Australian Competition and Consumer Commission

Decision

in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking – Initial Indicative Service variation

17 October 2012

Contents

Glossary

Capitalised terms used in this paper and not listed in this glossary are terms as defined in section 14.1 of the accepted Hunter Valley Access Undertaking (29 June 2011), available on the ACCC's website.

ACCC	Australian Competition and Consumer Commission
ARTC	Australian Rail Track Corporation
Asciano	Asciano Ltd
consist	A train 'consist' is the group of cars (including wagons and locomotives) which make up the train
Coal & Allied	Coal & Allied Industries Ltd
December 2011 Proposed Variation	ARTC's previous proposed variation to the June 2011 HVAU in relation to the Initial Indicative Service, submitted on 2 December 2011
draft revision(s)	Draft revised versions of the HVAU provided by ARTC to the ACCC on 8 March 2012 and 18 July 2012
Final Indicative Service	The services to be determined by ARTC in accordance with section 4.18 of the Revised Variation
gtkm	Gross tonne kilometres
Hunter Valley Rail Network	The rail network in the Hunter Valley owned and operated by ARTC and covered by the HVAU
HVCCC	Hunter Valley Coal Chain Coordinator
HVAU	Hunter Valley Access Undertaking prescribing arrangements for access to ARTC's Hunter Valley Rail Network.
Idemitsu	Idemitsu Australia Resources Pty Ltd
Initial Indicative Access Charges	Charges proposed by ARTC to apply to the Initial Indicative Services
Initial Indicative Services	Those services proposed to form the Initial Indicative Services under section 4.17 of the Revised Variation
Interim Indicative Access Charges	Charges for the Interim Indicative Services to be determined by ARTC in accordance with subsection 4.19 of the HVAU.
Initial Period	The period during which the Initial Indicative Services and Initial Indicative Access Charges will apply, as defined in the Revised Variation.
Interim Services	Those services forming the Interim Indicative Services under the June 2011 HVAU
IPART	Independent Pricing and Regulatory Tribunal
June 2011 HVAU	The Hunter Valley Access Undertaking (HVAU) accepted by the ACCC on 29 June 2011
kgtkm	Thousand gross tonne kilometres

NCIG	Newcastle Coal Infrastructure Group
NPC	Newcastle Port Corporation
NSWMC	New South Wales Minerals Council
Peabody	Peabody Energy Australia Pty Ltd
PN	Pacific National
PWCS	Port Waratah Coal Services
QR National	QR National Ltd
Revised Variation	ARTC’s variation to the June 2011 HVAU in relation to the Initial Indicative Service, submitted on 7 September 2012 and accepted by the ACCC on 17 October 2012
Xstrata	Xstrata Coal (NSW) Pty Ltd
TOP	Take or pay
Track Capacity	The capacity of the Hunter Valley Rail Network (defined in the HVAU as ‘Capacity’).
Whitehaven	Whitehaven Coal Ltd
Yancoal	Yancoal Australia Pty Ltd

Summary

Decision

The Australian Competition and Consumer Commission (**ACCC**) decided, on 17 October 2012, to consent to Australian Rail Track Corporation's (**ARTC's**) 7 September 2012 application to vary the June 2011 Hunter Valley Access Undertaking (**June 2011 HVAU**) to implement the Initial Indicative Service and associated Initial Indicative Access Charges (the **Revised Variation**).

The ACCC has made the decision to consent to this variation under subsection 44ZZA(7) of the *Competition and Consumer Act* 2010 (Cth) (**the Act**) having regard to the matters listed in subsection 44ZZA(3) of the Act.

Purpose of the requirement for ARTC to submit the variation

The purpose of the requirement in section 4.17 of the June 2011 HVAU for ARTC to submit the variation the subject of this decision is to contribute to achieving the most efficient utilisation of Coal Chain Capacity in the Hunter Valley based on existing Hunter Valley Coal Chain Coordinator (**HVCCC**) modelling. More detail about the purpose of the requirement for ARTC to submit the variation is set out at section 1.1 of this document.

This process forms the first stage of a two-stage process towards developing what is termed the Indicative Service. The second stage will require ARTC to determine and submit the characteristics of the efficient train configuration (to be termed the Final Indicative Service) on an optimised coal chain network by 31 December 2013. It is intended that stage two will utilise more advanced HVCCC modelling.

Reasons for decision

The ACCC considers that the Revised Variation adequately addresses concerns raised by the ACCC in relation to the prior variation submitted by ARTC on 2 December 2011 (the **December 2011 Proposed Variation**).

A key concern that the ACCC had with the December 2011 Proposed Variation was that the proposed Initial Indicative Access Charges did not appropriately reflect the relative consumption of Coal Chain Capacity. The ACCC considered that this would not provide appropriate signals for efficient use of and investment in coal supply chain infrastructure. The ACCC was also concerned that there was a lack of transparency in relation to the access charges for various services, and that the drafting of the December 2011 Proposed Variation was not sufficiently clear, particularly regarding the application of the dispute resolution provisions.

The December 2011 Proposed Variation was withdrawn by ARTC on 15 August 2012.

In the Revised Variation ARTC has re-allocated a portion of the Coal Chain Capacity component of charges to the Track Capacity component. The ACCC considers that this is likely to ensure that the impact of Track Capacity on Coal Chain Capacity is better reflected in the differentiated charges and also recognise that there may be other factors which impact Coal Chain Capacity. The ACCC therefore considers that ARTC's revised approach to differentiating charges more accurately reflects Coal

Chain Capacity consumption by various services (compared with the December 2011 Proposed Variation). This issue is discussed in more detail in section 5.2.1 of this decision.

The full reasons for the ACCC's decision are set out in the body of this document.

Consideration of submissions on the Revised Variation

The ACCC conducted a two week public consultation process on the Revised Variation. The reason for the short consultation process was that the lodgement of the Revised Variation followed extensive consultation on the December 2011 Proposed Variation. This assessment included three public consultation processes and a formal request for further information to be provided by ARTC.

The ACCC notes that submissions made in response to the Revised Variation raised concerns about the impact of the Revised Variation on Pricing Zone 3 producers. A key argument raised by Pricing Zone 3 producers is that any pricing differentials applied to the 82 wagon train will not provide incentives for Pricing Zone 3 producers to move to a more efficient, longer and heavier train, as they are unable to do so due to infrastructure constraints. These infrastructure constraints include shorter crossing loop lengths; the presence of old, lighter weight rail; and the grades and highly curved track which exists through the Liverpool Range.

The ACCC accepts that these infrastructure constraints exist at the current time, but notes that the purpose of differentiating charges for particular services is not solely to incentivise moving to the use of more efficient trains; it is also to ensure that charges for particular services reflect the efficient costs of providing those services, including the consumption of capacity.

The ACCC has come to this position taking into account the matters in subsection 44ZZA(3) of the Act. The ACCC considers that taking account of subsection 44ZZA(3)(aa) is particularly relevant to the current application. Subsection 44ZZA(3)(aa) provides for the ACCC to have regard to the objectives of Part IIIA, namely (relevantly) the promotion of the economically efficient operation of, use of and investment in infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets.

The ACCC notes that the current application is primarily concerned with promoting efficiency in the use of capacity. It is concerned with determining coal train configurations that represent 'the most efficient utilisation of Coal Chain Capacity' using existing HVCCC modelling (see section 4.17 of the June 2011 HVAU entitled Initial Indicative Service). For this reason the ACCC considers it is appropriate to place significant weight on subsection 44ZZA(3)(aa), and in particular, in relation to the efficient use of infrastructure, when assessing the Revised Variation.

The reasons that charges that reflect the efficient costs of providing these services will promote efficient operation of, use of and investment in infrastructure by which services are provided are:

- Each producer will be paying charges that more accurately reflect that producer's consumption of capacity (i.e. the cost savings resulting from using the

infrastructure more efficiently will be passed through to the party responsible for those cost savings).

- This means that each producer's supply chain costs will more accurately reflect the consumption of capacity by that producer.

- For the majority of producers, this will send pricing signals that efficient operation and utilisation of the network will be promoted by the use of longer, more efficient trains (although it is noted that Pricing Zone 3 producers are unable, at present, to upgrade to the 96 wagon train).

- It also sends signals about the efficient investment in the rail network (as well as complementary investments). For example, submissions have indicated that investments to upgrade infrastructure in Pricing Zone 3 could allow longer and/or heavier trains to operate in Pricing Zone 3.[1] Charges which accurately reflect the efficient costs (including consumption of capacity) of particular services will more accurately inform commercial decisions regarding whether to make particular investments in infrastructure.

The ACCC considers that this will promote competition in markets (relevant to subsections 44ZZA(3)(aa) and 44ZZA(3)(b)). While the ACCC has not conducted a market definition analysis (such as would occur under Part IV of the Act), and therefore not reached a conclusive view on what constitutes a particular upstream or downstream 'market,' the ACCC notes that the Hunter Valley coal supply chain is predominantly used for the export of coal from Australia, allowing Australian-based coal producers to sell coal to overseas customers.

The ACCC considers that if producers were paying supply chain costs that did not accurately reflect the consumption of capacity by that producer competition in the export of coal may be distorted. For example, were Pricing Zone 1 producers to pay more than the efficient costs of their consumption of capacity, they would be less able to compete effectively in export coal markets. The ACCC considers that producers utilising the more efficient, longer trains ought not pay substantially more than the efficient costs of providing those services.

While the ACCC appreciates that the effect of its decision may be to contribute to higher supply chain costs for Pricing Zone 3 producers in the short term, it notes that this is because these producers consume a greater amount of capacity (on a per tonne basis) than Pricing Zone 1 producers. It would have a distortionary effect on competition in related markets for Pricing Zone 1 producers to contribute substantially more to the costs of the network than that which reflects their consumption of capacity.

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[1] Asciano, *Submission to ACCC Consultation on the ARTC Revised Application to vary the Hunter Valley Access Undertaking*, 26 September 2012, p. 3; Whitehaven Coal, *Submission to the ACCC in relation to ARTC's Revised Initial Indicative Service Variation for the HVAU*, 26 September 2012, p. 3.

Given this, the ACCC considers that it is appropriate for ARTC's charges for particular services to reflect the efficient costs of providing those services, including the consumption of capacity.

The ACCC considers that accepting charges that reflect the efficient costs of providing those services is consistent with the other matters set out in subsection 44ZZA(3).

In terms of the pricing principles in section 44ZZCA, the ACCC notes that regulated access prices should be set so as to generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient costs of providing access to the regulated service or services. In this respect, the ACCC notes that ARTC's Revised Variation provides for prices to reflect the efficient costs of providing the relevant services. This is consistent with section 44ZZCA. To the extent that parties are able to utilise more efficient services, the ACCC also notes that, in accordance with subsection 44ZZCA(c), access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

In terms of the interests of persons that might want access to the service (subsection 44ZZA(3)(c)), the ACCC notes that submissions from access seekers have set out divergent views on the Revised Variation. Contrary to submissions from Pricing Zone 3 producers, submissions made by Coal & Allied and Xstrata in response to the Revised Variation have expressed concern that the magnitude of the pricing differentials in the Revised Variation is still too low and is unlikely to incentivise investment and movement towards the efficient train.[2]

The ACCC must take into consideration the interests of *all* persons that might want access to the service (rather than just the Pricing Zone 1 and 2 or Pricing Zone 3 producers). While these views are divergent, the ACCC considers that on balance the Proposed Variation promotes the interests of persons who might want access to the service by applying charges that are more cost-reflective. The ACCC has had regard to the interests of Pricing Zone 1 and 2 producers in paying access charges that reflect their consumption of Coal Chain Capacity. However, having regard to the interests of Pricing Zone 3 producers, the ACCC considers it is appropriate that ARTC has taken a relatively conservative approach to differentiating charges (compared to the proposal by Coal & Allied), particularly given the current modelling constraints and the transitional nature of the Initial Indicative Service.

Another factor in subsection 44ZZA(3)(a), which is not impacted significantly one way or another by the Proposed Variation, is the legitimate business interests of the provider (subsection 44ZZA(3)(a)). It is noted that ARTC, being under a revenue cap model, will recover its efficient costs from access seekers regardless of the specifics of the Proposed Variation.

The ACCC considers it is appropriate that ARTC's Revised Variation has recognised the importance of consumption of Coal Chain Capacity (which takes into account the

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2 Coal & Allied, *Submission in response to the ACCC's Consultation Paper in reaction to ARTC's revised HVAU variation*, 26 September 2012, p. 1; Xstrata, *Submission re ARTC revised Initial Indicative Service Variation*, 26 September 2012.

whole of the supply chain, rather than just the rail network). As explained in section 3.2.2 of this document the ACCC considers that coal chain alignment considerations are a relevant factor in assessing the Revised Variation in accordance with subsection 44ZZA(3)(e) of the Act.

On balance, the ACCC considers that it is appropriate to accept the Revised Variation because it promotes the objects of Part IIIA (subsection 44ZZA(3)(aa)), it is consistent with the pricing principles in section 44ZZCA (subsection 44ZZA(3)(ab)), it promotes the public interest, including the public interest in having competition in markets (whether or not in Australia) (subsection 44ZZA(3)(b)), and it promotes the alignment of the Hunter Valley coal chain (a relevant 'other matter' in subsection 44ZZA(3)(e)). As noted above the ACCC considers the Revised Variation will have a neutral impact on the legitimate business interests of the provider (subsection 44ZZA(3)(a)) and, on balance, promotes the interests of persons who might want access to the service (subsection 44ZZA(3)(c)).

The ACCC's detailed analysis of the issues raised above is at sections 5.2.1 and 5.2.2 of this document.

The next step – the Final Indicative Service

The ACCC recognises industry concern about the delays and uncertainty around the determination of the efficient train configuration. The ACCC considers that this initial stage has provided both the ACCC and industry with further insight into the longer-term process for determination of the efficient train configuration in the Hunter Valley. The ACCC considers that this experience should inform the development of the Final Indicative Service by ARTC in consultation with industry and the HVCCC.

Section 4.18 of the June 2011 HVAU provides that:

- the process for determination of the Final Indicative Service is intended to be more collaborative and a more robust modelling exercise than the process for determining the Initial Indicative Service; and

- ARTC is required to consider the basis for pricing, including whether gtkm is the appropriate pricing unit to encourage efficient consumption of Track Capacity, when it determines charges for the Final Indicative Services.

In the ACCC's view, successful implementation of the Final Indicative Service is more likely with industry participation in the process, particularly in establishing the assumptions to be used in the HVCCC modelling and the best approach to pricing.

1 Introduction

On 29 June 2011 the ACCC accepted, pursuant to Division 6 of Part IIIA of the Act, the June 2011 HVAU submitted by ARTC for its rail network in the Hunter Valley.

Under subsection 44ZZA(7) of the Act, the ACCC may consent to a variation of an accepted access undertaking if it thinks it appropriate to do so having regard to the matters listed in subsection 44ZZA(3).[3] ARTC submitted the Revised Variation in accordance with subsection 44ZZA(7) on 7 September 2012. The Revised Variation relates to the determination of the Initial Indicative Service in accordance with section 4.17 of the June 2011 HVAU.

1.1 The purpose of the requirement for ARTC to submit the variation

The ACCC considers that the purpose of the requirement for ARTC to submit the variation the subject of this decision is to contribute to achieving the most efficient utilisation of Coal Chain Capacity in the Hunter Valley based on existing HVCCC modelling. The reasons for the ACCC's view are set out below.

ARTC submitted the Revised Variation in order to comply with section 4.17 of the June 2011 HVAU (explained in further detail at section 3.2.1 of this document). In brief, section 4.17 requires ARTC to seek the approval of the ACCC to vary the June 2011 HVAU to adopt what is termed the Initial Indicative Service and associated Initial Indicative Access Charges. The Initial Indicative Service is intended to represent 'the most efficient utilisation of Coal Chain Capacity' as compared to other configurations tested by ARTC using existing HVCC modelling (see subsection 4.17(a)(iii)).

Section 4.17 of the June 2011 HVAU forms the first stage of a two-stage process towards developing what is termed the Indicative Service.

