



Australian  
Competition &  
Consumer  
Commission

# **Australian Competition and Consumer Commission**

## **Consultation Paper**

**in relation to Australian Rail Track  
Corporation's Hunter Valley Rail Network  
Access Undertaking variation**

**13 December 2011**



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# 1 Introduction

The Australian Rail Track Corporation Limited (**ARTC**) has requested that the Australian Competition and Consumer Commission (**ACCC**) consent to a variation of the access undertaking for the Hunter Valley Rail Network which was accepted by the ACCC on 29 June 2011 (**the June 2011 HVAU**).

On 2 December 2011 ARTC submitted this variation request (**the Proposed Variation**) in accordance with subsection 44ZZA(7) of the *Competition and Consumer Act 2010* (Cth) (**the Act**), which allows an access provider to vary an accepted access undertaking with the consent of the ACCC. Should the ACCC consent to the variation, the Proposed Variation will vary the June 2011 HVAU in effect for the Hunter Valley Rail Network.

The Proposed Variation has been submitted by ARTC in order to comply with subsection 4.17(c) of the June 2011 HVAU. It is the first of two variations explicitly required under the June 2011 HVAU in order to determine the efficient coal train configuration for the Hunter Valley Rail Network and revise the Indicative Service. This Proposed Variation seeks to implement an Initial Indicative Service as follows:

- for services commencing in pricing zones one and two, a train configuration with 96 wagons
- for services commencing in pricing zone three, a train configuration with 82 wagons.

The characteristics of the proposed Initial Indicative Service are described in further detail in section 2.1. ARTC has also proposed associated Indicative Access Charges, which are discussed in section 2.2.

The ACCC is conducting a public consultation as part of its assessment of the Proposed Variation, and seeks submissions from interested parties by 27 January 2012.

## 1.1 Background

### 1.1.1 Industry context

ARTC is a Commonwealth Government owned corporation, established in 1998 for the purpose of managing and providing access to the National Interstate Rail Network. ARTC is vertically separated, providing ‘below-rail’ track access services and not ‘above rail’ services such as haulage. The Interstate Rail Network is subject to an access undertaking accepted by the ACCC on 30 July 2008.<sup>1</sup>

The June 2011 HVAU regulates access to the Hunter Valley Rail Network operated by ARTC in New South Wales. ARTC leases the network from the New South Wales government under a 60 year lease granted on 5 September 2004.

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<sup>1</sup> See the ACCC website at <http://www.accc.gov.au/content/index.phtml/itemId/789738> for further details.

The network is predominantly used to transport coal from mines in the Hunter Valley region to the Port of Newcastle for export. Approximately 16 coal producers have either existing or planned operations in the region, and it has been estimated that the coal shipped on the network equates to around \$9 billion worth of export earnings per annum.

Capacity management arrangements at the export coal loading terminals at the Port of Newcastle were authorised by the ACCC in December 2009, with the aim of improving overall supply chain performance and reducing ship queues forming off the coast of Newcastle. The aligned interaction between the rail network access undertaking and the authorised capacity arrangements at the port was a key issue during assessment of the June 2011 and previous versions of the HVAU.

The rail network is also used by non-coal traffic, including general and bulk freight services (such as grain) and passenger services. It is also used to ship coal from the region's mines to domestic customers, such as power stations.

The network was previously subject to an access regime administered by the NSW Independent Pricing and Regulatory Tribunal, but as a consequence of the decision to accept the June 2011 HVAU access regulation is now governed by the ACCC and the HVAU.

### **1.1.2 The June 2011 HVAU**

ARTC submitted the June 2011 HVAU to the ACCC on 23 June 2011 for assessment under Part IIIA of the Act.

Prior to that time ARTC had submitted to the ACCC two formal access undertaking applications in relation to the Hunter Valley Rail Network, one in April 2009 and another in September 2010. The ACCC considered that those applications were not appropriate to accept, and provided ARTC with extensive feedback on how those applications could be revised such that they would be likely to be accepted. The ACCC also conducted extensive consultation with stakeholders in relation to those prior applications.

The June 2011 HVAU incorporated revisions to accommodate the ACCC's views from those previous assessments. Accordingly, on 29 June 2011 the ACCC accepted the June 2011 HVAU pursuant to subsection 44ZZA(3) of the Act.

