



AUSTRALIAN RAIL TRACK CORPORATION LTD

15 August 2012

Mr Matthew Schroder
General Manager, Fuel, Transport & Prices Oversight
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

By email: matthew.schroder@accc.gov.au

Dear Mr Schroder

Variation of Hunter Valley Coal Network Access Undertaking (HVAU) to incorporate the Initial Indicative Service – withdrawal of variation application

ARTC refers to ARTC's application to vary the HVAU submitted to the ACCC for consideration on 2 December 2011 to incorporate the initial indicative service (IIS) and indicative access charges (IIAC) developed in accordance with section 4.17 of the HVAU (**Proposed Variation**).

ARTC has worked, and will continue to work, with the ACCC to address commercial and drafting issues identified by the ACCC in its consideration of the Proposed Variation. ARTC has undertaken an iterative process with the ACCC and industry stakeholders in order to address the various issues and concerns raised by the ACCC in its formal information request issued on 15 February 2012 (**Information Request**) and position paper issued on 9 May 2012 (**Position Paper**). It is ARTC's belief that this process has resulted in positive outcomes and a number of amendments which improve the Proposed Variation.

On 13 July 2012, ARTC requested the ACCC's views on its proposal to defer the implementation of the IIAC and charges for other services until 1 January 2013 to avoid contractual uncertainties in relation to how the IIAC would be applied in the 2012 calendar year (**ARTC Proposal**).

The ACCC has informally advised ARTC that it is unlikely to consider the ARTC Proposal as acceptable. Given these issues and the fact that amendments to the Proposed Variation that have already been submitted by ARTC in connection with the ARTC Proposal, ARTC formally withdraws the Proposed Variation under section 44ZZA(7)(a) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

In seeking to address the concerns of the ACCC and industry stakeholder in relation to the Proposed Variation as set out in the Information Request, Position Paper and submissions received from industry stakeholders, ARTC proposes to revise the Proposed Variation to remove the ARTC Proposal and incorporate amendments



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proposed by ARTC to address issues raised in the Information Request and Position Paper and resubmit a revised Proposed Variation no later than 7 September 2012.

Please do not hesitate to Simon Ormsby on (08) 82174314 or Gavin Carney on (08) 82174189 if you have any queries in relation to the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Fullerton', is written over a horizontal line.

John Fullerton
Chief Executive Officer