AUSTRALASIA RAILWAY (THIRD PARTY ACCESS) CODE: GUIDELINE REVIEW

ISSUES PAPER

November 2007

The Essential Services Commission of South Australia
Level 8, 50 Pirie Street Adelaide SA 5000
GPO Box 2605 Adelaide SA 5001
Telephone 08 8463 4444 Facsimile 08 8463 4449
E-mail escosa@escosa.sa.gov.au Website www.escosa.sa.gov.au

REQUEST FOR SUBMISSIONS

The Essential Services Commission of SA (the Commission) invites written submissions from interested parties in relation to the issues raised in this paper. Written comments should be provided by **19 December 2007**. It is highly desirable for an electronic copy of the submission to accompany any written submission.

It is Commission policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to exhibit any submission based on their length or content (for example containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to:

AustralAsia Access Code Guideline Review

Essential Services Commission of SA

GPO Box 2605

Adelaide SA 5001

E-mail: escosa@escosa.sa.gov.au

Facsimile: (08) 8463 4449

Telephone: (08) 8463 4444

Contact Officer: Luke Wilson

Public Information about the Commission's activities

Information about the role and activities of the Commission, including copies of latest reports and submissions, can be found on the Commission's website at www.escosa.sa.gov.au.

TABLE OF CONTENTS

GLOSSARY OF TERMS

ABOVE-RAIL OPERATOR	A train operator
THE ACCESS ACT	*AustralAsia Railway (Third Party Access) Act 1999* (SA & NT)
ACCESS PROVIDER	A party providing, or able to provide, railway infrastructure services – sometimes referred to as a below-rail operator
ACCESS SEEKER	An Above-Rail Operator seeking access to the Railway
APT	Asia Pacific Transport – the Access Provider for the Railway
ARTC	The Australian Rail Track Corporation Ltd
BOOT	Build, Own, Operate, Transfer
CIRA	Competition and Infrastructure Reform Agreement
COAG	Council of Australian Governments
THE CODE	The AustralAsia Railway (Third Party Access) Code contained in the Access Act.
THE COMMISSION	The Essential Services Commission of South Australia, established under the ESC Act
DORC	Depreciated Optimised Replacement Cost
NCC	National Competition Council
NT	Northern Territory
THE RAILWAY	The AustralAsia Railway to which the Code applies, being the whole of the railway from (a point near) Tarcoola to its end in Darwin (in the Port of Darwin)
RAILWAY INFRASTRUCTURE SERVICES	The services to which an Access Seeker may seek access, being services provided by railway infrastructure facilities (including railway track, signalling, train control and communications)
ROA ACT	*Railways (Operations and Access) Act 1997*
SA	South Australia
SAIIR	South Australian Independent Industry Regulator
SOUTH AUSTRALIAN RAIL ACCESS REGIME	The Access Regime in Parts 3 to 8 of the ROA Act.

1 INTRODUCTION

Third-party access to the AustralAsia Railway (the Railway), which runs from Tarcoola to Darwin, is subject to the rail access regime set out in the AustralAsia Railway (Third Party Access) Code (the Code), which is itself a Schedule to the *AustralAsia Railway (Third Party Access) Act 1999* (SA & NT) (the Access Act).

The Code has been certified as an 'effective' State-based access regime in accordance with the principles set out in clauses 6(2)-6(4) of the Competition Principles Agreement on the recommendation of the National Competition Council (the NCC).[1,2]

In 2006, the Essential Services Commission (the Commission) conducted a review of the Code on behalf of the responsible SA & NT Ministers.[3] Whilst no changes to the Code resulted from that review, the Commission identified in its report that it would, after the Code review, examine the various guidelines it had made under the Code to ensure they remain up-to-date and relevant.[4] This Issues Paper is the commencement of that review.