### **1.1.3 Development of the efficient train configuration (Indicative Service)**

Sections 4.17 and 4.18 of the accepted June 2011 HVAU require ARTC to submit two variations during the term of the HVAU in relation to the Indicative Service and the Indicative Access Charges and Charges for non-Indicative Services.

These variations are required in order to facilitate a multi-stage approach to development of an Indicative Service and price signals to promote efficient consumption of capacity. The approach provides for the evolution of reference coal services as follows:

- **Stage one:** Interim Indicative Services to apply from commencement of the HVAU in accordance with section 4.19.

- **Stage two:** Initial Indicative Services to be developed within 5 months of commencement in accordance with section 4.17.
- **Stage three:** Indicative Services to be developed within 30 months of commencement in accordance with section 4.18.

The reason for the multi-stage approach is that the ACCC appreciates that determination of optimal service characteristics that promote efficient utilisation for an optimised coal chain may be a complex exercise, and considers that it is appropriate for ARTC and industry to have up to 30 months (from acceptance of the June 2011 HVAU) for development of coal chain modelling and thorough consultation.

However, in the interim, it is appropriate that service characteristics that promote the efficient use of the current infrastructure be determined. This provides for the first stage of a transition towards service characteristics that will ultimately promote the efficient operation of, use of and investment in infrastructure.

Consequently, the ACCC considers that this multi-stage approach provides a suitably robust approach to determination of Indicative Services, as it provides for:

- accelerated identification of Initial Indicative Service characteristics, which should provide pricing signals regarding the efficient consumption of coal chain capacity within the constraints of the existing infrastructure; and
- comprehensive determination of Indicative Service characteristics, which should promote the efficient consumption of coal chain capacity with optimized coal chain infrastructure.

The Proposed Variation has been submitted by ARTC in order to implement the Initial Indicative Services and proceed to stage two in accordance with section 4.17 of the June 2011 HVAU.

It should be noted that the ACCC's assessment of the Proposed Variation will not consider whether gtkm pricing is the appropriate pricing unit. The review of gtkm pricing will be undertaken as part of the comprehensive Indicative Service assessment outlined in subsection 4.18(b) of the June 2011 HVAU.

#### **1.1.4 ARTC consultation with industry**

In accordance with subsection 4.17(b), ARTC issued a consultation document on 8 November 2011. This consultation document outlined the process by which ARTC had determined the efficient train configurations, including the efficiency measures used and the number of combinations considered. This process was undertaken in consultation with the Hunter Valley Coal Chain Coordinator (HVCCC).

As a result of this process ARTC determined that the Coal Train configuration which would represent the most efficient utilisation of Coal Chain Capacity is the combination of 96 wagon trains in Pricing Zones 1 and 2 and 82 wagon trains in Pricing Zones 3 and 1.<sup>2</sup>

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<sup>2</sup> ARTC, Industry Consultation Document, 8 November 2011, pp. 5-6.

ARTC gave interested parties two weeks to provide comments in relation to its proposal. Subsection 4.17(c) requires ARTC to have regard to submissions received prior to submitting to the ACCC the characteristics of the Initial Indicative Service and Indicative Access Charges and requesting the ACCC's approval to vary the HVAU.

## **1.2 ACCC assessment**

The test the ACCC applies in deciding whether to consent to a variation of an accepted access undertaking is set out in subsections 44ZZA(7) and 44ZZA(3) of the Act. Essentially, the ACCC may accept the Proposed Variation if it thinks it appropriate to do so, having regard to various matters. The full test is set out in section 3 of this document.

The ACCC is calling for submissions by interested parties and has not yet formed a view on the appropriateness of ARTC's Proposed Variation.

## **1.3 Indicative timeline for assessment**

Under subsection 44ZZBC(1) of the Act, the ACCC must make a decision in relation to an access undertaking application within the period of 180 days starting at the start of the day the application was received (referred to as 'the expected period').

ARTC formally lodged the Proposed Variation with the ACCC on 2 December 2011.

The Act provides for 'clock-stoppers', meaning that some days will not count towards the 180 days of the expected period in certain circumstances. In particular, the clock is stopped where:

- the ACCC publishes a notice inviting public submissions in relation to an undertaking application (subsection 44ZZBD(1));
- the ACCC gives a notice requesting information in relation to an application (subsection 44ZZBCA(1)); or
- the ACCC and the access provider agree in writing that certain days are to be disregarded for the purposes of calculating the expected period (subsection 44ZZBC(4)).<sup>3</sup>

The ACCC is requesting submissions on the Proposed Variation by 27 January 2012. Under subsection 44ZZBD(1) this has the effect of extending the timeframe by which the ACCC is required to make a decision on the Proposed Variation. Following consultation on this consultation paper, the ACCC will be required to make a decision on the Proposed Variation by 16 July 2012. However, the ACCC notes that in the case of the current Proposed Variation, a decision may be made well before this date.

