



**FREIGHT RAIL OPERATORS GROUP**

**ARTC INTERSTATE  
ACCESS UNDERTAKING 2007**

**FREIGHT RAIL OPERATORS'  
GROUP  
SUBMISSION  
TO ACCC**

July 2007



## 1 GENERAL COMMENTS

The Freight Rail Operators' Group (FROG) welcomes the opportunity to provide the Australian Competition and Consumer Commission (ACCC) with comments on the proposed Australian Rail Track Corporation (ARTC) Access Undertaking (UT) for the interstate network.

FROG is a group of Australian rail freight operators comprising:

FreightLink

Genesee & Wyoming

Independent Rail

Pacific National

QRNational

SCT

South Spur Rail

Further information regarding FROG is available on the FROG website <http://www.frog.org.au>.

In the interests of transparency and to aid discussion amongst stakeholders, FROG regards this submission as a public document.

FROG made two submissions to ARTC on two previous draft versions of the ARTC Access Undertaking for the interstate network. Some of the major issues raised in those submissions, along with ARTC's response to those matters are summarised in Appendix A.

In this submission, FROG has attempted to respond to the questions put by the ACCC in its Issues Paper, June 2007.

## 2 **ACCC ISSUES PAPER REF. 5.1 – PART 1 'PREAMBLE'. QUESTION – DOES THE UNDERTAKING PROVIDE THE BASIS FOR OUTCOMES THAT BALANCE THE INTERESTS OF ARTC, POTENTIAL ACCESS SEEKERS, AND THE PUBLIC INTEREST?**

FROG supports a regulatory framework which is sufficiently transparent and provides both operators and the network owner with reasonable certainty to proceed with commercial negotiation.

The ARTC UT, relative to the Undertakings of other Australian network providers is limited in its prescriptive detail. ARTC has argued that the degree of regulatory intensity is consistent with the level of market power it possesses on the Interstate Network. While ARTC may not possess market power in the sense that it has the capacity to extract monopoly rents, it is still a monopolist in terms of bargaining position during commercial negotiations. This power is particularly acute, for instance, during the negotiation of price increases, noting that a substantial proportion of prices are not covered by the UT. A network owner may have an incentive to maximize its short term commercial performance by preferentially dealing with an incumbent operator in a manner that maximizes network owner's profits. Therefore, there are aspects of the UT, such as capacity management and price escalation, which should reflect the asymmetry of bargaining power that exist in interstate rail access. These issues are addressed further in our comments below.

FROG therefore believes that the UT does not provide an appropriate balance between the interests of the various stakeholders.

**3 ACCC ISSUES PAPER REF. 5.1 – PART 1 'PREAMBLE'. QUESTION – IS THERE SUFFICIENT CLARITY ABOUT THE TRACKS AND OTHER INFRASTRUCTURE THAT THE UNDERTAKING APPLIES TO NOW AND WILL APPLY TO DURING THE TERM OF THE UNDERTAKING?**

**ALSO REF. 5.2 - PART 2 'SCOPE AND ADMINISTRATION'. QUESTION – IS THE UNDERTAKING SUFFICIENTLY CLEAR ABOUT THE DIFFERENCE BETWEEN EXTENSIONS TO THE NETWORK AND EXPANSIONS TO THE NETWORK'S CAPACITY?**

### **Network Description**

The text description in the Undertaking does not appear to match the graphical information provided in Schedule E. For example Schedule E excludes sector 915 (Islington Junction to Scholey Street Junction) but in the diagram provided as part of Schedule E this is clearly included.

Schedule 1 to the IAA (Schedule D of the UT) also includes the following lines which are not mentioned in the text or contained in the diagrams:

- Goobang Junction to The Gap
- Merrygoen to Ulan

These inconsistencies lead to confusion and need to be rectified.

As a separate issue, the UT fails to cover a number of facilities, principally sidings, that are required by train operators for incidental operations such as the storage of rollingstock. These facilities are currently covered by the NSW Rail Access Undertaking (NSWRAU) and presumably would continue to be so covered in the event that the UT fails to provide adequate coverage. This would result in requiring a separate access agreement to be entered into by the access seeker under a different regulatory structure. This is clearly contrary to the stated intention of the Council Of Australian Governments (COAG) that rail access regulation should be streamlined and harmonised.<sup>1</sup> The preferred outcome would be that the UT provides appropriate coverage of these facilities and also provides explicitly for the service provided by them, including rollingstock storage.

### **Extensions**

The ARTC UT is clear about the fact that it doesn't cover extensions to the network (except for the Southern Sydney Freight Line (SSFL) once completed and commissioned) and that ARTC will provide Additional Capacity in the circumstances set out in 6.2 of the UT. The UT defines Additional Capacity as an enhancement or improvement of the infrastructure associated with the Network such that it has the capability to carry additional task. The difference appears to be that 'extensions' to the network increase the physical extent of the network (in terms of track kilometres but not necessarily track capacity), whilst 'expansions' increase the network track capacity but not the physical extent of the network.

What is not clear, is how ARTC proposes to deal with 'extensions', if they do occur, during the regulatory period.

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<sup>1</sup> The February 2006 COAG Communiqué Attachment B, Appendix E at clause 3.1 provides that the signatories agree to "implement a simpler and consistent national system of rail access regulation, using the Australian Rail Track Corporation access undertaking to the Australian Competition and Consumer Commission as a model ..."

### **Inclusion Of Southern Sydney Freight Line**

There is no clarity as to how ARTC intends to extend the UT to include the SSFL beyond the statement (in clause 2.1(c)) that the UT will include that line when it is constructed. It is assumed, from the wording of the clause, that ARTC does not intend to seek approval separately from the ACCC to cover this extension. Substantially more is required to make this provision effective, especially if ARTC is seeking approval from the ACCC in advance. For example the UT is silent on the pricing, path allocation or transitional arrangements that ARTC intends to apply. Given that this line will cater for existing traffics, the transitional arrangements are of significant interest to access seekers.

The logic for the exclusion of extensions to the network other than the SSFL in the Undertaking is unexplained. It is difficult to understand why ARTC would include one part of the Sydney freight package that is being considered while excluding others. If this is allowed to happen it is likely to place operators in an intolerable situation that parts of the Sydney metropolitan network will be included in the UT while other parts are excluded, but no longer part of the RailCorp network. Presumably this would require separate access agreements as these 'orphaned' parts of the network will still be governed by the NSWRAU.

If this just a mismatch in definitions, then ARTC needs to amend the Undertaking to rectify the matter. If it is intentional, then ARTC would need to provide a convincing explanation as to the merits of this arrangement.