1.1 The access regime

The Railway comprises both the recently constructed line from Alice Springs to Darwin and the pre-existing line between Alice Springs and Tarcoola. Operations on the 1,420 km section of the railway north of Alice Springs commenced on 15 January 2004.

The Code unbundles railway services (both freight and passengers) into:

- below-rail services (relating to the provision of track and associated infrastructure); and
- above-rail services (running rolling stock, or trains, on the below-rail infrastructure).

The Code regulates the provision of below-rail services only. It establishes a right for above-rail operators to negotiate access to the below-rail services of the Railway.

Asia Pacific Transport (APT) is the track operator and hence is the access provider for the Railway.

The Code sets out the rights and responsibilities of above-rail operators (access seekers) and the access provider (APT), and covers matters such as the negotiation process, dispute resolution, and the terms and conditions of access.

---

1 National Competition Council (NCC), 2000, *AustralAsia Railway Access Regime*, Final Recommendation, February 2000, Application for Certification under Section 44M(2) of the Trade Practices Act 1974, refer www.ncc.gov.au/pdf/CERaNtRe-001.pdf.

2 The Competition Principles Agreement is one of the agreements comprising the National Competition Policy. It can be accessed via www.ncc.gov.au/publication.asp?publicationID=99&activityID=39.

3 The relevant Ministers are: in South Australia, the Minister for Transport and, in the Northern Territory, the Minister for the AustralAsia Railway.

4 The report: *Ministerial Review of the AustralAsia Railway (Third Party Access) Code: Final Report, May 2006*, is available at: www.escosa.sa.gov.au/site/page.cfm?u=128&c=1657.

FreightLink is the main above-rail operator on the Railway and is a related party of APT.[5] The most notable other user of the railway is Great Southern Railway Ltd, operator of The Ghan passenger service between Adelaide and Darwin.

A very small number of other operators have also enquired about and purchased access to the railway for particular purposes. To date, there have been no access disputes.

1.2 The Commission's role under the Code

Clause 5 of the Code appoints the Commission as the regulator under the Code.[6] Key features of the Commission's role are:

- the development and maintenance of various guidelines, including:
  - arbitrator pricing requirements;
  - access provider reference prices and service policies; and
  - access provider information reporting requirements;
- facilitating access negotiations and (with consent of the parties) settling access disputes;
- monitoring and enforcing compliance with the Code as well as periodically conducting, or assisting with, reviews.

The Commission has issued the following guidelines:[7]

- Railway Industry (Tarcoola-Darwin) Guideline No. 1: Access Provider Reference Pricing and Service Policies;
- Railway Industry (Tarcoola-Darwin) Guideline No. 2: Arbitrator Pricing Requirements (incorporating the Commission's regulated rate of return determination);
- Railway Industry (Tarcoola-Darwin) Guideline No. 3: Regulatory Information Requirements; and
- Railway Industry (Tarcoola-Darwin) Guideline No. 4: Compliance Systems and Reporting.

The Commission does not set prices for the use of the Railway. Prices are to be set by negotiation between access seekers and the access provider.

In the event of an access dispute, the Commission is to appoint an arbitrator, who will be called upon to "set" prices through the arbitration process. Note that the Commission itself will not be the arbitrator – the Code keeps separate the role of regulator and arbitrator.

---

5 In essence, both FreightLink and APT are part of the same joint venture and come under a single organisational umbrella.

6 Note that Clause 5 actually nominates the South Australian Independent Industry Regulator (SAIIR), which is the Commission's predecessor. Schedule 2 of the *Essential Services Commission Act 2002* provides the appropriate succession arrangements.

7 Each guideline is available from the Commission's website: www.escosa.sa.gov.au/site/page.cfm?u=126.

1.3 Review process

The Commission is conducting this review pursuant to clause 45A(1) of the Code, which empowers the Commission, from time to time as it thinks fit, to vary or revoke guidelines developed and published under the Code, or to develop and publish new or substitute guidelines.

Clause 8 of the Code further obliges that the Commission must undertake a public consultation process when considering the adoption or variation of a guideline.

