



15 December 2010

National Transport Commission
L15/628 Bourke Street
MELBOURNE VIC 3000

Attention: Marcus Coleman
Project Manager Rail Productivity

Dear Mr. Coleman

Re: Discussion Paper on the Role of Government in Rail Freight Investment

Australian Transport & Energy Corridor Limited (ATEC) commends the National Transport Commission's (NTC) endeavours to enhance the efficiency of the Australian rail freight market. ATEC welcomes the opportunity to contribute to the development of a policy position paper on the productivity of rail freight in Australia – particularly from the perspective of private sector investment in rail freight infrastructure.

Whilst a relatively recent participant in the rail freight industry, ATEC has learnt some valuable lessons as a joint-venture proponent in the development of the Surat Basin Rail project, a \$1bn freight rail infrastructure asset to complete the supply chain from Queensland's Surat Basin coal fields to the Port of Gladstone. It is through these experiences that we believe we have some unique insights into private sector investment in below-rail infrastructure and more generally the bulk minerals supply chain.

Our submission has therefore been prepared within the context of one of NTC's stated purposes of the discussion paper, being to collect specific examples on the role of government in rail freight – with an emphasis on government's role in facilitating private sector investment in below-rail infrastructure assets.

By way of background, ATEC has established itself as a private sector below-rail infrastructure developer in Australia that is independent of above-rail operations. ATEC has key three business interests in:

- Rail Development – ATEC is a 33.3% equity participant in the privately developed Surat Basin Rail project in Queensland. ATEC was the proponent to secure the first ever unsolicited Exclusive Mandate in Queensland to develop this open access rail freight corridor, being an approx 210km mainly bulk mineral rail corridor. ATEC has other rail corridor projects in its development pipeline in NSW, QLD and WA.

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- Freight Terminals Ownership and management – ATEC also acquires and seeks to develop rail terminals. It has two such sites one in QLD and one in NSW. It has successfully received material rezoning of its site in QLD, and is now planning its development to efficiently service intermodal and bulk volumes.
 - Specialist rail and terminal services – ATEC has incorporated in joint venture, Intermodal Terminal Services Pty Limited (ITS). ITS has three service sites being in Perth (WA), Moorebank (NSW) and Newcastle (NSW). It provides below rail maintenance services as well as open access above-rail engineering and mobile service operations to above-rail operators.

ATEC's core strategy is to provide open access services dedicated to the rail industry.

Given our recent and continuing experience in the development of below-rail freight infrastructure, our objective in responding to the Discussion Paper is not to canvass the full range of issues and questions that have been raised. We intend, however, to consider the questions in the latter part of the Discussion Paper pertaining to rail investment while raising the particular issue of the role of government in facilitating private sector investment where there is no call on government to contribute either capital or ongoing operating subsidies.

Within this frame, our submission is centred on three primary themes that ATEC consider, the private sector would see as essential for enhancing the efficiency of governments' facilitation of private sector investment in below-rail infrastructure network –

- certainty of process through integrating policy, planning and project development frameworks;
- timely and effective decision-making within government; and
- government expertise in interacting with the private sector to facilitate commercially bankable agreements.

1. Policy and Planning Processes

- *Supply Chain Planning*

Fundamentally, rail freight policy should be built on the basis of facilitating the efficient exporting (and hence importing) of freight. Australia is simply not big enough to be self-sustaining so has to trade to grow its GDP. However, traditionally, freight transport has been (in general terms) an 'after thought'. Transport planning has been driven primarily from a focus of people movements, as these significantly outweigh 'non people' transport movements. Hence freight co-exists within connective infrastructure, which has traditionally been built and maintained for passenger transport services.

This has led (in our view) to poor freight corridor investment decisions (both public and private investment) in nodal and connective infrastructure development, which in turn provides for inefficient outcomes in the transport/logistics industry (manifested in so-called 'bottlenecks'). In the development of transport policy, governments have a tendency to not appreciate supply chain systems and the key relationships and inter-dependencies between the various components of these systems. This in turn leads to governments not understanding the reasons for, where the 'market' fails to provide an optimal solution, why this failure has occurred.

Government should use policy levers, which can facilitate efficient delivery of transport/freight infrastructure (both nodal (inter-modal ports) and connective) from the "Port back". For example, in New South Wales, freight corridors should be identified from the three main ports of Sydney, Newcastle and Wollongong to help facilitate intrastate movements of freight. This allows government to better understand the systems and to also gain an understanding within the chain of where market has provided a solution (or not) and why this solution (or not) has been provided.