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<sup>3</sup> See section 3 of this Paper for further information on these provisions of the Act.

## 1.4 Consultation

The ACCC has published the Proposed Variation on its website for stakeholder consideration. Section 2 of this Paper highlights those aspects of the Proposed Variation which differ from the accepted June 2011 HVAU.

The Proposed Variation has been submitted by ARTC in order to comply with subsection 4.17(c) of the June 2011 HVAU. Accordingly, the variation relates only to the characteristics of the Indicative Service and the applicable Indicative Access Charges and Charges for Non-Indicative Services, and does not revise other aspects of the June 2011 HVAU.

The ACCC requests that any submissions address the extent to which the proposed revisions appropriately address the requirements in section 4.17 of the June 2011 HVAU. Submissions are also encouraged to address the matters listed in subsection 44ZZA(3) of the Act.

The ACCC's current intention is that there will be a single round of consultation before the ACCC makes a final decision in relation to the Proposed Variation. However, the ACCC may consult further with industry if it considers there is a need to do so having regard to the submissions made in response to this Consultation Paper.

## 1.5 Making a submission

Submissions on ARTC's Proposed Variation should be addressed to:

Mr Anthony Wing  
General Manager  
Transport & General Prices Oversight Branch  
Australian Competition and Consumer Commission

GPO Box 520  
Melbourne Vic 3001

Email: [transport@accc.gov.au](mailto:transport@accc.gov.au)

### 1.5.1 Due date for submissions

Submissions **must** be received by **27 January 2012**. It is in your interest that the submission be lodged by this date, as section 44ZZBD of the Act allows the ACCC to disregard any submission made after this date.

### 1.5.2 Confidentiality

The ACCC strongly encourages public submissions. Unless a submission, or part of a submission, is marked confidential, it will be published on the ACCC's website and may be made available to any person or organisation upon request.

Sections of submissions that are claimed to be confidential should be clearly identified. The ACCC will consider each claim of confidentiality on a case by case basis. If the ACCC refuses a request for confidentiality, the submitting party will be given the opportunity to withdraw the submission in whole or in part.

For further information about the collection, use and disclosure of information provided to the ACCC, please refer to the ACCC publication “*Australian Competition and Consumer Commission / Australian Energy Regulator Information Policy – the collection, use and disclosure of information*” available on the ACCC website.

## **1.6 Further information**

The Proposed Variation and other relevant material, including supporting submissions from ARTC and the currently accepted June 2011 HVAU, are available on the ACCC’s website at the following link:

<http://www.accc.gov.au/content/index.phtml/itemId/994049>

Alternatively, go to the ACCC’s homepage at [www.accc.gov.au](http://www.accc.gov.au) and follow the links to ‘For regulated industries’ and ‘Rail’ and ‘ARTC Hunter Valley Access Undertaking 2011.’

Public submissions made during the current process will also be posted at this location.

Background information on the current process, including an overview of recent amendments to Part IIIA of the Act, is set out in section 3 of this document.

If you have any queries about any matters raised in this document, please contact:

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## 2 The Proposed Variation

The Proposed Variation seeks to implement the requirements contained in section 4.17 of the June 2011 HVAU. Subsection 4.17(a) requires that ARTC, in consultation with the HVCCC:

- (i) select a reasonable number of alternative Coal Train configurations in addition to the Coal Train configurations forming the Interim Indicative Services;*
- (ii) test the consumption of Coal Chain Capacity by those Coal Train configurations using the HVCCC modelling existing as at the Commencement Date (including, to avoid doubt, the coal chain infrastructure constraints as used by existing HVCCC modelling) unless otherwise agreed by ARTC and the HVCCC; and*
- (iii) select the Coal Train configuration which it considers will represent the most efficient utilisation of Coal Chain Capacity when compared to the other Coal Train configurations tested.*

Subsection 4.17(b) requires that ARTC consult with the HVCCC, Access Holders and Operators on the Initial Indicative Service selected under subsection (a).

