Previous Arbitration and Determinations

Determinations occur if a dispute exists with respect to the RIC Rail Access Regime between the Access Seeker and RIC and subsequently resolved by IPART or its nominated representative in accordance with Part 4A of the Independent Pricing and Regulatory Tribunal Act (the Tribunal). Only the Tribunal will act as arbitrator and that Part 4A of the Independent Pricing and Regulatory Act will apply to govern the Arbitration. RIC access contracts also provide for matters to be referred to mediation.

The Arbitrator publishes the Determination and any information before the Arbitrator relevant to the Determination other than:

a) Confidential Information; or
b) Information relating to the operation of the market which the Arbitrator considers should not be published.

Since the establishment of the NSW Access Regime in 1996 only one Determination has occurred. A copy of the Determination and media release is attached.

The attached Determination occurred between the National Rail Corporation (NRC) and the Rail Access Corporation (RAC) during 1996. In essence, the dispute involved the price of access to the NSW Rail Infrastructure by National Rail. The two parties involved requested IPART to arbitrate the dispute.

As a result of Arbitration on 14 March 1997 RAC reached agreement with NRC on access prices in respect of the NSW rail network. As a result IPART subsequently issued a consent award, giving effect to that agreement.

The non-confidential portion of the Determination is attached in the following section together with the media release.

M E D I A R E L E A S E

14 March, 1997

RAIL ACCESS CORPORATION AND NATIONAL RAIL CORPORATION REACH IN-PRINCIPLE AGREEMENT

The NSW Rail Access Corporation announced today that it has reached in-principle agreement with the National Rail Corporation on major issues in relation to track access for the company in New South Wales.

At the request of the two organisations, the NSW Independent Pricing and Regulatory Tribunal (IPART) has today handed down a consent determination, giving effect to the confidential agreement reached by National Rail and Rail Access Corporation. During 1996, the two parties requested IPART to arbitrate the dispute which then existed over the price for access to NSW rail infrastructure by National Rail.

“A competitive pricing regime for rail operators has never been introduced into NSW before and it was almost inevitable that there would be protracted negotiation on this issue”, said Ms Judi Stack, Chief Executive Officer of the Rail Access Corporation.

Ms Stack said relations between the two parties always remained amicable, and the Rail Access Corporation was very happy to have National Rail on board as its first interstate freight operator.

Judi Stack complimented National Rail on its approach to the pricing issue. “The negotiation of prices in any commercial situation can be a demanding task and, being the first of its kind under National Competition Policy anywhere in Australia, the process has broken a lot of new ground.”

continued...

Ms Stack added, “It has re-inforced the Rail Access Corporation’s keen focus on ensuring that rail is competitive and that we are providing sustainable opportunities for our customers.”

“Negotiations with a number of new operators are at an advanced stage and the result with National Rail is good news for the industry”, Ms Stack said.

“The Rail Access Corporation remains committed to creating a more efficient and competitive rail network by reaching equitable access agreements with current and new operators in the near future. Achieving our pricing goals is fundamental to the development and improvement of track in the State”, Ms Stack said.

A train control protocol will be developed by the Rail Access Corporation and National Rail to ensure rail operators are able to achieve consistent day-to-day transit times through NSW, provided rail operators themselves adhere to agreed schedules.

The in-principle agreement now reached will apply to general freight trains (not to coal or grain trains) operating on mainlines and on tracks which provide access in and out of National Rail freight terminals.

On 1 July 1996 the Rail Access Corporation became responsible for managing railway track in NSW. It owns all the publicly controlled rail infrastructure in the State, including signalling and train control systems, but not stations, platforms or rollingstock. The Corporation sells access to the rail network to existing and new operators for both freight and passenger carriage.

INDEPENDENT PRICING AND REGULATORY TRIBUNALOF NEW SOUTH WALES

Access Determination No 1 of 1996

Extract of the determination between:
RAIL ACCESS CORPORATION ("RAC"); and
NATIONAL RAIL CORPORATION LIMITED ("NRC")

1. The dispute which is the subject of this arbitration is described in the joint submission by the parties in dispute dated 7 March 1997. In essence, the dispute involves the charges to be paid by NRC for access to the NSW rail network under the access agreement dated 1 July 1996. That agreement covered the period from 1 July 1996 to 28 February 1997.