Accordingly, the Commission invites submissions on this Issues Paper. Requirements for submissions, including the due date, are set out at the front of this document.

While the Commission has identified certain matters for consideration in this Issues Paper, interested parties are welcome to comment on any aspect of the four guidelines or any additional matters they wish the Commission to consider in relation to, or for inclusion in, any guidelines.

The Commission will consider all submissions received and prepare a Draft Decision on any guideline variations by the end of February 2008. The Commission intends to release the draft on its website for further comment at that time.

The Commission will then issue a Final Decision, and any varied guidelines, by the end of April 2008.

The Commission also intends, at the completion of this review, to incorporate the resulting guidelines into a single Information Kit to provide ready access to the full suite of regulatory materials under the Code.[8]

[8] The Commission has already adopted this approach in its capacity as regulator under the South Australian Rail Access Regime, refer: www.escosa.sa.gov.au/webdata/resources/files/061006-D-SARailInfoKit.pdf.

2 BACKGROUND TO THE CODE

The Code provides a negotiate/arbitrate access regime. It was put together as part of the broader Railway project and reflects its nature and distinguishing characteristics, such as:

- The existing transport companies that provided freight services over the same route as the railway (or between the same destinations) are in competition with rail freight.
- On the transport corridor between Alice Springs and Darwin, rail is the new entrant. Since rail is the new mode competing with incumbent road, sea and air operators, any advantages of incumbency that exist in the freight market lie with these other modes.
- The 'greenfields' nature of the rail project sees the owners and operators of the railway bearing substantial demand risk, as the railway needs to win demand from alternative and incumbent modes of transport, such as sea, road and air. As a result, the railway starts with little revenue or profit in the early years, and may only make a profit after many years of operation. This position is different to other utilities and even other rail infrastructure providers built to serve an established market.
- The railway is owned and operated by the private sector on a Build, Own, Operate and Transfer (BOOT) basis. The concession period expires 50 years after construction. About $800 million in private sector equity and debt is invested in the project.
- Three Governments have also contributed importantly to making the railway financially viable. Government support for the project has been principally provided in the form of asset contributions. Thus the Commonwealth leased the existing Tarcoola-Alice Springs line to APT for a nominal rental for the duration of operation of the newly constructed Alice Springs-Darwin line and the South Australian, Northern Territory and Commonwealth Governments together funded $480 million worth of construction of the new railway. The Governments do not require a return on the capital invested in these contributed assets at any time during the concession period. They do, however, require the contributed assets to be returned to them at the end of the concession period along with the transfer of all project-funded assets.

2.1 Code objectives

Neither the Code, nor the Access Act, contain objectives or an objects clause. However, being an effective access regime suggests that the objectives of the Code are aligned with those underlying clause 6 of the Competition Principles Agreement. In essence, the clause 6 principles:

- identify the type of infrastructure services that should be subject to access regulation; and
- establish principles that the regulatory framework should embody.

The NCC has described the overall goals of access regulation in the following terms:[9]

> *The application of an efficiency objective in access regulation has the following three broad components:*
>
> - *first, ensuring the efficient use of natural monopoly infrastructure, especially by denying infrastructure owners the opportunity to misuse market power (in either the market for these services or in related markets) by refusing access to and monopoly pricing infrastructure services;*
> - *second, facilitating efficient investment in natural monopoly infrastructure, especially by ensuring:*
>   - *infrastructure services are maintained and developed appropriately;*
>   - *infrastructure owners (and potential owners) earn sufficient returns to provide incentives for efficient investment; and*
>   - *incentives for inefficient development of competitive infrastructure and for inefficient investment in upstream and downstream activities (that is, overinvestment and underinvestment) are minimised; and*
> - *third, promoting competition in activities that rely on the use of the infrastructure service where competitive infrastructure services are not economically feasible.*

2.2 Key features of the Code

2.2.1 Negotiation framework

The Code establishes a right to negotiate access to the Railway. The Code follows a negotiate/arbitrate model, where parties first attempt to agree on an access arrangement, with dispute resolution processes available if necessary.