The second stage requires ARTC to determine and submit the characteristics of the efficient train configuration on an optimised coal chain network by 31 December 2013[4], and will utilise more advanced HVCCC modelling.

Stage two (set out in section 4.18 of the June 2011 HVAU) provides for the determination of the Indicative Service, which is to be the service that 'ARTC considers will deliver the optimum utilisation of Coal Chain Capacity, given certain System Assumptions.' The June 2011 HVAU provides that this must be submitted to the ACCC by 31 December 2013.

The ACCC, in assessing ARTC's June 2011 HVAU, recognised that determining optimal service characteristics that promote efficient utilisation of an optimised coal chain may be a complex exercise. The ACCC notes that the two-stage process (outlined above) was endorsed by industry during the ACCC's assessment of the June 2011 HVAU.

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3 See chapter 3 of this document.

4 Refer to subsection 4.18(b) of the June 2011 HVAU.

The ACCC's December 2010 position paper on ARTC's proposed HVAU set out the ACCC's views on the purpose of the processes outlined above. The ACCC said that:

> ...the ACCC considers that the determination and implementation of the efficient train configuration is a key component of the Proposed 2010 HVAU. One of the objects of Part IIIA is to promote the economically efficient operation of, use of and investment in infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets. The ACCC is required to have regard to this object when assessing undertakings under Part IIIA.
>
> The ACCC considers that the determination of an Indicative Service is important to promote the efficient use of the Hunter Valley rail network, as the Indicative Service should be based on the most efficient consumption of rail capacity. While the determination of an efficient train configuration in part moves towards this outcome, the ACCC considers that the fundamental aim is to ensure that the undertaking provides appropriate price signals to ensure that network capacity is consumed efficiently.[5]

1.2 The ACCC's decision

ARTC had previously submitted the December 2011 Proposed Variation to the ACCC. The ACCC formed the preliminary view that this previous variation application was not appropriate to accept, and provided ARTC with guidance on how the application could be revised such that it would be likely to be accepted. The ACCC's views on the December 2011 Proposed Variation are set out in the 9 May 2012 Position Paper. The ACCC also conducted three public consultation processes as part of its assessment of the December 2011 Proposed Variation.

The Revised Variation incorporates revisions to accommodate the ACCC's views from its previous assessment. The ACCC also conducted a two week public consultation process on the Revised Variation.

Having regard to the matters listed in subsection 44ZZA(3) of the Act, the ACCC is of the view that it is appropriate under subsection 44ZZA(7) of the Act to accept ARTC's application, made on 7 September 2012, to vary the June 2011 HVAU.

The ACCC's reasons for this decision are set out in this document.

1.3 Effect of the decision to accept the Revised Variation

The acceptance of ARTC's Revised Variation by the ACCC allows ARTC to:

- vary the June 2011 HVAU in accordance with the changes contained in the Revised Variation;
- implement the Initial Indicative Services, being:
  - for trains originating in Pricing Zones 1 and 2, a 96 wagon service (with additional characteristics as specified in subsection 4.17(d) of the Revised Variation)

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5 ACCC, *Position Paper in relation to the Australian Rail Track Corporation's proposed Hunter Valley Rail Network Access Undertaking*, 21 December 2010, pp. 133-4.

- for trains originating in Pricing Zone 3 (and also running through Pricing Zone 1), an 82 wagon service (with additional characteristics as specified in subsection 4.17(d) of the Revised Variation);

- apply the Initial Indicative Access Charges to the Initial Indicative Services; and

- determine charges for non-indicative services, including the Interim Services.

1.4 Structure of this Decision

This Decision is structured as follows:

Chapter 2 - Background sets out the process that led to the ACCC's decision to accept the June 2011 HVAU, the background to ARTC submitting the Revised Variation, and the process for the ACCC's assessment of the Revised Variation.

Chapter 3 – Decision-making framework provides an overview of the matters that the ACCC must have regard to when assessing a request to vary an access undertaking under Part IIIA of the Act. The chapter also discusses other relevant matters that the ACCC has had regard to in assessing the Revised Variation.

Chapter 4 – The efficient train configuration discusses the characteristics of the proposed Initial Indicative Service, including whether ARTC has complied with the requirements in the June 2011 HVAU.

Chapter 5 – Proposed charges assesses the proposed Initial Indicative Access Charges and the methodology which ARTC has used to differentiate the charges for particular services.

Chapter 6 – Drafting changes considers the drafting changes in the Revised Variation, including the application of the dispute resolution provisions.

Chapter 7 – Appendix A – Legal framework provides additional information on the timeframes for ACCC decisions on access undertaking applications and formal information requests under Part IIIA of the Act.

Chapter 8 – Appendix B – Summaries of submissions provides an overview of submissions received by the ACCC during the assessment of the December 2011 Proposed Variation and the consultation on the Revised Variation.

2 Background

This chapter describes the Hunter Valley rail access arrangements, the context for developing the efficient train configuration for the Initial Indicative Services, and industry consultation on these issues to date.

2.1 Regulatory arrangements

ARTC is a Commonwealth Government owned corporation, established in 1998 for the purpose of managing and providing access to the interstate rail network. The interstate rail network is subject to an access undertaking accepted by the ACCC on 30 July 2008.[6]

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

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 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 HVAU, and previous versions of the HVAU.[7]

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

2.2 Industry context

ARTC is vertically separated, providing ‘below-rail’ track access services and not ‘above-rail’ services such as haulage. Above rail services are provided by QR National, Pacific National, XRail, Southern Shorthaul RailRoad and FLA Coal Haulage.

The Hunter Valley Rail 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. Current forecasts indicate that more than 140 million tonnes will be exported in 2012, worth in excess of $10 billion in export earnings to Australia.[8]

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

7 ARTC formally submitted two versions of the HVAU prior to the 23 June 2011 version that was accepted by the ACCC. These previous versions were submitted on 23 April 2009 and 7 September 2010 respectively.

8 See the HVCCC website at http://www.hvccc.com.au.

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

2.3 Development of the efficient train configuration

Sections 4.17 and 4.18 of the 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.

As set out above in section 1.1, the ACCC considers that the purpose of the requirement for ARTC to submit the variation the subject of this decision is to contribute to achieving the most efficient utilisation of Coal Chain Capacity in the Hunter Valley based on existing HVCCC modelling.

This 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:** Final Indicative Services to be developed within 30 months of commencement in accordance with section 4.18.

The Revised Variation forms part of the transition towards service characteristics that are intended to ultimately promote the efficient operation of, use of and investment in infrastructure.

The Revised 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 Revised Variation has not considered whether gtkm pricing is the appropriate pricing unit. The review of gtkm pricing will be undertaken as part of the Final Indicative Service assessment in accordance with subsection 4.18(b)(i) of the June 2011 HVAU.

2.3.1 ARTC consultation with industry

In accordance with subsection 4.17(b), which requires that ARTC consult with industry, ARTC issued a consultation document on 8 November 2011. This consultation document outlined the process by which ARTC had determined the proposed efficient train configurations, including the efficiency measures used and the number of combinations considered. This process was undertaken in consultation with the 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 1 and 3.[9]

ARTC provided interested parties with two weeks to provide comments in relation to its proposal. ARTC stated that it received submissions from the following parties:

- Xstrata
- Rio Tinto Coal Australia
- QR National
- Asciano
- Anglo Coal
- Peabody
- Hunter Valley Energy Coal (BHP).

Subsection 4.17(c) of the HVAU 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.

2.4 ACCC assessment of the December 2011 Proposed Variation

2.4.1 ACCC public consultation process

The Act provides that the ACCC may invite public submissions on an access undertaking application.[10]

The ACCC published both a Consultation Paper and Position Paper inviting submissions on ARTC's December 2011 Proposed Variation. The ACCC received public submissions from the following parties:

- Peabody – to the Consultation Paper
- Asciano – to both the Consultation Paper and the Position Paper
- Coal & Allied – to both the Consultation Paper and the Position Paper
- QR National – to both the Consultation Paper and the Position Paper
- PWCS – to the Consultation Paper

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9 ARTC, *Industry Consultation Document*, 8 November 2011, pp. 5-6. Trains originating in Pricing Zones 2 and 3 will pass through Pricing Zone 1 to get to port.

10 *Competition and Consumer Act 2010*, subsection 44ZZBD(1).

- Vale – to the Position Paper

On 26 July 2012 the ACCC sent a letter to industry in order to conduct targeted consultation on ARTC's proposal to defer the Initial Indicative Access Charges from coming into effect until 2013. The ACCC received submissions from:

- Xstrata
- Yancoal
- Asciano

A summary of all public submissions received in relation to the December 2011 Proposed Variation is at Appendix B. All public submissions are available on the ACCC's website at:

http://www.accc.gov.au/content/index.phtml?itemId=1029416

2.4.2 ACCC request for information and ARTC draft revision

On 15 February 2012 the ACCC sent a request for information to ARTC under s. 44ZZBCA of the Act. ARTC provided an initial draft of its response on 29 February 2012 and requested feedback from the ACCC. ARTC provided a finalised version of its response on 8 March 2012.

As part of its response to the ACCC's request for information, ARTC provided a draft revision to the December 2011 Proposed Variation, with the aim of addressing certain questions posed by the ACCC. The draft revision was not submitted as a formal replacement of the December 2011 Proposed Variation under consideration by the ACCC. However, the ACCC provided preliminary views on aspects of the draft revision in its 9 May 2012 Position Paper. The Revised Variation largely incorporates the amendments contained in the 8 March 2012 draft revision (along with other amendments to address the ACCC's concerns).

The ACCC's request for information, a public version of ARTC's response, and ARTC's 8 May 2012 draft revision are available on the ACCC's website at:

http://www.accc.gov.au/content/index.phtml/itemId/1038248 .

A summary of ARTC's response to the request for information is at Appendix B.

2.4.3 ACCC request for information from the HVCCC

On 29 March 2012, the ACCC sent an informal request for information to the HVCCC.[11] The purpose of the request was to assist the ACCC in fully understanding the current factors affecting the efficiency of the Hunter Valley coal supply chain, the framework for modelling the Final Indicative Service and better understanding the broader industry context for the December 2011 Proposed Variation. In making its request to the HVCCC, the ACCC had regard to several submissions to the ACCC's Consultation Paper calling for the final modelling to be expedited.

[11] This informal request for information was not issued under section 44ZZBCA of the Act and therefore did not 'stop the clock' under section 44ZZBC of the Act.

On 2 April 2012 the HVCCC provided a confidential response to the request for information. The HVCCC advised that it intended to make its response available to the members of the HVCCC Capacity Management Committee, a sub-committee of the HVCCC's Board upon which all HVCCC members are represented.

2.4.4 ARTC's 18 July 2012 draft revision

On 18 July 2012 ARTC provided a consolidated mark-up of draft amendments to the December 2011 Proposed Variation, which included:

- the draft amendments from the 8 March 2012 draft revision
- draft amendments proposed in ARTC's 28 May 2012 response to the ACCC's Position Paper
- further amendments intended to provide for the deferral of Initial Indicative Access Charges

This draft revision was not submitted as a formal replacement of the December 2011 Proposed Variation, and is available on the ACCC's website.

The Revised Variation largely incorporates the amendments proposed in the 18 July 2012 draft revision, except those relating to the deferral of Initial Indicative Access Charges.

2.5 Consultation on the Revised Variation

On 12 September 2012 the ACCC sent a letter to industry commencing public consultation on the proposed variation. Interested parties were invited to provide submissions by Wednesday 26 September 2012. The ACCC received public submissions from the following parties:

- Whitehaven
- Idemitsu
- Coal & Allied
- Xstrata
- Asciano

A summary of the public submissions received in relation to the Revised Variation is at Appendix B. All public submissions are available on the ACCC's website at:

http://www.accc.gov.au/content/index.phtml?itemId=1029416

3 Decision-making framework

This chapter provides an overview of the framework under which the ACCC has made its decision on ARTC's Revised Variation.

3.1 Legislative framework under Part IIIA

Under subsection 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.[12]

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,[13] 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;[14] 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:

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[12] Section 44ZZJ of the Act
[13] Section 44AA of the Act
[14] There is currently no access code that applies to services provided under the HVAU.

- 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 Other relevant matters

Under subsection 44ZZA(3)(e) of the Act, in deciding whether to accept the variation the ACCC may consider any other matters that it thinks are relevant. In its assessment of the Revised Variation, the ACCC considers that the June 2011 HVAU and the long term solution and supply chain alignment are relevant matters. These matters are discussed below.

3.2.1 The June 2011 HVAU

The ACCC considers that the June 2011 HVAU, in particular the requirements in subsection 4.17 and whether ARTC has complied with those requirements, are matters relevant to the current decision for the purpose of subsection 44ZZA(3)(e) of the Act. The ACCC notes that the Revised 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.*

These arrangements for determination of the Initial Indicative Service were the result of consultation between ARTC and coal industry stakeholders during the development of the June 2011 HVAU.

The ACCC considers that ARTC's compliance with the requirements in section 4.17 of the June 2011 HVAU is in the interests of coal industry stakeholders as it will promote more efficient use of the Hunter Valley Rail Network in the interim, and is a step toward providing efficient investment signals to industry.

As noted above in section 1.1 the ACCC considers that the purpose of the requirement for ARTC to submit the variation the subject of this decision is to contribute to achieving the most efficient utilisation of Coal Chain Capacity in the Hunter Valley based on existing HVCCC modelling. This is because:

- the HVAU states that the Initial Indicative Service is intended to represent 'the most efficient utilisation of Coal Chain Capacity' as compared to other configurations tested by ARTC (see subsection 4.17(a)(iii)); and
- the ACCC, in its December 2010 position paper on ARTC's proposed HVAU noted that the fundamental aim of the determination of the efficient train configuration is to 'ensure that the undertaking provides appropriate price signals to ensure that network capacity is consumed efficiently'.[15]

3.2.2 The long term solution and supply chain alignment

In its decision to accept the June 2011 HVAU the ACCC was of the view that the 'long term solution' for the Hunter Valley export coal supply chain, and the

[15] ACCC, *Position Paper in relation to the Australian Rail Track Corporation's proposed Hunter Valley Rail Network Access Undertaking*, 21 December 2010, pp. 133-4.

significance of the Hunter Valley Rail Network to that supply chain, were relevant matters to which to have regard under subsection 44ZZA(3)(e). The ACCC also recognised the desirability of facilitating 'alignment' across the different elements of the supply chain to seek to achieve the objectives sought by the long term solution.[16] Alignment across the different elements of the supply chain was recognised as being of critical importance throughout the whole of the ACCC's assessment of the HVAU.[17]

A detailed overview of the long term solution is set out in the ACCC's March 2010 Draft Decision in relation to an earlier version of the HVAU.[18] In summary, the long term solution refers to steps taken by participants in the Hunter Valley export coal industry to address capacity constraints that have impacted the supply chain for several years.

Key stages in the process for developing the long term solution, which has been driven by industry participants in conjunction with regulatory bodies, have included:

- a review of the coal chain operations in 2008 by the Hon. Nick Greiner AC, and the subsequent development of a framework to govern the expansion and management of the chain (the Greiner Review);

- the agreement of an Implementation Memorandum in April 2009 between export terminal operators PWCS and Newcastle Coal Infrastructure Group (NCIG), and Newcastle Port Corporation (NPC), to address issues with capacity management at the port; and

- the authorisation by the ACCC in December 2009 of long term 'Capacity Framework Arrangements' agreed between and put forward by the port terminal operators and NPC.[19]

The ACCC's decision to accept ARTC's June 2011 HVAU was another key step in the implementation of the long term solution.

The ACCC continues to view the promotion of alignment between the Hunter Valley Rail Network and other elements of the Hunter Valley coal chain as a key consideration in its assessment of the Revised Variation. The ACCC is of the view that the alignment will promote the interests of access seekers and the public interest, and is likely to promote the efficient operation of, use of and investment in the Hunter Valley Rail Network.

