



The Honourable Victor Dominello MP
Minister for Digital
Minister for Customer Service

Our reference: BN-04880-2021
Your reference: D21/18527

Ms Carmel Donnelly
Chair
IPART

By email: ipart@ipart.nsw.gov.au

Dear Ms Donnelly

I am writing in response to your correspondence on the final terms of reference for an IPART review of the NSW Rail Access Undertaking

In June 2021, pursuant to section 12 A of the *Independent Pricing and Regulatory Tribunal Act 1992*, I referred the matter to the Tribunal for investigation and report. I note that IPART gave notice of this referral, sought public comment on the draft terms of reference and consulted Transport for NSW about its findings following submissions.

I have considered the draft terms of reference you provided, and I am pleased to issue IPART with the final terms of reference (attached).

I ask the Tribunal to conduct a review and provide a final report within 12 months of receiving the final terms of reference.

Yours sincerely

Victor Dominello MP
Minister for Digital
Minister for Customer Service

Date: 22/08/21

Review of the NSW Rail Access Undertaking

Under Schedule 6AA of the *Transport Administration Act 1988*, the NSW Rail Access Undertaking (the Undertaking) provides for third party access to the rail network in NSW, including implementing certain pricing principles that apply in respect of third-party access.

The Undertaking was drafted in 1999. Since then, there have been changes in the ownership, scope and complexity of the networks covered by the regime. Regulatory practice has also evolved substantially, and the current Undertaking may no longer be meeting the needs of stakeholders. The relationship between the NSW and Commonwealth access regimes has also become an issue for stakeholders, in particular the ability of rail owners to switch between the two regimes and the implications of this for access seekers.

IPART review

I, Victor Dominello, Minister for Customer Service, pursuant to Section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992*, request that the Independent Pricing and Regulatory Tribunal (IPART) conduct an investigation in accordance with these 'terms of reference'.

Task

IPART should review the Undertaking, its operation and the surrounding regulatory framework. In particular, IPART should investigate:

- Whether the form of access and method of negotiation remain appropriate
- Minimum conditions of access and what should be included in the access agreement
- Appropriate pricing principles to apply to the calculation of access prices
- Whether current enforcement provisions adequately protect rail infrastructure owners and access seekers' rights to access facilities on fair and reasonable terms
- Transitional arrangements that should apply when rail infrastructure owners submit a voluntary undertaking to the ACCC and when a voluntary undertaking lapses
- Whether rail infrastructure owners and access seekers have sufficient rights of review of access decisions
- Whether the Undertaking facilitates appropriate modal choice for transporting freight.

In investigating and making recommendations, IPART should consider:

- a) Which elements of the current Undertaking are working well and should be continued
- b) The incentives for rail infrastructure owners and access seekers to make efficient investment in, use, and operation of the rail assets
- c) How the regime integrates with access regimes in other jurisdictions
- d) Any unnecessary regulatory or administrative burdens on rail infrastructure owners and access seekers

- e) Relevant legislative, regulatory and policy requirements including:
 - a. Relevant provisions of the *Transport Administration Act 1988*
 - b. The obligations and regulatory principles contained in the Competition Principles Agreement 1995 (amended 2007) (CPA) and the Competition and Infrastructure Reform Agreement 2006 (CIRA)
 - c. Requirements of part IIIA of the *Competition and Consumer Act 2010*
 - d. The NSW Government's policy objectives for freight in the NSW Freight and Ports Plan 2018-2023.
- f) The impacts of IPART's recommendations on rail infrastructure owners and access seekers, as well as competition in upstream and downstream markets.
- g) Any other matter it considers relevant.

Procedure

IPART should undertake public consultation, including holding a public hearing.

A draft report should be released publicly for comment, with a final report to be provided within 12 months after finalisation of the terms of reference.



Date: 22/08/21

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