Typically, a negotiate/arbitrate form of regulation is used where some combination of the following apply:

- the regulated service is subject to some contestability;
- there are few access seekers; and
- access seekers may have some countervailing power; and
- access seekers (and presumably the access provider) are sufficiently sophisticated to engage in commercial negotiations, that is:
  - they are typically businesses rather than households; and
  - they are sufficiently knowledgeable about the service in question (suggesting that it is a critical or significant input to their business).

To be effective, the negotiate/arbitrate form of regulation requires supporting structures that facilitate timely and effective commercial negotiations (including in relation to information disclosure) in the first instance – to maximise the likelihood of a reasonable negotiated outcome. It also requires supporting structures that facilitate timely and effective arbitration (ultimately), but still exposing the parties to

[9] National Competition Council, *The National Access Regime: A Guide to Part IIIA of the Trade Practices Act*, Part C Certification of Access Regimes, February 2003 p.11 – available at www.ncc.gov.au/pdf/DEGeGu-003a.pdf.

some risk in moving from negotiation to the arbitration – to ensure that arbitration is not sought as a matter of course.

The latter point is significant as the "light handed" and less costly nature of this form of regulation is largely as a result of the arbitration process being entered into only rarely. Once it is entered into, for the purposes of the dispute at hand, there may be little distinction between this form of regulation and direct price or revenue controls. Ideally, the arbitration phase of a negotiate/arbitrate regime is never activated, as the threat of arbitration should itself encourage the parties to resolve disputes.[10]

While commercial negotiation with dispute regulation can be a less intrusive and less costly form of regulation compared to direct forms, if the parties do not have appropriate incentives to reach agreement through commercial negotiation, in many cases the process can become overly protracted and costly with arbitration being resorted to as a matter of course by some parties.

2.2.2 Dispute resolution

Enforceable dispute resolution processes back access negotiations. The arrangements in the Code recognise that some issues may be small or time sensitive so that above-rail operators may not take them to arbitration, given the time and costs it involves. Without a less costly means of dispute resolution, many small or time sensitive disputes could go unresolved. This could discourage access.

The Code provides several levels of dispute resolution including:

- advice provided by the regulator on whether a negotiated outcome is consistent with the Code;
- voluntary conciliation by the regulator; and
- full arbitration.

2.2.3 Access prices

The Code includes a Pricing Schedule which provides considerable direction for access pricing in different circumstances. Access prices set under the Code are to be compatible with those generated by other complementary rail access regimes.

All prices for access are to be struck within a floor/ceiling band, set in accordance with efficient, forward looking costs. Where competition from non-rail freight is sufficient to discipline rail operators to minimise their costs and prices, the Code's "sustainable competitive" approach uses the price of the competitive non-rail freight

[10] The Commission observed in its 2004 report: *Ports Access Review Final Report*, that this poses a challenge for an assessment of the merits of such regimes as low dispute levels could be indicative of both success and failure.

as the starting point for calculating the rail access price between the floor/ceiling band. This ensures that access prices are based on competitive principles.

Further, the Code includes safeguards to ensure that monopoly rents are not built into access charges by periodically testing (by way of review) and, if necessary, adjusting those access prices vulnerable to monopoly pricing (priced using the floor/ceiling approach) to verify that the access provider is not earning an excessive return.

To ensure that all prices and the pricing review are based on appropriate estimates of costs:

- the Code provides that efficient forward looking costs must be used;
- cost definitions are to be consistent with those in other rail access regimes;
- the regulator is to develop guidelines on various aspects of calculating costs, including capital costs; and
- when developing capital costs guidelines, the regulator has the flexibility to consider the most appropriate way of taking into account the government-contributed assets and cash subsidies (noting the government contributions described at the start of this chapter) to the extent that this adjustment does not prevent the below-rail service provider from earning an appropriate return on its investment.

