC	ARTC	ARTC	Interstate	ACCC
ARTC intrastate and metropolitan freight networks ⁴	TAHE/ARTC	ARTC	ARTC	NSWRAU	IPART
ARTC Hunter Valley	TAHE/ARTC	ARTC	ARTC	Hunter Valley	ACCC
Sydney metropolitan network	TAHE	TAHE/TfNSW/Sydney Trains	Sydney Trains ⁵	NSWRAU	IPART
TAHE Hunter Valley sectors	TAHE	TAHE/TfNSW/Sydney Trains	Sydney Trains ⁶	NSWRAU	IPART
Country Regional Network	TAHE	TfNSW/John Holland Rail	John Holland Rail	NSWRAU	IPART
Victorian standard gauge – Oaklands line	VicTrack/ARTC	ARTC	ARTC	Unregulated	
Victorian broad gauge – Deniliquin and Tocumwal	VicTrack/V/Line	V/Line	V/Line	Unregulated	
Port Kembla - Inner and Outer Harbour	NSW Ports	NSW Ports	Pacific National	Unregulated	

Using the information set out in tables 1 and 2, it can be seen that in 1999 a bulk export grain train operating between Nevertire and Port Kembla via Dubbo, would have operated over one network and now experiences 6 network boundaries⁷ changes in each direction. Each of the network owners having different rules, possession arrangements, pricing structures, access agreements, timetables and train control centres.

The IPART's issues paper supporting the review focuses disproportionately on the regulated economic model supporting cost recovery on approximately 20 route kilometres of the state network which is located in the Hunter Valley. This focus on Hunter Valley operations may have been appropriate in 1999 when the NSWRAU applied to the Rail Access Corporation network, but following the ACCC acceptance of the ARTC Hunter Valley undertaking, most rail operators are now more concerned with access arrangements between networks and on the TAHE network, especially the inequities associated with vertically-integrated operations of Sydney Trains.

4 Industry regulation

NSW Auditor-General's performance report into rail freight on the Sydney metropolitan network⁸ identifies, from alternative perspective, the frustration experienced by rail freight operators with the lack of accountability applied to decisions made by Transport for NSW and Sydney Trains, the role of TAHE as the network owner and the constant change in industry governance. As noted above, despite oversight from numerous regulatory bodies, the expansion of network managers and other organisations in the provision of access has diluted accountability.

This is possibly due, in part, to network managers being permitted to lodge voluntary undertakings and safety management systems with regulatory agencies which do not vet the proposal as part of an integrated national network or alignment with government policies. The role of regulators is less clear

⁴ Qube notes that ARTC proposed to include the Sydney metropolitan freight network in the subsequently withdrawn 2018 Interstate Access Undertaking.

⁵ While Sydney Trains is accredited Rail Infrastructure Manager (RIM) with the Officer of the National Rail Safety Regulator (ONRSR), the network standards are managed by Transport for NSW, which is not accredited by ONRSR.

⁶ While Sydney Trains is accredited Rail Infrastructure Manager (RIM) with the Officer of the National Rail Safety Regulator (ONRSR), the network standards are managed by Transport for NSW, which is not accredited by ONRSR.

⁷ This train operates: Nevertire to Narromine (CRN) – Narromine to Dubbo (ARTC intrastate network) – Dubbo to Bowenfels (CRN) – Bowenfels to Lidcombe (Sydney Trains) – Flemington to Meeks Road Junction (ARTC Sydney Freight Network) – Meeks Road Junction to Coniston (Sydney Trains) – Coniston to Inner Harbour (NSW Ports/Pacific National)

⁸ NSW Auditor-General (2021) *Rail Freight and Greater Sydney Performance Audit* 19 October 2021

<https://www.audit.nsw.gov.au/our-work/reports/rail-freight-and-greater-sydney> (accessed 1 December 2021)

with both the ACCC and the IPART carrying out simultaneous, but independent, reviews of access arrangements by asking different questions without view the broader strategic vision of an integrated national network.

Neither of the current regulatory reviews appear to be considering how the industry vision agreed at the National Rail Summit in 1997⁹ and the Intergovernmental agreement in 2004¹⁰ and set out in the 2008 ARTC Interstate Access Undertaking can be achieved.¹¹ The industry vision is reinforced in National Freight and Supply Chain Strategy¹², the National Transport Commission's National Rail Action Plan¹³ and, more recently, the Australasian Rail Association's Rail Freight Action Plan¹⁴ and the work being undertaken by the Australian Centre for Rail Innovation (ACRI).

The role of the IPART also needs to be considered in light of the NSW Government's 2013 Freight and Ports Strategy (p77), which states "In late 2011 the NSW and Australian Governments signed a Memorandum of Understanding for a program of works to improve capacity for freight rail services on the Northern Sydney Freight Corridor (NSFC) between North Strathfield and Islington Junction. In signing the Memorandum of Understanding, NSW agreed to review the NSW RAU and seek certification of the reviewed undertaking by national competition authorities.¹⁵" In the 10 years since the signing of the MoU Qube is unaware of any move to finalise a review or seek certification of an revised undertaking.

The current NSW access model, whereby disputes are progressed to the IPART is slow and burdensome to both the operator and network owners. The process currently requires a rail operator to 'go it alone' in a costly dispute with industry-wide implications, potentially creating 'free-rider' beneficiaries. Additionally, a dispute can be risky with most agreements somewhat one-sided and access providers can counter argue many access issues with a broader safety argument which the IPART may be unable to resolve.

The TAHE and Sydney Trains commitment to the provision of access and understanding of operators needs is demonstrated in its 2018-19 and 2019-20 return for operations on its Hunter Valley network sectors. The submission argues that rail freight operators are the cause of its maintenance inefficiencies¹⁶, despite the fact that rail freight operators incur significant cost from the unvetted interpretation of passenger priority and unable to access its network for approximately one-third of each week day.

The decision by the rail freight industry to seek ACCC approval to enter into collective, non-commercial negotiations with Transport for NSW¹⁷ is representative of the challenges experienced by operators in working with network owners and the imbalance in market power. It also reflects the frustration operators experience with the NSW Government's delivery of policy, where rail mode share targets and claims of promoting rail freight for environmental, congestion and road safety benefits are not aligned with the behaviour of agencies.

During the period of the current NSW RAU, meaningful structural and regulatory reform has delivered productivity and safety benefits for road freight operators, little change in network access pricing.

⁹ Australian Parliament House, (2009), *Research Paper no. 19 2008-09 Commonwealth involvement in reform of the rail freight industry National Rail Summit* https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp0809/09rp19#national (accessed 12 September 2021)

¹⁰ Commonwealth of Australian and the State of Newcastle and the Australian Rail Track Corporation *Memorandum between the Commonwealth of Australian and the State of Newcastle and the Australian Rail Track Corporation* (4 June 2024) https://www.artc.com.au/uploads/Final_Tripartite_Agreement.pdf (accessed 13 September 2021)

¹¹ Australian Rail Track Corporation *ARTC Interstate Access Undertaking 2008* <https://www.accc.gov.au/system/files/Access%20undertaking%20%28clean%29.pdf> (accessed 13 September 2021)

¹² Transport and Infrastructure Council, Australian Government (2019) *National Freight and Supply Chain Strategy* <https://www.freightaustralia.gov.au/sites/default/files/documents/national-freight-and-supply-chain-strategy.pdf> (accessed 12 October 2021)

¹³ National Transport Commission (2020), *National Rail Action Plan* <https://www.ntc.gov.au/sites/default/files/assets/files/National-Rail-Action-Plan.pdf> (accessed 12 October 2021)

¹⁴ Australasian Rail Association (2021), *Rail Freight Action Plan* <https://ara.net.au/wp-content/uploads/ARA-Rail-Freight-Action-Plan.pdf> (accessed 12 October 2021)

¹⁵ Transport for NSW (2013) *NSW Freight and Ports Strategy*, p77

¹⁶ IPART (2021), *TAHE compliance – Hunter Valley Coal Network 2018-19 to 2019-20 Draft Report*

¹⁷ NSW Track Access Collective Bargaining <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/nsw-track-access-collective-bargaining> (accessed 8 December 2021)

5 Future regulatory framework

Qube supports a nationally, integrated regulatory framework which promotes the efficient use of the national rail network and applies appropriate oversight of network managers, in particular vertically integrated entities. Industry changes and behaviour since 1999 have indicated that voluntary undertakings do not serve the industry in establishing the envisioned environment which promotes economic and investment outcomes, but allow governments to make organisational changes and investment decisions without understanding industry ramifications.

Alignment of the access regimes and agreements at a national level will enable more consistent end-to-end arrangements for access to the rail network. Network owners need to be aligned in delivering improvements in whole of journey operations, supply chain efficiency and improved economic outcomes.

As noted in Qube's submission to the ACCC and consistent with the National Freight and Supply Chain Strategy¹⁸, the National Transport Commission's National Rail Action Plan¹⁹ and the Australasian Rail Association's Rail Freight Action Plan²⁰ sector reform must take a cross-jurisdictional view of the national rail network. Any review which focuses on one network or one jurisdiction will be unable to meet the urgent need for reform.

From this perspective, Commonwealth and state-based economic regulators need to demonstrate whether each adds value for the industry in supporting a nationally, integrated rail network which breaks-down, rather than reinforces jurisdictional and Rail Infrastructure Manager²¹-imposed network borders. As noted above, the current governance framework with numerous track owners and regulatory bodies creates significant operational inefficiencies, while generating an administrative and regulatory burden on the industry.

The framework should be developed through actively working with industry to support delivery of the vision, and reflect work currently being undertaken by ACRI and other industry participants.

6 Response to questions raised

In response to the specific questions raised by the IPART in its issues paper, Qube offers the following:

General statement

Qube is concerned that the IPART's review is Hunter Valley-centric as it represents around 20 route kilometres of the network covered by the NSWRAU. The bias towards the commercial network underestimates the barriers faced by all freight operators seeking access to the vertically integrated Sydney Trains managed network and the challenges in moving between networks.

The review needs to clearly demonstrate how any regulatory oversight by the IPART will support delivery of an integrated national rail network, rather than allowing further growth of misaligned networks which stymie performance and potential growth.

The review also needs to consider how rail access pricing reflects government policy, rail operator behaviour and broader network efficiency. Currently general freight operations on the Sydney Trains managed network are essentially take-or-pay, while cancellation costs on some lines of the Country Regional Network are higher than if the train operated.

¹⁸ Australian Transport and Infrastructure Council, Australian Government (2019) *National Freight and Supply Chain Strategy* <https://www.freightaustralia.gov.au/sites/default/files/documents/national-freight-and-supply-chain-strategy.pdf> (accessed 12 October 2021)

¹⁹ National Transport Commission (2020), *National Rail Action Plan* <https://www.ntc.gov.au/sites/default/files/assets/files/National-Rail-Action-Plan.pdf> (accessed 12 October 2021)

²⁰ Australasian Rail Association (2021), *Rail Freight Action Plan* <https://ara.net.au/wp-content/uploads/ARA-Rail-Freight-Action-Plan.pdf> (accessed 12 October 2021)

²¹ RIM – rail infrastructure manager, as set out in the Rail Safety National Law (see www.onrsr.com.au) (accessed 12 October 2021)

A whole of network pricing methodology should promote cross-network efficiency and reflect border government policy objectives as explored at the recent Australasian Transport Research Forum²².