#### **4 ACCC ISSUES PAPER REF. 52 – PART 2 'SCOPE AND ADMINISTRATION'. QUESTION – ARE THERE ANY ASPECTS OF THE UNDERTAKING THAT SHOULD BE TAKEN INTO ACCOUNT IN CONSIDERING THE OBJECTS CLAUSE 44AA(B), DEALING WITH A "CONSISTENT APPROACH TO ACCESS REGULATION IN EACH INDUSTRY"?**

FROG acknowledges the attention regulatory harmonization has received with the recent introduction of the objects clause in Part IIIA of the *Trade Practices Act* and the Coalition of Australian Government's (COAG) '*Competition and Infrastructure Reform Agreement*' obligations to achieve nationally consistent regulation of the designated interstate network from Perth to Brisbane.

The efficiency gains from regulatory harmonization will be greater in instances where there are horizontal interfaces between the interstate and other networks without any step change in the circumstances underlying the regulatory requirements. As a general principle, FROG supports the objective of harmonising regulation of rail access across jurisdictions, but with the recognition that this does not mean that all access arrangements should be uniform regardless of the circumstances. Where there is a valid reason for adopting a different approach to regulation, this should be balanced against the general preference for a uniform approach. In this context, FROG recognises that the NSW Hunter Valley export coal system does represent a situation that calls for substantially different treatment to that applied to the general interstate network. Therefore FROG supports, in concept, ARTC's intention to adopt multiple access undertakings for the interstate network and the Hunter-Valley coal network to take into account those differences.

However, FROG is concerned that in the absence of any detail on the Hunter-Valley coal network access undertaking it is difficult to ascertain the likely presence or consequence of the interface issues. Ideally, the interstate network undertaking and the Hunter-Valley access undertaking should be considered concurrently to enable interface issues to have been readily identified and addressed. This issue was raised with ARTC during the consultation process and a number of real examples of problems with the proposed interface (as far as could be known without any detail of the Hunter Valley undertaking)

were brought to ARTC's attention. ARTC has not addressed these issues in presenting the UT to the ACCC and therefore FROG is concerned that these may well make the UT unworkable in its current form.

**5 ACCC ISSUES PAPER REF. 5.3 – PART 3 'NEGOTIATING FOR ACCESS' – NEGOTIATION. QUESTION – IS THERE SUFFICIENT CLARITY AND TRANSPARENCY ABOUT THE METHOD THAT ARTC PROPOSES TO USE FOR CHOOSING AMONG COMPETING ACCESS APPLICATIONS?**

**ALSO REF. 5.5 – PART 6 'MANAGEMENT OF CAPACITY'. QUESTION – IS THERE SUFFICIENT CLARITY ABOUT ARTC'S PROPOSAL FOR AWARDING ACCESS RIGHTS IN THE CASE OF APPLICATIONS FOR MUTUALLY EXCLUSIVE TRAIN PATHS?**

The ARTC UT, including the Track Access Agreement for Indicative Services (TAA), permits ARTC a level of discretion in terms of who it allocates mutually exclusive capacity to. Given the importance of premium paths to the ability of a rail operator to successfully compete in the interstate freight transport market, FROG considers it critical that ARTC allocates train paths through a coherent and transparent process.

Under paragraph 3.10(d) and clause 5.3 of the UT where there is more than one party seeking access with respect to mutually exclusive access rights, ARTC is entitled to finalise an access agreement with the party who agrees to terms and conditions, including charges, that are considered by ARTC to be the most favourable to it. It goes on to say whilst ARTC's discretion in this regard is not limited, it would ordinarily make such a decision based on *"the Access Agreement that represented the highest present value of future returns to ARTC after considering all risks associated with the Access Agreement."*

FROG considers that limiting capacity allocation to 'the highest net present value of future returns after considering all risks associated with the Access Agreement' may not represent the terms and conditions most commercially favourable to ARTC. Further, this approach is directly solely at allocating a limited and finite resource. FROG suggests that the more appropriate response is that ARTC sees such demand as signalling a need for increased investment in the network.

FROG suggests that a clearer way to describe ARTC's objective in this circumstance is to say that they seek to maximise the commercially efficient use of the rail infrastructure over the long term for the benefit of users of that infrastructure and their customers. This means that the immediate commercial impact of the capacity allocation may not be the sole or the determining factor in the decision. Concomitant with this, the investment provisions within the UT should identify unsatisfied demand as a trigger for investigation into the need for additional capacity on the network.

**6 ACCC ISSUES PAPER REF. 5.4 – PART 4 'PRICING PRINCIPLES'**

**Cost Allocation**

FROG supports ARTC's proposal to have an intermediate 'corridor' allocation for non-segment specific costs and assets as well as a network-wide allocation where these cannot be determined on a corridor basis. It would be helpful if ARTC was to define the corridors by which such allocations are to be made. It is important that the definition of the corridors capture the benefit of this intermediate assignment, ie they should not be defined too narrowly nor too broadly. ARTC is clearly in the best position to determine this as it has the knowledge of how its costs are managed and how the services provided by such cost areas are consumed. This could simply be achieved by nominating the corridor to which each network segment has been assigned in the list in Schedule I of the UT.

It would assist stakeholder confidence for ARTC to provide some detail of the type of costs that it intends to allocate on a corridor basis. In particular, stakeholders will be concerned that the Hunter Valley is not allocated costs inappropriately. As this allocation would be an "inter-undertaking" allocation, it is not currently covered by the drafting in the UT. This is one of the interface issues that need to be addressed.

### **Floor Limit**

Access regimes across various jurisdictions have different interpretations for the relevant floor price. In regards to the *Trade Practices Act* objects clause this may be one area where there is benefit to achieving a consistent approach to access regulation.

The Floor Limit is not a floor limit as adopted in most rail access regulation around Australia. It is in fact a "mezzanine" limit reflecting the total receipts to ARTC for a segment of the network and not the minimum price that can be charged to an individual operator. The form of floor adopted by ARTC that it can, by agreement, go below this, effectively invalidates the concept. For any party negotiating an access agreement, the mezzanine revenue, in isolation, tells the applicant nothing as the applicant will (in most cases) not be the only party seeking access to a particular line, and anyway ARTC can agree to a price lower than a price that would generate the mezzanine revenue. So effectively the floor limit does not limit anything. What is required is a genuine floor limit that is based on the incremental costs (as most people would understand that term to mean) to provide access.

The inclusion in the definition of incremental costs in 4.4(b) continues the error of principle contained in the 2002 Undertaking in that it nominally includes any non-segment specific costs avoided by the removal of a segment from the network. This must be in error as any cost avoided by removal of a single segment ought to be directly associated with that segment and therefore could not be non-segment specific.

The retention of the phrase "such return being determined by applying Rate of Return to the value of these assets" is redundant given that it refers to assets that are being excluded.

FROG prefers the adoption of both a true floor and a mezzanine limit along the lines of the current NSWRAU. This formulation does away with discretion to go below the floor, but as this is a genuine incremental cost, this is consistent with the underpinning economic principle and prevents cross-subsidisation between access seekers. The adoption of a mezzanine that is an objective rather than a strict limit removes the problem of potential under-recovery on a particular segment leading to an unintended breach of the limit. This form of floor limit has worked well in NSW and there does not appear to be a compelling reason why ARTC would object to adopting this limit. As it is currently worded, the UT provides room for ARTC to negotiate prices below the floor limit, so would not seem to be any "in principle" objection from ARTC to the adoption of a true floor.