2.2.4 Time-path management

The quality of rail services can be just as important to the commercial potential of an above-rail operator's business as the prices paid. Therefore, the Code also recognises the importance of service quality, time-path allocation and reallocation policies and day-to-day train management. The access provider must develop policies on how it will manage these issues. These policies are to be consistent with guidelines developed by the regulator.

2.2.5 Safeguards against favouring the access provider's train operator

The Code provides safeguards against the below-rail service provider favouring its affiliated above-rail operations at the expense of other above-rail operators:

- the pricing approaches either automatically treat all above-rail operators equally (in the "sustainable competitive approach") or specifically provide for comparison with the prices of similar rail services (in the "floor/ceiling" approach);
- commercially-sensitive information cannot be disclosed to those with a conflict of interest or misused for commercial gain or in any other way not provided for by the Code; and

- the below-rail service provider must keep separate records for its above- and below-rail businesses, which increases transparency and reduces the risks that access charges will be inflated.

3 THE GUIDELINES

As noted earlier, the Commission has issued four guidelines:

- Railway Industry (Tarcoola-Darwin) Guideline No. 1: Access Provider Reference Pricing and Service Policies;
- Railway Industry (Tarcoola-Darwin) Guideline No. 2: Arbitrator Pricing Requirements (incorporating the Commission's regulated rate of return determination);
- Railway Industry (Tarcoola-Darwin) Guideline No. 3: Regulatory Information Requirements; and
- Railway Industry (Tarcoola-Darwin) Guideline No. 4: Compliance Systems and Reporting.

3.1 Guideline No. 1

Clause 9(1) of the Code obliges the access provider to provide, on application of any person, information reasonably requested by the person about:

> *"(a) the extent to which the Access Provider's Railway Infrastructure Assets are currently being used;*
>
> *(b) technical details and requirements of the Access Provider, such as axle load data, clearance and running speeds;*
>
> *(c) time-path allocation and reallocation policies for the Railway;*
>
> *(d) service quality and train management standards; and*
>
> *(e) relevant prices and costs associated with railway infrastructure services provided by the Access Provider, prepared by the Access Provider for reference purposes in accordance with guidelines developed and published by the Commission."*

Clause 9(3) provides that the access provider must, for the purposes of clauses 9(1)(c) and (d), develop and maintain time-path allocation and reallocation policies and service quality and train management standards in accordance with principles contained in guidelines developed and published by the Commission.

Guideline No. 1 is published by the Commission to fulfil the requirements for guidelines in both clauses 9(1)(e) and 9(3). It sets out requirements for reference pricing, train-path policy, train control and service quality.

The distinguishing feature of Guideline No. 1 is that it involves guidance directed at the access provider (APT).

3.2 Guideline No. 2

In the event of an access dispute, the Code requires an arbitrator – appointed by the Commission – to determine an access price payable to the access provider by an access seeker for a railway infrastructure service.

At various points in the principles and methods set out in the Pricing Schedule to the Code, an arbitrator is obliged to apply particular principles and methods in accordance with guidelines developed and published by the Commission.

When developing such guidelines, the Pricing Schedule also empowers the Commission to include provisions that the Commission considers appropriate in addition to those specifically nominated in the Pricing Schedule.

Guideline No. 2 is published by the Commission to fulfil the guidelines requirements of the Pricing Schedule. It sets out requirements for ceiling pricing, floor pricing, arbitrated pricing (both with and without sustainable competitive prices) and rate of return parameters.

The distinguishing feature of Guideline No. 2 is that it involves guidance directed at any arbitrator appointed by the Commission in the event of an access dispute.