1. *Do you agree with our proposed approach and principles to guide our decision making? What other principles, if any, should we apply?*

Qube notes the approach and principles, but believes that the IPART has placed a disproportionate focus on price, especially given the Hunter Valley sectors form around 20 route kilometres of up to 4,000 operational route kilometres of the NSW rail network which is covered by the undertaking. While the IPART is an economic regulator, its review of the undertaking needs to consider this in the broader context of access.

Rail freight operators in NSW have continually struggled in dealing with the numerous rail-related entities involved in the provision of access to the state government managed network. While TAHE has entered into the NSW RAU as the owner of the NSW network, all aspects of contract management, rolling stock approvals, timetables, billing and day-to-day network operations are undertaken by other organisations which are not party to regulatory control and not contractually bound.

In undertaking a review of the NSW RAU, the following specific questions should be addressed by the IPART:

- Should a party which is directly involved in the delivery of access be required to enter into an undertaking?
- If a party entering into an undertaking is not directly involved in the delivery of access, how are agents or contracted parties held accountable? Should such an agency or contract arrangement be a public document?
- How should vertically integrated rail network managers be held accountable for decision affecting third party operators?
- How should network investment decisions by government agencies not party to the NSW RAU be managed to ensure third party operators are not disadvantaged?
- How can industry issues be raised by freight operators, without resorting to a lengthy and costly access dispute?
- How can IPART or another regulator (ideally, a single party) drive a more integrated and aligned rail network nationally?
- How can greater alignment between economic and safety regulation be enabled to deliver greater productivity outcomes and protect against cost-shedding by network managers? Does the joint regulatory role of the National Heavy Vehicle Regulator provide a better industry model?
- Should the regulatory framework respond to the industry structure, or should the industry structure align with a framework to optimise economic value?
- How can government use access charges to deliver government policy initiatives?

In posing these questions, Qube notes that its access dealings for the TAHE network are with the TAHE's agents, Transport for NSW and Sydney Trains, and Transport for NSW's contractor John Holland Rail. The TAHE appears to have little, if any, oversight of how 'passenger priority' is applied or track possessions are scheduled, resulting in freight operators carrying significant additional operating costs, being unable to reliably met freight customer needs and being disproportionately affected by maintenance.

²² Bullock P and Frost T (2021) Rethinking rail freight access: developing a new policy agenda, Australasian Transport Research Forum, Brisbane 8 – 10 December 2021 (www.atrf.info)

Almost all the infrastructure investment in the Sydney Trains network is driven by passenger projects, undertaken without consultation with the freight industry, and has resulted in reduced capacity for freight operators. This means freight operators have incurred cancellations during construction of the projects which have then delivered operational constraints after the infrastructure is commissioned and then face further path cancellations as maintenance is scheduled during periods of high freight utilisation.

Form of regulation

2. *How effective is the current negotiate-arbitrate regime in balancing the market power between rail owners and access seekers in negotiating access?*

The formation of the Rail Operators' Group (ROG) and gaining approval to negotiate with TAHE was a result of rail operators not being able to negotiate terms with network owners. Qube recommends IPART review the ROG application²³ to understand industry concerns.

NSW Government industry structures have become significantly complex to the extent that there is confusion regarding decision making and a lack of accountability in relation to the delivery of TAHE's contractual obligations. This is reinforced by the corporate structures of Transport for NSW and Sydney Trains, with freight access functions being buried within broader operational streams which have conflicting obligations²⁴. The arrangements are further tangled by Sydney Trains reporting into Transport for NSW within the Transport Cluster, despite being a separate legal entity.²⁵

In regards to the balance of market power, rail operators can only accept the price and train paths offered by the network owner and any variation in price directly affects rail contestability. As noted in the Qube submission to the ACCC, some end customers have little choice in the use of rail as developments may be constrained by planning consent or previous investment decisions. This represents a significant investment in rolling stock and infrastructure, which a network owner has the ability to exploit.

This imbalance in price-related market power, and real time control in the day-to-day management of rail freight operations on the network actively deters the use of rail and new capital investment in sidings, terminals and rolling stock.

It is also noted that following the numerous changes in NSW Government structures, the structure of access charges has not changed in more than 10 years. Access charges have been 'rolled over' as each newly created agency has sought to finalise structure and reviewed access agreement terms and conditions. During this time the TAHE (and its predecessors) have not sought to engage industry in access charges negotiations or review the behaviours associated with the pricing structure.

The NSW Auditor General's review noted that a high portion of freight services on the Sydney network operate on *ad hoc* train paths²⁶. Given the take-or-pay access charge structure, this behaviour is understandable, given the high cost incurred by the operator from cancelling a train.

While NSW RAU supports the negotiate-arbitrate model, access charges for the Country Regional Network for all traffic other than coal are posted on its contractor's (John Holland Rail) website²⁷. As noted above, the access charges for some cancellations are greater than

²³ NSW Track Access Collective Bargaining <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/nsw-track-access-collective-bargaining> (accessed 1 December 2021)

²⁴ In Transport for NSW, rail freight access responsibilities are located within the operations team of Freight Branch in the Customer Strategy and Technology Division. In Sydney Trains, rail freight access responsibilities are located in the Operations Directorate.

²⁵ <https://www.transport.nsw.gov.au/system/files/media/documents/2021/Updated%20op%20model%2001092021.pdf>

²⁶ NSW Auditor-General (2021) *Rail Freight and Greater Sydney Performance Audit* 19 October 2021

<https://www.audit.nsw.gov.au/our-work/reports/rail-freight-and-greater-sydney> (accessed 1 December 2021)

²⁷ <https://www.jhrcrn.com.au/media/8187/access-pricing-2021.pdf> (accessed 15 December 2021)

those for operating a train, often on lines with no capacity constraints. Similarly, ARTC has posted rates for its network covered by the NSW RAU.

3. *Should the negotiate-arbitrate model be replaced by regulator-determined access prices and/or other conditions of access?*
4. *Should different forms of regulation apply to different parts of the network? If so, what criteria should we use to determine what form of regulation applies?*
5. *Are the current compliance obligations for non-Hunter Valley rail networks proportionate to the level of market power rail owners can exercise?*

As noted in Qube's submission to the ACCC, the current industry model with numerous economic regulators administering 'voluntary' access undertakings provides little confidence to participants. This is further complicated by the disconnect between economic and safety regulation.

Qube supports a nationally integrated model which provides surety of access, appropriate regulatory oversight of access providers and encourages industry investment. The model should also reflect government policy outcomes, promote competition and incorporate the principles of mode neutrality.

While Qube notes the unique nature of access arrangements in the Hunter Valley sectors, this only relates to 20 route kilometres of the network covered by the NSW RAU. On this section of the network, despite the freight operation being fully commercial, the freight operators do not receive a 'rebate' for the priority given to passenger services despite losing access for around one-third of each week day.

Qube is concerned that the IPART's focus on compliance in its review is focussed on financial compliance when there needs to be oversight of whether access is being managed equitably within the broader scope of the undertaking.

The current arrangements for access to the TAHE network place considerable obligations on rail freight operators, often without reciprocity. As noted in the NSW Auditor-General's Report into Rail freight and Greater Sydney Freight operators are, rightly, held accountable for delays caused by freight services but this is not reciprocal, in fact many of these delays are not recorded despite the significant economic cost of export freight potentially missing its vessel.

Commercially, this imbalance is demonstrated through trains cancelled by the rail operator and the network owner. Rail operators incur access charges on a take-or-pay basis on the Sydney Trains network while, as the network manager, Sydney Trains imposes an uncapped number of track possessions affected timetabled services.

Qube supports independent benchmarking of efficient operations and maintenance costs for the Sydney Trains network if costs are an input in determining access charges.

Negotiation process

6. *What problems have access seekers experienced in negotiating access? What changes would help them negotiate access on fair and reasonable terms?*
7. *How could the Undertaking facilitate more effective consultation between rail owners and access seekers on capacity and investment decisions?*

Industry frustration in dealing with TfNSW and Sydney Trains triggered operators seeking and gaining approval from the ACCC to collectively negotiate on the non-commercial terms for access to the TAHE network²⁸.

Additionally, TfNSW has undergone numerous changes since it was formed and this resulted in access arrangements being continually rolled over for short periods. From an operator's perspective, there are costs associated with negotiating access to the network with the need for legal, insurance and commercial reviews – costs which the network owner is able to spread across all operators and, potentially, claim as a regulatory cost associated with providing access while operators bear the burden of dealing with multiple network owners nationally. An operator is then burdened with the additional on-going costs of dealing with numerous access providers to secure rolling stock approvals and train paths, along with increased day-to-day administrative, operational and contract management costs.

Access providers are also limited in willingness to negotiate, particularly given the need to seek internal board approval (or similar) for variations to 'standard' access terms and conditions. Access negotiations have become even more complicated with the establishment of the TAHE and agency arrangements with Sydney Trains and Transport for NSW. As noted above, a rail operator must now negotiate with Transport for NSW (acting as an agent for the TAHE) to gain access to the TAHE network. In negotiating with Transport for NSW, it is highly conflicted in regard to obligations or standards which may potentially be applied to its own performance by the TAHE.

Examples of issues which may create conflicts for Transport for NSW:

- Performance standards for TfNSW and Sydney Trains operations
- Infrastructure maintenance and performance standards for TfNSW and Sydney Trains
- Review and acceptance for new rolling stock, including a timeframe for approval of new rolling stock
- Consultation on network maintenance investment strategies (as Transport for NSW develops the projects for many of the network upgrades for passenger services and submits funding bids to NSW Treasury)
- Longer term access arrangements to provide surety of access
- Obligations in regard to possessions management and the mitigation of freight impacts from possessions
- Commitments to work with adjoining network owners to support the efficient movement of trains
- Development of infrastructure strategies which align with adjoining networks

One key area of concern for rail operators is approval of new rolling stock. Transport for NSW is the holder of the network standards for the Sydney Trains managed network, despite not being accredited as the RIM. A lack of willingness from Transport for NSW or the TAHE to include an obligation to review and approve new rolling stock represents a deterrent to investment and places the risk on rail operators that new rolling stock will be unable to operate as designed in the network²⁹.

In recent years this has resulted in rail freight operators either not investing in new rolling stock or purchasing new equipment with older technology rather than risk acquiring new, high-tech locomotives or wagons which are not promptly accepted on the network. Suggestions

²⁸ NSW Track Access Collective Bargaining <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/nsw-track-access-collective-bargaining> (accessed 1 December 2021)

²⁹ Qube is currently required to register its locomotives and wagons with each network owner the rolling stock operates on, plus the Office of the National Rail Safety. Each network has its own, independent registration process. For the TAHE networks, registration is with both TfNSW and John Holland Rail, despite TfNSW not being accredited and Sydney Trains is the RIM.

that the access agreement include a commitment to aligning with the national Rail Industry Safety and Standards Board's rolling stock standards have also been rejected in negotiations over the new standard track access agreement.

In regard to investment decisions, both the state and commonwealth governments have demonstrated a track record of investing in projects without regard for undertakings. This is identified as an issue in Qube's submission to the ACCC, with Inland Rail, Fast Rail and More Trains More Services cited as examples. Each of these investments affects underlying value of value network asset.