### **Ceiling Limit**

The ceiling limit proposed by ARTC is a novel approach to economic regulation. The RAB capitalisation model effectively removes the ceiling for all practical purposes as it applies to the interstate network. So long as ARTC has not recovered the regulated full cumulative economic return in any year, prices are unlimited. A cap on revenue only arises once any past under-recovery has been recouped.

ARTC's reason for adopting this approach to limiting prices is to allow it to recover in later years investments that cannot be supported in earlier years. But the practical

reality is that this will never happen for the lines included in the Undertaking.<sup>2</sup> ARTC demonstrates this itself in the graphs in Appendix 1 to Attachment A of the Explanatory Guide wherein all of the line segments show a perpetually increasing RAB.

The ACCC has rejected this proposed methodology in the past. For example, in the context of pricing Telstra's unconditioned local loop service (ULLS) the ACCC rejected Telstra's proposal to recover past losses associated with ULLS specific costs in prices for the current undertaking period. The ACCC concluded that such an approach was inconsistent with the ex ante access pricing approach and would shift all the risk associated with forecasting errors to access seekers<sup>3</sup>.

FROG does not support this form of ceiling limit. In its place, FROG supports the adoption of the two-part ceiling limits contained in the current NSWRAU. These limits provide both an individual price constraint (the stand-alone cost to provide the service) and a combinatorial revenue limit. These limits have worked well in NSW and have the added advantage that, if adopted, they could be applied uniformly to both the interstate and Hunter Valley networks, thus furthering the objective regulatory harmonisation.

For the potential occurrence of a situation that ARTC provides as the rationale for the whole approach, FROG sees no reason why the Undertaking could not provide a relatively simple mechanism of negotiation above the limits that could easily allow for the sort of temporal shift in access charges proposed by ARTC. In fact this is already catered for in the UT in clause 6.2, and all that is necessary is for the pricing principles in Part 4 to recognise such an exception as allowable by agreement.

### **Gifted Assets**

The UT is silent on the matter of valuation of gifted assets. Gifted assets should be recognised as such and either excluded from the asset base for the purpose of calculating revenue limits or otherwise included at zero value. As ARTC is in receipt of substantial government grants for investment in the network, this is likely to have a significant impact on the calculation of the regulated asset base. It would be inappropriate for the assets purchased with those funds to be valued at replacement cost and included in the RAB such that a rate of return was sought for such assets. This position is consistent with the ACCC's conclusion in its 2002 Decision on ARTC's Undertaking, in particular, that Commonwealth grants need to be taken into account in determining floor and ceiling revenue limits.

### **Price Escalation**

FROG has significant concerns regarding the amended price escalation provisions in the UT. In particular, FROG questions an access provider's capacity to fully comprehend the impacts of such price changes on above rail operators given the relevant information asymmetries.

FROG sees no compelling reason why ARTC should have discretion to raise prices as often and whenever ARTC believes appropriate. This would be a most unusual discretion and FROG is not aware of any contract that allows price setting at the discretion of the price setter.<sup>4</sup> FROG has no confidence that ARTC has access to any particular insight into

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<sup>2</sup> There are no lines contained within the UT as formulated by ARTC where the predominant traffic is a mineral haul. Minerals lines are the only lines where it is at all likely that the ceiling might be reached at some future time.

<sup>3</sup> ACCC 2006, Assessment of Telstra's ULLS Monthly Charge Undertaking, Final Decision, p. 150.

<sup>4</sup> Obviously some contracts do have different types of escalation processes, an example being fuel contracts that vary based on the world fuel price on a continuous basis – but these are based on some objectively measurable parameter that is not discretionary to the price setter,

the state of the various haulage markets at any particular time and views it as inappropriate for ARTC to hold itself out as possessing such knowledge.

FROG agrees that the consumer price index (CPI) provides a general proxy for the movement of prices over time and as it is independently and objectively derived it makes a suitable proxy for the change to ARTC's input costs. However, this must be tempered by a requirement for ARTC to continually seek to improve its practices and this should be reflected in a price escalation mechanism that contains a discount to the CPI. Few businesses are afforded the luxury of maintaining real prices and ARTC has made no case as to why it should be allowed to do so.

FROG supports reinstatement of the process that applies under the 2002 Undertaking with the exception that this ought to be extended to apply to all access prices, not just the indicative access charge.

### **Excess Network Occupancy Charge (ENOC)**

The consumption of capacity on the network is a complex matter and FROG's view is that it is not amenable to a simplistic application of an additional charge as proposed in the UT. The chosen model is based on a doctrine that the purpose of ARTC's network is to serve as a conduit between an entry and exit point. This model suits some traffics and in particular suits many of the traffics using ARTC's former East-West network. However, ARTC has acquired a more complex network with the NSW lease and the traffics on that network do not necessarily conform to the simple model of the network being a pipeline. In some cases, trains need to perform actual work on the network itself or it is more appropriate to delay on the network at a particular point than at some other point. It is apparent from the explanation provided by ARTC that it wishes to impose an additional charge for such traffics even though they have been using the network in this manner for many years and that this might have been seen as a perfectly legitimate method of operation under the previous network ownership.

It appears that the core underlying reason for the charge is to recognise consumption of capacity beyond the norm. However, the consumption of capacity is not amenable to a simple, one dimensional management tool such as the ENOC. As an example of the difficulty, passenger trains consume far more capacity due to the priority they command than from their actual occupancy of the network per se. Priority imposes a 'shadow' around the train through the need for other trains to be put aside to allow the uninterrupted passage of the priority train. Thus the effective capacity consumed is substantially greater than the apparent capacity consumption. A simple measure based on 'network occupancy', if applied consistently, should see passenger trains offered a rebate because their actual track occupancy is less the 'standard' train.<sup>5</sup> Clearly this introduces another element into the equation ie that of priority, that the ENOC fails to address. If the charge was genuinely attempting to maximise network usage, the charge would be based on a single set of train characteristics and any deviation from these would result in a variation of charges – such variation would seem to be contrary to the differentiated pricing structure that ARTC currently has in place (eg passenger trains and express freight trains pay nominally the highest price on the former ARTC East-West network whereas, applying the ENOC concept would reduce the price compared to the standard train).<sup>6</sup>

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<sup>5</sup> FROG is not advocating this, merely using the example to show that the adoption of a unidimensional measure as proposed is conceptually flawed.

<sup>6</sup> While the nominal rates paid by passenger trains is the highest, the actual revenue generated is relatively low on a train basis as passenger trains are very light compared to freight trains – thus a measure based on GTK provides a low yield on the variable component for passenger trains. This does not counter the argument above but points to the fact that ARTC's pricing is in fact governed by matters other than network capacity consumption.