3.3 Guideline No. 3

At various points in the Code an access provider is obliged to keep and/or report certain information to the regulator or an arbitrator in the furtherance of their functions under the Code, including:

- clause 15(1) where the Commission, and an arbitrator, would apply the Code's pricing principles for the purposes respectively of undertaking conciliations and arbitrations;
- clause 39(1) where an Access Provider responds to requests for information issued by the Commission;
- clause 46 where an Access Provider must keep separate accounts and records, including in compliance with any guidelines issued; and
- clause 50(4) in relation to the Commission undertaking revenue reviews.

Any information sought by the regulator is done so pursuant to clause 39 of the Code. Information so collected is then protected by the confidentiality provisions of clause 40 of the Code.

Guideline No. 3 sets out the regular reporting requirements of the Commission in relation to regulatory accounts, detailed cost information, usage information and various related requirements.

3.4 Guideline No. 4

Clause 6 of the Code assigns to the Commission the function "to monitor and enforce compliance" with the Code. This compliance function is common to most of the Commission's regulatory roles (although it may be stated differently for different industries).

Guideline No. 4 sets out a process for the reporting of compliance by an access provider in a way that meets the Commission's requirements and demonstrates that appropriate compliance systems are in place. Taking this approach reduces the need for exhaustive testing and investigation by the Commission of compliance systems by providing an appropriate level of assurance and reporting of compliance issues. This allows the Commission to fulfil its clause 6 obligation while maintaining a relatively light handed approach to the Code.

Notwithstanding this approach, the Commission considers effective compliance systems, and the associated assurance, as being an important part of its regulatory responsibilities. This is particularly so for an access regime such as that in the Code, where compliance problems may remain otherwise undiscovered until a dispute arises, causing an effective failure of the regime. Hence the significance the Commission places on the assurance received through compliance reporting under Guideline No. 4.

4 KEY ISSUES

While the Commission welcomes comment on any aspect of the guidelines, it has commenced this review in light of certain specific issues it has identified within the guidelines. These are set out below for comment.

The Commission is mindful that considering change to some elements of its guidelines, especially the rate of return elements of Guideline No. 2, would raise concerns about regulatory certainty. While the Commission welcomes comment on any aspect of the guidelines, it is not minded to effect change in respect of those more sensitive areas.

4.1 Asset roll forward

On 4 April 2005 the Commission finalised its acceptance of the valuation of the Railway for ceiling price purposes. The valuation was prepared by Booz Allen Hamilton for the railway operator Asia Pacific Transport in line with directions from the Commission. In accordance with Guideline No. 2, it is based on the depreciated optimised replacement cost (DORC) methodology.

The total valuation is $1696.9 million, comprising $1159.1 million for the Darwin-Alice Springs section and $537.8 million for the Tarcoola-Alice Springs section.[11]

The value above is the value of the total asset – whether funds invested by APT or contributed by governments. This is because the ceiling price reflects the stand alone, or bypass, cost of the Railway.

Guideline No. 2 also sets out the asset valuation to be used for arbitrated prices where there is no sustainable competitive price. In such cases a more usual building block approach to pricing emerges, which also requires the use of an asset value. For this situation the value of the railway infrastructure assets exclusive (that is, net) of government-contributed assets is to be used.

However, Guideline No. 2 is silent on how the DORC valuation is to be rolled forward over time. By implication, a new DORC valuation could be required on future occasions.

The Commission considers that there is merit in adding roll forward provisions to Guideline No. 2. This may also require complementary variations to Guideline No. 3.

In general, roll forward arrangements involve adjustments over time for depreciation, additions, disposals and, if applicable, inflation. The treatment of extensions and expansions will also be considered in the context of the Code's coverage.

The Commission invites comment on the roll forward methodology that should be applied.

[11] The Commission intends to insert this decision into a varied Guideline No. 2.

4.2 Reference prices

While clause 9(1)(e) of the Code does not oblige publication of reference prices, only the provision of such prices on request, Guideline No. 1 addresses the process involved in the request and provision of such prices.

