



3 November 2008

Mr James Cox
Chief Executive & Full Time Member
Independent Pricing And Regulatory Tribunal
PO Box Q290, QVB Post Office NSW 1230

Your Reference: 07/541

Dear Mr Cox

RAILCORP COMPLIANCE WITH NSW RAIL ACCESS UNDERTAKING 2006/07

In response to our previous submission regarding RailCorp compliance with the NSW Rail Access Undertaking in 2006/07, Asciano has received a more detailed document from RailCorp. Asciano acknowledges the efforts of both RailCorp and IPART in attempting to provide an appropriate level of public disclosure of information to allow for meaningful comment while at the same time protecting the legitimate commercial interests of RailCorp.

Asciano does not claim any confidentiality over this document. These comments may be made public and published as IPART considers appropriate. A copy of this letter will be provided to RailCorp.

The key issues raised by Asciano in our previous submission were:

- The information provided was insufficient to allow Asciano to make any meaningful comment;
- The information required to make comments was the information largely set out in Schedule 5 of the NSW Rail Access Undertaking and therefore ought not to be subject to claims of confidentiality; and
- The information that was provided appeared to contain errors.

The revised and expanded document provided by RailCorp contains sufficient information to allow Asciano to form a view that the Ceiling Test has not been breached for the group of 5 line sectors.

In arriving at that opinion, it is noted that RailCorp has provided data for the costs, revenues and asset values for the 5 line sectors as a group and also asset values for the individual line sectors.

There is insufficient information for Asciano to determine whether any individual line sector has reached (or approached) the ceiling. Given the cumulative nature of the traffic base as it moves north towards Newcastle, it is possible that the closest sectors to Newcastle might approach the ceiling even if the group as a whole is significantly below the ceiling. Asciano recognises that the combinatorial approach used to evaluate the Ceiling Test makes it less likely that any one sector is at the ceiling when others are below the ceiling, however, the point from Asciano's perspective is that there is still insufficient data to allow such an evaluation to be carried out. Notwithstanding this, the difference between the revenues and economic cost of the combined line sectors make it unlikely that any one sector has reached the ceiling.

Therefore Asciano's view is that:

- Asciano accepts, on the evidence provided, that RailCorp has complied with the Ceiling Test for the group of 5 line sectors under consideration as a whole but has insufficient data to form an opinion as to whether any subset of that group might have exceeded the ceiling.
- Asciano has no evidence to suggest that RailCorp has not complied with the Ceiling Test or consultation process required under the NSW Rail Access Undertaking for 2006/07.
- Despite only being in a position to form a qualified view as to RailCorp's compliance, Asciano does not seek IPART to take any further action on the basis of Asciano's concerns with regard to the 2006/07 compliance audit.
- Asciano remains of the view that RailCorp, in future submissions to IPART, ought to allow publication of any data that it is required to make available under Schedule 5 of the NSW Rail Access Undertaking.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Bugler".

Paul Bugler

Access & Regulation

cc Patrick Lam
Aaron Murray
Tony Gausden