Further, the logic of the argument raised by ARTC in support of the ENOC would see the imposition of a refund to a train operator where ARTC planned a path that required the operator to stop to interact with other trains on the network. As this increases the network occupancy of the train it ought to be paid for by the party imposing the delay. Clearly this is not intended by ARTC but it appears to flow from ARTC's rationale for the charge.

ARTC suggests that this charge would provide a signal for additional investment. FROG would certainly welcome and support a measure that provided for ARTC to invest in the network to provide additional capacity when this is required, however the excess network occupancy charge does not appear to drive such behaviour, nor is there any link discernable to investment within the UT.

It is unclear how ARTC has determined the excess network occupancy charge and how it has established the base-line as an appropriate measure to trigger the charge. The arbitrary adoption of a base-line detracts significantly from the rationale for adopting the charge in the first place. Rather it would appear that the charge is imposed because the train is different from the standard rather than for some underlying consumption of capacity. For example are the sectional run times based on a particular power to weight ratio? If so, how does ARTC justify that this is the appropriate value rather than one which is higher or lower. How does ARTC factor in speed restrictions and their effect on train length into the determination of sectional running times?<sup>7</sup> How have 'reasonable allowances' for above rail activities been determined and how does ARTC justify potentially penalising an operator that performs these activities differently to current practices? For example if an operator chooses to fuel 'on the run' from an on-board tanker, thereby not having to stop to refuel, if the stated principle is applied, such an operator ought to be rewarded with an access charge reduction for occupying less of the network.

As the ENOC seems to fail to meet its objectives at a conceptual level, it is appropriate to consider whether, despite these flaws, it would serve to benefit the network on a practical basis. FROG is not aware of any particular problem that ENOC would serve to remedy. It is noted that ARTC has used the example of operators stowing trains at locations near terminals in order to avoid investment in additional capacity within those terminals. This again takes a very simple view of the operation of the network that is inconsistent with the practical needs of all parties. When this issue was discussed among FROG members, not one member indicated any concern that the stowage example actually had a negative impact on network operations in practice.

Given these concerns, the ENOC does not appear to be effective in achieving its stated goals, nor are the stated goals particularly germane to the efficient operation of the network. A further issue is that the charge has the 'look' of one that is designed to derive incremental revenue to ARTC. FROG members are concerned that there appears to be an agenda whereby ARTC is seeking to add charges for 'ancillary' services, whether it be the ENOC, wagon storage or other benefits that, until now, have been seen as part of the service provided by the network to operators and therefore encapsulated within the access charge. These charges are characterised by their lack of cost reflectivity eg the underlying 'service' that the ENOC is ostensibly providing results in no actual incremental cost and arguably no opportunity cost.

FROG does not support the introduction of this charge.

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<sup>7</sup> A speed restriction, even though it is constant, has different effects depending on the characteristics of the train. For example a highly powered, short passenger train will be affected far less by a given speed restriction than a long heavy freight train that takes considerably longer to slow down, pass through the restriction and regain line speed.

## Reservation Fee

FROG does not consider that there is any persuasive justification for a reservation fee. In fact, FROG considers that such a fee will actively discourage proactive infrastructure investment discussion between operators and ARTC.

FROG supports the ability of access seekers to negotiate access contracts in advance of requirements, but does not support the introduction of this fee.

## Indicative Access Charges

The UT only includes one set of charges, the Indicative Access Charge (IAC). ARTC has a number of prices currently in operation and even though it has indicated an intention to move to a simplified pricing structure, it will still have at least 6 different sets of prices in operation. If the ACCC approves the UT, ARTC will be able to set prices other than the IAC at will, without regulatory scrutiny. Clearly ARTC has in mind a set of charges<sup>8</sup> and is denying the regulator the opportunity to consider those charges. It is also material that the escalation process in the UT applies only to the IAC. ARTC has previously increased prices for traffics other than the IAC by amounts higher than allowed under the Undertaking as it then applied for the IAC<sup>9</sup> and FROG is concerned that this discretion should not stay with ARTC.

FROG strongly urges the ACCC to require that all existing prices be included the UT so that they can receive appropriate regulatory scrutiny and receive the protection of the escalation provision.

## Structure OF Access Charges

ARTC is seeking to radically alter the structure of access prices for a number of traffics. The new structure doesn't fit many of these well. The change will disturb existing contractual arrangements for no obvious benefit. ARTC has not even provided its customers with any analysis of the effect it expects the changes to have on its customers. There is no reason to suppose that the proposed structures will change the relative position of competing rail access seekers unless there are access contracts continuing under the current pricing arrangements – if there are such contracts, then there are likely to be substantial variations in access prices between access seekers.

However, where the change results in increases in access charges, then there are likely to be modal share impacts. Many of these traffics are subject to either road or marine competition. Access prices are a substantial input cost to a train operator and increases would almost certainly have to be passed through to end customers (except where this is not available under existing haulage contracts).

## Quantum Of Access Charges

ARTC has published a modest amount of information regarding market shares and 'door-to-door' transport costs to justify its pricing for the IAC. Unfortunately, the data provided presents a simplistic, incomplete and distorted view of the situation.

<sup>8</sup> ARTC published a set of access prices under its new preferred structure during the pre-submission consultation process but was at pains to point out that these were not intended to form part of the Undertaking. The pricing document is available at [http://www.artc.com.au/docs/news/pdf/news\\_100407\\_Pricing%20Schedule.pdf](http://www.artc.com.au/docs/news/pdf/news_100407_Pricing%20Schedule.pdf).

<sup>9</sup> Prior to the occurrence of this event, it was widely believed that the escalation process in the Undertaking would apply to all access prices, or at least the "posted prices" that ARTC published on its website. Indeed for several years that is how ARTC behaved, applying the escalation formula across all posted prices in the same manner. However, it decided in one year not to do this, apply greater increases on access charges that were not the IAC.

An example of this is the claims being made with regard to intermodal rail freight to Western Australia. This traffic competes with both road and sea. Rail freight provides various levels of service offerings, and is, for a number of traffics, priced above sea freight and below road freight. The decision by a customer to use rail will be dependent on a number of factors, including the total supply chain cost, reliability of supply, transit time, safety and environmental factors. The total supply chain cost includes the end to end cost of transport, plus inventory holding costs, storage costs, insurance etc. The final modal decision is a balance of these factors and cannot simply be limited to a comparison of direct transport costs. While rail costs may, in most situations, be below road costs, poor reliability of delivery and inferior transit times mean the total equation is often resolved in favour of road, despite the difference in direct transport cost.

Both road and sea enjoy significant market share of the freight market to WA from the East coast, but the ARTC analysis ignores the sea component – thus its conclusions regarding market share and the consequences of changes in prices are fundamentally flawed. ARTC has stated that it is not competing against sea freight and therefore its land based data is the only relevant data. But train operators are competing directly against sea, and increasingly so. Thus to ignore sea is to disregard a significant competitor and an invalid proposition. It is simply wrong to say that rail can absorb a significant increase in its costs East-West without suffering an erosion in market share, because of a simplistic comparison of rail versus road transport costs. Access costs for approximately 30% of the total rail costs on the East-West corridor, and an increase of the magnitude being proposed by ARTC will have a significant impact, which will make both sea and road freight more attractive.