8. *Should IPART have a role providing advice on proposed agreements before they are executed in a negotiate-arbitrate model?*

It is unclear what advice the IPART could provide, noting that once a standard agreement is developed network managers are reluctant to vary from the standard form contract. Further, the much of the agreement, given the nature of rail network operations, needs to be largely consistent across operators making network owners unlikely to amend processes.

As noted above, the network owners also still hold considerable market power and are unlikely to agree to a position which lessen its rights.

Terms of access and information disclosure

9. *Should the Undertaking apply different rules to non-price terms and conditions in the Hunter Valley Coal Network? If so, what differences would be useful and why?*

Rail operators are frustrated by the misalignment in operating and access arrangements between networks while each network manager is likely to apply standard non-price terms and conditions across its network.

It should be noted that non-coal operators use one access agreement for all the ARTC networks in NSW regardless of whether it falls within the remit of the NSW RAU, the Hunter Valley network or the Interstate Access Undertaking. This arrangement complicates access for non-coal operators through the Hunter Valley network as ARTC's local staff do not view general freight trains consistently with coal trains.

10. *Which of the current information disclosure provisions in the Undertaking should be retained and why? What else would be useful to include?*

11. *Should rail owners publish more information about how they will set prices and indicative access agreements?*

In the interests of transparency, all aspects of an information pack should be available to operators without an access holder needing to request.

If access charges are a regulated, posted rates, then details relating to actual costs may not be required but information on efficient cost and benchmarking should be provided. The TAHE's submission to the IPART in relation to Hunter Valley Coal Network (HVCN) states that using Sydney Trains data "it is not possible to separately allocate costs to freight lines and passenger only lines for the MRN and TAHE HVCN"³⁰ suggesting that vertically integrated networks do not have the appropriate accounting systems to support publication of costs.

³⁰ Transport Asset Holding Entity Submission on compliance with the pricing principles in the NSW Rail Access Undertaking 2018-19 to 2019-20 (p. 7) (https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/NSW-Rail-Access-Undertaking-%28original%29.PDF – accessed 3 December 2021)

The use of efficient cost should be one input into determining access charges, but other inputs including degraded access due to passenger priority, market neutrality and government policy should also be inputs to prices. As noted above, the current access arrangements on the shared rail network place additional operating costs on freight operators through increased transit times, operational reliability, sub-optimal train paths, curfew periods and additional fleet costs to compensate for reduced asset utilisation. These inefficiencies are then amplified as trains move between the artificial barriers which have been created by network boundaries.

A top-down approach to aligning the needs of the national rail network, rather than a series of non-aligned voluntary undertakings would provide a meaningful response to the needs of the industry. Furthermore, this approach could drive a more informed decision making on infrastructure investment.

Access charges also form an important aspect in the delivery of broader government policy objectives where freight is highly contestable between road and rail. These considerations should be considered transparently in setting prices³¹.

12. Should the Undertaking prescribe a standard set of performance indicators? If so, should they apply to the Hunter Valley network or coal customers only? Which metrics would be useful?

Qube supports the findings of the NSW Auditor-General's report and proposes that the performance measures be developed through industry workshops.

In identifying performance indicators, the IPART should consider the specific operational needs of each freight task, noting:

- Operational management of trains, especially in relation to time-sensitive tasks (e.g. port windows, interstate freight availability, train cycle times and the need to achieve set border times when moving between networks).
- Infrastructure performance
- Infrastructure availability, include the impact of possessions on freight services
- Delays associated with passenger services and the application of passenger priority
- End to end train performance, noting the direct impact of network management in the movement of freight services across network boundaries

13. What are the benefits of trading access rights? What are the risks if access holders could on-sell access rights to a third party? How could these be managed without prohibiting re-sale?

Qube proposes this issue be considered independent of this review, noting that any trading of access rights would need to include integration with broader supply chain considerations including other access undertakings, terminal access and port windows.

Access pricing principles

14. Is it still appropriate to calculate full economic costs under the ceiling test on a standalone basis? If not, is there an alternative method that would still protect IPART is reviewing the NSW Rail Access Undertaking Review of the NSW Rail Access Undertaking access seekers from paying too much and promote efficient use of and investment in the network?

³¹ Bullock P and Frost T (2021) Rethinking rail freight access: developing a new policy agenda, Australasian Transport Research Forum, Brisbane 8 – 10 December 2021 (www.atrf.info)

15. *Should the RAB continue to be set using a DORC valuation? If so, should the Undertaking provide more guidance on how to calculate the DORC value?*
16. *Should a single rate of return continue to apply across all networks under the Undertaking? Should it be based on the coal network, given that is the network most at risk of exceeding the ceiling test?*
17. *Should the Undertaking allow greater flexibility in calculating depreciation? What are the merits of levying depreciation on a per unit basis or calculating it separately for branch lines?*
18. *Should the pricing principles continue to include a floor test? If so, should IPART assess compliance with the floor test, and are other mechanisms required to ensure compliance?*
19. *Should the Undertaking provide more explicit guidance about the operation of the unders and overs account? If so, what should that guidance include? Should the Undertaking allow capitalised loss accounts for new infrastructure?*

While Qube acknowledges the need to ensure the TAHE does not continue to over-recover for the small section of its network between Newstan and Islington Junction, Qube is concerned at the IPART's disproportionate focus on compliance on this portion of the State's rail network.

Further considerations in establishing any network valuation, cost model or depreciation methodology, include:

- Whether any Government sourced capital meets defined criteria as being an investment or is grant funding
- The lack of a pricing methodology for passenger operations undertaken by Sydney Trains or NSW Trains, or transparent access arrangements
- Determination of efficient cost for construction, maintenance, operational management and overheads
- The source, scope and purpose of funding for network upgrades funding to enable increased passenger service plans, such as More Trains More Services
- Investment in the network must include an allowance for maintenance activities and not constrain freight capacity
- The RAB cannot encourage 'regulator' shopping

Compliance and enforcement

20. *What powers should the regulator have to enforce compliance? Should the Undertaking include remedies or sanctions for non-compliance?*

Currently the IPART appears to not have, or has not used its, power to enforce compliance of the 'unders and overs' arrangements of the TAHE or the timeliness of its annual submissions.

As noted in this submission, rail operators have limited, if any, recourse against the network owner, which places the network owners and managers at a significant advantage in relation to the rail operator. This discourages investment in the network and use of rail.

Without legislative obligations and accountability to an independent party, network managers have little incentive to facilitate the movement of freight by rail. In the case of Sydney Trains, there are also conflicting drivers, where for example, the obligation to provide reliable passenger services is at conflict with the contractual or undertaking obligations of TAHE, the network owner.

The IPART's focus on commercial issues, rather than the broader needs of freight operators suggest that a separate, independent body may be more appropriate to oversee access arrangements across multiple networks.

21. *Why do end use customers prefer to contract with rail operators to access the rail network, rather than contracting directly with the rail owner?*

The barriers to entry into the industry are significant, including the highly complex processes associated with gaining access to multiple networks and securing safety accreditation. For most freight generators, contracting directly with a logistics company (road and/or rail) is a rational, commercial decision enabling the company to focus on its core business.

In NSW, only miners on the ARTC Hunter Valley network have entered into producer agreements, demonstrating that most freight generators do not have the depth of operations or resources to enter into agreements with network owners.

22. *Should the Undertaking allow automatic triggers for arbitration? If so, in what circumstances should this apply?*

23. *Do rail owners and access seekers have adequate rights of review of the regulator/arbitrator's decisions?*

As noted above, there needs to be greater accountability placed on the provision of access, particularly by vertically integrated entities, to ensure the industry is given the opportunity to achieve its economic potential.

The high cost of a dispute and the extended period for resolution actively deter an operator triggering from a dispute. Furthermore, for most operators, the disproportionate resources available to a government-owned entity make an operator reluctant to a dispute.

Facilitating appropriate modal choice

24. *Are access seekers unreasonably constrained from accessing train paths? How could the Undertaking provide more transparency and certainty about how rail owners allocate capacity?*

As noted in the NSW Auditor-General's Report, rail freight operators have been seeking access to specific train paths (referred to as 'gold' paths) during the current commuter peak periods. This process has been on-going for a number of years and remains unresolved. There is also little willingness to make small tweaks to passenger timetables to create additional capacity for freight.

The IPART should consider that rail freight operators do not have the resources to interrogate alternative train pathing opportunities and generally have to accept the paths offered by the network managers. In most instances, a freight service in NSW will travel across multiple networks, with each network 'border time' being accepted by the operator in good faith.

Using the example from section 3 (above), an export bulk grain train operated between Nevertire and Port Kembla via Dubbo, operates across 6 network boundaries³² in each direction. As a train path is developed jointly by the network managers, an operator has little visibility of whether the path is optimal or any opportunities to improve operational efficiency.

³² This train operates: Nevertire to Narromine (CRN) – Narromine to Dubbo (ARTC intrastate network) – Dubbo to Bowenfels (CRN) – Bowenfels to Lidcombe (Sydney Trains) – Flemington to Meeks Road Junction (ARTC Sydney Freight Network) – Meeks Road Junction to Coniston (Sydney Trains) – Coniston to Inner Harbour (NSW Ports/Pacific National)

General freight services through the ARTC Hunter Valley network, face the additional burden of being pathed around defined coal paths, with limited capacity allocated for non-coal traffic. The non-coal paths are not adjusted to reflect peaks in demand for seasonal commodities, such as grains or cotton, meaning some export tasks can face extended journey times, such a path of over 20 hours which was offered for trip of less than 600km from Narrabri to Port Botany.

In addressing this question, the IPART should also consider the issues associated with broader government policy³³, adjoining network arrangements and the behaviour different pricing models encourage.

25. Does the Undertaking facilitate efficient investment decisions? What else should it include?

Neither the current access undertaking nor the constantly changing industry models of government ownership promote investment in above or below rail assets.

Since the commencement of the undertaking, investment in the infrastructure has been driven by government (i.e. the network owner), often without engaging with network users. Qube has expressed similar concerns in its submission to the ACCC in relation to the ARTC Interstate Access Undertaking.

As stated above, the current industry arrangements also fail to provide an incentive for rail operators to invest in new rolling stock and terminals. This disincentive is driven by a misalignment of economic, environmental and safety regulation.

Relationship with other regimes

26. What changes to the Transport Administration Act 1988 (or other legislation) that govern voluntary undertakings would provide more certainty to access seekers about regulatory arrangements they can expect? What transitional arrangements should apply if a rail owner decides to switch regimes?

27. Which operating procedures, systems, technologies or environmental requirements cause the biggest problems between networks? Which elements of other networks or regimes should we consider adopting in the NSW Undertaking?

These questions pre-suppose that there should be a new NSW RAU and rather than an aligned national arrangement or, potentially, a nationally certified undertaking as proposed in the NSW Freight and Ports Strategy (2013).

Qube suggests that the IPART review the industry submissions to the ACCC interstate access undertaking, and actively engage with industry by working with organisations such as the Freight on Rail Group. Working with industry at a national level to breakdown some of the barriers created by jurisdictional structures and network boundaries will enable delivery of the recommendations set out in National Freight and Supply Chain Strategy³⁴, the National Transport Commission's National Rail Action Plan³⁵ and, more recently, the Australasian Rail Association's Rail Freight Action Plan³⁶.

