



Friday, 12 June 2015

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**By email:** [publicsubmissions@erawa.com.au](mailto:publicsubmissions@erawa.com.au)

Dear Sir

## **Submission to the ERA Review of the WA Railways Access Code**

### **Background**

Asciano welcomes the opportunity to make a further submission to the Economic Regulation Authority's (ERA) Review of Western Australian Railways (Access) Code 2000 (the Code). Asciano has previously made a submission to this regulatory process in April 2015.

Asciano recognises that the ERA's call for further comment seeks comment on both the prescriptiveness of the access regime and valuation methodology. Asciano is limiting its comment to the general prescriptiveness of the access regime.

Asciano operates intermodal freight trains between Kalgoorlie and Perth, and consequently the comments below are based on Asciano's experience on this freight corridor rather than other rail infrastructure covered by the Code.

### **Prescriptiveness of the Access Regime**

Asciano recognises that the Competition Principles Agreement indicates a preference for the "negotiate and arbitrate" model of access. However as outlined in both Asciano's previous submission and other parties submissions the "negotiate and arbitrate" model of access as provided for in the Code is flawed due to the uneven bargaining positions of the natural monopoly rail infrastructure provider and the users and potential users of this infrastructure.

While the Code limits the rail infrastructure provider's bargaining power via the use of floor and ceiling price tests, the broad range between the floor and ceiling price combined with the rail infrastructure provider's bargaining power results in outcomes which favour the monopolist rail infrastructure provider.

Under the "negotiate and arbitrate" model the rail infrastructure provider bargaining advantage is enhanced by their knowledge their own cost information. The lack of independently tested cost information available to users and potential users places these parties at a disadvantage in negotiating an efficient, cost reflective access price, as only the access provider has detailed knowledge of their costs.

Asciano believes that given the market power of the monopoly rail infrastructure provider the ideal outcome would be for a shift from the "negotiate and arbitrate" model of access pricing towards a more prescriptive approach to access pricing. Asciano believes that in order to ensure efficient pricing the Code should provide for the ERA to determine benchmark tariffs

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for benchmark services.

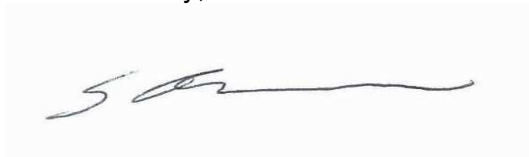
If the “negotiate and arbitrate” model is to be maintained the rail infrastructure provider’s cost information must be made available to users and potential users in order to allow negotiations between the two parties to be undertaken on more balanced basis. An access regime where cost information is available to both negotiating parties is more likely to result in an access price which is efficient and cost reflective than a price negotiated in a regime where one party has very little cost information. Consequently, as a minimum, Asciano believes that Code should prescribe that sufficient cost information be supplied by the access provider to address the cost information asymmetry between the access provider and the access user.

### **Conclusion**

Overall, as outlined in both Asciano’s previous submission, pricing and cost certainty and transparency are not prescribed by the Code under the current “negotiate and arbitrate” access model and the floor and ceiling price process. The Code’s approach to pricing should shift towards a more prescriptive approach; ideally the Code should provide for ERA approved access tariffs for benchmark services. If such an approach is not possible then as a minimum the Code should require access providers to provide sufficient cost information to facilitate more balanced access negotiations and more efficient access pricing.

If ERA wishes to discuss this submission I can be contacted on (02) 8484 8056.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Stuart Ronan". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Stuart Ronan**  
Manager Access and Regulation