



Thursday, 17 April 2014

The Chairman
Economics and Industry Standing Committee
Legislative Assembly Parliament House
Perth WA 6000

By email: laeisc@parliament.wa.gov.au

Dear Sir

Management of WA's Freight Network Parliamentary Inquiry

This Asciano submission is in response to Economics and Industry Standing Committee (EISC) call for submissions to the inquiry relating to the Management of Western Australia's Freight Rail Network.

Asciano, through its subsidiary Pacific National, currently operates freight trains on the Brookfield Rail standard gauge network from Kalgoorlie to Perth and has at various times sought access to the Public Transport Authority network.

The EISC inquiry is reporting on the whether the current lease arrangements and management of the Western Australian freight rail network facilitate or hamper state development, with a focus on recent decisions relating to the network lease and low-traffic rail lines, the network regulatory arrangements and management of the network by the Public Transport Authority. In this submission Asciano is confining itself to comments on the network regulatory arrangements.

Asciano believes that the transparency of the determination of freight rail access pricing in Western Australia needs to be improved. The transparency of the regulatory consultation process and access pricing is currently limited by the workings of the Railways Access Code (the Code).

Under the Code access providers can indicate that the cost information provided to the Economic Regulation Authority (ERA) is confidential and so under section 50 (3) of the Code the ERA cannot make this information public. This in turn makes it impossible for interested parties (such as end users) to make any genuinely informed comment on the appropriateness of the access provider's costs, and so makes any public consultation on such costings problematic.

Given that freight rail networks are typically natural monopolies (albeit sometimes constrained by other transport options). Asciano believes that these networks should be required to make costings public. In general, Asciano does not believe that making costings public should damage the commercial position of a natural monopoly. Asciano believes that in relation to regulated natural monopoly pricing primacy should be granted to the transparency of pricing processes and regulatory processes rather than protecting the information of the natural monopoly.

Asciano notes that prior to 2011 Brookfield Rail (then WestNet Rail) was required to

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regularly provide floor and ceiling costs for certain rail lines and this information was publicly available through ERA processes¹. This regulatory process resulted in the provision of a series of costs and provided a level of costing transparency for access seekers (and other interested parties such as end users). In particular there was a benefit to the access seeker in having predetermined costs available, as opposed to discovering those via the access proposal process. The existence of these predetermined costs allows for more balanced price negotiations.

In 2011 the ERA conducted a review of the requirements on railway owners to submit floor and ceiling cost proposals. This review reduced requirements on rail network providers to provide proposed floor and ceiling costs for certain rail lines. As such the pricing and costing transparency and certainty provided under the previous regulatory approach has been diminished.

Asciano believes that the previous approach to the regular public provision of floor and ceiling costs should be reinstated. The provision of such information would go some way to addressing concerns with the current process where the confidentiality of cost information makes it impossible for parties to make informed comment on the appropriateness of the costs. This lack of ability to make informed comment diminishes both the regulatory process and the quality of regulatory decision making.

Asciano believes that the issue of confidentiality should be further considered in the next review of the Railways (Access) Code (under section 12 of the Railways (Access) Act)². In particular clause 50 (3) of the Railways (Access) Code should be reviewed so that a test is applied to determine whether information claimed as confidential by a monopoly access provider is genuinely confidential such that the release of the information would be commercially damaging to the monopoly access provider.

Given the brief nature of this submission Asciano does not believe that it will need to appear before the EISC to present the case put forward in this submission. To further discuss this submission please contact Stuart Ronan, Manager Access and Regulation on 02 8484 8056.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Tim Kuypers". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dr Tim Kuypers
General Manager Regulation

¹ See <http://www.erawa.com.au/infrastructure-access/rail-access/brookfield-rail/floor-ceiling-costs>

² Asciano expects the review would occur in 2016.