³³ Bullock P and Frost T (2021) Rethinking rail freight access: developing a new policy agenda, Australasian Transport Research Forum, Brisbane 8 – 10 December 2021 (www.atrf.info)

³⁴ Transport and Infrastructure Council, Australian Government (2019) *National Freight and Supply Chain Strategy* <https://www.freightaustralia.gov.au/sites/default/files/documents/national-freight-and-supply-chain-strategy.pdf> (accessed 12 October 2021)

³⁵ National Transport Commission (2020), *National Rail Action Plan* <https://www.ntc.gov.au/sites/default/files/assets/files/National-Rail-Action-Plan.pdf> (accessed 12 October 2021)

³⁶ Australasian Rail Association (2021), *Rail Freight Action Plan* <https://ara.net.au/wp-content/uploads/ARA-Rail-Freight-Action-Plan.pdf> (accessed 12 October 2021)

Development of a body similar to the National Heavy Vehicle Regulator, which has a mandate to drive economic, safety and productivity outcomes should be considered during the undertaking of this review.

7 Conclusion

Qube would support reform of the national rail market to enable it to achieve its economic potential. The current market structure is more fragmented than when the competition reforms were first implemented in the 1990s, with an increase in network owners and infrastructure entities, and the concept of a one-stop-shop now less likely than when the current undertakings in NSW commenced or the ARTC was established.

The IPART governance remit and the scope of this review do not clearly identify how the IPART can facilitate a longer-term industry model which supports industry growth or optimises use of the network. Within the constraints of the current industry model, operators are constrained by a number of non-aligned and highly conflicted participants.

The issues raised in this paper call out the challenges confronting rail operators and freight owners as a result of today's misaligned, State-based industry framework. Without meaningful steps to address the existing failures in the market, rail will continue to under-perform as a consequence of mis-aligned investment decisions and unnecessary regulatory burden. As noted in the introduction, this is consistent with the recommendations and actions in the National Freight and Supply Chain Strategy³⁷, the National Transport Commission's National Rail Action Plan³⁸ and, more recently, the Australasian Rail Association's Rail Freight Action Plan³⁹ and ACRI.

³⁷ Transport and Infrastructure Council, Australian Government (2019) *National Freight and Supply Chain Strategy* <https://www.freightaustralia.gov.au/sites/default/files/documents/national-freight-and-supply-chain-strategy.pdf> (accessed 12 October 2021)

³⁸ National Transport Commission (2020), *National Rail Action Plan* <https://www.ntc.gov.au/sites/default/files/assets/files/National-Rail-Action-Plan.pdf> (accessed 12 October 2021)

³⁹ Australasian Rail Association (2021), *Rail Freight Action Plan* <https://ara.net.au/wp-content/uploads/ARA-Rail-Freight-Action-Plan.pdf> (accessed 12 October 2021)

Appendix

Transport Administration Act 1988⁴⁰ extract

36A Objectives of Sydney Trains

- (1) The principal objective of Sydney Trains is to deliver safe and reliable railway passenger services in an efficient, effective and financially responsible manner.
- (2) The other objectives of Sydney Trains are as follows—
 - (a) to be a successful business and, to that end—
 - (i) to operate at least as efficiently as any comparable business, and
 - (ii) to maximise the net worth of the State's investment in Sydney Trains,
 - (b) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
 - (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*,
 - (d) to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates.
- (3) The other objectives of Sydney Trains are of equal importance, but are not as important as the principal objective of the corporation.

⁴⁰ <https://legislation.nsw.gov.au/view/html/inforce/current/act-1988-109#sec.36A>



SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

REGULATORY FRAMEWORK FOR THE AUSTRALIAN RAIL TRACK CORPORATION'S INTERSTATE NETWORK

October 2021

1 Background

Qube Logistics is part of Qube Holdings Limited, 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.

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

2 Clarification

In reviewing the issues paper, Qube wishes to make some clarifications on the scope of the ACCC review:

It is noted that the map of the Defined Interstate Rail Network in Figure 1 does not include the Southern Sydney Freight and parts of the Sydney Metropolitan Freight Network. Qube's assumption in preparing this response is that the scope of this review includes all of dedicated freight network managed by ARTC in Greater Sydney.

Further, it is noted that the paper discusses the potential future inclusion of the Inland Rail corridor into the interstate rail regulatory framework, Qube's response assumes that Inland Rail is 'in scope' for this review.

Finally, in response to a question at the first on-line industry briefing conducted by the ACCC, it was stated that broader reform to reduce the complexity of the regulatory framework would be considered. Qube's response will address some of the issues associated with broader market operations which complicate access for users of the network, create administrative, operational and regulatory burden for the industry and lessen the economic and environmental outcomes for Australia.

3 Introduction

Qube wishes to make one general statement regarding the timing of the review:

In addition to the ACCC's announcement of this review of the ARTC Interstate Access Undertaking, the NSW government's Independent Pricing and Regulatory Tribunal (IPART) has announced that it will review the NSW Rail Access Undertaking.

Qube's response to some of the specific questions posed by the ACCC highlight the strong relationship between the two documents as the NSW Rail Access Undertaking applies to some sections of the ARTC network. The NSW Rail Access Undertaking also applies to part of the Sydney – Brisbane rail corridor which is owned by the Transport Asset Holding Entity between Sydney and Newcastle and includes train paths which are administered by the ARTC through the Northern Sydney Freight Corridor agreement.

Despite having only one access agreement with ARTC, most of Qube's train services operating on the ARTC network in NSW traverse sections of the network covered by the Interstate Access Undertaking and the NSW Rail Access Undertaking. Furthermore, most trains operate across both the ARTC and TAHE networks as part of an end to end journey.

A joint ACCC and IPART review of access arrangements offers the opportunity to reduce some of the complex administrative and regulatory burden on the industry rather than deal with a single, voluntary undertaking which appears to be flawed. Furthermore, this would partially address one of Qube's concerns, that there needs to be greater alignment between rail network owners.

Outside the Hunter Valley rail network arrangements, alignment of the regulatory regimes and access agreements will enable more consistent end-to-end arrangements for access to the rail network. Network owners nationally should also be aligned in delivering improvements in whole of journey operations, supply chain efficiency and improved economic outcomes.

A broader regulatory review of the national rail network will also enable the ACCC to validate ARTC's service offering to the freight industry through various undertakings against its corporate charter:

- Provide seamless and efficient access to users of the interstate rail network.
- 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.¹

The issues raised in this paper are consistent with the issues identified in previous government industry investigations and have been targeted for action in the National Freight and Supply Chain Strategy², the National Transport Commission's National Rail Action Plan³ and the Australasian Rail Association's Rail Freight Action Plan⁴.

¹ Australian Rail Track Corporation, *Our Charter*, <https://www.artc.com.au/about/our-charter/> (accessed 22 September 2021)

² Transport and Infrastructure Council, Australian Government (2019) *National Freight and Supply Chain Strategy* <https://www.freightaustralia.gov.au/sites/default/files/documents/national-freight-and-supply-chain-strategy.pdf> (accessed 12 October 2021)

³ National Transport Commission (2020), *National Rail Action Plan* <https://www.ntc.gov.au/sites/default/files/assets/files/National-Rail-Action-Plan.pdf> (accessed 12 October 2021)

⁴ Australasian Rail Association (2021), *Rail Freight Action Plan* <https://ara.net.au/wp-content/uploads/ARA-Rail-Freight-Action-Plan.pdf> (accessed 12 October 2021)

4 Response to questions raised

In response to the specific questions raised by the ACCC in its issues paper, Qube offers the following:

1. **Do stakeholders agree with, or have any comments on, the observations set out in sections 2.2.1 and 2.2.2 on the competitive conditions for short and long haul freight?**

The ARTC's Interstate Access Undertaking reflects the ARTC internal business structure, with separate business units managing its Hunter Valley and Interstate operations. While the Hunter Valley operations are aligned with the primary use of the Hunter Valley network, being the movement of coal, the remaining parts of the ARTC network are not always primarily used for interstate operations.

Additionally, while the Hunter Valley network covers almost all of the mines exporting coal through the Port of Newcastle, the ARTC network does not cover the end-to-end journey for the majority of freight services moving across its 'interstate' network. Effectively, this means the Interstate Access Undertaking has been developed to support the ARTC business model and does not reflect the users of the network (rail operators), or the consignors of freight (end customers) who rely on the infrastructure.

Qube suggests that the ACCC's review of the regulatory framework should examine how the infrastructure is used as part of the broader national rail network, its role in commercial supply chains and how it serves the needs of end customers. The review should also consider the relationship between economic and safety regulation, as infrastructure condition, service standards and rolling stock approvals delivered by network managers are outcomes of both regulatory frameworks.

The Sydney – Melbourne corridor is an example of where the 'interstate' rail network is primarily used for tasks other than inter-capital freight. While this is one of the busiest sections of ARTC's interstate network, the majority of freight trains on the line do not operate between the two capital cities but use parts of the corridor to access the ports and other markets in Melbourne, Geelong, Port Kembla and Sydney.

Aside from the numerous short commuter trains between Moss Vale and Macarthur, the line is dominated by regional freight services carrying containers with export agricultural commodities (e.g. cotton, grain, meat, paper products), and bulk commodities (e.g. coal, steel, grain, cement and aggregates). With very low rail mode share for inter-capital general freight (as noted in the issues paper), the ACCC should consider how the corridor supports rail operators' businesses, supply chains and the regional economies which all rely on the corridor, and how the ARTC network addresses industry's challenges in moving trains across network boundaries (noting ARTC's charter "to provide seamless and efficient access to users of the interstate rail network"⁵).

Along this corridor, Qube does not currently operate in the inter-capital general freight market. Qube operate bulk export grain services to Port Kembla from the Riverina and Central West; export containerised products and grain to Port Botany from the Riverina cement from the NSW Southern Highlands into Victoria. In the near future Qube will commence the movement of steel from Port Kembla to interstate markets. In all instances, access to the rail network is one small part in a large freight supply chain which is of national significance.

Contrary to the view of the ACCC, Qube views the key rail freight markets as:

- cross-metropolitan (import-export, or IMEX) containers;
- regional containerised exports (largely agricultural and manufactured products);
- bulk domestic products (including steel, grains, aggregates and cement);
- bulk export freight (including minerals and grains); and
- inter-capital linehaul (general freight).

⁵ Australian Rail Track Corporation *Our Charter*, https://www.artc.com.au/about/our-charter/?doing_wp_cron=1632177218.8483850955963134765625 (accessed 20 September 2021)

In most instances, the key reasons for the commodities moving by rail are a combination of the volume, load mass density, proximity to rail (to avoid or minimise change of mode costs) and distance. Some tasks are also constrained by statutory planning consent conditions or influenced by other logistics services, including container storage. The concept of 'interstate' is largely irrelevant, except from a jurisdictional perspective.

The importance of rail access from regional areas to port is reinforced by NSW Ports' analysis which shows 86 percent of regional export freight moving through the Port Botany container terminals arrives at the port by rail⁶. This demonstrates the need for efficient rail links to key trade gateways, with the ARTC network forming one link in the supply chain with its management of the Sydney metropolitan freight network and Port Botany rail yard.

Similarly, due to the distances and volumes involved, the vast majority of bulk grains from the Riverina and Central West districts to New South Wales and Victorian ports are moved by rail. Most of these trains access the NSW Country Regional Network and/or the Sydney Trains network as well as the ARTC network. Given grain market dynamics, there is potential for unregulated prices to affect the viability of these export tasks and regional communities.