ARTC seeks to justify the East-West increase on the basis of a real reduction in unit access costs over previous years ie the real prices have decreased. This is true, but this provides no justification for seeking a real price increase at this time. Train operators have also seen real price decreases over the same period of at least the amounts claimed by ARTC (one FROG member reports a reduction in prices over the same period of 34%), and have also suffered significant cost escalations such as the doubling of the price of fuel which they have had to absorb though productivity gains.

It is notable that in its justification for a substantial price increase, ARTC has neglected to show the benefits it has received from the growth in volumes over the years. While ARTC's real prices have decreased, the high level of fixed cost in its infrastructure means that its profitability from that infrastructure has soared. It would be appropriate for the ACCC to enquire as to ARTC's actual income, costs and profitability on the East-West axis in recent years, and to show actual expenditure over the same period.

In terms of North-South access pricing ARTC acknowledges that current pricing is above road pricing on Melbourne-Sydney and Sydney-Brisbane. To address this ARTC is proposing a temporary rebate of 10% on access fees. While this is welcome, this is after the imposition of a CPI based increase so that the reduction is somewhat less than 10%. Further, ARTC intends this to apply only to intermodal traffics (ie the traffics to which the IAC would apply). ARTC has not provided a rationale for this specific treatment.

FROG questions why such a pricing approach should be applied outside of the UT. It seems extraordinary that ARTC puts up a regulatory document while at the same time is offering a substantially different price outside of that document. FROG suggests that any adjustment to the IAC should be done through the UT and approved by the ACCC. Further, ARTC should show why the rebate should not apply to other traffics that are equally uncompetitive.

**7 ACCC ISSUES PAPER REF. 5.5 – PART 5 'MANAGEMENT OF CAPACITY'. QUESTION – ARE THE PROVISIONS DEALING WITH CANCELLATION OF PATHS IN THE EVENT OF UNDERUTILISATION ("USE OR LOSE" PROVISIONS) APPROPRIATE? ARE THE CURRENT "USE OR LOSE" PROVISIONS APPROPRIATE FOR ALL TRAFFICS?**

Whilst the threshold test for initiating a resumption of access rights for underutilisation is the same under QR's Undertaking as it is under the ARTC UT, QR's Undertaking provides a more extensive process for dealing with the removal of scheduled train paths than that detailed in the ARTC UT.

By and large, QR's process provides more avenues through which an access holder might challenge the decision by QR to resume their access rights. These additional obligations aim to comfort an access holder that such fundamental action as removal of access rights will not be undertaken without weighty consideration and the opportunity for appeal. Operators of seasonal traffics have found particular relevance in this additional security.

**8 ACCC ISSUES PAPER REF. 5.6 – PART 6 'NETWORK CONNECTIONS AND ADDITIONS TO CAPACITY'. QUESTION – ARE THE UNDERTAKING PROVISIONS ON ARTC'S COMMITMENTS IN RESPECT OF ADDITIONS TO CAPACITY FULLY FUNDED BY AN ACCESS SEEKER APPROPRIATE? IS THERE SUFFICIENT CLARITY ABOUT HOW CAPACITY FUNDED BY AN OPERATOR WOULD AFFECT THAT OPERATOR'S ACCESS CHARGES?**

FROG supports the ability of the network provider to recover all reasonable costs associated with providing network extensions which accrue economic benefits solely to an individual customer. However, FROG has considerable concern regarding the potential above-rail competition impacts where the full costs of providing additional capacity are sought from the incremental access seeker.

The provision and pricing of additional capacity which has common use characteristics, i.e. there is nothing unique about the service for which the expansion is required, has been scrutinised by other rail regulators in Australia. For instance:

- The QCA rejected QR's request to impose pre-conditions on mainline expansions, citing concerns about competition between mines; and
- ERA's review of the Western Australian Rail Access Code recommended that:
 

*"It is proposed that section 9.2 (b) of the Code be amended to require the railway owner, in forming its opinion under section 9.2 (b)(ii), to give consideration to implementing cost sharing arrangements which are set equitably between all users based on a combination of relative current usage and economic benefits where this is commercially possible".*

ARTC provided the following response to the ERA recommendation when first discussed in the draft report:

*"ARTC was concerned the incumbent user may have to pay for a share of capacity expansion that is higher than the benefit it could currently, or in the future, extract from that expansion in order to achieve equity with the access seeker may result in a loss of economic efficiency. ARTC believed that if the access seeker is required to pay a higher charge for the surplus of cost over benefit to itself and incumbent users, then this is a commercial decision for the access seeker"*

ARTC's claim of any loss of economic efficiency associated with recovering the costs from all users rather than the user requiring the additional capacity does not recognise the opportunity costs of the existing capacity. Kahn summarises the situation neatly when discussing the demand of two operators A and B<sup>10</sup>:

*“true, it is the increase in B's purchases that precipitates the additional investment; but the additional costs could just as well be saved if A reduced their purchases as if B refrained from increasing theirs. So A's continuing to take the service is just as responsible, in proportion to the amount they take, for the need to expand investment as B's increasing needs, and A should therefore be forced just as much as B to weigh the marginal benefits of the capacity to them against the marginal costs they impose on society by continuing to make demands.*

*Even though B's demand is 'marginal' in the temporal sense, both groups are marginal in the economic sense. Both should be forced to match the higher capacity costs against the satisfaction they derive from continuing to use the service.”*

This concept is particularly relevant to an infrastructure provider like ARTC who does not recover the full economic cost of its existing capacity. In this context, where the incumbent operator charges are less than stand alone cost, and the expansion costs would lead to higher access rates to the entrant, the access provider could increase its commercial return by transferring the incumbent's access rights to the entrant and not undertake the expansion.

This indicates that where additional capacity would be necessary to accommodate the requirements of an access seeker who is providing the same service in the same market as an incumbent operator, then the cost of additional capacity should be borne by all operators (or in this case the government that is bearing the shortfall in recovery for public good) to avoid distortions in other markets. However, this should only occur where it is clear that the additional capacity is not specific to the access seeker and the demand for that level of capacity is expected to prevail into the foreseeable future. For instance, where it is clear that the additional capacity would not be necessary if an incumbent operator reduced their current demand by a corresponding amount as the new access seeker it is clear the capacity is not specific to the operator. Such an outcome is entirely consistent with clause 6.4(j)(iii) of the Competition Principles Agreement.

In relation to infrastructure investment more generally, FROG wishes to emphasise that it is critical to the on-going health of interstate rail haulage that appropriate mechanisms are in place to plan and implement investments in the network to ensure that sufficient capacity is provided to meet market needs. FROG is strongly of the view that this is a matter that requires an inclusive engagement between ARTC, government and network users in order to determine future network requirements.