The ACCC also continues to recognise that these alignment considerations are to be viewed alongside the legitimate business interests of ARTC as the access provider and

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16 ACCC, *Final Decision*, 29 June 2011, pp. 31-3.
17 ACCC, *Draft Decision*, 5 March 2010, p. 9; ACCC, *Position Paper in relation to the Australian Rail Track Corporation's proposed Hunter Valley Rail Network Access Undertaking*, 21 December 2010, p. 12; ACCC, *Final Decision*, 29 June 2011, p. 5.
18 ACCC, *Draft Decision*, 5 March 2010, pp. 41-7.
19 See authorisations A91147, A91148, A91149, A91168 and A91169 on the ACCC's website at http://www.accc.gov.au/content/index.phtml/itemId/879882.

the interests of parties using the network other than to transport coal (that is, non-coal users).

Accordingly the ACCC is of the view that alignment considerations are a relevant factor in assessing the Revised Variation for the purposes of subsection 44ZZA(3)(e) of the Act.

4 The efficient train configuration

This chapter sets out the ACCC's decision on particular aspects of ARTC's Revised Variation, including the determination of the efficient train configuration and the proposed Initial Indicative Services.

4.1 The proposed Initial Indicative Services

ARTC is required, under section 4.17 of the June 2011 HVAU, to follow a process for determining the Initial Indicative Service, which includes the following steps:

- select a reasonable number of coal train configurations in addition to those forming the Interim Indicative Services (subsection 4.17(a)(i))
- in consultation with the HVCCC, select the coal train configuration which will represent the most efficient utilisation of Coal Chain Capacity, given the HVCCC modelling existing at the commencement of the June 2011 HVAU (including infrastructure constraints as used by HVCCC modelling) (subsections 4.17(a)(ii) and (iii))
- consult with industry on the proposed Initial Indicative Service (subsection 4.17(b)).

In the Revised Variation, ARTC has proposed the following Initial Indicative Services as those which provide for the most efficient utilisation of Coal Chain Capacity:

- for services commencing in Pricing Zones 1 and 2, a train with the following characteristics:
  - 96 wagon train length
  - 30 tonne maximum axle load
  - 60 kph maximum speed (loaded)
  - 80 kph maximum speed (empty)
  - 1543 metres maximum train length
  - Section run times as per applicable Hunter Valley standard working timetable
- for services commencing in Pricing Zone 3, a train with the following characteristics:
  - 82 wagon train length
  - 25 tonne maximum axle load
  - 80 kph maximum speed (loaded)
  - 80 kph maximum speed (empty)

- 1350 metres maximum train length
- Section run times as per applicable Hunter Valley standard working timetable.

These Initial Indicative Services are the same as those proposed by ARTC in the December 2011 Proposed Variation, except for the addition of the maximum train length characteristic.

4.2 ACCC decision

In the Position Paper, the ACCC took the preliminary view that the Initial Indicative Services proposed by ARTC in the December 2011 Proposed Variation were likely to be appropriate having regard to the matters in s. 44ZZA(3) of the Act and the constraints of the initial modelling.[20] In particular, the ACCC considered that ARTC had complied with the requirements in section 4.17 of the June 2011 HVAU in relation to the process for determining the Initial Indicative Services and the Initial Indicative Charges.

The ACCC notes the submission by QR National that the Initial Indicative Services is of little value, and that a better outcome would be to defer any changes until the development of the Final Indicative Service.[21] The ACCC also recognises Peabody's concerns regarding the limitations of the modelling.[22]

The arrangements for determining the Initial Indicative Service and Final Indicative Service were the result of consultation between ARTC and coal industry stakeholders during the development of the June 2011 HVAU. The ACCC considers that the requirements for the determination of the Initial Indicative Service (in section 4.17) form part of the overall 'package' of terms which were negotiated by ARTC and coal industry stakeholders and subsequently incorporated into the June 2011 HVAU which was accepted by the ACCC. The ACCC does not intend to reopen its decision to accept the balance of terms and conditions contained in the June 2011 HVAU in its assessment of this variation.

The ACCC remains of the view that ARTC has complied with the requirements in section 4.17 of the June 2011 HVAU in relation to the process for determining the Initial Indicative Service(s), including consulting with both the HVCCC and industry. The ACCC also considers that the proposed Initial Indicative Services are likely to promote efficiency in the utilisation of the existing rail network and coal supply chain.

The ACCC notes the submission by Asciano that the definition of efficient train in the June 2011 HVAU should utilise train length or some other clear measure of Coal

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20 ACCC, *Position Paper*, 9 May 2012, p. 29.

21 QR National, *Submission: Position Paper – ARTC's Hunter Valley Rail Network Access Undertaking Variation*, 28 May 2012, p. 2.

22 Peabody, *Submission in response to Australian Rail Track Corporation's Proposed Variation to the June 2011 Hunter Valley Coal Network Access Undertaking*, 25 January 2012, p. 3.

Chain Capacity.[23] The June 2011 HVAU describes the Interim Indicative Services as follows:

- maximum axle load in tonnes
- maximum speed (both loaded and empty) in kilometres per hour
- train length in number of wagons.

However, the ACCC is aware that the proposed Initial Indicative Services assumes the use of newer, shorter wagons in order for the entire configuration not to exceed the length of passing loops in the Hunter Valley Rail Network. The ACCC understands that if a configuration used 96 older style wagons it may not fit on the network given existing constraints, even though it would meet the listed Initial Indicative Service characteristics in terms of maximum axle load, maximum speed, and number of wagons.

In the Revised Variation, ARTC has included 'maximum train length' in metres as a characteristic of the Initial Indicative Services, as follows:

- for the 96 wagon service, a maximum train length of 1543 metres
- for the 82 wagon service, a maximum train length of 1350 metres.[24]

In response to the Revised Variation Asciano submitted that train length, rather than wagon count, should be the determining factor in whether a train is an efficient train, given the potential for there to be variability in the length of wagons. Asciano considered that including both train length (in metres) and wagon count may lead to confusion.[25]

The ACCC considers that the number of wagons is a key characteristic of the Initial Indicative Services, as it is a key determinant of the total amount of coal that a service can carry. Net tonnage is important in determining the impact of a particular service on Coal Chain Capacity and calculating applicable pricing differentials (discussed below in chapter 5). The ACCC therefore considers it would not be appropriate to remove wagon count as a characteristic of the Initial Indicative Services.

However, the ACCC considers it is appropriate to include a maximum train length (in metres) in conjunction with the wagon count, because this clarifies that in order to qualify as an Initial Indicative Service a configuration must have the specified number of wagons and also not exceed the maximum train length (as well as meeting the other applicable characteristics).

The ACCC therefore considers that the need to use certain wagons to ensure that the train length does not exceed the network constraints is sufficiently clear in the

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23 Asciano, *Submission to the ACCC in relation to the ACCC Position Paper on the ARTC's HVAU variation*, May 2012, p. 6.

24 ARTC, *Response to ACCC information request*, 8 March 2012, p. 7.

25 Asciano, *Submission*, 26 September 2012, p. 2.

Revised Variation, and that Access Holders are able to take this into consideration when deciding what service to run.

Given the considerations outlined above, the ACCC considers that the proposed Initial Indicative Services are appropriate having regard to the matters in subsection 44ZZA(3) of the Act and recognising the constraints of the initial modelling.[26]

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[26] The ACCC has had regard to all of the matters listed in subsection 44ZZA(3), in particular the interests of access seekers (subsection 44ZZA(3)(c)) and promoting the economically efficient operation of, use of and investment infrastructure (subsection 44AA(a)).

5 Proposed charges

This chapter sets out the ACCC's decision on the pricing aspects of ARTC's Revised Variation, including the proposed Initial Indicative Access Charges and the level of transparency provided by ARTC.

5.1 The proposed Initial 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.

The Revised Variation provides that the charges in Table 1 below will form the Initial Indicative Access Charges applying to the Initial Indicative Services during 2012.

Table 1: Initial Indicative Access Charges

Initial Indicative Service Assumptions	Pricing Zone	Non-TOP $/kgtkm (ex GST)	TOP $/kgtkm (ex GST)
96 wagon train 30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 96 wagon train length 1543 metres maximum train length section run times as per applicable Hunter Valley standard working timetable	Pricing Zone 1: Initial Indicative Service 1	0.844	8.314
	Pricing Zone 2: Initial Indicative Service 1	2.393	6.920
82 wagon train 25 tonne maximum axle load 80 kph maximum speed (loaded) 80 kph maximum speed (empty) 82 wagon train length 1350 metres maximum train length section run times as per applicable Hunter Valley standard working timetable	Pricing Zone 1: Initial Indicative Service 2	0.812	9.636
	Pricing Zone 3: Initial Indicative Service 1	0.837	5.564

Table sources: See ARTC's Revised Variation, subsection 4.17(d).

Subsection 4.17(c) of the Revised Variation provides that ARTC will, using reasonable endeavours and having regard to available information, determine Initial Indicative Access Charges each calendar year of the Initial Period (being the period during which the Initial Indicative Services apply under subsection 4.17(b)). The Initial Indicative Access Charges in Table 1 above will apply during the first calendar year of the Initial Period.

As the Initial Indicative Services are Indicative Services, in accordance with subsection 4.15 of the Revised Variation the pricing differentials for non-Indicative

Services (including Interim Services) will be calculated in relation to the charges for the Initial Indicative Services.

5.1.1 The process for determining Initial Indicative Access Charges

The June 2011 HVAU does not prescribe a particular process by which ARTC must determine the Initial Indicative Access Charges. However, section 4 of the June 2011 HVAU contains general principles and objectives for setting prices, including the structure of charges for coal access rights (section 4.11) and pricing objectives (section 4.13). Section 4.14 sets out the process by which ARTC will determine Indicative Access Charges each year for the Indicative Services, including by having regard to the system assumptions. The June 2011 HVAU also contains grandfathering provisions for charges for particular Interim Indicative Services in subsection 4.15(a)(iii).[27]

5.1.1.1 Factors used in estimating charges

ARTC's supporting document provides further detail regarding the Initial Indicative Access Charges, including the factors it has taken into account in determining those charges.[28] ARTC elected to have regard to the relative impacts of each service on:

- Track Capacity
- Coal Chain Capacity
- consumption of ARTC's resources, focussed on maintenance impacts (driven by speed and axle load).

In its response to the ACCC's request for information, ARTC outlined the process by which it has determined the relative impacts of each of the differentiation factors in each pricing zone.[29] ARTC also provided guidance as to how it has differentiated the Initial Indicative Access Charges from the Interim Indicative Access Charges, and submitted that it based this differentiation upon the factors prescribed in section 4.15 of the June 2011 HVAU.

ARTC's approach to determining the weightings of the key differentiation factors has been revised since the December 2011 Proposed Variation. Coal Chain Capacity and Track Capacity impacts are weighted equally, compared to two thirds and one third respectively in the December 2011 Proposed Variation. The differences between ARTC's approach in the December 2011 Proposed Variation and the Revised Variation are discussed further in section 5.2.1 below.

5.1.1.2 ARTC's pricing methodology

The ACCC's understanding of ARTC's pricing methodology is summarised below.

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[27] Subsection 4.15(a)(iii) of the June 2011 HVAU requires that ARTC charge the same price for the two primary existing Interim Indicative Services using the network as at the Commencement Date (being the 91 and 74 wagon trains) until 31 December 2014.

[28] ARTC, *Revised application to vary the 2011 Hunter Valley Coal Network Access Undertaking to provide for the adoption of the Initial Indicative Services and Initial Indicative Access Charges in accordance with section 4.17(c)(ii) – Supporting Document*, 7 September 2012, pp. 27-9.

[29] ARTC, *Response to ACCC information request*, 8 March 2012, pp. 13-17.

Pricing Zone 1 – Initial Indicative Access Charges for the 96 wagon train

- The 2012 Interim Indicative Access Charge for the 91 wagon train in Pricing Zone 1 is used as a base for differentiation (that is, for determining price relativities).

- Maintenance expenditure is divided into fixed and variable components. The variable component of maintenance expenditure is included as the non-TOP component of charges and the fixed component of maintenance forms part of the TOP component of charges. ARTC concluded that there is no basis for differentiating maintenance costs between the 96 and 91 wagon train. The average and maximum speeds and axle loads (which influence maintenance costs) are the same for both trains.

- The remainder of the TOP component of charges is differentiated according to relative consumption of Track Capacity and Coal Chain Capacity respectively.

- ARTC has concluded that the 96 and 91 wagon trains consume the same amount of Track Capacity per train path. As charges apply on a per gross tonne kilometre (gtkm) basis, ARTC has applied a negative differential on the TOP component in respect of the 91 wagon train to reflect its lower gross tonnage compared to the 96 wagon train.

- In relation to Coal Chain Capacity, ARTC has applied a 0.5 per cent differential on the TOP component in respect of the 91 wagon train to reflect its lower throughput in terms of tonnage carried compared to the 96 wagon train.[30]

Pricing Zone 1 – Initial Indicative Access Charges for the 82 wagon train

- The Initial Indicative Access Charge for the 96 wagon train in Pricing Zone 1 is used as a base for setting the relative price of the 82 wagon train.

- ARTC has decreased the non-TOP charge of the 82 wagon train relative to the 96 wagon train to reflect the reduced variable maintenance costs resulting from the lighter axle load of the 82 wagon train.[31] ARTC has also applied an 8 per cent differential in fixed maintenance costs (which form part of the TOP charges) to reflect the higher maximum speed of the 82 wagon train.[32]

- In relation to Track Capacity, ARTC has determined that the 82 and 96 wagon trains consume the same amount of Track Capacity per train path. ARTC has therefore applied a 34 per cent differential on the TOP component in respect of the 82 wagon train to reflect its lower gross tonnage compared to the 96 wagon train.[33]

- In relation to Coal Chain Capacity, ARTC has not differentiated the TOP component of the charges between the 96 and 82 wagon trains.

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[30] ARTC, *Supporting documentation*, 2 December 2011, p. 43.
[31] ARTC, *Supporting document*, 7 September 2012, p. 27.
[32] ARTC, *Supporting documentation*, 2 December 2011, p. 39.
[33] ARTC, *Response to ACCC information request*, 8 March 2012, p. 17.

Pricing Zone 2 – Initial Indicative Access Charges for the 96 wagon train

The 2012 Interim Indicative Access Charge for the 91 wagon train in Pricing Zone 2 is used as a base for differentiation. ARTC has applied the same methodology as used to determine the Initial Indicative Access Charges for the 96 wagon train in Pricing Zone 1.

Pricing Zone 3 – Initial Indicative Access Charges for the 82 wagon train

- The 2012 Interim Indicative Access Charge for the 72 wagon train in Pricing Zone 3 is used as a base for differentiation.
- ARTC has concluded that there is no basis to differentiate the non-TOP and TOP components that relate to variable and fixed maintenance costs respectively between the 82 and 72 wagon train, because the average and maximum speeds and axle loads are the same for both trains.
- In relation to Track Capacity, ARTC has concluded that the 82 and 72 wagon trains consume the same amount of Track Capacity per train path. Consequently, as charges apply on a per gtkm basis, ARTC has applied a negative differential to the TOP component in respect of the 82 wagon train to reflect its higher gross tonnage compared to the 72 wagon train.
- In relation to Coal Chain Capacity, ARTC has applied a negative 0.5 per cent differential on the TOP component in respect of the 82 wagon train to reflect its higher throughput in terms of tonnage carried compared to the 72 wagon train.[34]

ARTC's methodology is largely the same as that in the December 2011 Proposed Variation, with the exception of reflecting differences in axle load in the variable maintenance component and weighting the Track Capacity differentiation factor equally with Coal Chain Capacity.[35]

ARTC also has not applied a downwards adjustment to the total TOP component of the access charge in Pricing Zone 3, as it did in the December 2011 Proposed Variation. ARTC stated that this adjustment was made in the December 2011 Proposed Variation to 'offset' the financial impact on Access Holders of the increase in charges for the 82 wagon train in Pricing Zone 1.

5.2 ACCC decision

In the Position Paper, the ACCC identified several concerns with ARTC's proposed Initial Indicative Access Charges, including the approach to applying pricing differentials and pricing transparency. A key concern for the ACCC was that the proposed Initial Indicative Access Charges did not appropriately reflect the relative consumption of Coal Chain Capacity, in particular between the 96 and 82 wagon trains in Pricing Zone 1. The ACCC considered that this would not provide appropriate signals for efficient use of and investment in coal supply chain

[34] ARTC, *Supporting documentation*, 2 December 2011, p. 43.
[35] ARTC, *Supporting document*, 7 September 2012, p. 27.

infrastructure. The ACCC had several other concerns which are discussed below in section 5.2.2.