Within Sydney, trains accessing Port Botany also need to travel on parts of the ARTC network which are subject to the NSW Rail Access Undertaking. In practice, this means one train can operate on one 'network' with one agreement but is subject to two different regulatory frameworks.

Finally, as noted in the introduction, there is an inter-relationship between the safety and regulatory frameworks which should be addressed in this review. The Sydney – Melbourne corridor has been the subject of several investigations by the regulatory agencies during the term of the current undertaking. While the track is deemed to be safe through the use of temporary speed restrictions and other controls, it has not been fully 'fit for purpose' with operators incurring delays and damage to rolling stock and freight. Due to the nature of the current undertaking operators are hamstrung by this under-performance and the falling rail market share indicates that some end customers have chosen to use the more reliable road network.

Train reliability on the corridor was noted in a 2013 Australian Transport Safety Bureau investigation into systemic track condition issues, finding that, "the actions taken to ensure safe operations have come at the expense of operational efficiencies through increased train running times."⁷ While there has been some improvement, overall network performance continues to be poor, as shown in table 1 (below) from the ARTC's NSW Lease Annual Condition Report for 2020-21⁸.

⁶ NSW Ports, *Port Botany – the heart of NSW's container freight*, <https://www.nswports.com.au/nsw-container-ports> (accessed 6 September 2021)

⁷ Australian Transport Safety Bureau, (2013), *Investigation number RI-2011-015 Investigation of rail operations on the interState rail line between Melbourne and Sydney* https://www.atsb.gov.au/publications/investigation_reports/2011/rair/ri-2011-015/ (accessed 13 September 2021)

⁸ Australian Rail Track Corporation (2021), *NSW Lease Annual Condition Report 202021* p12 https://www.artc.com.au/uploads/NSW-Lease-Annual-Condition-Report-20-21_FINAL.pdf (accessed 10 September 2021)

Excluding Force Majeure Events						
Category	16/17 Period Avg	17/18 Period Avg	18/19 Period Avg	19/20 Period Avg	20/21 Period Avg	16/17 - 20/21 Five Year Rolling Average
Hunter Valley						
Freight	26.0	32.1	25.7	17.4	21.5	24.5
Super Freight	48.3	58.0	45.2	32.3	42.0	45.2
XPT	18.7	18.1	13.3	7.9	12.6	14.1
North Coast						
Freight	3.9	6.7	7.0	6.3	6.0	6.0
Super Freight	6.5	10.8	11.6	10.0	10.4	9.8
XPT	3.1	4.8	4.7	4.0	5.1	4.4
South						
Freight	13.9	17.4	24.5	26.3	21.6	20.7
Super Freight	29.9	36.6	47.7	46.7	38.5	39.9
XPT	7.5	5.6	7.8	10.0	14.5	9.1
West						
Freight	12.1	9.5	5.4	3.5	8.0	7.7
Super Freight	39.1	20.7	18.3	20.5	27.2	25.2
XPT	18.0	6.4	7.6	11.1	8.9	10.4

Table 1: Five year rolling average of Total Transit Time Delay, excluding Force Majeure Events

This degradation of performance has occurred despite the 2004 Tripartite Agreement to upgrade the line to achieve prescribed service standards⁹ which included reducing transit times between Sydney and Melbourne from 13.5 hours to 10.5 hours for freight services. Transit times remain largely unchanged, and rail operators have no recourse for these benchmarks not being met as the prescribed services standards were set out in the lease arrangement between the governments (Commonwealth and NSW) and ARTC, but not operators.

Similarly, the benchmark for transit times on the Sydney – Brisbane corridor have not been met, although there has been some reduction in journey time following the removal of the manual safeworking systems between Casino and Brisbane which was specified for funding as part of the lease agreement¹⁰.

Accordingly, consideration of the Interstate Access Undertaking in isolation, rather than in the context of the broader industry and the relationship between different networks, will not enable the ACCC to understand the existing market failure.

⁹ Commonwealth of Australian and the State of New South Wales and the Australian Rail Track Corporation *Memorandum between the Commonwealth of Australian and the State of New South Wales and the Australian Rail Track Corporation* (4 June 2024) https://www.artc.com.au/uploads/Final_Tripartite_Agreement.pdf (accessed 13 September 2021)

¹⁰ ARTC (2004) *The Agreement in Summary* http://www.artc.com.au/library/agreement_summary.pdf (accessed 15 September 2021)

Qube position:

Rail operations on the ARTC interstate network are more extensive than the interstate rail operations noted in the ACCC issues paper, with more freight and passenger services serving regional, cross metropolitan, bulk and IMEX markets operating on the network than the inter-capital operations identified.

Freight operators need train paths which provide end-to-end connections within broader supply chains. Most trains are not exclusively within the ARTC network and there are significant challenges in working with numerous rail network owners and operators.

ARTC and government agencies have been unable to deliver the industry structure envisioned in the 2008 ARTC Interstate Access Undertaking and earlier government policy documents.

A review of the ARTC Interstate Access Undertaking in isolation from other rail networks and broader market reform cannot deliver improved outcomes for rail freight operators using the ARTC network.

2. To what extent are passenger services on the Interstate network constrained by competition or effective transport substitutes? Why?

Qube has no comment on the competitive market for passenger rail operations.

However, as noted in response to question 11 (below), Qube is aware of government and community interest in enabling faster passenger rail services. Investment in high speed passenger services through the Commonwealth government's National Faster Rail Agency, state government agencies or ARTC on the existing shared¹¹ rail network must not have a detrimental impact on freight operations. Further, freight should not cross-subsidise passenger services.

Qube position:

Qube does not operate passenger services but notes the risks associated with Commonwealth or state government-led investment on the shared rail network to support Faster Rail projects which may have an adverse impact on freight operations.

3. Do stakeholders have any views on the current regulatory framework for the Interstate network and its effectiveness?

Since the introduction of the current regulatory framework in 2008, there has been significant change in how the industry operates and rail operators now face significantly increased competition from road freight haulers in contestable markets.

During this period, road freight operators have benefited from a sustained program of government investment and regulatory reform with the creation of the National Heavy Vehicle Regulator (NHVR) – a body which promotes road safety, vehicle access and vehicle innovation across road network managers. This has resulted in large productivity gains for road operators, while neither rail network owners or regulators have delivered comparable benefits for rail operators. Additionally, heavy vehicle road users benefitted from five years of access charge-related freezes between 2016/17 and 2020/21¹².

While rail safety regulation has been harmonised under the Office of the National Rail Safety Regulator (ONRSR), operators are still required to negotiate with multiple network owners and operate under numerous access regimes. These access arrangements remain despite the original intention of the ARTC to address “the most urgent need ... for the DIRN [Defined Interstate Rail Network] to be operated as a single network with respect to investment, access

¹¹ Shared rail network – those sections of the network used by freight and passenger trains, including sections of the ARTC interstate network.

¹² National Transport Commission, (2021), *Heavy vehicle charges consultation report* p16 https://www.ntc.gov.au/sites/default/files/assets/files/Heavy%20vehicle%20charges%20consultation%20report%202021-22_0.pdf (accessed 22 September 2021)

and pricing, to replace the discrete state-based systems” so “operators would be able to access the network through a single point of entry the so-called one-stop-shop to provide seamless access and operations across the network.”¹³ This objective is also noted in the current 2008 Interstate Access Undertaking¹⁴ and is consistent with ARTC’s corporate charter.

Despite this vision, a rail operator still must hold an access agreement and safety interface agreement with each network owner, negotiate train paths with each of the access providers, and comply with the safety frameworks set out in each of network’s discrete safety management system. Even with the creation of ONRSR and the vision of the Rail Industry Safety and Standards Board (RISSB), rail operators must now demonstrate the safe performance of rolling stock with more network managers than in the mid-1990s when private operators started to compete and vertically integrated railways were being broken up.

This lack of meaningful reform in the provision of access, regulatory frameworks or policy continues to pose as a barrier to entry to the industry, a deterrent to market growth and restricts competition. The current arrangements promote further network fragmentation, dilute responsibility for network strategies and investment while placing additional administrative and operational costs on commercial participants.

In a shorter timeframe, there has been a step-change improvement in productivity and access for heavy vehicles, in part driven by the NHVR which has delivered access improvements through road managers at state and local government levels. Concurrently, Commonwealth and state government spending has seen the full duplication of the Hume and Pacific highways, largely to motorway standards, with improved alignments and town bypasses. This investment has enabled the operation of longer vehicles, at higher mass limits (HML), at no infrastructure cost to operators.

As noted in response to question 1, below rail network investment has not delivered ARTC’s strategic vision set out in the lease agreement or its 2007 corridor strategy.¹⁵ For rail operators, this means that the envisaged productivity and time savings have not enabled growth or supported private sector investment in new rolling stock and terminals.

State-based rail investment has largely targeted passenger needs, often in isolation from the broader freight task, with the key exception of Sydney’s Northern Sydney Freight Corridor stage 1 works, which protected capacity for future growth in freight services. This capacity, however, targeted interstate services rather the export containers or other freight which have seen the greatest growth.

During this period of investment in passenger services, the network ownership and management in NSW has constantly changed. The infrastructure maintenance burden associated with the increased passenger services has largely been felt by freight operators, with additional track maintenance windows scheduled during periods traditionally used by freight, while constant organisational changes have resulted the continued, short term roll over of access agreements. The complexity of existing access arrangements in New South Wales is shown in table 2, which until the early 2000s involved only single agencies within each of the NSW government (standard gauge) and Victorian government (broad gauge) as network owner-managers.

¹³ Australian Parliament House, *Research Paper no. 19 2008-09 Commonwealth involvement in reform of the rail freight industry National Rail Summit* (1997) https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp0809/09rp19#national (accessed 12 September 2021)

¹⁴ ARTC, (2017) *Access Undertaking* <https://www.acc.gov.au/system/files/Access%20undertaking%20%28clean%29.pdf> (accessed 13 September 2021)

¹⁵ ARTC, (2007), *North-South Corridor Strategic Investment Outline* (2007) <http://www.artc.com.au/library/North-South%20Corridor%20Strategic%20Investment%20Outline.pdf> (accessed 16 September 2021)

Network	Network owner / lessee	Access provider	Rail Infrastructure Manager	Access regime	Regulator
ARTC Interstate network	TAHE/ARTC	ARTC	ARTC	Interstate	ACCC
ARTC intrastate and metropolitan freight networks ¹⁶	TAHE/ARTC	ARTC	ARTC	NSWRAU	IPART
ARTC Hunter Valley	TAHE/ARTC	ARTC	ARTC	Hunter Valley	ACCC
Sydney metropolitan network	TAHE	TAHE/TfNSW/ Sydney Trains	Sydney Trains ¹⁷	NSWRAU	IPART
TAHE Hunter Valley sectors	TAHE	TAHE/TfNSW/ Sydney Trains	Sydney Trains ¹⁸	NSWRAU	IPART
Country Regional Network	TAHE	TfNSW/John Holland Rail	John Holland Rail	NSWRAU	IPART
Victorian standard gauge – Oaklands line	VicTrack/ ARTC	ARTC	ARTC	Unregulated	
Victorian broad gauge – Deniliquin and Tocumwal	VicTrack/ V/Line	V/Line	V/Line	Unregulated	
Port Kembla - Inner and Outer Harbour	NSW Ports	NSW Ports	Pacific National	Unregulated	

Table 2: Rail access arrangements in New South Wales (as interpreted by Qube)

As noted above, most train paths traverse more than one network and/or more than one undertaking which means a dispute it is likely to involve more than one regulator. Legislative arrangements further complicate access arrangements, with the *Transport Administration Act* requiring TAHE “to promote and facilitate access”¹⁹ in accordance with the NSW Rail Access Undertaking, but no similar obligation is placed on Sydney Trains, which is responsible for delivery of access.