The view of FROG members is that ARTC must engage closely with its customers to determine the most appropriate response to capacity issues, drawing on the experience and knowledge of this group. The members of FROG have much to offer ARTC through participation in a collaborative capacity and investment planning process to arrive at mutually beneficial outcomes. Similarly, governments have a significant interest in ensuring that rail networks are appropriately resourced to meet the nation's transport designs. FROG sees the inclusion of government representatives in ARTC's capacity and investment planning processes as essential.

The following is an example of the problem arising under the UT. The Adelaide to Tarcoola section of the interstate network is generally recognised as nearing practical capacity. In the next few years additional capacity will be required to cater for normal

<sup>10</sup> Kahn, A (1988) *The Economics of Regulation: Principles and Institutions*

market growth (assuming sustainable pricing by the network owner). In addition there are several potential minerals projects that may need capacity on this line in the medium term. Despite the potential additional traffic, it is highly unlikely that any of these traffics would be able to sustain the cost of the additional investment through access charges. It will be noted that the diagram in ARTC's Explanatory Guide (p 45) for this section shows that, while access charges are significantly above the revenue floor, they are substantially below the ceiling and that this is predicted to continue into the future – as evidenced by the ever increasing cumulative loss. Despite this, ARTC has suggested that any development of that corridor will be dependent on commercial funding of the investment. This appears to be inconsistent and is of considerable concern.

The investment process under the UT is solely directed to dealing with the situation where an access seeker is able to bear the cost of the investment either through initial capital contributions or through a specific access charge. In a sense, this is entirely independent of any investment program that ARTC or government might intend and the UT in fact places no obligation on ARTC to consider investments that are outside of this specific circumstance. Thus as no traffic (or even groups of traffics or operators) can afford to invest on this independent basis, the UT provides;

- no mechanism for achieving the additional capacity in the network,
- no opportunity for stakeholders to actively influence the planning for that investment.

As a result, the UT leaves the on-going investment decision making totally in the hands of ARTC, without any formal mechanism whereby stakeholders can influence that process.

The obvious solution would be for the UT to;

- provide a clear process whereby stakeholders can work closely with ARTC to identify the demand and resulting capacity requirement,
- provide for clear criteria by which such projects can be judged and prioritised, and
- where necessary, provide for joint approaches to government for funding.

## **9 OTHER ISSUES**

There is a number of other issues that have not necessarily been covered through responses to specific questions from the ACCC Issues Paper. These are canvassed in brief below. Appendix A contains a more comprehensive list of issues that have been raised by FROG in previous submissions to ARTC during the consultation process along with the result as evidenced in the UT as submitted to the ACCC. It is disappointing that a great many of these issues have not even been acknowledged by ARTC, let alone dealt with positively. While FROG has tried to engage ARTC in a positive exchange of views, the lack of engagement by ARTC through the process has been disappointing. Thus many issues that could have been sorted out prior to reaching this stage in the process remain in contention.

## Path Allocation Model

The path allocation model included in the UT is that an access seeker will purchase a path for a specified period<sup>11</sup> and that path is allocated to the access seeker.<sup>12</sup> This generally works well for intermodal traffics that have a regular passage and can therefore be routinely timetabled (eg like a bus, with a known departure point and arrival point and planned departure time). But a number of traffics operating on the network, particularly in NSW, do not fit those criteria. For example, the allocation of fixed paths for traffics such as grain that display a substantial level of irregularity would result in;

- a reduction in flexibility of operations,
- raise the spectre of almost continual failure to meet the 'use it or lose it' provisions,
- impose unnecessary rigidity between train operators through the fixed assignment of paths to a particular operator,<sup>13</sup>
- impose additional costs that are not currently incurred by such traffics (eg application of a more rigid flagfall charge).

What is required to address this and other situations is a series of pathing models that provide the appropriate levels of flexibility and capacity required by the different types of traffic along with appropriate transparent allocation processes.

## Insurance

ARTC claims that it has increased the insurance coverage under the UT from \$200m to \$250m in order to have consistent arrangements across the network where it is under an obligation to the NSW Government to apply a minimum of \$250m.

While this might be appropriate for access seekers that operate in NSW as well as on other parts of the network, there seems to be little reason to require this increased coverage from those operators that do not operate in NSW. In fact it is far from clear that ARTC has an obligation imposed on it to provide that level of coverage. The NSW rail safety legislation requires each party to have an appropriate level of insurance but does not impose a specific level of coverage. While it is true that RailCorp requires a minimum \$250m general liability insurance coverage, that has been explained to FROG members as being due to movements within the Sydney metropolitan area. FROG is not aware that the same obligation would necessarily apply to operations outside of Sydney. A far more robust explanation is required from ARTC to justify placing this burden on all operators, some of whom may have no access rights in NSW at all.

While FROG supports the goal of having "consistent arrangements over the whole network"<sup>14</sup> where this makes sense, insurance does not appear to be a matter that lends itself to uniformity. FROG's view is that the level of insurance required should be driven by the level of risk arising from a particular operation. While there may be a number of common risk elements in rail operations, FROG would argue that there are likely to be differences depending on the circumstances and, rather than adopting ARTC's approach

<sup>11</sup> The UT is equivocal on this point. Nominally one ought to be able to purchase paths for different durations under an access contract. However past experience with ARTC indicates they are unwilling to contract on this basis, requiring the train paths in a particular contract to run for the entire course of the contract. For example, a train operator might wish to contract for additional paths for a period of 3 months each year to cover opportunities for additional intermodal traffic during the peak season. In the past, ARTC has refused to contract paths on this basis, preferring instead to offer paths on an ad hoc basis each year (if available).

<sup>12</sup> While paths are offered on a licence basis and are not exclusively assigned to the operator, the effect is an exclusive licence as ARTC contracts not to offer the path to another operator during the life of the contract.

<sup>13</sup> This could have a significant impact on competition for such business as it would more significantly impact a small operator with few trains compared to a large operator with a large fleet that is better able to make use of the assigned paths through greater deployment flexibility of the available fleet.

<sup>14</sup> ARTC Explanatory Guide p 25

which seeks consistency, it is appropriate to consider whether some level variation is appropriate in the particular circumstances to avoid placing an unnecessary burden on a particular party.

### **Management Of Horizontal Interfaces**

*“A key objective of ARTC’s lease in NSW has been to deliver improved performance and capacity of the rail network between Melbourne and Brisbane (via Sydney) (“North-South rail network”) through strategic investment in that network to enable the performance of the network to meet market requirements in terms of reliability, transit time, availability and yield, as well as through more holistic management of that network, including delivering greater consistency in access regulation to the interstate rail network more broadly. This undertaking forms a key part of ARTC’s strategy to deliver on this objective.”<sup>15</sup> (emphasis added)*

Far from assisting to deliver “holistic management” of the interstate network, the UT detracts from that worthy objective. FROG has raised with ARTC the need for the UT to explicitly recognize the horizontal interfaces between ARTC and the networks which it adjoins (not the least its own proposed Hunter Valley region). It is recognised that this could not impose a requirement on the achievement of any specific outcome, but at the least, it would be indicative that ARTC recognises the inter-relationships of the various parts of the network and the need to manage the network with an eye to achieving the best outcomes overall.

