



8th August 2005

Mr Lyndon Rowe
Chairman
Economic Regulation Authority
GPO Box 8469
Perth Business Centre
PERTH WA 6849
Dear Mr. Rowe

Dear Mr Rowe,

Review of the Western Australian Railways (Access) Code 200, Draft Report

Below are some of the key issues, from PATREC's perspective, in regards to the above review. Overall, PATREC applauds the ERA's cautious approach to reforming regulation, in light of the limited experience in WA with the new regime, and for not acceding to the desires of some industry participants for heavy-handed regulation which might aid some competitors in the rail industry, but which would stifle competition. That said, some issues remain:

The ERA suggests that Section 21 be strengthened in order to provide the ERA with the power to request internal prices from infrastructure owners, in order that it might better judge whether prices quoted to access seekers are 'reasonable'. This is suggested to improve informational asymmetries. The first point to make in regards to this recommendation is that it misunderstands the nature of a regulatory informational asymmetry. An informational asymmetry means that the regulator simply cannot know the exact cost structure of the regulated firm, regardless of what informational requests are made or audits carried out. It is for this reason that economists generally recommend incentive programmes to entice firms to act in a manner consistent with economic efficiency, rather than attempting to enforce intrusive rights of information gathering. This recommendation from the ERA thus does not reflect best practice in this regard. The second point is the basis of the 'reasonableness' of prices, as assessed by the regulator. In discussions with the ERA, it seems this assessment will be based on some notion of 'like services priced alike', and will essentially be based upon the cost of providing a service. This, however, is not how a firm in a competitive market operates. Rather, a competitive firm prices to demand, not the cost of supply. There appears to be no consideration of demand in the ERA's consideration of 'reasonableness', and this will impinge upon the efficiency of regulatory outcomes.

The ERA also suggests that the regulated rail providers provide web-based information on capacity and price caps and floors. It is unclear why this information provision needs to be regulated. Yes, it would be nice if there were more information available in the marketplace, but it is not clear whether regulation is necessary to achieve this goal. Good regulation is sparing in its application, used only where no other means of achieving the goal exists. It is suggested that some way, other than regulation, be used to provide more information in the marketplace. On a related theme, the nature of the information required is important. It is difficult to see how forecasts of capacity, over periods of time as long as two years, in an industry as heterogeneous as rail, would be particularly useful. Such forecasts are likely to be expensive to produce, and may only have marginal benefits compared to simple statements of current actual track usage.

We are happy to provide any further information in relation to these above two points, and look forward to the ERA's final report on the issue.

Regards

Nick Wills-Johnson
Research Fellow, Planning and Transport Research Centre (PATREC)

Planning and Transport Research Centre

*A collaborative program of
Curtin University of Technology,
Edith Cowan University,
Murdoch University and
The University of Western
Australia, supported by the
Government of Western Australia.*

GPO Box U1987, Perth
Western Australia 6845
T +61 8 9266 3295
F +61 8 9266 3300
patrec@curtin.edu.au
www.patrec.org