Subsection 4.17(c) requires that ARTC request the approval of the ACCC to vary the HVAU to implement the Indicative Service, as follows:

- (c) Within 5 months of the Commencement Date, and after having regard to submissions from the consultation at subsection (b), ARTC will:*
  - (i) submit to the ACCC:*
    - (A) the characteristics of the initial indicative service selected as a result of the process described in subsection (a); and*
    - (B) the indicative access charges for the initial indicative service; and*
  - (ii) seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the initial indicative service and indicative access charges applicable until ARTC develops and the ACCC accepts the indicative service and indicative charges under section 4.18.*

In this section the ACCC has highlighted those aspects of the Proposed Variation which differ from the accepted June 2011 HVAU.

### 2.1 Efficient coal train configuration

Under the June 2011 HVAU, the current Interim Indicative Services are as follows:

**Table 1: Interim Indicative Service**

<b>Interim Indicative Service</b>	<b>Segments</b>	<b>Indicative Service Assumptions</b>
Indicative Service 1	Pricing Zones 1 and 2	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 91 wagon train length section run times as per applicable Hunter Valley standard working timetable
Indicative Service 2	Pricing Zones 1 and 2	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 74 wagon train length section run times as per applicable Hunter Valley standard working timetable
Indicative Service 3	Pricing Zones 1 and 3	25 tonne maximum axle load 80 kph maximum speed (loaded) 80 kph maximum speed (empty) 72 wagon train length section run times as per applicable Hunter Valley standard working timetable

Table sources: See June 2011 HVAU, subsection 4.19.

Subsection 4.17(a)(i) requires that ARTC select ‘a reasonable number of alternative Coal Train configurations’ to those forming the Interim Indicative Services. ARTC selected two alternative Coal Train configurations as follows:

**Table 2: Alternative Services**

<b>Alternative Service</b>	<b>Segments</b>	<b>Indicative Service Assumptions</b>
Alternative PZ1/2 Service	Pricing Zones 1 and 2	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 96 wagon train length section run times as per applicable Hunter Valley standard working timetable
Alternative PZ3 Service	Pricing Zones 1 and 3	25 tonne maximum axle load 80 kph maximum speed (loaded) 80 kph maximum speed (empty) 82 wagon train length section run times as per applicable Hunter Valley standard working timetable

Table sources: See ARTC, *Supporting Documentation*, 1 December 2011, p. 16.

Subsections 4.17(a)(ii) and (iii) require that ARTC test the consumption of Coal Chain Capacity by the selected configurations, using existing HVCCC modelling, and select the Coal Train configuration which it considers will represent ‘the most efficient utilisation of Coal Chain Capacity when compared to the other Coal Train configurations tested’.

ARTC submits that the most appropriate efficiency measures to compare are:

1. Total Export Train Consists Required
2. Path Utilisation
3. Average Vessel Queue.

Given these criteria, ARTC has determined that the most efficient combination is the 96 wagon train on Pricing Zones 1 and 2, and the 82 wagon train on Pricing Zones 1 and 3 (as described above in Table 2). Accordingly, subsection 4.17(d) of the Proposed Variation proposes that these services should form the Initial Indicative Services.

Subsection 4.17(a) of the Proposed Variation 2011 HVAU requires that ARTC must publish the characteristics of the Initial Indicative Services within 30 days of receiving approval from the ACCC to vary the HVAU. Subsection 4.17(b) provides that these characteristics will apply as the Initial Indicative Services from the first day of the calendar month following publication under subsection 4.17(a) until the Final Indicative Services and the Indicative Access Charges approved by the ACCC come into effect under section 4.18. This period during which the Initial Indicative Services will apply is defined in the Proposed Variation as the “Initial Period”.

ARTC’s supporting documentation provides further detail regarding the HVCCC modelling used and the assumptions made by ARTC in order to determine the Initial Indicative Service, and is available on the ACCC’s website.

#### **Questions for comment**

- Are the Initial Indicative Services determined by ARTC appropriate?
- Has the approach taken by ARTC in determining the Initial Indicative Services been appropriate?
- Has ARTC considered a reasonable number of alternative Coal Train configurations in addition to the Coal Train configurations forming the Interim Indicative Services in accordance with 4.17(a)(i) of the HVAU?
- Are the efficiency measures determined by ARTC appropriate? If not, what additional efficiency measures should have been taken into account?
- Will the Initial Indicative Services proposed by ARTC facilitate more efficient use of the network?

- Do the proposed Initial Indicative Services appropriately reflect the current network infrastructure constraints in each pricing zone?