It is disappointing that this issue has neither been acknowledge nor responded to by ARTC. COAG has placed a great deal of faith in the ARTC UT as a model for all rail access undertakings across the nation and it would be a very poor outcome if that model was one which pretended that the interactions between networks were irrelevant. For example, the allocation of train paths (ignoring the problems with the allocation model previously alluded to) solely within the ARTC non-Hunter Valley network without regard to the paths that might be allocated in adjacent networks will (and currently does) lead to inefficient train pathing across the ‘borders’. By refusing to formally recognise the need to work collaboratively across networks, network owners have created their own borders that are every bit as disruptive as the State borders that ARTC was supposed to eliminate.

It is acknowledged that there is informal communication between network owners regarding the allocation of train paths from time to time, but this is ad hoc, dependent on the personalities and good will of the people involved and unstructured. In the experience of FROG members it is far more often the case that the train operator sorts out the pathing in each jurisdiction in order to achieve a sensible outcome.

### **Need For A Possessions Planning Process**

In a similar vein, the UT is silent on the need for a comprehensive possessions planning process. Track possession is the term for when the network owner closes the track to traffic in order to perform maintenance. It will be readily appreciated that a closure on the Sydney – Brisbane corridor on one day and the Sydney – Melbourne corridor the next will have a far more substantial impact on Brisbane – Melbourne traffic (and most other corridors as well) than if the possessions can be coordinated to occur on the same day. This is not always achievable, but it often is achieved or the effects of possessions ameliorated through close cooperation between the track owner and train operators.

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<sup>15</sup> ARTC 2007 Interstate Access Undertaking Explanatory Guide p 4

The impacts can be even further reduced if different network owners will cooperate to plan their possessions together. Obviously a Sydney – Brisbane train has little advantage if RailCorp chooses to close the Sydney – Newcastle network one day and ARTC the Newcastle – Queensland border the next, and it is worse again if QR chooses the third day to close its 100km of track to Brisbane, regardless of how well ARTC is coordinated itself.

While the Undertaking cannot oblige ARTC to have particular outcomes with other network owners, it can:

- a) oblige ARTC to have an appropriate possessions planning process for its own network; and
- b) recognise the importance of coordination with other network owners and require ARTC to make reasonable efforts to plan network possessions across all relevant network owners.

It is noted that ARTC does interact with some network owners in an attempt to plan possessions on a coordinated basis and, by and large, while not perfect, these arrangements do have a substantial benefit in reducing the effects of network possessions. However, this is a matter that ought to be recognised in the UT and given force by it.

### **Third Party Works**

The TAA contains a provision (clause 9.4) regarding third party works on the network that absolves ARTC from all responsibility for third party work on its network. FROG recognises that ARTC might be required at times to permit such work, however, the drafting in TAA clause 9.4(b) is inappropriate. Train operators rely on ARTC to provide a network that is safe to operate on, yet this provision removes any responsibility from ARTC totally where a third has caused an incident. If an operator is not able to rely on ARTC to provide a safe network, to whom should the operator look? ARTC's accreditation would not support its walking away from providing a safe network. It is FROG's strong view that ARTC cannot resile from its liability to provide a network fit for purpose regardless of who or what other party is involved.

## APPENDIX A COMPARISON OF ISSUES

The table below sets out matters that FROG raised in submissions to ARTC, commenting on earlier drafts of the UT and the response provided by ARTC in the UT. The table is intended to show ARTC's response to major issues and omits issues raised by FROG that were of a relatively minor nature.

The table does not detail those matters modified by ARTC that were not subject to comment originally by FROG. Most such modifications were of a minor nature with the notable exceptions being the confidentiality arrangements and in the IAA, the liability and indemnity provisions.

FROG Submissions	ARTC Response UT
<b>General &amp; Part 1: Preamble</b>	
The undertaking should recognise that ARTC is not a 'traditional' commercial entity but rather is a provider of rail infrastructure that is a key economic enabler.	<p>✗ Not referred to or discussed.</p> <p>✗ No recognition of government contributions or ARTC's role in securing these.</p>
Pricing on basis of efficient costs	<p>✗ No explicit recognition of efficient costs. While there is a reference to "industry efficient basis" with regard to operating expenditure (cl 4.4(d)) and the definition of Capital Expenditure appears to endorse the principle, there is no unequivocal commitment that the revenue limits will be based on efficient costs. The failure to acknowledge this principle explicitly while arguably providing for it is unhelpful.</p>
<b>Part 2: Scope</b>	
Definition of the network – lack of clarity	<p>✓ Diagrams are clearer about what is included but these remain at odds with the text.</p> <p>✗ Textual description is confusing as it appears to include the coal roads and exclude the main lines and the TAA is inconsistent with the main document.</p>
No information about interface with the proposed Hunter Valley undertaking.	<p>✗ Not referred to or discussed. The UT is still region based.</p> <p>✗ No recognition of the substantial issues raised nor any answers to specific questions raised.</p>
Need for explicit recognition of horizontal interfaces and obligation to work to minimise these.	✗ Not referred to or discussed.
Need for recognition of terminal access.	✗ Not referred to or discussed.
Recognition of transitional issues with take-up of SSFL.	✗ Not referred to or discussed.
Clarification sought as to what constituted an extension.	✓ Extension now separately defined.
Clarification sought as to why other network extensions are excluded.	✗ No clarification provided.
Treatment of existing contracts.	<p>✗ Noted that ARTC Rail 2007 presentation suggested that all access contracts except the RailCorp contract were up for renewal – how does the new passenger pricing apply if it doesn't apply to RailCorp?</p>