- *Corridor Planning*

Corridors also need to be identified from main international air and sea ports, e.g. Sydney, Melbourne, Brisbane, Perth, Darwin and Adelaide back to the supply/demand nodes within each state such that nodal infrastructure and connective infrastructure is developed within those corridors.

While this has been somewhat achieved with the creation of Australian Rail Track Corporation (ARTC), however their remit does not encompass either nodal or port infrastructure and hence is not facilitating changes fast enough (i.e. they are seeking to 'push' solutions to Ports, who are all under different ownership, etc).

Additionally, within each state, regional freight corridors should then be branched off the main connective intra and interstate corridors, which help facilitate regional development and regional trade. This is where the respective State Governments should play a bigger role in understanding the system and the issue of market participation (i.e. why doesn't the private sector provide for these corridors).

In the end, the corridor selection process has to be driven by private sector demand, as it is the private sector movement of freight within these corridors that will make them successful. Government can then elect to be involved in those segments that may not work with private sector involvement alone, if there is other planning considerations or benefits to be obtained.

Policy should also allow regulation of 'significant freight corridors', particularly where the private sector has invested in the development of either nodal or connective infrastructure. The regulatory regime however needs to allow for/reflect the risk being taken on by the private sector in developing infrastructure, particularly infrastructure that is supported by 'walk-up' freight and not 'take or pay' styled freight.

Where intermodal ports are critical to shifting freight from road to rail, regulation of these infrastructure assets should also be considered. This could be seen in the context of facilitating appropriate responses to climate change initiatives, particularly if Government policy is to enhance the use of rail over road, where it is commercially sensible.

- *Government Coordination to achieve consistent Project Development Frameworks*

However, the above strategies require several arms of government (and between the different jurisdictions of both Commonwealth and State) to be coordinated such that policy and planning decisions can be made efficiently.

Critical to the achievement of a national rail freight network is the development of consistent frameworks across jurisdictions.

In Queensland, coordination has been successfully driven through the powers of the Coordinator-General under the Queensland *State Development and Public Works Organisation Act 1971*. ATEC believes that this provides an ideal model for the Commonwealth to influence all states to implement as it provides legislative 'teeth' to ensure all jurisdictions (and agencies within all jurisdictions) act in the national interest rather than parochial local interests. Such coordination will significantly reduce impediments to investments across Australia. This may be something that could be considered for example by Infrastructure Australia.

2. Timely and Effective Government Decision-Making

ATEC considers that one of the most critical aspects of governments' role in facilitating private sector investment in freight rail infrastructure is certainty, being:

- Certainty of policy;
- Certainty of process; and
- Certainty that can only be achieved through timely decision-making.

So as to elaborate, we provide below areas that ATEC considers could be looked at or addressed further within NTC's remit.

- *Understanding of Commercial Drivers and Objectives of Private Investment*

In ATEC's experience, state governments (particularly Treasuries) have not been able to fully comprehend the risk that private capital is exposed to in undertaking these long linear infrastructure projects, where no direct government funding is being requested. While governments are generally understanding of the myriad of complexities involved in government and environmental approvals, there is a lack of appreciation of the hurdles required to focus the effort of private capital in proving up the viability of these projects and then delivering them.

A significant factor in this is that there is a highly competitive market for the use of capital, and if government decision-making processes become too onerous or unpredictable (in respect to timing), there are strong possibilities that private capital will seek other projects in which to invest. In particular, given the size of linear projects (typically in excess of AUD\$1bn), the quantum of capital required to deliver these projects is in the main sought from international market places. Intermediaries who have access to such capital therefore by implication have global remits in which to invest capital, and hence Australian developers of privately financed infrastructure are not only competing for finance for different classes of projects (e.g. rail line, versus road, versus port, etc) but also in different jurisdictions (Australia, versus Canada, versus US, etc).

- *Intra- and Inter-Government Coordination/Integration*

In consideration of a potential national network of rail freight (integrated of course with a National Port Network that we understand may be under consideration by the Australian Government), where rail freight infrastructure assets are intended to cross State or Territory Borders, there needs to be strong interaction between relevant government agencies – both between States/Territories and the Commonwealth, as well as within their respective delivery agencies. In addition, the implementation of this interaction needs to be consistent across governments.

ATEC has found that one of the most effective mechanisms to ensure this consistency is Queensland's Coordinator-General – with the primary reason for being so effective being the legislative support to this role provided by Queensland's *State Development and Public Works Organisation Act 1971*.