While the Victorian government continues to address issues such as gauge conversion and the promotion of regional passenger rail, freight operators have continued to face increasingly restricted access to the V/Line network. Further, the impact to freight access during construction of gauge conversion initiatives and the level crossing removal project has resulted in rail operators losing rail mode share to road through increased operating costs, reduced reliability and increased track possessions.

Additionally, given the different drivers of the ARTC and the state-based, vertically-integrated rail network managers, freight rail operators are still confronted with barriers akin to the ‘break of gauge’ constraints of old. This creates unnecessary complexity in providing efficient logistics outcomes and acts as a deterrent to improved economic and environmental outcomes which cannot be resolved through numerous multi-jurisdictional, voluntary undertakings.

¹⁶ Qube notes that ARTC proposed to include the Sydney metropolitan freight network in the subsequently withdrawn 2018 InterState Access Undertaking.

¹⁷ While Sydney Trains is accredited Rail Infrastructure Manager (RIM) with the Officer of the National Rail Safety Regulator (ONRSR), the network standards are managed by Transport for NSW, which is not accredited by ONRSR.

¹⁸ While Sydney Trains is accredited Rail Infrastructure Manager (RIM) with the Officer of the National Rail Safety Regulator (ONRSR), the network standards are managed by Transport for NSW, which is not accredited by ONRSR.

¹⁹ Section 11, Transport Administration Act 1988 <https://legislation.nsw.gov.au/view/html/inforce/current/act-1988-109#sec.11> (accessed 23 September 2021)

Many investments made in the ARTC network and by other network owners, are undertaken by governments without formal consultation with rail operators. This results in investment which may be misaligned with the interests of freight operators and adjoining network owners.

In some instances, government investment is made on the basis of broader economic outcomes, rather than a financial investment. For example, the Commonwealth government \$14 plus billion investment in Inland Rail has been made largely through an equity injection²⁰. While Qube supports Commonwealth government investment in projects with wider economic benefits, the rail industry and freight owners should not be required to contribute a rate of return to ARTC for what is essentially a grant to stimulate broader economic outcomes.

Within vertically integrated networks, such as the V/Line, MTM and Sydney Trains networks, investments can be made which have a direct commercial impact on freight operators. Timetable changes and scheduling of maintenance can be undertaken without the network manager being required to mitigate the impact to freight operators or end customers.

An additional concern with Inland Rail, which will be expanded upon later in this submission, is that existing users on the brownfield sections of Inland Rail which will be upgraded as part of the project may not derive benefits from the investment. This is likely to occur at locations where adjoining networks have not been upgraded resulting in trains being axle load constrained and length limited, while Inland Rail trains are prioritised resulting in increased journey times and operating costs. This outcome is a result of the project being limited in scope to 'the corridor' without an assessment of the broader rail network (i.e. non-ARTC lines) impact being undertaken.

The regulatory framework needs to incentivise an integrated approach to the national rail network including the development of:

- integrated network strategies, with agreed and committed investment plans;
- an on-going engagement framework with rail operators and end customers;
- outcomes which are aligned with broader government policies; and
- simplified access arrangements, including regulation which promotes access.

In regard to network valuation principles, the current Depreciated Optimised Replacement Cost or DORC approach is not appropriate in a market which largely competes with the road freight industry. As noted in the issues paper, the current rail access charges are determined by a Regulatory Asset Base which is comparatively higher per tonne than road charges, and is inconsistent with Commonwealth and state policy to increase rail mode shares. The National Transport Commission notes that "for 2020-21, the gap between heavy vehicle cost base and estimated revenue at current charges is \$52 million or 13.4 per cent."²¹

Pricing of rail also fails to acknowledge broader government policies to reduce road trauma, reduce greenhouse gas emissions and the reduce the need for increased investment in the road infrastructure by using more efficient modes of transport. Moving rail to a determined access charge framework which is more comparable with road would enable greater alignment between government policy and the broader market, rather than a pricing model which is based on the principle of providing a rate of return to the Commonwealth government.

Finally, ARTC's current ability to set a price between its floor and ceiling levels is extremely broad with the ceiling access revenue around six to seven times the floor revenue for the Sydney – Melbourne corridor²² (all corridors are shown on pp15-18 of the ARTC 2018

²⁰ Senate Committee into Inland Rail, *An inquiry into the management of the Inland Rail project by the Australian Rail Track Corporation and the Commonwealth Government (2021)*, Australian Parliament House website, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/InlandRail/Report/section?id=committees%2Freportsen%2F024401%2F73075 (accessed 3 September 2021)

²¹ National Transport Commission, (2021), *Heavy vehicle charges consultation report* p13, https://www.ntc.gov.au/sites/default/files/assets/files/Heavy%20vehicle%20charges%20consultation%20report%202021-22_0.pdf (accessed 22 September 2021)

²² ARTC, (2018), *2018 InterState Network Access Undertaking Renewal Explanatory Guide* p17, <https://www.accc.gov.au/system/files/ARTC%20InterState%20Network%20-%202018%20IAU%20Explanatory%20Guide.pdf> (accessed 23 September 2021)

Interstate Network Access Undertaking Renewal Explanatory Guide). This range gives industry little long term surety that the prices will remain competitive, particularly if the Commonwealth government elects to sell the ARTC. The size of the gap between the floor and the ceiling price, the potential for price escalation and the short term nature of access agreements currently pose significant risk to rail operators.

Qube position:

The current regulatory framework does not promote efficiency, investment or innovation as it provides little certainty for rail operators. Operators face regulatory burden from non-aligned economic and safety regulation and mis-aligned rail networks which seek to promote the interests of vertically integrated state-based network managers and not the broader transport industry.

4. Is ARTC currently able to exercise market power? Why and how, or why not?

ARTC has the ability to exercise market power where freight is not contestable with another mode or source. This includes high mass, long distance commodities (such as steel), and bulk commodities (such as mineral concentrates, cement, grains and coal), all of which are transported in dedicated train loads on the Interstate network.

On a gross tonne per kilometre basis, ARTC's current freight access charges on the 'north-south' portion of the interstate network are already higher for 'heavy freight' and 'regular freight' than for other types of freight such as seasonal grain services²³. This appears to reflect a higher ability to pay, rather than a different cost structure associated with different trains using the network.

Additionally, ARTC is able to differentiate between commodities, priority and operating specifications within its current broad pricing parameters. The current structure does not require ARTC to consider operational constraints ('last mile' issues such as axle load or train length restrictions) on connecting lines, the operational efficiency of train paths or the external factors.

From an operator's perspective, the different pricing regimes on different networks send conflicting signals. For example, some networks have high cancellation costs while others offer an agreed number of annual cancellations; some networks charge based on train mass while others charge a flat usage fee. These signals seek to incentivise different, often conflicting, train configurations for each network, despite operators being constrained by available freight, siding lengths, grades, available rolling stock or the adjoining network configuration.

ARTC, and other network owners, are also able to prioritise (either through timetabling or live run decision making) trains which maximise commercial return or for other reasons. Prioritisation can result in operators' trains arriving on-time or late at an adjoining network, with flow-on impacts regardless of the cause of a delay. This is currently a major issue for trains arriving at the border with the Sydney metropolitan rail network which a tighter application of 'on-time' than ARTC and applies stricter interpretation of 'reasonable passenger priority.' Qube and other rail operators experience further issues with different interpretations when trying to access tight time windows at Port Botany for loading and unloading containers.

Finally, as noted above, there is the ability for network managers to make savings and to pass costs on to operators. In addition to the transfer of operating costs on the Sydney to Melbourne corridor through increased transit time, reduced reliability and rolling stock damage, the roll out of new 'in cab' technology will increase costs for operators. Delivery of the new Advanced Train Management System will require the installation and modification of locomotives, while ARTC benefits from the long-term removal of lineside signals and associated maintenance costs. The current regulatory regime does not provide solutions for this transfer of cost.

²³ ARTC, *ARTC Pricing Schedule applicable rate – effective from 1 July 2021* <https://www.artc.com.au/uploads/Access-Charges.pdf> (accessed 3 September 2021)

ACCC regulation of the ARTC network, in isolation, will not address these issues which already exist in the current voluntary undertaking. Without a broader, whole of network approach any action by ACCC without an assessment of the wider impacts has the potential to place additional cost and regulatory burden on an industry which is struggling to compete with road.

Qube position:

ARTC current differentiates between market segments. ARTC can also use its position as the network owner to transfer network costs to rail operators.

Qube supports reform of the broader regulatory framework supporting the national rail freight industry, rather than the ARTC Interstate Access Undertaking being addressed in isolation

5. In the absence of regulation, could ARTC exercise market power on the Interstate network (for example, due to the lack of competitive alternatives)? If so, in which geographic areas is ARTC able, or unable, to exercise its market power?

As noted above, ARTC has the ability to exercise market power in specific supply chains, rather than within specific geographic areas. It is also the monopoly provider of access for rail operators along most rail corridors and excessive use of market power could leave rail operators with stranded assets when freight tasks transfer to road or become unviable.

In the case of export commodities, Australia's international competitiveness is dependent upon access to export terminals, while some developments, such as mines and quarries, are constrained by statutory planning approvals which stipulate the use of rail.

The lack of long term surety of access (including price structures) will continue to act as a deterrent to investment in new rolling stock. This lack of investment confidence directly affects modal competitiveness, freight rates and environmental outcomes.

While there is a need for regulatory oversight of the ARTC, this needs to be undertaken as part of a national network, not just the ARTC network. This review currently proposes a review of only one voluntary undertaking, which forms part of a broader, more complex network which includes numerous network owners and managers.

As noted in response to question 4, ACCC regulation of the ARTC network, in isolation, will not address these issues which already exist in the current voluntary undertaking. Without a broader, whole of network approach any action by ACCC without an assessment of the wider impacts has the potential to place additional cost and regulatory burden on an industry which is struggling to compete with road.

Qube position:

ARTC already uses its market power in setting prices and allocation of costs. This market power is more aligned with specific supply chains, rather than geographic segments of its network.

Qube supports reform of the broader regulatory framework supporting the national rail freight industry, rather than the ARTC Interstate Access Undertaking being addressed in isolation

6. Who are the captive customers or services on the Interstate network?

There are a number of commodities, as well as customers, which are captive as the volume and mass of the freight tasks make road transport unviable. These include steel, export and domestic grains, coal, export containerised agricultural commodities (e.g. cotton, grains, meat and timber), and bulk materials (e.g. aggregates and cement).

Furthermore, some specific freight tasks must be rail hauled as a condition of the statutory planning consent or would require significant developer-funded road network upgrades to support the movement of the freight. On the interstate network there are mines, quarries and other developments which have statutory planning restrictions. Other developments, including

Qube's Moorebank intermodal terminal, have statutory planning obligations relating to the use of rail despite competing with unconstrained road freight operators along the same corridor.