2. The dispute raises complex legal, economic, accounting and engineering issues. The Arbitrators have had the benefit of written and oral submissions from the parties on those questions and a written report by an independent expert, Dr Stewart Joy. The Arbitrators also established a discussion between experts nominated by both parties, and the independent expert, on 6 and 7 January, 1997.

3. In determining this dispute, the Arbitrators were required under Section 19B of the Transport Administration Act 1988 ("**TAA**") to give effect to the NSW rail access regime proclaimed on 19 August 1996. That regime includes the pricing principles set out in Schedule 3 to the regime. In addition, the Independent Pricing and Regulatory Tribunal Act 1992 ("**IPART Act**") requires the Arbitrators to take certain matters into account. Whilst the Arbitrators have not formed a final view about all the matters that should be taken into account, we note that we must take into account the matters set out in clause 6(4)(i), (j) and (l) of the Competition Principles Agreement.

4. Schedule 3 to the Access Regime provides as follows:

"(i) Prices will be negotiated so that the following requirements are satisfied:

(a) revenue from every Rail Operator or group of Rail Operators must at least meet the direct costs imposed by that Rail Operator or group of Rail Operators; and for any line section or group of line sections, the full incremental costs, including incremental fixed costs, must at least be met by revenue from the Rail Operators of those sections ("**floor test**");

(b) for any Rail Operator or group of Rail Operators, revenue must not exceed the full economic costs of the infrastructure (including reasonable costs of capital, overheads etc) which is required by that Rail Operator or group of Rail Operators on a stand alone basis ("**ceiling test**");

(c) total Corporation revenues must not exceed the stand alone economic costs of the entire NSW Rail Network".

5. The Arbitrators are of the view that, in interpreting the cost terms used in the pricing principles in the access regime, we should have regard to efficient costs.

6. The Arbitrators are of the view that the second limb of the floor test in the pricing principles does not necessarily translate to a specific price for an individual rail operator. Rather, we are of the view that the second limb requires revenue from rail operators (together with any government funding) to at least cover full incremental cost, including incremental fixed costs. Any negotiation or determination of a price for a particular rail operator should at least be consistent with the second limb of the floor test being satisfied.

7. In relation to the ability to pay argument raised by NRC, the Arbitrators have noted that this is not a factor explicitly recognised in the pricing principles in the access regime. Nevertheless, the Arbitrators are of the view that end market ability to pay is a factor which they are entitled to take into account under the IPART Act.

8. On 7 March 1997 the parties made a written submission setting out a proposed basis for resolution of the dispute and asking for the dispute to be formally determined by a consent award.

9. Both parties have assured us that, for the purposes of the arbitration, their proposed basis for settlement adequately takes into account the following

(a) RAC's obligations under the TAA and, in particular, its obligations to act in accordance with the NSW Rail Access Regime.

(b) The Arbitrators' obligation to give effect to the Access Regime.

(c) The Arbitrators' obligation under the IPART Act to take into account various matters and, in particular, our obligation to take into account the matters referred to in clause 6(4)(i),(j) and (l) of the Competition Principles Agreement.

(d) RAC's current actual costs of providing and maintaining the rail network on the corridors used by NRC as well as the currently estimated future efficient costs of providing and maintaining that rail network.

(e) NRC's ability to pay for the use of the rail network based on its current actual costs, its currently estimated future efficient costs and the currently assessed ability of the end market to pay.

(f) The level and nature of community service obligations paid, or to be paid, to RAC and/or NRC.

10. We have noted and have taken into account the comments made by the parties in their written submission dated 7 March 1997. On the basis of that submission, and the other material placed before us in this matter, we have formed the view that the proposed basis for resolution of the dispute is, in all the circumstances, reasonable.

11. We therefore propose to determine the dispute on the basis of the consent award being sought by the parties.

Thomas G Parry, Chairman
James Cox, Member
12 March 1997