

Submission to the NCC

**Certification of the South
Australian Rail Access Regime**

**Response to the NCC Draft
Recommendation**

April 2011

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1 INTRODUCTION

Asciano welcomes the opportunity to respond to the National Competition Council (NCC) Draft Recommendation that the South Australian Rail Access Regime (SARAR) be certified as an effective regime.

In making this submission Asciano notes that the NCC's "Guide to Making a Submission" seeks that submissions on an NCC Draft Recommendation should focus on the draft recommendations and seek to provide additional information and analysis, and that repetition of points previously made is unlikely to be of assistance. Consequently, this Asciano submission largely focuses on recommendations and reasoning in the Draft Recommendation.

However, Asciano continues to have concerns with issues raised in its submission of February 2011. In particular, Asciano has concerns relating to the vertically integrated nature of railways regulated under the SARAR and the lack of detailed price regulation of these railways. Asciano will continue to pursue these concerns within the framework of the regulatory regime.

2 CERTIFICATION TERM AND REQUIREMENT FOR PERIODIC REVIEW

In the Draft Recommendation the NCC recommends that the SARAR only be certified for five years due to the absence of a requirement for periodic reviews of the regime. In particular the NCC considers the SARAR's compliance with clause 6(4) (d) of the Competition Principles Agreement is arguable and that the case for compliance would be stronger if the South Australian Government were to formalise a requirement for ESCOSA to periodically review the railway services covered by SARAR.

Asciano supports this NCC position. In particular Asciano supports the requirement for a formalisation of periodic reviews of the railway services covered by SARAR by ESCOSA. If such a requirement is not met Asciano supports the shorter certification term of five years proposed by the NCC.

3 SARAR AND INTERSTATE SERVICES

In relation to the treatment of interstate issues the NCC Draft Recommendation (page 17) notes that:

Clause 6(2) establishes principles for the treatment of a services provided by a facility with an influence beyond a jurisdictional boundary or where there are difficulties because the facility providing the service that is subject to a regime is located in more than one jurisdiction. Clause 6(4)(p) is aimed at ensuring there is a single seamless process for obtaining access to a service, so promoting timely and efficient outcomes.

In assessing this issue the NCC Draft Recommendation (page 18) concludes that:

... the SA Rail Access Regime operates to intrastate railway services operating and located exclusively within the jurisdiction of South Australia, and as no other access regime applies to those services, there is no prospect for conflict to arise.

Asciano recognises that the railways currently covered by the SARAR are located entirely within South Australia. However the trains using the services provided by these railways travel across jurisdictional boundaries and as such the railways covered by the SARAR and the SARAR itself have the potential to have an influence beyond jurisdictional boundaries. For example Asciano has to manage rail access across at least two access regimes when operating interstate services in South Australia resulting in duplication and the potential for a lack of consistency between regimes.

The fact that the use of the railways currently covered by the SARAR is a necessary adjunct to, and component of, interstate rail transport was mentioned in the Asciano submission of February 2011 (page 5, pages 12-13), but the issue of jurisdictional boundaries was not discussed in the Asciano submission in any detail.

Asciano believes that in assessing the treatment of interstate issues under clauses 6(2) and 6(4)(p) of the Competition Principles Agreement the NCC should take into further consideration the fact that the intrastate infrastructure regulated under

SARAR connects to interstate infrastructure regulated under other certified regimes. This means that train operators using the SARAR regulated intrastate infrastructure are also using interstate infrastructure regulated under another regime while operating the same train. As such, actions undertaken under SARAR and infrastructure regulated under SARAR may impact activities beyond the jurisdictional boundary. Asciano is seeking that the issue be further considered. Asciano believes this lack of consistency will continue to be a concern until it is addressed.

4 ASCIANO CONCERNS RAISED IN ITS PREVIOUS SUBMISSION

Asciano continues to have concerns as to whether a regime which allows access to vertically integrated monopoly infrastructure with minimal separation and price regulation meets the Competition Principles Agreement criteria relating to promotion of economic efficiency (6(5)(a)) and provision of a robust framework for negotiating agreements (6(4)).

Asciano's concerns, as raised in its submission of February 2011, more specifically relate to:

- the vertically integrated nature of railways regulated under the SARAR;
- the minimal standards of separation relating to above rail and below rail functions within the vertically integrated railways regulated under the SARAR; and
- the lack of detailed price regulation of the vertically integrated railways regulated under the SARAR.

Asciano recognises that the view of the NCC, as expressed in the Draft Recommendation) (page 45) is that these concerns should be addressed within the regime itself.

In its submission of February 2011 Asciano indicated that it believed that elements of the regime (for example sections 22, 23 and 24 of the ROA Act) needed to be strengthened to address the issues outlined above. Asciano continues to be of the view that without the regime being strengthened the regime will not be able to fully address Asciano's concerns. Nevertheless Asciano will seek to address these concerns within the framework of the SARAR, to the extent that the framework allows.

5 CONCLUSION

Asciano supports the Draft Recommendation the NCC recommends that the SARAR only be certified for five years due to the absence of a requirement for periodic reviews of the regime.

Asciano seeks that the NCC further consider Competition Principles Agreement clauses 6(2) and 6(4) (p) regarding the interaction of the SARAR and interstate services.

In addition Asciano continues to have concerns as to whether a regime which allows access to vertically integrated monopoly infrastructure with minimal separation and price regulation meets the criteria relating to promotion of economic efficiency and provision of a robust framework for negotiating agreements. Asciano continues to be of the view that without the regime being strengthened the regime will not be able to fully address these concerns However Asciano will seek to address these concerns within the SARAR framework to the extent that the SARAR framework is able.