- *Clarity in Articulation of Freight Industry Strategies*

ATEC recognises that rail freight infrastructure assets are merely the platform upon which the industry needs to move goods throughout the nation. At either the State/Territory or Commonwealth level, there does not appear to be clear government policy in respect to long-term Freight Strategies.

In developing such strategies, the Commonwealth needs to ensure that the focus is on the economic contribution that freight can provide to Australia's productive output to meet global demand/supply imbalances, rather than what appears to be the current thinking of considering freight as an adjunct to passenger/metro transport plans or inwardly focussed regional infrastructure plans.

ATEC holds this view as, in our experience, government decision-making needs to match projects that have such long lead times to develop with the industry/ies they seek to serve. For example Open Access principles of access seek to match the infrastructure with the demand for freight (bulk and general), as Australia is a taker of demand not a maker (given the small domestic market) so Government decision making on these projects needs to be aligned not to simply the inputs, but the very markets (and drivers of those markets) rail infrastructure projects are seeking to exploit commercially (i.e. where is the real competition occurring).

- *Engagement with Private Investors*

ATEC understands the need for government to ensure both consistency and transparency in their processes of engaging with a private rail developer. Up to more recent times, the majority of engagements with governments have been through Government Owned Rail Entities which, although operated on a 'commercial' basis, still have government mindsets with regard to decision-making.

However, as the private rail development market is maturing in Australia, with limited or no direct previous exposure to government process and bureaucracy, for future rail freight infrastructure networks to develop, the traditional ways of how decisions are made and the effectiveness of those processes will require a re-think to better match drivers and objectives of private investment. In addition, it will require a matching of the demand need, such that privately finance rail infrastructure can be delivered within the time frame required by international markets, so that Australia can benefit from exploiting a demand/supply imbalance.

3. Government Expertise

Such a re-think to achieve certainty through more timely and effective decision-making requires somewhat different skills sets in negotiating with private investors rather than negotiating with the more traditional Government Owned entities. Open-access rail developments require a better understanding of those markets – driven from long-term policy planning referred to above.

- *Policy Signals*

As the private rail infrastructure market continues to mature, there needs to be a greater policy emphasis by Government to provide clear signals to the private sector of where government would like to see private investment in rail to meet emerging markets.

In particular, there needs to be a strong interface between Regulatory Bodies and Government policy directive. Whilst this may be a challenge in achieving a cultural shift, if the intent of government is to access more private investment in rail freight then the way in which regulators seek to indirectly develop policy imperatives for government through the 'access' principles, particularly in relation to Greenfield and Brownfield expansion, is something that needs greater skills transfer and coordination. An example of the challenges in achieving this is the issue that government, in seeking a policy outcome, wants a more efficient and integrated approach between rail freight and the major export Ports requiring significant private capital investment. Yet the regulatory-driven pricing results in insufficient incentives to allow for such investment.

- *The Art of Commercial Negotiation*

In ATEC's experience, we have found that a critical skill that is currently lacking in most government agencies is the ability to interact with private developers, with an understanding of the commercial drivers, objectives, constraints and obligations of that developer. That is not to say the current bureaucracy have not got the skills, it is more an issue that historically they may have not needed to use these skills as frequently as is likely to be the case in this shift if greater commercial capital is to be harnessed for the delivery of freight infrastructure.

- *Coordination and Consistency of Expertise*

Generally, we have found that strong skills sets and capabilities can be found embedded in the different agencies – however it appears that there is no coordination or cross-fertilisation of experiences to enhance corporate knowledge rather than individual experiences. The benefit of this consistency of deployment of resources is that expertise can be more readily retained within and accessible to government.

Conclusion

Maximising the efficiency of Australia's rail freight across the country requires all governments (particularly state and territory governments) to shift their thinking from one of state and local parochialism and to create a national rail freight network that integrates with the key export/import nodes of the major seaports and airports.

To facilitate this paradigm shift, ATEC believes that the primary role of government in facilitating investment in a national rail freight network is to provide the enabling framework to stimulate private sector involvement.

The Australian Government should take a leadership role and drive the development of such an enabling framework to ensure consistency in policy, planning and approval processes.

On behalf of ATEC, I appreciate the opportunity to contribute to this valuable policy development process. We would appreciate the opportunity to meet with you and your colleagues to discuss the contents of this submission further.

Should you require any further information, or wish to discuss the matter further, please do not hesitate to contact me on 073003 0900

Yours sincerely



John Balassis
Managing Director