FROG Submissions	ARTC Response UT
Exclusion of obligation on ARTC to hold insurance and rise to \$250m	✓ Reinstated previous obligation. ? Explanation of rise to \$250m unconvincing – unclear who is dictating this requirement, but even aside from NSW issue imposes costs on others without reason except for consistency.
Publication of existing access prices	✓ Reinstated previous obligation.
Broadening of material change to apply to operators as well as ARTC	✗ Not referred to or discussed. No change – still only applies to ARTC’s position.
Part 3: Negotiation Process	
ARTC to provide additional information where reasonable. Noted loss of NSW information pack.	✓ Reinstated previous obligation (note fees apply). ✗ No recognition of loss of information compared to NSW Undertaking.
Prudential requirements and extension to require proof of ability to meet access obligations.	✗ Not referred to or discussed.
Reduction in time to respond with Indicative Access Proposal (IAP) to 20 business days (from 30).	✗ Not referred to or discussed.
Clarification why ARTC wants arbitrary cessation of access negotiations after 3 months.	✗ Not referred to or discussed.
No opportunity to refute allegation of failure to meet prudential requirements.	✗ Not referred to or discussed.
Dispute resolution as an inclusive model and therefore numerous specific inclusions are redundant.	✗ Not referred to or discussed. In fact reinstated some specific provisions.
Renegotiation of scheduled train paths. FROG suggested ARTC had reduced this provision to a point where it was of questionable utility. Need for transparent path allocation process. No process provided for dealing with irreconcilable train path applications. Need for ARTC to provide capacity to meet demand – this would obviate the need for other mechanisms such as roll-over of access rights.	✗ Some amendments made to remove the end-user part of the renegotiation provision, but this is still basically at ARTC’s discretion and therefore a mere shadow of the provision it replaces. ✗ Matters relating to investment and transparent path allocation process not addressed. ✗ Reinstated previous NPV based evaluation. This provides no visibility to the applicants and does not address the underlying issues. ✗ Issues raised by FROG not referred to or discussed.
Need to address different forms of train path and contractual obligations eg fixed paths for grain or minerals & contracting for whole of the period – one size does not fit all.	✗ Not referred to or discussed.
Consistent use of “business days”.	✓ Adopted.
Redundant (and inappropriate) inclusion of standard terms and conditions in the IAP.	✗ Not referred to or discussed.
Inappropriate to have tri-party agreements.	✗ Not referred to or discussed.
Part 4: Pricing Principles	
Adoption of a reference tariff approach inconsistent with a posted price approach and fails to recognise many traffics on the network.	✗ Not referred to or discussed ... ✓? ARTC put out a set of other prices but excluded them from the undertaking. Unsatisfactory to FROG.

FROG Submissions	ARTC Response UT
Clarification sought regarding qualification of obligation to limit charge differentiation and how pricing would be determined.	✗ Not referred to or discussed.
Clarification sought regarding use of unusual revenue limits. Clarification sought regarding use of unusual definitions in revenue limits.	<p>✓ Explanation of use of 'capitalisation' model.</p> <p>✓? Incremental cost partially fixed (though still includes non-segment specific costs which, by definition can't be avoidable to a segment.</p> <p>✗ No response to FROG questions regarding use of a mezzanine rather than a true floor.</p> <p>✗ Use of capitalised ceiling model. Regardless of the explanation, this is contrary to every other ceiling for rail in the country. The explanation only makes any sense if you accept the fiction that non heavy haul rail infrastructure is capable of economic profit.</p>
Gifted assets should be excluded from the asset base.	✗ Not referred to or discussed.
Inappropriate general allocation of non segment specific costs	<p>✓ ARTC has proposed a "corridor" basis. This is a good step forward but corridors to be defined.</p> <p>✗ Issue of allocation between different undertakings not referred to or discussed.</p>
Structure of access charges needs to reflect existing structures.	<p>✗ The existing structures in NSW (except coal – which as yet has not been addressed even outside Hunter Valley) are removed and everything is moved to a flagfall and variable charge. No explanation provided in the undertaking. The "pricing schedule" which is not part of the undertaking does not provide any explanation either.</p> <p>✗ Related issue of charging flagfall for bulk traffics not addressed.</p>
Lack of linkage between provision of path and enforcement of flagfall.	✗ Not referred to or discussed.
Excess network occupancy charge (ENOC) – need for clarification as to what this is all about and how it will work.	<p>✓ Clarification provided.</p> <p>✗ No link back to investment.</p> <p>✗ No explanation why the charge has changed between versions (quite substantially in some cases). Given that the changes are in both directions depending on line segments, this is particularly obscure.</p>
Prime path charge should be removed.	✓ Removed.

FROG Submissions	ARTC Response UT
Prices not provided and therefore unable to judge the impact of the new undertaking.	<p>✓ Prices provided – but not as part of the undertaking so their status is unclear. No explanation given.</p> <p>✗ No justification for changes from current structures.</p> <p>✗ No context, analysis or comparative prices provided – coupled with the change in structure, this makes it very difficult to analyse the impact.</p>
Escalation includes a banking provision to allow recoupment of any amount not taken previously. Potential for multiple price variations in the one year.	<p>✓ Explanation of intended operation of escalation provision provided along with example.</p> <p>✗ No justification for adoption of full CPI provided.</p> <p>✗ Operators left exposed to discretion of ARTC – significant increase in exposure that is unlikely to be covered by being able to pass through effectively to customers. Reliance on ARTC to ‘judge the market’ is a particular concern.</p>
<b>Part 5: Capacity Management</b>	
Clarification sought regarding removal of obligation to perform a capacity analysis in preparation of an IAP.	<p>✓ Obligation reinstated.</p> <p>✗ No explanation provided as to why previous position was sought.</p>
Clarification sought as to why a capacity reservation fee is to be imposed.	<p>✗ Not referred to or discussed. Provision remains unchanged.</p>
Indiscriminate application of ‘use it or lose it’ model inappropriate.	<p>✗ Not referred to or discussed.</p>
Linking of access contract to underlying haulage contracts.	<p>✓ Removed.</p>
<b>Part 6: Network Connections &amp; Additions</b>	
No provision for how the investment program is to be determined. No criteria provided for guidance as to how investments will be determined. No mechanism for stakeholders to influence the investment process. No consultation process even mentioned. No mechanism for adjustment to Schedule H if investments change.	<p>✗ Not referred to or discussed.</p>
Lack of obligation on ARTC to invest even if conditions in the undertaking are met.	<p>✗ Not referred to or discussed.</p>
<b>Part 8: Performance Indicators</b>	
Need for explanation of changes to wording of existing performance indicators.	<p>✗ Not referred to or discussed.</p>
Suggested inclusion of transit time based indicators.	<p>✓ New transit time indicators included. These are reported on the basis of average speed – less helpful than if reported as elapsed time, though this ought to be capable of determination from the measure.</p>
Existing indicators based on ‘healthy trains’ unhelpful.	<p>✓? Some explanation provided. Measures retained for continuity.</p>
<b>Matters That Were Not Addressed At All In The Undertaking During Consultation Process</b> (Matters FROG raised that had not been addressed in the UT during the consultation process and not identified elsewhere in this table.)	

FROG Submissions	ARTC Response UT
Service objectives, ie ARTC's purpose in providing the network for use by train operators.	✘ Not referred to or discussed.
The undertaking and TAA are silent on ARTC's obligations with respect to occupational health and safety matters for train operator employees. Given that much of an Operator's workforce works on ARTC property for most of the time this is a significant omission.	✘ Not referred to or discussed.
Need for a specific Possession Planning Process to effectively manage maintenance.	✘ Not referred to or discussed.
Assistance to operators to make above rail investments. The undertaking places obligations on the access seeker, but none on ARTC to assist the access seeker.	✘ Not referred to or discussed.
Arrangements for recovery from network incidents. The undertaking and TAA are silent on the arrangements that should apply when the network is disrupted by an incident.	✘ Not referred to or discussed.
The storage of rollingstock on the network and any associated charges is not dealt with.	✘ Not referred to or discussed.