However, the ACCC considers that ARTC's Revised Variation has adequately addressed the ACCC's concerns that were set out in the Position Paper. The reasons for the ACCC's view are set out below.

5.2.1 Charge differentiation on the basis of Coal Chain Capacity

The ACCC's Position Paper noted that in the December 2011 Proposed Variation ARTC did not differentiate based on Coal Chain Capacity between the 96 and the 82 wagon trains in Pricing Zone 1. The ACCC's Position Paper set out the ACCC's preliminary position that this was not appropriate, as the Initial Indicative Access Charges did not reflect the consumption of Coal Chain Capacity. The ACCC also expressed concerns that the current HVCCC modelling has several limitations which are likely to further mute the impact on Coal Chain Capacity of running particular services.[36]

ARTC provided a number of reasons for its proposal not to differentiate the Coal Chain Capacity component of pricing between the 96 wagon configuration and the 82 wagon configuration in Pricing Zone 1.

First, ARTC noted that producers operating in Pricing Zone 3 are not able to run longer trains than 82 wagons due to existing infrastructure constraints in that zone. ARTC submitted that:

> Providing a pricing incentive for them to do so would not seem to add any value…[37]

Second, ARTC recognised that running only 96 wagon trains in Pricing Zone 1 (instead of both 96 and 82 wagon trains) would increase Coal Chain Capacity utilisation. However, ARTC noted that existing infrastructure constraints currently rule out this option in practice and the HVCCC had not modelled the impact of running only 96 wagon trains. In this respect ARTC noted that: [38]

> ARTC accepts that throughput would be higher if only 96 wagon trains were operated… However the most efficient utilisation of Hunter Valley coal chain must be contemplated in terms of the market being serviced by that coal chain which includes the Gunnedah basin mines… As such, ARTC cannot see any basis for differentiation in terms of Coal Chain Capacity consumption between the 96 and 82 wagon configurations where existing infrastructure constraints are to be applied.[39]

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36 These limitations included that system throughput was assumed to be fixed at 160 mtpa for 2012, and that the modelling did not allow for cargo parcel size (i.e. larger vessels) to adjust to match the greater tonnage carried by a longer train. For further details see pp. 49-51 of the ACCC's 9 May 2012 Position Paper on the December 2011 Proposed Variation.

37 ARTC, *Supporting documentation*, 2 December 2011, p. 18.

38 ARTC, *Response to ACCC information request*, 8 March 2012, p. 19.

39 ARTC, *Supporting documentation*, 2 December 2011, p. 43.

Third, ARTC considered that existing infrastructure constraints mean that an 82 wagon train is the most efficient train that can be run in Pricing Zone 1 when it originates in Pricing Zone 3. ARTC concluded that:

> penalising Pricing Zone 3 producers by differentiating on the basis of coal chain capacity in Pricing Zone 3 when they [are] operating the most efficient configuration that they are able to given the existing infrastructure constraints in Pricing Zone 3 would not be reasonable.[40]

Several submissions by interested parties have commented on the infrastructure constraints faced by producers operating in Pricing Zone 3. These infrastructure constraints include shorter crossing loop lengths; the presence of old, lighter weight rail; and the grades and highly curved track which exists through the Liverpool Range. The ACCC is aware of planned infrastructure upgrades to allow a heavier axle load in Pricing Zone 3 (from 25 to 30 tonnes).[41] The ACCC notes the view of Whitehaven and Idemitsu that the cost of track infrastructure upgrades necessary to allow longer trains (such as the 96 wagon train) in Pricing Zone 3 would be 'prohibitive'.[42]

A contrary view is provided by Asciano, who notes that the infrastructure constraints in Pricing Zone 3 could 'largely be addressed by ARTC' and that:

> a better solution to the issue of the 82 wagon train originating in Pricing Zone 3 is for ARTC to invest in infrastructure in Pricing Zone 3 to allow longer trains to operate in Pricing Zone 3.[43]

The ACCC notes submissions by Whitehaven, Idemitsu and Asciano in response to the Revised Variation expressing concern that access charges under the Revised Variation will 'penalise' producers in Pricing Zone 3 for factors beyond their control (being the infrastructure constraints in Pricing Zone 3).[44] Idemitsu submitted that higher unit costs in Pricing Zone 3 already provide strong incentives to seek efficient utilisation of rail assets, and that pricing signals with significant differentials are 'non-beneficial'.[45]

The ACCC accepts that (at least in the short term) any pricing differentials applied to the 82 wagon train will not provide incentives for Pricing Zone 3 producers to move to a more efficient, longer train, as they are unable to do so. However, the ACCC considers that the purpose of differentiating charges for particular services is not solely to incentivise efficient behaviour; it is also to ensure that charges for particular services reflect the efficient costs of providing those services, including the consumption of capacity.

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40 ARTC, *Supporting documentation*, 2 December 2011, p. 18.

41 Whitehaven, *Submission*, 26 September 2012, p. 3.

42 Whitehaven, *Submission*, 26 September 2012, p. 3; Idemitsu, *Submission on ARTC's Hunter Valley Rail Network Access Undertaking variation: Initial Indicative Service and Access Charges*, 26 September 2012, p. 2.

43 Asciano, *Submission*, 26 September 2012, p. 3.

44 Whitehaven Coal, *Submission*, 26 September 2012, p. 5; Idemitsu, *Submission*, 26 September 2012, p. 4; Asciano, *Submission*, 26 September 2012, p. 3.

45 Idemitsu, *Submission*, 26 September 2012, p. 3.

The ACCC has come to this position taking into account the matters in section 44ZZA(3) of the Act. The ACCC considers that taking account of subsection 44ZZA(3)(aa) is particularly relevant to the current application. Section 44ZZA(3)(aa) provides for the Commission to have regard to the objectives of Part IIIA, namely (relevantly) the promotion of the economically efficient operation of, use of and investment in infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets.

The ACCC notes that the current application is primarily concerned with efficiency in the use of capacity. It is concerned with determining coal train configurations that represent "the most efficient utilisation of Coal Chain Capacity" using existing HVCCC modelling (see section 4.17 of the HVAU entitled Initial Indicative Service). For this reason the ACCC considers it is appropriate to place significant weight on subsection 44ZZA(3)(aa), and in particular, in relation to the efficient use of infrastructure, when assessing the Revised Variation.

The reasons that charges that reflect the efficient costs of providing these services will promote efficient operation of, use of and investment in infrastructure by which services are provided are:

- Each producer will be paying charges that more accurately reflect that producer's consumption of capacity (i.e. the cost savings resulting from using the infrastructure more efficiently will be passed through to the party responsible for those cost savings).

- This means that each producer's supply chain costs will more accurately reflect the consumption of capacity by that producer.

- For the majority of producers, this will send pricing signals that efficient operation and utilisation of the network will be promoted by the use of longer, more efficient trains (although it is noted that Pricing Zone 3 producers are unable, at present, to upgrade to the 96 wagon train).

- It also sends signals about efficient investment in the rail track (as well as complementary investments). For example, submissions have indicated that investments to upgrade infrastructure in Pricing Zone 3 could allow longer and/or heavier trains to operate in Pricing Zone 3.[46] Charges which accurately reflect the efficient costs (including consumption of capacity) of particular services will more accurately inform commercial decisions regarding whether to make particular investments in infrastructure. This also applies to investments to increase capacity in Pricing Zones 1 and 2.

The ACCC considers that this will promote competition in markets (relevant to subsections 44ZZA(3)(aa) and 44ZZA(3)(b)). While the ACCC has not conducted a market definition analysis (such as would occur under Part IV of the TPA), and therefore not reached a conclusive view on what constitutes a particular upstream or downstream 'market,' the ACCC notes that the Hunter Valley coal supply chain is

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[46] Asciano, *Submission*, 26 September 2012, p.3; Whitehaven, *Submission*, 26 September 2012, p. 3;

predominantly used for the export of coal from Australia, allowing Australian-based coal producers to sell coal to overseas customers.

The ACCC considers that if producers were paying supply chain costs that did not accurately reflect the consumption of capacity by that producer competition in the export of coal may be distorted. For example, were Pricing Zone 1 producers to pay more than the efficient costs of their consumption of capacity, they would be less able to compete effectively in export coal markets.

While the ACCC appreciates that the effect of its decision may be to contribute to higher supply chain costs for Pricing Zone 3 producers in the short term, it notes that this is because these producers consume a greater amount of capacity (on a per gtkm basis) than Pricing Zone 1 producers. It would have a distortionary effect on competition in related markets for Pricing Zone 1 producers to contribute more to the costs of the network than that which reflects their consumption of capacity.

Given this, the ACCC considers that it is appropriate for ARTC's charges for particular services to reflect the efficient costs of providing those services, including the consumption of capacity.

The ACCC considers that accepting charges that reflect the efficient costs of providing those services is consistent with the other matters set out in section 44ZZA(3), including the pricing principles set out in section 44ZZCA.

In terms of the pricing principles in section 44ZZCA, the ACCC notes that regulated access prices should be set so as to generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient costs of providing access to the regulated service or services. In this respect, the ACCC notes that ARTC's Revised Variation provides for prices to reflect the efficient costs of providing the relevant services. This is consistent with section 44ZZCA. To the extent that parties *are* able to utilise more efficient services, the ACCC also notes that, in accordance with subsection 44ZZCA(c), access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

In terms of the interests of persons that might want access to the service (subsection 44ZZA(3)(c), the ACCC notes that submissions from access seekers have set out divergent views on the Revised Variation. Contrary to submissions from Pricing Zone 3 producers, submissions made by Coal & Allied and Xstrata in response to the Revised Variation have expressed concern that the magnitude of the pricing differentials in the Revised Variation are still too low and are unlikely to incentivise investment and movement towards the efficient train. [47]

The ACCC must take into consideration the interests of *all* persons that might want access to the service (rather than just the Pricing Zone 1 and 2 or Pricing Zone 3 producers). While these views are divergent, the ACCC considers that on balance the Proposed Variation promotes the interests of persons who might want access to the service by applying charges that are more cost-reflective. The ACCC has had regard to the interests of Pricing Zone 1 and 2 producers in paying access charges that reflect

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[47] Coal & Allied, *Submission*, 26 September 2012, p. 1; Xstrata, *Submission*, 26 September 2012.

their consumption of Coal Chain Capacity. However, having regard to the interests of Pricing Zone 3 producers, the ACCC considers it is appropriate that ARTC has taken a relatively conservative approach to differentiating charges (compared to the proposal by Coal & Allied), particularly given the current modelling constraints and the transitional nature of the Initial Indicative Service.

Another factor in subsection 44ZZA(3)(a) which is not impacted significantly one way or another by the Proposed Variation is the legitimate business interests of the provider (subsection 44ZZA(3)(a)). It is noted that ARTC, being under a revenue cap model, will recover its efficient costs from access seekers regardless of the specifics of the Proposed Variation.

The ACCC considers it is appropriate that ARTC's Revised Variation has recognised the importance of consumption of Coal Chain Capacity (which takes into account the whole of the supply chain, rather than just the rail network). As explained in section 3.2.2 of this document the ACCC considers that coal chain alignment considerations are a relevant factor in assessing the Revised Variation in accordance with subsection 44ZZA(3)(e) of the Act.

The application of pricing differentials is therefore not about 'penalising' the 82 wagon service, but about ensuring that charges for both the 96 and the 82 wagon service accurately reflect their efficient costs, including the consumption of Track Capacity and Coal Chain Capacity.

The ACCC notes Whitehaven's submission that the Revised Variation does not adequately take into account the importance of developing new coal production capacity in the Gunnedah Basin, and does not have regard to:

> the public interest in having economic development in the Gunnedah region and the rail infrastructure servicing the region as well as the public interest in having the increase competition in export and domestic coal markets that results from the development of the Gunnedah Basin mines.[48]

The ACCC notes, as set out above, that the current application is primarily concerned with efficiency in the use of capacity. The focus on efficiency is expressly recognised in section 4.17 of the June 2011 HVAU. However, the ACCC is also required to have regard to the other matters in subsection 44ZZA(3) of the Act, including the 'public interest, including the public interest in having competition in markets' and 'the interests of persons who might want access to the service'.

In this respect, the ACCC must have regard to the interests of producers across all pricing zones in the Hunter Valley rail network, and the public interest in efficient economic development in all relevant regions (including, but not limited to, the Gunnedah Basin). The ACCC does not consider that there is a strong basis upon which it should preference the concerns of Gunnedah Basin producers over producers in other regions of the Hunter Valley. The ACCC understands that the Gunnedah Basin is currently in the 'start-up' phase of production. To the extent that reduced prices are considered necessary during this phase, the appropriate mechanism to

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[48] Whitehaven Coal, *Submission*, 26 September 2012, p. 6.

address this is the loss capitalisation mechanism which applies in Pricing Zone 3. This is discussed in section 5.2.2 of this decision.

The ACCC remains of the view that the infrastructure constraints in Pricing Zone 3 are not a sufficient basis for ARTC to set access charges that do not reflect consumption of Coal Chain Capacity in Pricing Zone 1, particularly given that Pricing Zone 1 is constrained. The ACCC considers that the access charges applied in a particular pricing zone should reflect the costs and capacity impacts in that pricing zone, in order to promote efficient use of and investment in infrastructure and the interests of access seekers in facing charges that accurately reflect their efficient costs.

As noted above the ACCC considers that the Revised Variation will send signals about the efficient investment in the railway (as well as complementary investments). For example, the ACCC is aware of planned infrastructure upgrades to allow a heavier axle load in Pricing Zone 3 (from 25 to 30 tonnes).[49] The ACCC is also aware that additional investments to alleviate infrastructure constraints in Pricing Zone 3 have been subject to consideration by ARTC, such as the new alignment options discussed in ARTC's *Liverpool Range New Route Selection Study*.[50] As stated above, the ACCC considers that charges which accurately reflect the efficient costs (including consumption of capacity) of particular services will more accurately inform commercial decisions regarding whether to make particular investments in infrastructure. Given that efficient use of and investment in the network is likely to reduce congestion, the ACCC considers this will also enable more efficient operation of the network by ARTC.

Vale also expressed concern that ARTC's proposed pricing under the December 2011 Proposed Variation did not consider the loss of Coal Chain Capacity. [51] Asciano also submitted that the low magnitude of pricing relativities implicit in ARTC's December 2011 Proposed Variation did not provide strong pricing signals and incentives to adopt the Initial Indicative Service. [52]

Coal & Allied raised similar concerns in both its submissions and supplementary submissions to the ACCC's consultation processes. Coal & Allied suggested that in the absence of sufficiently accurate modelling of the effect of different train configurations on Coal Chain Capacity, ARTC could use Track Capacity as a proxy for Coal Chain Capacity,[53] or reduce the weighting of Coal Chain Capacity to zero or close to zero until ARTC can model and assess the effects of Coal Chain Capacity consumption.[54] Coal & Allied submitted that 'given the current industry context of severe Coal Chain Capacity constraints... sending pricing signals regarding the efficient use of Coal chain capacity is of critical importance.'[55]The weightings of the

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49 Whitehaven, *Submission*, 26 September 2012, p. 3

50 ARTC, *Liverpool Range New Route Selection Study Project Conclusions*, 18 January 2007.

51 Vale, *Submission re Position Paper in relation to ARTC's Hunter Valley Rail Network Access Undertaking variation*, 24 May 2012, p. 2.

52 Asciano, *Submission*, May 2012, p. 6.

53 Coal & Allied, *Submission in response to the Australian Competition and Consumer Commission's Consultation Paper in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking variation*, 27 January 2012, p. 10.

54 Coal & Allied, *Supplementary Submission*, June 2012, p. 3.

55 Coal & Allied, *Submission*, 26 September 2012, p. 1.

key differentiation factors proposed by ARTC in the December 2011 Proposed Variation are set out in Table 2.