When considering the questions above, interested parties are encouraged to refer to the matters listed in subsection 44ZZA(3) of the Act (see section 3 of this document).

## 2.2 Indicative Access Charges

Subsection 4.17(c)(i)(B) of the June 2011 HVAU requires that ARTC submit to the ACCC the Indicative Access Charges for the Initial Indicative Service.

In the Proposed Variation, ARTC has proposed that the charges in the table below will form the Initial Indicative Access Charges which apply to the Initial Indicative Services from the first day of the calendar month following publication as required by section 4.17(a).

**Table 3: Initial Indicative Access Charges**

<b>Initial Indicative Service Assumptions</b>	<b>Pricing Zone</b>	<b>Non-TOP \$/kgtkm (ex GST)</b>	<b>TOP \$/kgtkm (ex GST)</b>
<u>96 wagon train</u>  30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 96 wagon train length section run times as per applicable Hunter Valley standard working timetable	Pricing Zone 1: Initial Indicative Service 1	0.844	8.342
	Pricing Zone 2: Initial Indicative Service 1	2.393	6.939
<u>82 wagon train</u>  25 tonne maximum axle load 80 kph maximum speed (loaded) 80 kph maximum speed (empty) 82 wagon train length section run times as per applicable Hunter Valley standard working timetable	Pricing Zone 1: Initial Indicative Service 2	0.844	9.251
	Pricing Zone 3: Initial Indicative Service 1	0.837	5.072

Table sources: See ARTC Proposed Variation, subsection 4.17(d).

The Initial Indicative Access Charges in Table 3 above will apply to the Initial Indicative Services during the first calendar year of the Initial Period (being the period during which the Initial Indicative Services apply under subsection 4.17(b)). Subsection 4.17(c) of the Proposed Variation provides that ARTC will determine, using reasonable endeavours and having regard to available information, Initial Indicative Access Charges for each calendar year of the Initial Period.

Subsection 4.17(c) of the Proposed Variation also requires ARTC to determine charges for other services associated with Coal Access Rights applicable during the Initial Period.

Subsection 4.19(a) of the Proposed Variation requires that ARTC also continue to publish Indicative Access Charges for the current Interim Indicative Services until the Final Indicative Services and the Indicative Access Charges approved by the ACCC come into effect under section 4.18.

In accordance with subsection 4.17(a) of the Proposed Variation, the process in subsection 4.20(f) for dispute of Indicative Access Charges will not apply to the charges in Table 3, but will apply to the Indicative Access Charges published by ARTC for subsequent calendar years of the Initial Period. Access holders may also use the process in subsection 4.20(f) to dispute charges published for the Interim Indicative Services in accordance with subsection 4.20(i).

The June 2011 HVAU contains a grandfathering section which requires that ARTC maintain pricing parity until 31 December 2014 between the two primary existing Interim Indicative Services using the network as at the commencement date (being the 91 and 74 wagon trains in Table 1 above). This grandfathering provision is contained in subsection 4.15(a)(iii) of the June 2011 HVAU. ARTC is not required to maintain pricing parity between the Initial Indicative Service and the existing Interim Indicative Services.

ARTC's supporting documentation provides further detail regarding the Initial Indicative Access Charges, including the factors it has taken into account in determining those charges. ARTC has elected to have regard to the relative impacts of each service on network capacity, coal chain capacity, and consumption of ARTC's resources (specifically maintenance impacts). ARTC has outlined the process by which it has determined the relative impacts as well as the weightings applied to each of the differentiation factors in each pricing zone. ARTC's supporting documentation is available on the ACCC's website.

As noted in section 1.1.3 above, the ACCC's assessment of the Proposed Variation will not consider whether gtkm pricing is the appropriate pricing unit. The review of gtkm pricing will be undertaken as part of the comprehensive Final Indicative Service assessment outlined in subsection 4.18(b) of the June 2011 HVAU.

#### **Questions for comment**

- Are ARTC's proposed Indicative Access Charges for the Initial Indicative Services appropriate?
- Does ARTC's proposed Indicative Access Charges for the Initial Indicative Services provide appropriate efficiency incentives for access holders and operators?
- Are the factors to which ARTC has had regard in determining the Initial Indicative Access Charges (being the impact on network capacity, coal chain capacity and maintenance) appropriate?