For industry participants with dedicated rolling stock, such as steel manufacturers and bulk freight transporters, there are also high capital costs associated with use of rail, which act as both a barrier to entry and have the potential to leave stranded assets. Customers using containers, or similar multi-purpose equipment have the greatest ability to move between operators and between modes.

For all rail freight operators, the nature of the industry makes each a captive customer of the ARTC.

Qube position:

Some supply chains markets are captive customers on the ARTC network.

Additionally, all rail operators are captive customers to ARTC with significant capita already invested in locomotives and rolling stock. Operational costs, including access charges, will drive the industry's capacity to invest in fleet renewal and improved environmental outcomes.

7. In the absence of regulation, what is the likelihood of ARTC being able to exercise market power in relation to captive customers or services on the Interstate network?

As noted above, ARTC already exercises some market power through a differential pricing structure, which appears to reflect the value of the commodity and the market's elasticity. There is also an imbalance of knowledge, with above-rail operators holding little knowledge of infrastructure asset lifecycles, whole-of-life costs and operational costs or whether ARTC is operating efficiently.

With such a significantly broad range between the floor and ceiling price, ARTC already has significant room in which to set prices. On the east coast corridor, it is likely that rail would lose a significant portion of market share if ARTC sought to increase prices towards some commodities, potentially with significant economic impact in regional areas.

Similarly, rail mode share and broader economic outcomes would be significantly affected by a step change in pricing on brownfield sections of the Inland Rail corridor if ARTC sought to increase access charges for existing commodities moving on the network.

To understand the broader economic and environmental impact of increasing rail access charges, the ACCC should directly engage with end customers in industries which are captive to rail due to the volume or mass of the products. This assessment should also consider the broader strategic alignment with government road safety, environmental outcomes and rail mode share objectives.

Even with regulation, the current arrangements enable ARTC to make savings by transferring operating or asset costs to the rail operator or to increase prices directly affecting contestable markets.

Qube position:

Qube does not support further regulator intervention without broader regulatory and market reform.

8. Will the introduction of Inland Rail potentially allow ARTC to exercise market power on the Melbourne–Brisbane corridor?

Qube is a supporter of the Commonwealth government decision to deliver Inland Rail to enable improved regional connectivity and improved access to markets. The investment enables rail to compete for the movement of freight tasks which would previously have not been contestable, or required a change of mode. Like national highway network funding programs, this investment should not trigger a direct commercial investment return to the Commonwealth government.

The inclusion of the Inland Rail corridor into the Interstate Access Undertaking poses a risk for existing rail traffic using the brownfield and upgraded sections of the Inland Rail route. These sections include Illabo to Melbourne, Stockinbingal to Narromine, and Narrabri to North Star.

The proposed Inland Rail service offering will enable heavier axle loads, accommodate longer trains, allow for double stacking and permit increased train speeds. Industry supports infrastructure improvements, however, many existing rail operations on these brownfield sections may not enjoy any benefit as trains will remain constrained by lighter axle load lines adjoining the Inland Rail route, train length restrictions at loading or unloading points or other tunnels and bridges on the broader network.

Any attempt by ARTC to increase access charges for existing traffic moving along the brownfield sections of the Inland Rail, in order to recoup the Commonwealth government investment will increase freight costs and affect rail's viability. Further, any operational decisions to prioritise Inland Rail trains to achieve its transit time offering of 24 hours between Melbourne and Brisbane and 98 per cent reliability will also affect existing traffic²⁴.

Where existing rail traffic is bulk or containerised agricultural exports, there is little or no ability to absorb increased transport costs without adversely affecting either international competitiveness or the return to primary producers. Along the Sydney – Melbourne corridor the market is highly price sensitive and Inland Rail does not offer any service improvement.

Given the decision to invest in the Inland Rail project was an economic decision made by the Commonwealth government and not a financial decision made by ARTC in consultation with operations (including price), existing operations should not be exposed to a step change in access charges as occurred when ARTC delivered the Southern Sydney Freight Line. Similarly, the upgrades to the existing Sydney – Melbourne corridor between Illabo and Melbourne should not trigger a step change in access charges.

Qube is also concerned that ARTC and its shareholder focus on the profitability and sustainability of the Inland Rail operations may result in the redirection of resources to the new corridor. The ACCC should ensure that ARTC does not reallocate resources or reduce service outcomes and performance on other corridors in order to cross-subsidise its new business.

Qube position:

Qube support the Commonwealth government decision to invest in the Inland Rail projects and deliver wider economic benefits to regional communities and the transport sector.

The decision by ARTC's shareholder to invest in Inland Rail was undertaken without industry engagement and the corridor utilises significant lengths of the existing rail network. Most existing rail traffic on the future Inland Rail corridor will gain no productivity benefit from the investment due to other operational constraints and should not be negatively impacted (including access charges) by Inland Rail operations.

ARTC should not be permitted to reduce service offerings or infrastructure standards on other corridors to cross-subsidise or support the Commonwealth government's decision to support the wider economic benefits of the project.

9. Would any of the policy changes set out in section 4.3.3 significantly alter the competitive environment of the Interstate network? Are there any other changes that are likely to do so?

Reforms associated with road user charging have the potential to affect road and rail mode shares on the regional and interstate transport market, however the reality of mass-distance charging or greater cost recover from road linehaul freight in the next 10 years is unlikely given historic government action.

²⁴ ARTC, (2019), Inland Rail service offering <https://1worpv3xudfc4dl40l1hi7fz-wpengine.netdna-ssl.com/wp-content/uploads/2020/07/service-offering-brochure.pdf> (accessed 24 September 2021)

Conversely, there is a greater likelihood of the Commonwealth and state governments further supporting road freight operator productivity improvement through greater access for high productivity vehicles, infrastructure upgrades, grant-funded network enhancements and infrastructure to support the rollout of electric vehicles. As noted above, there have also been numerous decisions to freeze road user charges.

Excluding Inland Rail, there has been very limited infrastructure investment specifically to support the rail freight industry, with most funding allocated without engaging with rail operators or seeking to address legacy issues such as resolving gauge issues. As noted above, some of the network investment has come at a cost to rail freight operators with increased operating cost, reduced reliability and loss of rail mode share. Unlike the road industry which has benefited from improved access for larger, heavier vehicles, rail investment has not delivered a step change to deploy modern, higher axle load rolling stock.

In metropolitan areas, where networks are largely managed by vertically integrated rail operators, recent state government policy decisions to increase passenger services have come at the expense of freight capacity. Some vertically integrated rail network managers also provide little tolerance for the needs of rail operators through a strict interpretation 'passenger priority' resulting in trains often missing timetabled paths on the ARTC network. Within state-based regimes, this leaves rail freight operators with little room to progress potentially costly and high adversarial, access disputes.

These issues further highlight the need for an extensive review of the access framework confronting rail freight operators in providing end-to-end train paths. Targeted investment, such as the Port Botany rail line duplication (which is a NSW government initiative, but fully Commonwealth funded, and supported by Qube) may address some network constraints, but does not provide access for the increased axle loads, more productive trains or resolve the interface issues from trains moving between the Sydney Trains and ARTC networks to access the port.

Within the current industry model, rail operators lack an understanding of network investment decisions, asset life-cycles, operating costs and the efficiency of the network manager. While there is some scope for benchmarking, this is limited in its effectiveness due to the vertically integrated structure of most network owners, the focus on passenger outcomes and a lack of efficiency measures. Further regulatory controls are likely to add to network manager costs and would penalise rail through increased access costs, further undermining rail's competitiveness in contestable markets.

A major concern is the potential sale of ARTC without significant market reform, modal competitive neutrality and proven enforceable performance standards being established. Without suitable protections in place, this would impact all of Qube's rail services including those moving export commodities through the ports at Melbourne, Newcastle, Botany and Port Kembla.

Qube position:

Qube supports reform of the broader regulatory framework supporting the national rail freight industry, rather than the ARTC Interstate Access Undertaking being addressed in isolation.

The framework needs to provide surety of train paths across multiple networks, with a consistent regulatory framework, while enabling confidence to support long term investment in rolling stock and terminals. Access pricing arrangements should support investment cycles and should be consistent with those in competing markets.

The current ARTC Interstate Access Undertaking is not fit for purpose should the Commonwealth government decide to sell ARTC.

10. Do stakeholders agree with our preliminary view on the case for regulation (as set out in section 4.4)?

As the ARTC is a monopoly service provider to rail freight operators and supply chain owners on the 'Interstate' rail network, Qube does not support the ARTC being entirely unregulated in setting prices or the terms relating to the provision of access on the interstate network. Qube supports a review of national rail infrastructure pricing and access arrangements, consistent with how operators use the broader rail network, rather than from an asset-owner perspective.

Further, as noted in the response to questions 1 and 2, Qube suggests an assessment of how end-to-end access arrangements can best support key supply chains would be of greater value than an isolated review of one portion of the interstate rail network. This assessment should also address the relationship between ARTC and the other rail infrastructure managers supporting access to trade gateways and capital cities.

Qube's suggested approach is consistent with the proposed industry structure agreed at the National Rail Summit in 1997²⁵ and the Intergovernmental agreement in 2004²⁶ and set out in the 2008 ARTC Interstate Access Undertaking.²⁷ The structure also addresses the primary issues associated with network access and regulation identified in the Australasian Railway Association's *Rail Freight Action Plan*²⁸ and aligns with action 3.3 of the National Freight and Supply Chain Strategy: National Action Plan²⁹.

Qube position:

Qube supports reform of the broader regulatory framework supporting the national rail freight industry, rather than the ARTC Interstate Access Undertaking being addressed in isolation.

The framework needs to provide surety of train paths across multiple networks, with a consistent regulatory framework, while enabling confidence to support long term investment in rolling stock and terminals. Access pricing arrangements should support investment cycles and should be consistent with those in competing markets.

Without significant reform, the ACCC will potentially increase the cost of access and further erode rail's competitiveness in the freight market.

11. Would a uniform level of regulation be appropriate for the Interstate network, or would a targeted regulatory framework be more suitable?

The regulatory framework should be more aligned to the role of the network in supporting supply chains, rather one network owner's business model selling capacity to rail operators. This would better align with how the different network segments are used, and partially align with the market-based business model ARTC has adopted for the Hunter Valley

From a rail operator's perspective, network owners do not work together to provide integrated end-to-end train paths. There is a lack accountability for investment decisions, delivery of service outcomes, efficient delivery of infrastructure and maintenance, and real-time train management decisions. This is replicated with a lack of clarity in Commonwealth and state levels governments regarding the ownership of freight rail issues within the government, undermining the reputation of the rail freight industry. This lack of clarity has been highlighted

²⁵ Australian Parliament House, (2009), *Research Paper no. 19 2008-09 Commonwealth involvement in reform of the rail freight industry National Rail Summit*

https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp0809/09rp19#national (accessed 12 September 2021)

²⁶ Commonwealth of Australian and the State of New South Wales and the Australian Rail Track Corporation *Memorandum between the Commonwealth of Australian and the State of New South Wales and the Australian Rail Track Corporation* (4 June 2024) https://www.artc.com.au/uploads/Final_Tripartite_Agreement.pdf (accessed 13 September 2021)

²⁷ Australian Rail Track Corporation *ARTC Interstate Access Undertaking 2008* <https://www.accc.gov.au/system/files/Access%20undertaking%20%28clean%29.pdf> (accessed 13 September 2021)

²⁸ Australasian Railway Association (2021) *Rail Freight Action Plan* p7 <https://ara.net.au/wp-content/uploads/ARA-Rail-Freight-Action-Plan.pdf> (accessed 29 September 2021)

²⁹ Australian Government (2019) *National Freight and Supply Chain Strategy: National Action Plan* p19 <https://www.freightaustralia.gov.au/sites/default/files/documents/national-action-plan-august-2019.pdf> (accessed 22 September 2021)

in the NSW Audit Office report into rail freight operations on the TAHE/Sydney Trains network.³⁰

Despite the lack of meaningful investment in rail freight, the Commonwealth government, along with some states, is currently proposing to invest in 'Faster Rail' through the National Faster Rail Agency. This investment has the potential to further diminish rail freight capacity reliability, with Commonwealth funding likely to be allocated to operate additional passenger services on rail lines which are currently shared with freight without delivering infrastructure to retain or improve freight outcomes.