Table 2: Differentiation factors in the December 2011 Proposed Variation

Pricing Zone	Maintenance	Coal Chain Capacity	Capacity
1	19%	54%	27%
2	35%	43%	22%
3	13%	58%	29%

Table sources: See ARTC Supporting Submission, 2 December 2011.

ARTC submitted that the weightings in the December 2011 Proposed Variation were derived as follows:

- Differentiation based on maintenance impacts will be weighted by reference to the proportion of maintenance expenditure forecast in Economic Cost for each Pricing Zone in 2012. Differential will be applied across the non-TOP and TOP components on the initial Indicative Access Charges. These proportions are 19% (Pricing Zone 1), 35% (Pricing Zone 2) and 13% (Pricing Zone 3) as forecasted in 2012.

- The remaining weightings in each Pricing Zone (representing other operating costs and capital costs) would be allocation to Capacity and Coal Chain Capacity considerations.

In the December 2011 Proposed Variation ARTC weighted Coal Chain Capacity considerations two thirds and Track Capacity considerations one third, in recognition of the importance placed by the coal industry on efficient utilisation of Coal Chain Capacity.[56]

The ACCC considers that applying a relatively high weighting to Coal Chain Capacity would be appropriate in circumstances where it is sufficiently accurately captured by the modelling. However, the ACCC considers it is difficult to justify a high weighting given the limitations of the current modelling of Coal Chain Capacity, particularly given that the relative impact of the 82 wagon train and the 96 wagon train in Pricing Zone 1 has not been modelled at all.

While the ACCC accepts that the allocation of full economic cost to particular services may be difficult, failing to account for the impact of the 82 wagon train on Coal Chain Capacity results in the allocation of a lower proportion of full economic cost to users of the 82 wagon train, and a relatively higher allocation to those running other trains, including the more efficient 96 wagon train.

In the Revised Variation ARTC has proposed to address the ACCC’s concerns by reducing the weighting of Coal Chain Capacity so that it is weighted equally with

56 ARTC, *Supporting Documentation*, 2 December 2011, pp. 44-5.

Track Capacity. ARTC stated in its supporting document that this is likely to ‘result in pricing that more closely reflect an appropriate allocation of ARTC’s costs’ and will still maintain ‘a relatively conservative approach to setting price differentials in the short term’.[57]

Re-allocating a portion of the Coal Chain Capacity component of charges to the Track Capacity component reflects the impact of Track Capacity on Coal Chain Capacity in the context of the limitations of the current Coal Chain Capacity modelling. Submissions by Xstrata and Coal & Allied expressed the view that Track Capacity represents the major constraint on Coal Chain Capacity, and is likely to do so for several years.[58] Asciano also submitted that ‘rail congestion is the largest issue currently facing the Hunter Valley coal chain’.[59] Whitehaven submitted that the weightings applied to the revised differentials are arbitrary and ‘unlikely to be correct considering the importance of factors other than Track Capacity in optimising Coal Chain Capacity’.[60] Idemitsu also stated that the revised weightings are arbitrary, but that they are appropriate rather than reducing Coal Chain Capacity weighting to zero.[61]

While a portion of the charges remains allocated to Coal Chain Capacity and reflects the limitations of the current modelling and the lack of differentiation between the 96 and 82 wagon services in Pricing Zone 1, the ACCC recognises that ARTC’s revised approach goes some way to addressing its concerns. Having regard to the divergent views in submissions, ACCC considers that the rebalanced weightings are likely to ensure the impact of Track Capacity on Coal Chain Capacity is better reflected in the differentiated charges, and also recognise that there may be other factors which impact Coal Chain Capacity.

It is noted that submissions by Coal & Allied, Xstrata and Asciano in response to the Revised Variation expressed concern that the low magnitude of the pricing differentials in the Revised Variation is still unlikely to incentivise investment and movement towards the efficient train. [62]

The ACCC notes that the determination of the Initial Indicative Service is an interim measure which will be superseded by the Final Indicative Service, and considers that, given this, it is not unreasonable that ARTC wishes to take a conservative approach in differentiating charges.

The ACCC considers that ARTC’s revised approach more accurately reflects Coal Chain Capacity consumption by various services (compared with the December 2011 Proposed Variation) and also recognises the interim nature of the Initial Indicative Services.

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57 ARTC, *Supporting document*, 7 September 2012, p. 22.
58 Coal & Allied, *Submission*, 26 September 2012, p. 2; Xstrata, *Submission*, 26 September 2012.
59 Asciano, *Submission*, 26 September 2012, p. 2
60 Whitehaven, *Submission*, 26 September 2012, pp. 5-6.
61 Idemitsu, *Submission*, 26 September 2012, p. 5.
62 Coal & Allied, *Submission*, 26 September 2012, p. 1; Xstrata, *Submission*, 26 September 2012; Asciano, *Submission*, 26 September 2012, p. 3.

On balance, the ACCC considers that it would be appropriate to accept the Revised Variation because it promotes the objects of Part IIIA (subsection 44ZZA(3)(aa)), it is consistent with the pricing principles in section 44ZZCA (subsection 44ZZA(3)(ab)), it promotes the public interest, including the public interest in having competition in markets (whether or not in Australia) (subsection 44ZZA(3)(b)), and it promotes the alignment of the Hunter Valley coal chain (a relevant 'other matter' in section 44ZZA(3)(e)). As noted above the ACCC considers the Revised Variation will have a neutral impact on the legitimate business interests of the provider (subsection 44ZZA(3)(a)) and, on balance, promotes the interests of persons who might want access to the service (subsection 44ZZA(3)(c)).

The ACCC considers that ARTC should have regard to improvements in the accuracy of the HVCCC modelling in setting the methodology for calculating charges for the Final Indicative Services.

5.2.2 Pricing Zone 3 'offset'

In the Position Paper the ACCC expressed concerns that ARTC's proposed Initial Indicative Access Charges for the 82 wagon train in Pricing Zone 3 included a downward adjustment to 'offset' the financial impact of the increase in charges for the 82 wagon train in Pricing Zone 1.

In its supplementary submission to the Position Paper, ARTC noted that it is constrained in setting access charges that recover full economic cost due to the volumes currently being transported from Pricing Zone 3. ARTC argued that it is constrained by the market rather than regulation. In addition, ARTC also submitted that the operation of loss capitalisation will, if volumes grow as planned, enable ARTC to recover long term economic cost in Pricing Zone 3 in the longer term.

ARTC has removed the offset in the Revised Variation. In its supporting documentation, ARTC stated that:

> ARTC has elected, under this application, not to incorporate any adjustments in pricing in Pricing Zone 3 in order to take into account additional commercial considerations as described in the Initial Variation Proposal.
>
> Whilst ARTC no longer considers an adjustment is required in relation to this application, ARTC retains its discretion under the HVAU to take into account competing factors outside of cost and efficiency considerations when differentiat[ing] pricing for Coal Access Rights in the future.[63]

Coal & Allied submitted that it is strongly supportive of ARTC's decision in the revised variation not to incorporate the 'distortionary' price adjustments to Pricing Zone 3 producers included in the original proposed variation. Coal & Allied expressed concern, however, that ARTC has only made the commitment to remove the 'distortionary' price adjustments in the initial pricing to be implemented in the variation. Coal & Allied contended that this commitment should extend to the formulation of all future Charges, and be transparent to the ACCC.[64]

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63 ARTC, *Supporting document*, 7 September 2012, p. 28.
64 Coal & Allied, *Submission*, 26 September 2012, p. 2.

However, the ACCC also notes the following submissions by producers in Pricing Zone 3:

- Whitehaven submitted that the ACCC should confirm that ARTC has the discretion to make adjustments for 82 wagon trains in PZ3 under the HVAU;[65]

- Idemitsu submitted that it supports the requirement for a pricing offset in Pricing Zone 3 and ARTC retaining discretion to apply an offset, given that it's view that the development and exploration of new opportunities in Pricing Zones 3 and 4 and beyond are the future of the NSW coal industry.[66]

The ACCC notes that it is an objective under section 4.13 of the June 2011 HVAU for ARTC to set access charges to achieve maximum recovery of full economic costs. However, if ARTC charges less than full economic cost in Pricing Zone 3, the loss capitalisation mechanism will enable ARTC to recover capitalised losses from Access Holders in Pricing Zone 3 once Pricing Zone 3's volumes increase. During the assessment of the June 2011 HVAU the ACCC stated that:

> The intent of loss capitalisation is to allow under-recovery of economic cost for a period and then recovery of the relevant shortfall at a later date. In appropriate circumstances, loss capitalisation may therefore operate to facilitate investment in new assets where there is limited initial demand by allow initial under-recovery of relevant costs in the expectation of 'making up' the shortfall when demand reaches an appropriate level.[67]

As discussed in section 5.2.1 above, the ACCC considers that in Pricing Zone 1 the charges for various services should reflect the relative consumption of Coal Chain Capacity and Track Capacity in that zone. Given that over the long term access charges in Pricing Zone 3 are likely to reflect full economic cost (including any short term capitalised losses), the ACCC accepts that ARTC has the ability to set access charges in Pricing Zone 3 that are less than full economic cost in the short term. To the extent that in future years ARTC considers it necessary to reduce charges faced by Pricing Zone 3 producers in order to reduce its revenue risk, the ACCC considers this may be appropriate. Accordingly, the ACCC considers that ARTC's ability under the HVAU to set charges in Pricing Zone 3 which are less than full economic cost is appropriate having regard to the matters in subsection 44ZZA(3) of the Act, in particular the interests of access seekers and the legitimate business interests of ARTC.[68]

5.2.3 Other concerns outlined in the Position Paper

The ACCC had several other concerns with ARTC's approach to pricing in the December 2011 Proposed Variation, including:

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65 Whitehaven, *Submission*, 26 September 2012, p. 6.

66 Idemitsu, *Submission*, 26 September 2012, pp. 7-8

67 ACCC, *Position Paper in relation to the Australian Rail Track Corporation's proposed Hunter Valley Rail Network Access Undertaking*, 21 December 2010, p. 81.

68 The ACCC considers its decision is not inconsistent with the other matters listed in subsection 44ZZA(3).

- ARTC not reflecting the impact of differences in axle load on the maintenance component of the differentials.

- the proposed TOP charge for the 82 wagon service in Pricing Zone 1 being higher than the current TOP charge for the 72 wagon service, which does not provide the correct incentive for Pricing Zone 3 producers to use the more efficient 82 wagon service.

- ARTC not providing sufficient information to Access Holders regarding the basis on which it differentiates charges for particular services, in order to inform their own investment and contractual decisions, as well as further information about how it intends to determine charges for other services (including the Interim Indicative Access Charges).

ARTC has addressed these concerns in the Revised Variation, as discussed in the sections below.

5.2.3.1 No axle load impact in maintenance differentials

In the Position Paper the ACCC highlighted that ARTC had not reflected the impact of differences in axle load in setting the access charges in Pricing Zone 1 between the 82 and 96 wagon trains even though the 82 wagon train has a lighter axle load than the 96 wagon train.

ARTC acknowledged that this was an 'unintended error in the methodology for some services', and has amended the non-TOP charge in Pricing Zone 1 for the 82 wagon train in order to reflect the correct axle load impact.[69] In addition ARTC has also used actual average speeds rather than modelled average speeds to determine the maintenance impacts in differentiating the non-TOP component of the Initial Indicative Access Charges.[70]

Whitehaven submitted that it supports these changes but also noted that the basis for differentiating maintenance costs will need to be considered more rigorously for the determination of Indicative Access Charges and charge differentials (i.e. the Final Indicative Service).[71]

The ACCC considers that these amendments are appropriate having regard to the matters in subsection 44ZZA(3) of the Act, in particular the interests of access seekers and the objective of promoting the economically efficient operation of, use of and investment in infrastructure, as users will be paying a charge that more accurately reflects the maintenance costs imposed by each service.[72]

On a related issue, Idemitsu considered that ARTC applying an 8 per cent premium on fixed maintenance costs for the 82 wagon train based on higher maximum speeds is not appropriate as it is not clear that a higher maximum speed would lead to

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69 ARTC, *Supporting document*, 7 September 2012, pp. 12, 27.
70 Ibid., p. 27.
71 Whitehaven, *Submission*, 26 September 2012, p. 11.
72 The ACCC considers its decision is consistent with the other matters listed in subsection 44ZZA(3).

significantly higher maintenance costs if trains are not actually running at that speed.[73]

In its response to the ACCC's information request on the December 2011 Proposed Variation, ARTC submitted that it had determined the 'relative fixed [maintenance] cost impacts by applying maximum speed and axle load for each coal train configuration in the loaded and empty direct[ion] separately'.[74]

It is the ACCC's understanding that fixed maintenance costs are intended to reflect the cost of maintaining a certain track standard to accommodate higher maximum speeds of loaded trains. As the Initial Indicative Service characteristics for the 82 wagon train specify a higher maximum speed than the 96 wagon train Initial Indicative Service characteristics, ARTC has applied a 'premium' to reflect this. The ACCC considers that it is appropriate for ARTC to maintain the track to accommodate the higher maximum speed regardless of whether the 82 wagon train is able to run at this higher speed on its entire journey. This ensures that where the 82 wagon train is running at the higher maximum speed the track standard can cope with the extra 'wear and tear'. Therefore the ACCC considers that the fixed maintenance costs are appropriate having regard to the matters in subsection 44ZZA(3) of the Act, in particular the objective of promoting the economically efficient operation of, use of and investment in infrastructure.

5.2.3.2 Differential between the 72 and 82 wagon train

In the Position Paper the ACCC expressed concerns that the directional relativity of the TOP charges between the 72 and 82 wagon services originating in Pricing Zone 3 are not appropriate when they pass through Pricing Zone 1. The proposed TOP charge for the (more efficient) 82 wagon service in Pricing Zone 1 is higher than the current TOP charge for the (less efficient) 72 wagon service. The ACCC considered that this does not provide the correct incentive for Pricing Zone 3 producers to use the more efficient 82 wagon service.

In response to the ACCC's Position Paper, ARTC submitted that it was aware that the 72 wagon TOP charge in Pricing Zone 1 was less than the equivalent 82 wagon TOP charge, however, ARTC noted that it intended to revise the Interim Indicative Access Charges following the approval of the proposed variation by the ACCC:

> ARTC confirms that it intends to revisit the 2012 Interim Indicative Access Charges and charges for other services following approval of the variation. It is intended that any revised Interim Indicative Access Charges and other Charges will be developed on a basis and methodology similar to that used to develop the Initial Indicative Access Charges...[75]

ARTC noted that it was not required to submit the revised Interim Indicative Access Charges and other Charges to the ACCC for approval as part of the Proposed Variation.

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73 Idemitsu, *Submission*, 26 September 2012, p. 6
74 ARTC, *Response to ACCC information request*, 8 March 2012, p. 13.
75 ARTC, *Supplementary Submission*, June 2012, p. 3.

The ACCC is of the view that the relativities between the Initial Indicative Access Charges and other charges are likely to impact on whether Access Holders and Operators have incentives to adopt a more efficient train configuration.

While the ACCC accepts that ARTC is not required to submit its revised Charges for non-Indicative Services for consideration as part of the Revised Variation, the ACCC considers that these charges should be determined on a fair and transparent basis in accordance with the principles in the June 2011 HVAU and the pricing principles in section 44ZZCA of the Act.

In this respect, the ACCC considers that the information provided at pages 8 and 9 of ARTC's application (discussed below in relation to pricing transparency) provides the ACCC with sufficient certainty about the methodology that ARTC will use to determine its access charges.[76] As a result, the ACCC is satisfied that ARTC will amend the perverse pricing differential between the 72 and 82 wagon train TOP charge in Pricing Zone 1.

The ACCC notes ARTC's 13 July 2012 letter, which stated that prices for the first contract year are fixed under existing Access Holder Agreements, and therefore ARTC is unable to unilaterally vary existing Access Holders' prices for the 2012 calendar year in order to impose revised charges.

The ACCC accepts that ARTC may be unable to unilaterally vary contracts, and that therefore the charge for the 72 wagon service in Pricing Zone 1 may remain unchanged in particular parties' contracts for the remainder of 2012. This is discussed further in section 5.2.3 below. However, the ACCC considers that this perverse incentive is unlikely to have any significant effect given that it will apply for only a short time and that ARTC intends to rectify it in the 2013 suite of charges.