- Are the weightings applied by ARTC to the key differentiation factors in each pricing zone appropriate?
- ARTC has previously advised access holders of the Interim Indicative Access Charges that will apply to Interim Indicative Services in 2012. Having regard to the grandfathering requirements in subsection 4.15(a)(iii) of the June 2011 HVAU, are ARTC's proposed Access Charges for the Interim and Initial Indicative Services appropriate?

When considering the questions above, interested parties are encouraged to refer to the matters listed in subsection 44ZZA(3) of the Act (see section 3 of this document).

## **2.3 Minor drafting amendments**

ARTC has made a number of other drafting changes in the Proposed Variation. In particular, ARTC has proposed to remove the process for determining the Initial Indicative Services contained in subsections 4.17(a) to (c) of the June 2011 HVAU. ARTC has also proposed several additional defined terms including:

- Final Indicative Services
- Initial Indicative Access Charges
- Initial Indicative Services
- Initial Period.

These additional drafting changes can be viewed in the marked up version of the June 2011 HVAU at Attachment A, Annexure 1 to ARTC's application to vary the June 2011 HVAU, which is available on the ACCC's website.

### **Questions for comment**

- Are the additional drafting changes in the Proposed Variation appropriate?
- Is the drafting of the Proposed Variation sufficiently clear and transparent?

When considering the questions above, interested parties are encouraged to refer to the matters listed in subsection 44ZZA(3) of the Act (see section 3 of this document).

## 3 Appendix: Background Information

### 3.1 Legal test for accepting an access undertaking variation

Under paragraph 44ZZA(7)(b) of the Act, an access provider may withdraw or vary an access undertaking at any time after it has been accepted by the ACCC, but only with the consent of the ACCC.

If the ACCC consents to the variation, the provider is required to offer third party access in accordance with the varied access undertaking. An access undertaking is binding on the access provider and can be enforced in the Federal Court upon application by the ACCC.

Subsection 44ZZA(7) allows the ACCC to consent to a variation of an accepted access undertaking if it thinks it appropriate to do so, having regard to the matters contained in subsection 44ZZA(3), which are:

- the objects of Part IIIA of the Act, which are to:
  - promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and
  - provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry;
- the pricing principles specified in section 44ZZCA of the Act (see further below);
- the legitimate business interests of the provider of the service;
- the public interest, including the public interest in having competition in markets (whether or not in Australia);
- the interests of persons who might want access to the service;
- whether the undertaking is in accordance with an access code that applies to the service; and
- any other matters that the ACCC thinks are relevant.

In relation to the pricing principles, section 44ZZCA of the Act provides that:

- regulated access prices should:
  - be set so as to generate expected revenue for a regulated service that is at least sufficient to meet the efficient costs of providing access to the regulated service or services; and
  - include a return on investment commensurate with the regulatory and commercial risks involved; and

- access price structures should:
  - allow multi-part pricing and price discrimination when it aids efficiency; and
  - not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and
- access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

## 3.2 Timeframes for ACCC decisions and clock-stoppers

Subsection 44ZZBC(1) of the Act provides that the ACCC must make a decision on an access undertaking application within the period of 180 days starting at the start of the day the application is received (referred to as ‘the expected period’). A request made to the ACCC for the withdrawal or variation of an access undertaking is an access undertaking application.

If the ACCC does not publish a decision on an access undertaking application under section 44ZZBE of the Act within the expected period, it is taken, immediately after the end of the expected period, to have:

- made a decision to not accept the application; and
- published its decision under section 44ZZBE and its reasons for that decision: see section 44ZZBC(6).

The Act contains ‘clock-stoppers’ that mean certain time periods are not taken into account when determining the expected period (see subsection 44ZZBC(2)). In particular, the clock may be stopped:

- by written agreement between the ACCC and the access provider (in this case, ARTC), and such agreement must be published: subsections 44ZZBC(4) and (5);
- if the ACCC gives a notice under subsection 44ZZBCA(1) requesting information in relation to the application;
- if a notice is published under subsection 44ZZBD(1) inviting public submissions in relation to the application;
- if a decision is published under subsection 44ZZCB(4) deferring consideration of whether to accept the access undertaking, in whole or in part, while the ACCC arbitrates an access dispute.

### 3.2.1 Information requests

Subsection 44ZZBCA(1) provides that the ACCC may give a person a written notice requesting the person give to the ACCC, within a specified period, information of a



kind specified in the notice that the ACCC considers may be relevant to making a decision on an access undertaking application.

As noted above, the period within which the ACCC requests information constitutes a clock-stopper.