This role of government agencies or shareholders which are not party to access agreements investing in network infrastructure also needs to be addressed in the regulatory framework. Transport for NSW's More Trains More Services investment in the Transport Asset Holding Entity network and Victorian's Level Crossing Removal Project provide examples of investment which has been announced and delivered with minimal or no freight industry engagement, and delivery has directly impacted rail freight operators through increased operating costs, reduced reliability and constrained capacity.

Qube supports an industry framework which enables efficient supply chains, promotes economic efficiency and delivers greater network owner accountability. The challenge for the rail industry is that 25 years after the 1997 agreement, the ACCC only regulates a single track access provider on the national rail network, while rail freight operators are still dealing with up to three network owners to operate a single train within a state. To operate between the mainland capitals, operators now need to deal with more rail network owners than states.

Qube position:

Qube supports reform of the broader regulatory framework supporting the national rail freight industry, rather than the ARTC Interstate Access Undertaking being addressed in isolation.

The framework needs to provide surety of train paths across multiple networks, with a consistent regulatory framework, while enabling confidence to support long term investment in rolling stock and terminals. Access pricing arrangements should support investment cycles and should be consistent with those in competing markets.

Without reform, the ACCC will potentially increase the cost of access and further erode rail's competitiveness in the freight market.

12. Do stakeholders think any of the regulatory approaches set out in section 5.2 are suitable for the Interstate network?

Qube's suggested regulatory framework requires significant changes to the accountability of network owners, both individually and collectively, and structural change in the industry. This is consistent with Action 3.3 of the National Freight and Supply Chain Strategy: National Action Plan, which states "improving freight access, particularly across jurisdictional boundaries and access regimes, will boost use of freight related infrastructure, and enhance network performance, critical to handling forecast freight growth."³¹

Given the competition between the road and rail industries for some commodities, a price control without a Regulatory Asset Base appears to be the most appropriate. This arrangement could enable some modal equity issues to be addressed and enable government to work with network owners to adjust access charges as a lever for specific policy outcomes, including alignment with road user charging.

In establishing prices without a Regulatory Asset Base, the issues of optimised network design, non-commercial investment, non-commercial operations (including passenger) and efficient costs will not need to be addressed. The model, however, still needs to consider

³⁰ NSW Audit Office (2021) *Rail freight and Greater Sydney*, <https://www.audit.nsw.gov.au/our-work/reports/rail-freight-and-greater-sydney> (accessed 20 October 2021)

³¹ Transport and Infrastructure Council, Australian Government, (2019), *National Freight and Supply Chain Strategy: National Action Plan* p19 <https://www.freightaustralia.gov.au/sites/default/files/documents/national-action-plan-august-2019.pdf> (accessed 22 September 2021)

issues relating to network integration, enforceable service standards and appropriate investment as part of the broader monitoring framework.

Qube position:

Qube supports reform of the broader regulatory framework supporting the national rail freight industry, rather than the ARTC Interstate Access Undertaking being addressed in isolation.

The framework needs to provide surety of train paths across multiple networks, with a consistent regulatory framework, while enabling confidence to support long term investment in rolling stock and terminals. Access pricing arrangements should support investment cycles and should be consistent with those in competing markets.

Without reform, changes to the existing framework will potentially increase the cost of access and further erode rail's competitiveness in the freight market.

13. Are there other approaches (not mentioned in section 5.2 or drawing on state regimes) that could be appropriate for regulating the Interstate network?

Section 5.2 of the issues paper primarily focusses on the price aspects of the regulatory framework, which is relevant for some tasks but does not address issues associated with performance standards, end-to-end train paths, train management decisions and network investment decisions.

Given the market structure, rail freight operators are essentially price-takers in the current model and this would be unlikely to change, even in a negotiate-arbitrate model. Ideally, the pricing model should encourage rolling stock investment (including technical innovation), and promote efficient use of the available capacity.

Qube supports a model which places greater accountability on network owners, enables the management of issues without triggering formal regulatory disputes, provides greater regulatory clarity nationally and incentivises operators to invest in new rolling stock and technology. This includes resolving the disconnect between the economic regulatory framework and safety regulation which is currently a disincentive to invest and innovate.

Qube position:

Qube supports reform of the broader regulatory framework supporting the national rail freight industry, rather than the ARTC Interstate Access Undertaking being addressed in isolation. There review needs to deliver an outcome which enables greater alignment between economic and safety regulation, while delivering increased productivity for the industry.

The framework should also support industry in holding network managers accountable for delivery of service outcomes and infrastructure standards, rather than existing model which requires expensive access disputes.

14. Do stakeholders support changes to the regulatory framework being made through a revised voluntary access undertaking, or do stakeholders consider legislative change is required?

If the framework proposed by Qube is to be adopted, it would require either each network to align under a single enforceable undertaking, most likely through legislative change.

Without meaningful steps to address the existing failures in the market, rail will continue to underperform as a consequent of mis-aligned investment decisions and unnecessary regulatory burden. As noted in the introduction, this is consistent with the recommendations and actions in the National Freight and Supply Chain Strategy³², the National Transport

³² Transport and Infrastructure Council, Australian Government (2019) *National Freight and Supply Chain Strategy* <https://www.freightaustralia.gov.au/sites/default/files/documents/national-freight-and-supply-chain-strategy.pdf> (accessed 12 October 2021)

Commission's National Rail Action Plan³³ and, more recently, the Australasian Rail Association's Rail Freight Action Plan³⁴.

Qube position:

Qube supports reform of the broader regulatory framework supporting the national rail freight industry.

15. Are there any other issues that stakeholders would like to raise?

The challenges confronting ARTC in the development of an Interstate Access Undertaking, for what is essentially a sub-set of the interstate rail network, are a symptom of a failure in the current market structure.

The misalignment of individual network manager objectives, government policy and the existing regulatory frameworks acts as a deterrent to private investment, under-utilisation of the network and inhibits economic opportunities. Without addressing these issues, a new voluntary undertaking is unlikely to deliver change.

The regulatory framework needs to discourage an environment where many track access providers continue to offer short term (often 6 month) extensions to track access agreements and target freight capacity to deliver non-commercial passenger-related construction and maintenance needs. If this is not resolved, freight will be worse off with the expansion of arm's-length asset owners and the delivery of non-aligned initiatives such as Faster Rail on existing shared rail corridors.

Aligning safety and access frameworks has the opportunity to avoid operators unnecessarily allocating resources (labour, equipment and capital) to demonstrate the credentials of rolling stock to each network owner and negotiate (mis-aligned) multiple access contracts. This reduction in red tape would also encourage investment and innovation, while also improving industry competitiveness with road freight.

Within the life of a potential 10 year undertaking, rail freight operators will need the commercial confidence to make significant rolling stock investment to support emissions reduction targets. Without a sound access and safety framework, there is the potential that rail, which is more environmentally efficient, may lose further market share to road.

Finally, most access undertakings and access agreements have 5 year terms. As most train paths use more than one network (and undertaking) the misalignment of access agreements and undertakings often only gives an operator a 2 or 3 year period of end-to-end access and access charge surety across the length of a train path. This is inconsistent with haulage contracts, rolling stock investment (which includes a minimum of 25 to 30 year investment in locomotives) and acts as a disincentive to long term investment in new siding and terminal infrastructure.

Qube position:

As an access seeker, the current model does not promote industry outcomes but further promotes the isolated interests of individual network owners and manager across the country, while placing the regulatory burden and commercial risk on each rail freight operator.

The current industry model is not effective and without structural reform to incorporate the adjoining networks into an aligned framework with a streamlined system of access, similar to road, the rail industry will continue to be strategically, commercially and competitively disadvantaged.

³³ National Transport Commission (2020), *National Rail Action Plan* <https://www.ntc.gov.au/sites/default/files/assets/files/National-Rail-Action-Plan.pdf> (accessed 12 October 2021)

³⁴ Australasian Rail Association (2021), *Rail Freight Action Plan* <https://ara.net.au/wp-content/uploads/ARA-Rail-Freight-Action-Plan.pdf> (accessed 12 October 2021)

5 Conclusion

Qube supports reform of broader regulatory framework to restructure the national rail market to enable it to achieve its economic potential. The current market structure is more fragmented than when the competition reforms were first implemented in the 1990s, with an increase in network owners and infrastructure entities, and the concept of a one-stop-shop now less likely than when the ARTC was established.

Industry requires an enforceable regulatory framework for access which addresses the conflicts associated with vertically-integrated passenger rail entities with sufficient drivers to support the delivery of an integrated, national rail network. The current economic regulatory model provides disincentives to investment and innovation, while placing costs and risk upon rail access seekers,

The existing pricing model, with a large gap between the floor and ceiling price, exposes rail operators to unnecessary commercial risk which is increased with the potential for step-changes in pricing from government-led decisions such as Inland Rail investment or operational impacts from Faster Rail. This risk is accentuated by the potential future sale of ARTC.

The issues raised in this paper call out the challenges confronting rail operators and freight owners as a result of today's non-aligned, state-based and network-focussed industry framework. Without meaningful steps to address the existing failures in the market, rail will continue to underperform as a consequence of mis-aligned investment decisions and unnecessary regulatory burden. As noted in the introduction, this is consistent with the recommendations and actions in the National Freight and Supply Chain Strategy³⁵, the National Transport Commission's National Rail Action Plan³⁶ and, more recently, the Australasian Rail Association's Rail Freight Action Plan³⁷.

To this end, industry through bodies such as the Australasian Rail Association, Australian Centre for Rail Innovation and the Freight on Rail Group all actively support the establishment of an overarching truly national statutory regulatory authority to address and advocate for rail freight productivity, enabling economic gains similar to successes of the National Heavy Vehicle Regulator. The ACCC may also like to consider such a regulatory concept for rail in its review recommendations to increase national rail freight productivity and ultimately drive greater modal competition through reduced operating costs and a lessening of the current regulatory burden for rail operators.

³⁵ Transport and Infrastructure Council, Australian Government (2019) *National Freight and Supply Chain Strategy* <https://www.freightaustralia.gov.au/sites/default/files/documents/national-freight-and-supply-chain-strategy.pdf> (accessed 12 October 2021)

³⁶ National Transport Commission (2020), *National Rail Action Plan* <https://www.ntc.gov.au/sites/default/files/assets/files/National-Rail-Action-Plan.pdf> (accessed 12 October 2021)

³⁷ Australasian Rail Association (2021), *Rail Freight Action Plan* <https://ara.net.au/wp-content/uploads/ARA-Rail-Freight-Action-Plan.pdf> (accessed 12 October 2021)