5.2.3.3 Pricing transparency

In the Position Paper the ACCC considered that access seekers should have sufficient information to be able to calculate, with a reasonable degree of certainty, the likely direction and estimated magnitude of pricing relativities between various services. The ACCC considered that such transparency is necessary to inform investment and contractual decisions by coal industry participants. The ACCC notes the statement by Coal & Allied that:

> Greater transparency at each time Charges are set will facilitate industry's understanding of the factors which contribute to differential pricing and improve their ability to determine how best to achieve efficient use of Network Capacity.[77]

In the supporting documentation to the Revised Variation, ARTC outlined how it intends to determine its access charges for all services running on the Hunter Valley Rail Network. ARTC stated that:

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[76] ARTC, *Application by ARTC to vary the Hunter Valley Access Undertaking to provide for the initial indicative services and initial indicative access charges*, 7 September 2012, pp. 8-9.

[77] Coal & Allied, *Submission*, 27 January 2012, p. 13.

> The following outcomes could be expected to arise where the above basis for determining Initial Indicative Access Charges, Interim Access Charges and Charges for non-Indicative Services is applied.
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> Where:
>
> - all other material aspects of the terms and conditions of access are equal;
> - there are no pricing impacts based on factors prescribed at Sections 4.15(a)(ii), 4.15(a)(iii); and
> - there is no reasonable basis to adjust impacts based on practical considerations,
>
> the following could be expected in a Pricing Zone:
>
> - a negative (positive) price differential will arise where a Service operates with a higher (lower) average or maximum axle load than the Initial Indicative Service due to variable and fixed maintenance impact;
> - a negative (positive) price differential will arise where a Service operates with a higher (lower) average or maximum speed than the Initial Indicative Service due to variable and fixed maintenance impact;
> - a negative (positive) price differential will arise where a Service operates with a lower (higher) gross mass than the Initial Indicative Service due to Capacity impact;
> - a negative (positive) price differential will arise where a Service is shown by available HVCCC modelling in the circumstances (or as contemplated under the 2011 HVAU) consumes more (less) Coal Chain Capacity; and
> - an overall price differential will result from the weighted combination of the above differentials, but a Service consuming, on balance, more of ARTC's maintenance and Capacity resources, and Coal Chain Capacity will result in a negative price differential.[78]

ARTC noted that a 'negative' price differential is taken as leading to a higher price, and a 'positive' price differential is taken as leading to a lower price. ARTC also confirmed that 'it intends to review 2012 Interim Access Charges'. [79]

Similarly, in its latest submission Coal & Allied stated that ARTC's pricing methodology lacks sufficient transparency and that it:

> ...still has concerns regarding the transparency of the pricing methodology ARTC will use in revising Access Charges for the Interim Indicative Services. ARTC has provided only an indication as to the methodology it will use with no clear statement that the methodology will be the same as that for Initial Indicative Services.[80]

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78 ARTC, *Application by ARTC to vary the HVAU*, 7 September 2012, pp. 8-9.
79 ARTC, *Supporting document*, 7 September 2012, p. 11.
80 Coal & Allied, *Submission*, 26 September 2012, p. 3.

Coal & Allied also considered that additional information, such as GTK's for each service by Pricing Zone would be useful; aggregated if necessary to address any confidentiality concerns.[81]

Asciano submitted that ARTC should provide sufficient data to allow access holders and operators to estimate a likely price from the existing series of determined price points.[82] In this regard, the ACCC also notes that prices for non-Indicative Services are required to be published by ARTC under subsection 2.6(b)(iv) of the June 2011 HVAU.

The ACCC notes Asciano's submission that the weightings proposed by ARTC to determine the Access Charges should be 'confirmed' and transparent in order to ensure efficient investment and operating decisions. [83] The ACCC agrees that the weightings used to determine Access Charges should be transparent, however, given that the maintenance component is based on the forecast maintenance expenditure, the ACCC notes that the weighting applied to this component may vary in subsequent years. As discussed in section 5.2.1, the ACCC considers that ARTC should have regard to improvements in the accuracy of the HVCCC modelling in setting the methodology for calculating Access Charges for the Final Indicative Services.

The ACCC considers that the information provided by ARTC in its supporting documentation, combined with the suite of prices to be published under section 2.6(b)(iv) of the June 2011 HVAU, should provide sufficient pricing transparency to industry. In addition, the ACCC considers that ARTC's methodology accords with section 4 of the June 2011 HVAU which, as discussed in section 3.2 of this decision, is a relevant consideration under subsection 44ZZA(3)(e) of the Act.[84]

5.2.4 Grandfathering

During the ACCC's assessment of the December 2011 Proposed Variation and Revised Variation several submissions have called for changes to the grandfathering provisions under the June 2011 HVAU. The current provision, subsection 4.15(a)(iii), provides that TOP and Non-TOP prices may be the same for both Interim Indicative Services in Pricing Zones 1 and 2 (that is, the 91 and the 74 wagon services) until 31 December 2014.

Submissions by QR National and Peabody in response to the December 2011 Proposed Variation called for the grandfathering period to be extended.[85] Asciano called for the grandfathering of 'evidently inefficient trains' to be removed, so that those trains would pay their true costs. However, Asciano considered that grandfathering protections should apply to services 'operating at the maximum length

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81 Ibid.

82 Asciano, *Submission*, May 2012, p. 10.

83 Asciano, *Submission*, 26 September 2012, p. 4.

84 The ACCC has had regard to all of the matters listed in subsection 44ZZA(3), in particular the interests of access seekers and the legitimate business interests of ARTC. The ACCC considers its decision is not inconsistent with the other matters listed in subsection 44ZZA(3).

85 QR National, *Submission*, 28 May 2012, p. 3; Peabody, *Submission*, 25 January 2012, p. 2

allowed by infrastructure constraints at the time of service commencement' as these services are 'in essence efficient trains'.[86]

In response to the Revised Variation, Xstrata submitted that it is concerned about the timeliness of the process for introducing the Initial Indicative Service and that the period of time allowed for grandfathering of existing trains and adopting the Final Indicative Service is 'too long' and should be reduced.[87] Whitehaven submitted that the 72 wagon service should also be covered by the grandfathering provision and stated that it is 'inequitable to penalise efficient Zone 3 trains during any period when the grandfathering protection for 74 and 91 wagon trains in Zone 1 continues to operate'.[88]

The ACCC considers that subsection 4.15(a)(iii) forms part of the overall 'package' of terms which were negotiated by ARTC and coal industry stakeholders and subsequently incorporated into the June 2011 HVAU. In its decision to accept the June 2011 HVAU the ACCC noted statements made by ARTC in its letter of 6 May 2009, including that it was committing to maintain pricing parity between the two key existing train types operating in the Hunter Valley for not less than five years. The ACCC took the view that while the 6 May 2009 letter should not limit its consideration of the appropriate pricing approach under the HVAU, it was appropriate for the HVAU to incorporate grandfathering arrangements to ensure that those parties that had invested in good faith on the basis of ARTC's statement have sufficient time to adjust to the new arrangements, once determined.[89]

The ACCC does not intend to reopen its decision to accept the balance of terms and conditions contained in the June 2011 HVAU in its assessment of this variation by removing or extending the scope of the grandfathering provisions in subsection 4.15(a)(iii).

5.2.5 Conclusion

For the reasons set out above the ACCC considers that ARTC's proposed Initial Indicative Access Charges (in the Revised Variation) now appropriately reflect the relative consumption of Coal Chain Capacity by particular services and should promote the efficient use of and investment in coal supply chain infrastructure. The ACCC considers that these charges are appropriate having regard to the matters listed in subsection 44ZZA(3) of the Act.

It should also be noted that the ACCC's assessment of the Revised Variation has not considered whether gtkm pricing is the appropriate pricing unit. The review of gtkm pricing will be undertaken as part of the Final Indicative Service assessment in accordance with subsection 4.18(b)(i) of the June 2011 HVAU. During the assessment of the June 2011 HVAU and the December 2011 Proposed Variation, submissions proposed alternative charging structures such as:

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86 Asciano, *Submission*, May 2012, pp. 6-7.

87 Xstrata, *Submission*, 26 September 2012.

88 Whitehaven, *Submission*, 26 September 2012, p. 5.

89 ACCC, *Decision in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Undertaking*, 29 June 2011, p. 54.

- charges based on a per train or per train kilometre basis
- a two-part tariff where variable maintenance charges could be priced on a gtkm basis and the TOP charge would be based on a per train basis[90]
- a train path price based on the characteristics of the Final Indicative Service (i.e. if a shorter train configuration was used, the per tonne cost would be higher, giving an incentive to make better use of Track Capacity).

The ACCC encourages ARTC to consult with the HVCCC and industry on the best approach to pricing for the Final Indicative Service in accordance with section 4.18 of the June 2011 HVAU.

90 Coal & Allied, *Submission in response to the ACCC's consultation paper in relation to ARTC's proposed Hunter Valley rail network access undertaking*, 25 October 2010, pp. 79-86.

6 Drafting changes

This chapter sets out the ACCC's decision on ARTC's proposed drafting of the Revised Variation, in particular the continuation of the Interim Indicative Services and the application of the dispute resolution provisions.

6.1 The proposed drafting changes

ARTC made a number of drafting changes in the Revised Variation, in addition to the changes required to implement the proposed Initial Indicative Services and access charges (discussed in chapters 4 and 5). These 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.

The Revised Variation continues the Interim Period, during which the Interim Services and the Interim Access Charges apply, until the Final Indicative Service is implemented. This means the Interim Period and the Initial Period will run concurrently, and has implications for the application of the dispute resolution provisions in subsections 4.15(d) and 4.20(f) of the June 2011 HVAU. This proposed change is discussed further in sections 6.2.1 and 6.2.2 below.

The drafting of the Revised Variation generally reflects the drafting of the December 2011 Proposed Variation with the addition of several further amendments to address the ACCC's concerns outlined in the Position Paper. These further amendments were included in draft revisions provided by ARTC during the ACCC's assessment of the December 2011 Proposed Variation, which are available on the ACCC's website and were subject to consultation with interested parties.[91]

6.2 ACCC decision

6.2.1 Continuation of the Interim Period

The Revised Variation provides that the Interim Period will apply until the Final Indicative Services and the Indicative Access Charges approved by the ACCC come into effect under section 4.18. Taken with the proposed definition of the Initial Period, this provides that the Interim Services (and applicable charges) and the Initial Indicative Services (and applicable charges) will apply concurrently. ARTC has also amended the defined terms to clarify that the Interim Services are not "indicative" services as follows:

- 'Interim Indicative Services' have become 'Interim Services'
- 'Interim Indicative Access Charges' have become 'Interim Access Charges'.

Under the June 2011 HVAU it was not envisaged that the Interim Period would continue once the 'initial' Indicative Services (now Initial Indicative Services) under section 4.17 were approved. The Interim Period was defined as the period between the commencement of the June 2011 HVAU and the time the Indicative Services

[91] Further detail on the draft revisions is contained in sections 2.4.2 and 2.4.4 of this Decision.

approved by the ACCC came into effect under section 4.17 of the June 2011 HVAU (or, if not approved, the ‘final’ Indicative Services approved by the ACCC under section 4.18).

While the Interim Indicative Services will not constitute Indicative Services under the Revised Variation ARTC will be required to continue to:

- publish the Interim Access Charges applicable to the Interim Services each calendar year (in accordance with subsection 4.20(g) of the Revised Variation); and

- offer the Interim Access Charges to Applicants seeking Coal Access Rights with applicable Interim Indicative Services characteristics (in accordance with subsection 4.19(d) of the Revised Variation).

In the Position Paper, the ACCC was of the view that continuing the Interim Period would provide additional transparency and certainty to those access seekers continuing to utilise the Interim Services following acceptance of the December 2011 Proposed Variation. Further, the services to which the grandfathering provisions in subsection 4.15(a)(iii) of the June 2011 HVAU apply are Interim Services, and continuing to publish the charges applicable to these services provides transparency around ARTC’s compliance with subsection 4.15(a)(iii).

Asciano has expressed concern that the extension of the Interim Period until the implementation of the Final Indicative Service will add to Hunter valley rail congestion by continuing the Interim Access Charges, thereby removing efficient price signalling which would otherwise have encouraged the operation of efficient trains.[92] The ACCC notes that while the extension of the Interim Period requires ARTC to continue to publish the Interim Access Charges, it does not continue the application of those charges which currently apply to the Interim Indicative Services. On the contrary, ARTC has stated that it intends to revise the Interim Access Charges following the approval of the Revised Variation by the ACCC, as discussed above in sections 5.2.3.2 and 5.2.3.3.

The ACCC remains of the view that continuing the Interim Period concurrently with the Initial Period is appropriate, having regard to the matters in subsection 44ZZA(3) of the Act, in particular the interests of access seekers.

However, the ACCC expressed concern in the Position Paper that continuing the Interim Period has implications for other provisions in the June 2011 HVAU, including the dispute resolution provisions in subsections 4.15(d) and 4.20(f). The dispute resolution provisions are discussed below.

6.2.2 Dispute resolution

The June 2011 HVAU includes two processes by which access seekers can dispute charges determined by ARTC:

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92 Asciano, *Submission*, 26 September 2012, p. 4.

- under subsection 4.15(d), an access seeker can notify a dispute regarding a Charge for coal access rights other than an Indicative Access Charge. This dispute can be resolved by arbitration.

- under subsection 4.20(f), 'Access Holders holding two thirds or more of the contracted gtkm for Indicative Services in the relevant pricing zone for the next calendar year' may notify a dispute regarding Indicative Access Charges. This dispute can be resolved by arbitration.

In the Position Paper the ACCC was of the view that the application of the dispute resolution provisions to the Initial Indicative Services under the drafting of the December 2011 Proposed Variation was unclear. The ACCC expressed concern that Initial Indicative Services and Initial Indicative Access Charges may not be subject to any dispute resolution provisions, as they would be precluded from both the provisions in subsection 4.15(d) and 4.20(f) of the December 2011 Proposed Variation. The ACCC considered this was not appropriate, and that ARTC should clarify which services are intended to be covered by the provisions in section 4.20 during the concurrent Initial and Interim Periods.

In the Position Paper the ACCC was of the view that the provisions in subsection 4.20 should apply to the Initial Indicative Services, and that it may be appropriate if the provisions also applied to the Interim Indicative Services. In response to the ACCC's request for information, ARTC stated that:

> The "two thirds" rule is necessary to avoid delays and costs to industry arising from an individual dispute which will have implications for all ARTC customers with access rights for Interim Indicative Services and Indicative Services…
>
> Accordingly, the dispute resolution process in section 4.20 will apply when two thirds or more of those Access Holders with Coal Access Rights submit a dispute notice to ARTC within the requisite timeframe in relation to Interim Indicative Services or Indicative Services.[93]

In its Revised Variation ARTC has included several amendments intended to clarify that the dispute resolution provisions in subsection 4.20 will apply to both the Initial Indicative Services and the Interim Services (previously 'Interim Indicative Services'). The ACCC considers that this is appropriate taking into account the matters in subsection 44ZZA(3) of the Act, in particular the interests of access seekers in having clarity regarding the dispute resolution options available to them.

6.2.2.1 Application of the 'two-thirds threshold'

A key feature of the dispute resolution provision in 4.20(f) of the June 2011 HVAU is that it requires a 'threshold' of Access Holders holding at least two thirds of contracted gtkm for Indicative Services in the relevant pricing zone. In the Position Paper, the ACCC was of the view that ARTC should specify how the two-thirds threshold is to be applied if both the Interim Services and Initial Indicative Services are to be covered by the provision in 4.20(f). Specifically, whether the two-thirds threshold would apply:

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[93] ARTC, *Response to ACCC Information Request*, 8 March 2012, p. 27.