In this regard, the Commission's position was that the access seeker should be required to put its request for reference prices in writing, to be accompanied by the general information necessary for this purpose as published by the access provider.

With regard to "publication" of the access provider's information requirements as well as its standard service characteristics, standard pricing components and its rail segments for reference pricing purposes, it was the Commission's position that the means of publication should be via a clearly identified and publicly accessible page of the access provider's (below-rail) website.

While Guideline No. 1 is currently limited to the above matters of procedure, the Commission acknowledged during its making that it could also provide guidance on such matters as:

- the purpose to be served by reference prices (and the appropriate balance between the legitimate business interest of the access provider, the interest of the public and the interests of access applicant);
- the nature of a standard service for reference pricing purpose;
- the appropriate structure of reference prices – and the extent to which reference prices could comprise a variable component, which is a function of distance and gross mass ($/gtkm); and a flagfall component, which is fixed and specific to each service type and segment ($/km);
- the rail sectors/segments to be used for pricing purposes; and
- the appropriate method for allocating non-segment specific costs to segments.

The Commission clearly did not pursue this broader approach on the basis that it might introduce some inflexibility into pricing negotiation. The Commission was particularly influenced, given the role played under the Code by the competitive imputation pricing rule, by the role to be played by market-based – as opposed to cost-based – pricing. Under competitive imputation, pricing can be expected to vary more markedly than under a cost-based approach. In such circumstances, the Commission considered that published reference prices might inadvertently hamper implementation of the competitive imputation pricing rule.

However, recent developments with the Railway have seen a focus on bulk traffic (e.g. minerals), which are less likely to trigger the competitive imputation approach to pricing (because there are less likely to be sustainable competitive modes for such traffic). Accordingly, it may be the case that the Commission's original reasoning is no longer sufficient and that more detailed reference pricing requirements are warranted.

The Commission invites comment on the merits of its current approach to reference prices and whether more detailed direction is required.

4.3 ARTC undertaking and CIRA

Clause 45A(2) of the Code requires the Commission to take into account interface issues with other access regimes when making or varying guidelines. For this reason, Guideline Nos. 1 and 2 both refer to and require varying degrees of consistency with the ARTC undertaking, noting that the Railway connects to the ARTC interstate system.

The purpose of such an approach is to ensure that rail operators do not face a dramatic change of arrangements merely because they move onto the Railway. That is not to say that no differences can arise, clearly the nature of the project and the Code will result in some difference.

While the existing Guidelines nominate consistency in some areas (e.g. the approach to DORC valuation, train path policy, train control and service quality) the Commission has not included such provisions in relation to other areas such as reference pricing.

The Commission will investigate further the merits of any change in approach in relation to alignment with ARTC. In doing so relevant considerations will include:

- the emergence of minerals traffic, some of which will not interface with ARTC (i.e. some may move north to Darwin from points along the Railway); and
- the implications of proposed changes to the ARTC undertaking.

The Commission is also mindful of the Competition and Infrastructure Reform Agreement (CIRA) entered into by the Council of Australian Governments (COAG) in February 2006 – after the four Guidelines were published.

The CIRA aims for a simpler and consistent national approach to the economic regulation of significant infrastructure such as railways. Where third-party access regimes are needed, the CIRA has resulted in changes to the Competition Principles Agreement to incorporate a number of principles, including that:

- all third-party access regimes include objects clauses that promote the economically efficient use of, operation and investment in, significant infrastructure;
- all access regimes include consistent principles for determining access prices; and
- railways that are agreed to be nationally significant adopt a simpler and consistent national system of access regulation, using the ARTC access undertaking as a model.

While the Code is grandfathered from CIRA's specific requirements, the regulatory principles involved provide a benchmark against which some of the discretions exercised by the Commission when it developed and published the existing Guidelines could be reconsidered.

The Commission invites comment on the degree of alignment necessary with ARTC, and the implications of CIRA for the guidelines.