- *across* all Access Holders holding Interim and Initial Indicative Services (i.e. the threshold for a dispute relating to either Interim or Initial Indicative Access Charges will be two thirds of all those Access Holders utilising either Interim Indicative Services or Initial Indicative Services), or

- *separately* to those Access Holders holding Interim Indicative Services and those holding Initial Indicative Services (i.e. the threshold for a dispute relating to Initial Indicative Access Charges will be two thirds of those Access Holders utilising Initial Indicative Services, similarly for disputes relating to Interim Indicative Access Charges and those Access Holders utilising Interim Indicative Services).

The ACCC called for submissions on which of these alternatives would be appropriate. Vale and Asciano both submitted that the two thirds threshold should apply separately to those Access Holders holding Interim Indicative Services and those holding Initial Indicative Services.[94] Coal & Allied submitted that the two thirds threshold should apply to users of a particular service, rather than across users of all Initial Indicative Services and all Interim Indicative Services.[95]

In the Revised Variation, ARTC has included subsection 4.20(i) which provides that:

> *To avoid doubt, the requirement in section 4.20(f) to give ARTC a Dispute Notice if Access Holders holding two thirds or more contracted gtkm in the relevant pricing zone dispute Interim Access Charges or Initial Indicative Access Charges applies separately to Access Holders operating Interim Services and Initial Indicative Services in the relevant Pricing Zone (as applicable).*

The ACCC considers that the drafting of subsection 4.20(i) of the Revised Variation provides sufficient clarification that the two-thirds threshold will apply separately to Initial Indicative Services and Interim Services. ARTC has also amended subsection 4.15(e) of the June 2011 HVAU to reflect that subsection 4.20(f) will apply to Interim Services (previously Interim Indicative Services).

The ACCC recognises Coal & Allied's concern that applying the two-thirds requirement across all users of Initial Indicative Services or Interim Services imposes too high a hurdle for Access Holders wishing to dispute charges. The ACCC also recognises ARTC's position that the two-thirds threshold is necessary to avoid delays and costs to industry arising from an individual dispute.

The ACCC considers that applying the two-thirds threshold separately to those Access Holders holding Interim Indicative Services and those holding Initial Indicative Services, but not to each individual service, is consistent with the application of the dispute resolution provisions under the accepted June 2011 HVAU. The ACCC considers that this approach provides an appropriate balance between the objective of allowing access holders to dispute a charge applied to them and avoiding delays and costs to the whole of industry. The ACCC notes that these dispute

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94 Vale, *Submission*, 24 May 2012, p. 2; Asciano, *Submission*, May 2012, p. 13.

95 Coal & Allied, *Submission in response to the ACCC's Position Paper of 9th May 2012 regarding ARTC's Hunter Valley Rail Network Access Undertaking variation*, 24 May 2012, pp. 7-8.

resolution provisions have not yet been tested, and considers that this aspect of the HVAU should be revisited as part of the five year review.

Accordingly, the ACCC considers that the Revised Variation provides sufficient clarity regarding the application of the dispute resolution provisions, and is appropriate having regard to the matters in subsection 44ZZA(3) of the Act, in particular the interests of access seekers and the legitimate business interests of ARTC.[96]

6.2.2.2 Dispute resolution for the Initial Indicative Access Charges during the first calendar year

Subsection 4.17(a) of the Revised Variation provides that the process in subsection 4.20(f) for dispute resolution in relation to Indicative Access Charges will not apply to the 2012 Initial Indicative Access Charges set out in Table 1 of this decision. Given that these charges are also excluded from subsection 4.15(d) (as they are Indicative Access Charges), access seekers will not be able to notify a dispute under either process regarding the 2012 Initial Indicative Access Charges in the Revised Variation.

The 2012 Initial Indicative Access Charges (in the Revised Variation) have been assessed by the ACCC having regard to the interests of access seekers in accordance with subsection 44ZZA(3)(c), as part of the assessment of the December 2011 Proposed Variation and subsequent Revised Variation.

The ACCC remains of the view it expressed in the Position Paper, that because the first set of Initial Indicative Access Charges have been assessed by the ACCC as part of the Revised Variation (i.e. the 2012 Initial Indicative Access Charges) and have been subject to industry consultation, it is appropriate that they are not also subject to dispute resolution provisions.

The ACCC formed this view having regard to the legitimate business interests of ARTC and the interests of access seekers in having certainty regarding the terms of access. The ACCC's assessment of the proposed Initial Indicative Access Charges is detailed in Chapter 5.

As outlined in section 6.2.2 above, in the Revised Variation the Initial Indicative Access Charges for subsequent calendar years of the Initial Period may be disputed by access seekers through the process in subsection 4.20(f) of the June 2011 HVAU.

6.2.3 Drafting amendments proposed by the ACCC in the Position Paper

In the Position Paper, the ACCC noted that the 8 March 2012 draft revision submitted by ARTC included several additional amendments which address some concerns raised by Coal and Allied. These amendments have been retained in the Revised Variation, and the ACCC remains of the view that these amendments are appropriate.

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[96] The ACCC considers its decision is consistent with the other matters listed in subsection 44ZZA(3).

The Position Paper stated that several additional drafting amendments may be required in order for the Revised Variation to be appropriate. The ACCC's view on these drafting amendments is set out below.

6.2.3.1 Annual determination of Initial Indicative Access Charges

The table in section 4.17(d) of the Revised Variation sets out the Initial Indicative Service Assumptions and the TOP and Non-TOP charges which will apply following acceptance of the Revised Variation.

As drafted in the December 2011 Proposed Variation, subsections 4.17(c) and (d) could have been interpreted to mean that the charges in the table would apply for the entire duration of the Initial Period. As stated in the Position Paper, the ACCC considers that this would not be appropriate.

In the Revised Variation ARTC has amended subsection 4.17(c) to provide that:

> *Indicative Access Charges applicable to the Initial Indicative Services ("Initial Indicative Access Charges") will until the expiry of the Initial Period be subject to annual review in accordance with section 4.14.*

The ACCC considers that this change is appropriate as it reflects that the Initial Indicative Access Charges will be determined annually.

6.2.3.2 Determination of non-indicative access charges

The next amendment relates to the publication of charges for services other than the Indicative Services. The ACCC notes the submission by Coal & Allied that the timeframes for publication of charges for non-Indicative Services should be made clear.[97]

In the Position Paper the ACCC was of the view that parties running services other than the Initial and Interim Indicative Services should have sufficient certainty as to the charges they face. Accordingly, the Position Paper stated that a revised variation application should specify that charges for Coal Access Rights other than the Indicative Services (or Interim Indicative Services) will be determined by 1 November each year, at the same time as the Indicative Access Charges.

The ACCC notes ARTC's submission that it is required to consider Indicative Access Charges for Indicative Services when determining charges for non-indicative services, and it is therefore not appropriate to require these charges to be specified at the same time.[98]

The ACCC considers it would be in the interests of access seekers for the HVAU to specify the timeframe for determination of non-Indicative Access Charges. However, the ACCC also recognises the legitimate business interests of ARTC in having flexibility to determine non-indicative access charges following the determination of Indicative Access Charges. ARTC must have regard to a range of factors in determining non-indicative access charges under section 4.15. The ACCC

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[97] Coal & Allied, *Submission*, 27 January 2012, p. 18.
[98] ARTC, *Supporting documentation*, 2 December 2011, p. 39.

understands that in practice ARTC has been determining non-indicative access charges shortly following the determination of Indicative Access Charges.

Accordingly, the ACCC considers that on balance it is appropriate that ARTC has not amended the Revised Variation to require that non-Indicative Access Charges be determined by 1 November each year.

6.2.3.3 Varying existing agreements

Subsection 4.17(e) of the Revised Variation states that:

> *ARTC will offer the applicable Initial Indicative Access Charges to Applicants seeking Coal Access Rights with applicable Initial Indicative Service characteristics during the Initial Period.*

The ACCC notes the submission by Coal & Allied that section 4.17 of the HVAU should provide for the possibility of Access Holders seeking to vary their executed Access Holder Agreements so as to operate the Initial Indicative Services.[99] In the Position Paper, the ACCC agreed with Coal & Allied that a revised variation application should specify that Access Holders will be given the opportunity to vary their access holder agreements during the Initial Period to operate the Initial Indicative Services.

In response to the Position Paper, ARTC submitted that Access Holders have the ability to vary their Access Holder Agreements in order to allow them to run an Initial Indicative service, and that an amendment to the HVAU is not required.[100]

Given that Access Holders are able to vary their Access Holder Agreements to adopt the Initial Indicative Service, the ACCC considers from a practical perspective it is appropriate that the Revised Variation does not expressly provide for this in the HVAU.

6.2.4 Minor drafting changes

The Revised Variation includes a number of minor drafting changes in addition to those outlined in the sections above. The majority of these changes have been retained from the December 2011 Proposed Variation, and there are a small number of additional changes in the Revised Variation.

6.2.4.1 Minor drafting changes retained from the December 2011 Proposed Variation

ARTC has retained the minor drafting changes from the December 2011 Proposed Variation in the Revised Variation.

The ACCC remains of the view expressed in the Position Paper that these changes are appropriate, subject to ARTC addressing the substantive concerns with the December 2011 Proposed Variation regarding dispute resolution (discussed in this chapter) and charges (discussed in Chapter 5). These changes are discussed below.

Removal of the process for determination of the Initial Indicative Service

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[99] Ibid., p. 18.
[100] ARTC, *Submission to ACCC Position Paper*, 28 May 2012, p. 40.

In the Revised Variation ARTC has deleted subsections 4.17 (a), (b) and (c) contained in the June 2011 HVAU. These subsections outlined the process by which the Initial Indicative Services and charges (previously the initial Indicative Service and initial Indicative Access Charge) would be determined and incorporated in the undertaking.

Given that the ACCC has consented to the Revised Variation, ARTC has fulfilled these requirements. Retaining the sections in the HVAU would be of limited value as they would no longer be in operation, and would have the potential to create confusion regarding ARTC's ongoing obligations under the HVAU. The ACCC remains of the view in the Position Paper that this amendment is appropriate.

Pluralised 'Indicative Services'

ARTC has pluralised the term 'Indicative Services' (previously 'Indicative Service'). Subsection 14.2(a) of the HVAU states that unless the context otherwise requires, 'singular words will also have their plural meaning and vice versa'. The ACCC also notes that subsection 4.14(b) of the HVAU states that: 'There may be more than one Indicative Service and Indicative Access Charge within a Pricing Zone.'

The ACCC remains of the view that this change has no material effect on the operation of the HVAU and provides clarity, given that there is more than one Indicative Service proposed to be in effect for the Hunter Valley Rail Network. The ACCC considers that this amendment is appropriate.

Defined Terms

ARTC has included the following additional defined terms in section 14.1 of the Revised Variation, consistent with the December 2011 Proposed Variation:

- <u>'Final Indicative Services'</u> – renamed, previously 'Indicative Services'. ARTC states that this change was made:

  > to provide clarification that the transitional process will end when the indicative services and associated charges are determined in accordance with section 4.18.[101]

- <u>'Initial Indicative Services'</u> – defined as having the characteristics set out in subsection 4.17(d). This is consistent with the terminology used in section 4.17 of the June 2011 HVAU.

- <u>'Initial Indicative Access Charges'</u> – defined as having the meaning given in subsection 4.17(c) of the Revised Variation.

- <u>'Initial Period'</u> – defined as the period from the time the Revised Variation takes effect to the time the ACCC approves the characteristics of the Final Indicative Service under section 4.18 of the HVAU.

The ACCC remains of the view expressed in the Position Paper that these additional defined terms are appropriate as they provide additional clarity and transparency to

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[101] ARTC, *Application by ARTC to vary the Hunter Valley Access Undertaking to provide for the initial indicative services and initial indicative access charges*, 2 December 2011, section 3.

access seekers regarding the operation of the HVAU. In particular, the ACCC notes that the terms ‘Initial Indicative Services’, ‘Initial Indicative Access Charges’, and ‘Initial Period’ are appropriate as they clearly link the Initial Indicative Services with the applicable charges and the period during which they apply.

6.2.4.2 Additional minor drafting changes in the Revised Variation

ARTC has made the following minor drafting changes in the Revised Variation which are additional to those in the December 2011 Proposed Variation:

- ARTC has changed references to service ‘assumptions’ of the Initial Indicative Services and Interim Services to ‘characteristics’. ARTC states that this change has been made to avoid confusion in relation to the defined term ‘System Assumptions’.[102]

- ARTC has removed ‘indicative’ from Interim Services and Interim Access Charges (i.e. previously Interim Indicative Services and Interim Indicative Access Charges). ARTC states that this change has been made to remove any doubt that Interim Services are not “Indicative Services”.[103]

The ACCC considers that these changes are appropriate as they have no material effect on the operation of the June 2011 HVAU and provide additional clarity and transparency to access seekers.

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102 ARTC, *Supporting documentation*, 7 September 2012, p. 34.
103 Ibid.

7 Appendix A – Legal framework

7.1 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 on 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 s. 44ZZBE and its reasons for that decision: see subsection 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.

7.2 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.

Subsection 44ZZBCA(3) states that the ACCC must have regard to any information given in compliance with a notice under subsection 44ZZBCA(1) in making its decision.

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

8 Appendix B – Summaries of submissions

8.1 Submissions in response to the ACCC's Consultation Paper

The ACCC received a number of submissions in response to the ACCC's Consultation Paper on the December 2011 Proposed Variation. Below is a summary of the submissions.

8.1.1 Initial Indicative Services

Peabody: Peabody submitted that ARTC has not considered a sufficient number of configurations and that the modelling is not advanced enough. Peabody suggested that the modelling should have included:

- entry and exit points to the network;
- geographic spread; and
- encouraging alignment in capital investment between above/below rail.[104]

QR National: QR submitted that the process undertaken by ARTC was 'completely inadequate' as ARTC should have considered the impact of above rail efficiency in its modelling, which QR suggested affects overall transportation costs to coal producers.[105]

QR also submitted that ARTC should have considered system velocity as an efficiency indicator, driven by cycle times. In addition, QR stated that the time and resource constraints placed on the modelling process have limited the value of the modelling outputs.[106]

QR considered that its trains are more efficient from an above rail perspective, as it uses more efficient locomotives and could haul up to 120 wagons if another locomotive was added.[107]

Consequently QR stated that the Initial Indicative Service is of limited value in guiding investment decisions.[108]

Asciano: Asciano supported the conclusion that longer trains provide more coal chain capacity than shorter trains. Asciano submitted, however, that some of the modelling

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104 Peabody, *Submission in response to Australian Rail Track Corporation's Proposed Variation to the June 2011 Hunter Valley Coal Network Access Undertaking*, 25 January 2012, p. 3.
105 QR National, *QR National's submission in response to the ACCC's Consultation Paper on ARTC's application to vary the HVAU to implement the Initial Indicative Service*, 27 January 2012, p. 2.
106 Ibid., pp.7-8.
107 Ibid., pp.4-5.
108 Ibid., p. 5.

assumptions used by ARTC could have been varied – for example, the assumptions that fix the capacity at 160mtpa and ignore the impact of congestion.[109]

Asciano noted that there may be one loop (the Sandy Hollow loop) in Pricing Zone 2 in which the 96 wagon train does not fit. Asciano noted however, that email correspondence with ARTC clarified that the 96 wagon train length is actually 1540m long and not 1570m as contained in ARTC's documents.[110]

Coal And Allied: Coal & Allied supported the conclusion that longer trains represent more efficient use of capacity.[111]

Coal & Allied submitted that of the metrics used by ARTC to determine the efficient train configuration (path utilisation, average vessel queue and number of consists to compare each train configuration), path utilisation is the best measure of efficiency given a fixed throughput as it reflects the extent to which spare Track Capacity remains available to industry to support growth and/or cope with unforeseen variability in the coal chain.[112]

Coal & Allied considered that the other metrics used by ARTC are inappropriate, but noted that their inclusion does not appear to have altered the outcome.[113]

8.1.2 Initial Indicative Access Charges

Efficiency implications

QR National: QR noted that gtkm-based pricing has been retained in the Initial Indicative Access Charges, which QR submitted was appropriate because it incentivises a lower gross-to-net ratio and promotes efficiency.[114]

Asciano: Asciano submitted that the level of the proposed charges is not appropriate. Asciano considered that the pricing relativities are not sufficient to encourage Operators to move from smaller to larger trains and that ARTC should provide pricing incentives for the operation of efficient, longer trains.[115]

Asciano also submitted that the proposed Initial Indicative Access charges are unlikely to address network congestion. Asciano considered that the differentials between the 72, 74 and 82 wagon trains in Pricing Zone 1 are not appropriate because they do not provide sufficient incentives to facilitate more effective use of the

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[109] Asciano, *Submission to the ACCC in relation to the ACCC Consultation Paper on Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking variation,* 27 January 2012, pp. 6, 7-8.

[110] Ibid., pp. 9-10.

[111] Coal & Allied, *Submission in response to the Australian Competition and Consumer Commission's Consultation Paper In relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking variation*, 27 January 2012, p. 4.

[112] Ibid., p. 5.

[113] Ibid., p. 5.

[114] QR National, *Submission*, 27 January 2012, p. 8.

[115] Asciano, *Submission,* 27 January 2012, pp. 9-10.

network. Asciano also considered that trains other than the Initial Indicative Services should be priced in relation to the efficient train benchmark.[116]

Coal & Allied: Coal & Allied submitted that the differential charges for the 96 and 82 wagon trains will not promote efficiency. Coal & Allied noted that ARTC has proposed a 0 per cent non-TOP differential (that is, no differential) and an 11 per cent TOP differential. Coal & Allied submitted that ARTC should apply a -7.5 per cent non-TOP differential (that is, the 82 wagon service should face a lower non-TOP charge) and a 31 per cent TOP differential. In determining these differentials, Coal & Allied noted that ARTC had not reflected consumption of coal chain capacity in the proposed Initial Indicative Access Charges:

> Given the constraints of the existing modelling which cap throughput at 160 Mtpa it is difficult to assess the relative efficiency of different train configurations based on throughput estimates alone.[117]

The following table is from Coal & Allied's submission, and sets out its understanding of how ARTC has determined the Indicative Access Charges.[118]

Table 6: Coal & Allied's proposed differential in Zone 1 Charges for the two Initial Indicative Services*

Component of Access Charge	Proportion of total**	96 wagon train configuration	82 wagon train configuration	Differential
	%	$/'000GTK	$/'000GTK	%
Non-TOP (variable maintenance charge)	9%	0.844	0.781	(7.5%) decrease due to axle load
TOP (fixed charge for maintenance and capacity)	91%	8.342	10.926	31%
- Maintenance	10%	0.901	0.973	8% (1% of total)
- Coal Chain Capacity	54%	4.960	6.635	34% (20% of total)
- Capacity (Network)	27%	2.480	3.318	34% (10% of total)

* These values reflect the appropriate relatively rather than absolute values – by raising Charges for 82 wagon trains ARTC might over-recover revenue in Zone 1

** Total Access Charge is sum of TOP and non-TOP Charges

Table source: See Table 3 in Coal & Allied's January 2012 submission.

Coal & Allied also submitted that ARTC had decreased access charges in Pricing Zone 3 to offset the impact of Pricing Zone 1 price differentials on Pricing Zone 3 producers using the 82 wagon train. Coal & Allied stated that this approach would distort the overall efficiency incentives for Pricing Zone 3 producers.[119]

Coal & Allied also stated that it is the pricing signals from the Initial Indicative Service that will influence the efficient investment and use of the network:

116 Asciano, *Submission*, 27 January 2012, pp. 9-11.
117 Coal & Allied, *Submission*, 27 January 2012, p. 10.
118 Ibid., p. 13.
119 Ibid., p. 10.

> it is the approach to price differentiation that ARTC will use to determine Charges for all train configurations that will send economic signals to industry regarding the efficient investment in and use of available capacity. The Initial Indicative Services merely set a benchmark against which other train configurations will be measured. The proposed Initial Indicative Services can serve this purpose as well as any other if they are priced appropriately relative to each other and to other services.[120]

Coal & Allied also submitted that the 2012 Interim Indicative Access Charges published by ARTC in November 2011 should be adjusted following the determination of the Initial Indicative Access Charges.[121]

PWCS: PWCS submitted that the access charges for Pricing Zone 3 services are not consistent with efficiency based pricing and do not necessarily give producers incentives to adopt the more efficient Pricing Zone 3 configuration (i.e. the 82 wagon train).[122]

Pricing transparency

There was general agreement in submissions that the level of information provided by ARTC regarding the proposed Indicative Access Charges and how they had been determined was insufficient.

Peabody: Peabody submitted that access seekers need more information around how ARTC's proposed charges are calculated. For example, Peabody suggested that if the charge differentiation factors under section 4.15 of the June 2011 HVAU are intended to apply then this should be clearly expressed by ARTC.[123]

QR National: QR noted that it does not have access to ARTC's modelling, costs and forecasts and therefore is not able to comment on the quantum of the proposed Indicative Access Charges.[124]

Asciano: Asciano submitted that more clarity is needed around how the proposed Initial Indicative Access Charges have been derived and how non-efficient trains, including Asciano's 91 wagon train, will be priced.[125]

Coal and Allied: Coal & Allied considered that greater transparency is needed around the calculation of charges for different services (both Indicative and non-Indicative) and submitted that this will help industry make investment decisions.[126]

PWCS: PWCS submitted that it is not clear how ARTC intends to price for smaller configurations in the Hunter Valley.[127]

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[120] Coal & Allied, *Submission*, 27 January 2012, p. 5.
[121] Ibid., p. 10.
[122] PWCS, *Submission to the Australian Competition and Consumer Commission regarding the Australian Rail Track Corporation Limited's proposed variation to the Hunter Valley Rail Network Access Undertaking*, 27 January 2012, p. 3
[123] Peabody, *Submission*, 25 January 2012, p. 2.
[124] QR National, *Submission*, 27 January 2012, p. 9.
[125] Asciano, *Submission*, 27 January 2012, p. 7.
[126] Coal & Allied, *Submission*, 27 January 2012.

Grandfathering

Peabody: Peabody submitted that the pricing parity mechanism should apply after the Regulatory Transition Period. Peabody considers that pricing parity should remain until the expiry of the above rail contracts entered into prior to the commencement of the June 2011 HVAU.[128]

QR National: QR also submitted that the grandfathering provisions in section 4.15 of the June 2011 HVAU should apply for the term of above rail contracts entered into under arrangements in place at the time. QR considers that 3.5 years is an unreasonably short period for grandfathering to apply.[129]

Asciano: Asciano submitted that congestion is unlikely to be addressed on the Hunter Valley network due to the grandfathering provisions contained in section 4.15 of the June 2011 HVAU.[130]

Coal and Allied: Coal & Allied submitted that ARTC is only required to maintain pricing parity for the two main services in Pricing Zones 1 and 2 (that is the 91 and 74 wagon train), but not for services in Pricing Zone 3 (the 72 wagon train).[131] Coal & Allied considered that ARTC should adjust the Interim Indicative Access Charges for the less efficient Pricing Zone 3 services.[132]

8.1.3 Drafting changes

Submissions to the ACCC's 13 December 2011 Consultation Paper relate only to the drafting of the December 2011 Proposed Variation and not to the additional changes in ARTC's draft revisions, which were received after the consultation period had ended.

Peabody: Peabody submitted that, given that the Interim and Initial Periods are intended to operate concurrently, it is not clear how to determine whether an actual service will be an Interim Indicative Service or an Initial Indicative Service and what it means to 'meet' the service assumptions.[133]

Coal and Allied: Coal & Allied expressed concerns about the clarity and interpretation of the drafting proposed by ARTC. Coal & Allied submitted that:

- The Interim Indicative Access Charges which ARTC issued in November 2011 should be revisited and adjusted, based on the Initial Indicative Services, at the time the Initial Indicative Services are adopted, and that this should be made clear in the drafting of the Proposed Variation (refer subsections 4.17(a) and 4.19(b) of the HVAU).[134]

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127 PWCS, *Submission*, 27 January 2012, p. 3.
128 Peabody, *Submission*, 25 January 2012, p. 2.
129 QR National, *Submission*, 27 January 2012, p. 3.
130 Asciano, *Submission,* 27 January 2012, pp. 10-11.
131 Coal & Allied, *Submission*, 27 January 2012, p. 16
132 Ibid., p. 15.
133 Peabody, *Submission*, 25 January 2012, s. 3.1(a).
134 Coal & Allied, *Submission*, 27 January 2012, p. 17.

- The wording in subsection 4.17(d) of the HVAU should clarify that the Initial Indicative Access Charges will be revised annually. Coal & Allied also considered that the meaning of the 'reasonable endeavours' in subsection 4.17(c) of the HVAU is uncertain.[135]

- There appears to be a footnote missing from table in 4.17(d) stating that '*Pricing Zones contain Segments as specified at Schedule E'.[136]

- Section 4.17 of the HVAU should provide for the possibility of Access Holders seeking to vary their executed Access Holder Agreements so as to operate the Initial Indicative Services.[137]

- The reference to 'Indicative Access Charges' in section 4.19(a)(i) of the Proposed Variation is incorrect, as the Interim Indicative Access Charges are not actually Indicative Access Charges as defined in section 4.14 of the HVAU. Coal & Allied submitted that section 4.19(b) of the HVAU should be expanded to provide that the Interim Indicative Access Charges will be determined 'in accordance with section 4.15' and will 'take into account' the Initial Indicative Access Charges.[138]

- The timeframes for publication of charges for non-Indicative Services should be made clear. Specifically, Coal & Allied considered that these charges should be determined by 1 November each year in accordance with subsection 4.20(d) of the HVAU.[139]

- Regarding the dispute resolution provisions in the HVAU, the 'two-thirds test' in section 4.20(f) of the June 2011 HVAU should be removed. Coal & Allied considers that the Indicative Access Charges should be disputed under section 4.15.[140]

- There is inconsistency in the dispute resolution provisions for Interim Indicative Services, in particular that it is unclear whether disputes will be conducted under section 4.15 or section 4.20. Coal & Allied submitted that dispute resolution for Interim Indicative Access Charges should be in accordance with section 4.15.[141]

8.1.4 The Final Indicative Service

Acceleration of the process

QR National: QR submitted that the modelling and assessment process underpinning the Initial Indicative Services was under-developed. QR submitted that the Initial

[135] Ibid., pp. 17-18.
[136] Ibid., p. 18.
[137] Ibid.
[138] Ibid.
[139] Ibid.
[140] Coal & Allied, *Submission*, 27 January 2012, p. 19
[141] Ibid., pp. 18-19.

Indicative services should be abandoned and a more robust and comprehensive assessment should be undertaken.[142]

Asciano: Asciano submitted that the process for the Final Indicative Service, and the implementation of pricing based on the efficient train, should be accelerated.[143]

Asciano stated that the final modelling and implementation of the efficient train can and should be done in a much shorter timeframe than that outlined the in the June 2011 HVAU. Asciano expressed concern that the current congestion in the Hunter Valley system should be relieved as soon as possible, and that this requires modelling of the efficient train and attendant pricing signals.[144]

PWCS: PWCS submitted that ARTC should determine the Final Indicative Service as soon as possible, and well before the maximum timeframes in the HVAU.[145]

Modelling the Final Indicative Service

Several submissions expressed dissatisfaction with the modelling undertaken for the Initial Indicative Service, and made recommendations for the modelling of the Final Indicative Service.

Peabody: Peabody submitted that the modelling used to develop the Indicative Service is not adequate and that the final modelling should include characteristics such as:

> entry and exit points to the Network, the geographic spread of an above rail provider's trains throughout the Network, and encouraging alignment in capital investment between the above and below rail operations.[146]

Peabody submitted that measuring utilisation of coal chain capacity should include measures of loading and unloading performance, and distribution of trains.[147]

QR National: QR submitted that:

> An efficient outcome from a whole of coal chain perspective is one where maximum possible tonnes are delivered, at the lowest possible total cost, when all elements of coal transportation costs within the coal chain are considered.
>
> This would entail an assessment based on a 'total cost of ownership' approach that allows for trade-offs between different elements of the coal chain that result in optimal utilisation of Coal Chain Capacity.[148]

QR submitted that efficiency measures should include elements of cost and total throughput delivered within a period and should also take account of distance.

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142 QR National, *Submission*, 27 January 2012, p. 2.
143 Asciano, *Submission*, 27 January 2012, p. 1.
144 Ibid., pp. 6-7.
145 PWCS, *Submission*, 27 January 2012, pp. 2-3.
146 Peabody, *Submission*, 25 January 2012, s. 3.3.
147 Ibid., s. 3.3.
148 QR National, *Submission*, 27 January 2012, p. 2.

QR submitted that ARTC should consider the impact on above rail efficiency, which affects the overall transportation costs to coal producers.[149] QR also submitted that ARTC should consider system velocity, driven by cycle times, as an efficiency indicator.[150]

QR stated that it is willing to work with the HVCCC and ARTC to develop appropriate modelling for the Final Indicative Service.[151]

PWCS: PWCS submitted that ARTC should consider an expanded range of configuration factors and efficiency measures for the Final Indicative Service. PWCS suggested that ARTC should consider additional aspects of train performance, such as wagon types, sizes, and trigger mechanisms, and other measures of coal chain efficiency. PWCS also stated that the Final Indicative Services should contemplate likely future infrastructure configurations, such as the new Terminal 4.[152]

PWCS considered that the relative pricing should provide clear economic incentives for efficient use of capacity.[153]

8.2 ARTC response to the ACCC's request for information

On 15 February 2012 the ACCC requested that ARTC provide further information to assist the ACCC in its assessment of the December 2011 Proposed Variation. On 29 February 2012 ARTC provided a response to the ACCC's request for information.

A summary of ARTC's response is provided below.

8.2.1 Efficiency implications

ARTC's response addressed two issues raised by the ACCC in regard to the expected efficiency implications of the Initial Indicative Access Charges:

- pricing of trains in Pricing Zone 1 and differentiation for coal chain capacity
- lower access charges in Pricing Zone 3 to offset pricing differentials in Pricing Zone 1.

ARTC provided a number of reasons for its proposal not to differentiate the Coal Chain Capacity component of pricing between the 96 wagon configuration and the 82 wagon configuration in Pricing Zone 1.

First, ARTC noted that producers operating in Pricing Zone 3 are not able to run longer trains than 82 wagons due to existing infrastructure constraints in that zone. ARTC submitted that:

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149 Ibid., pp. 4-5.
150 Ibid., p. 7
151 Ibid., p. 2.
152 PWCS, *Submission*, 27 January 2012, p. 3.
153 Ibid., p. 1.

> Providing a pricing incentive for them to do so would not seem to add any value…[154]

Second, ARTC recognised that running only 96 wagon trains in Pricing Zone 1 (instead of both 96 and 82 wagon trains) would increase coal chain capacity utilisation. However, ARTC noted that existing infrastructure constraints currently rule out this option in practice and the HVCCC had not modelled the impact of running only 96 wagon trains: [155]

> ARTC accepts that throughput would be higher if only 96 wagon trains were operated… However the most efficient utilisation of Hunter Valley coal chain must be contemplated in terms of the market being serviced by that coal chain which includes the Gunnedah basin mines… As such, ARTC cannot see any basis for differentiation in terms of Coal Chain Capacity consumption between the 96 and 82 wagon configurations where existing infrastructure constraints are to be applied.[156]

Third, ARTC considered that existing infrastructure constraints mean that an 82 wagon train is the most efficient train that can be run in Pricing Zone 1 when it originates in Pricing Zone 3. ARTC concluded that:

> penalising Pricing Zone 3 producers by differentiating on the basis of coal chain capacity in Pricing Zone 3 when they [are] operating the most efficient configuration that they are able to given the existing infrastructure constraints in Pricing Zone 3 would not be reasonable.[157]

ARTC concluded that the only reliable basis upon which prices could be differentiated in Pricing Zone 1 was maintenance. ARTC submitted that this differentiation would only impact upon fixed costs. ARTC concluded that there was no reliable basis upon which prices could be differentiated due to maintenance considerations in relation to all other Coal Train configurations in all pricing zones.[158]

In relation to ARTC's decision to reduce access charges in Pricing Zone 3 to offset the increased charges in Pricing Zone 1, ARTC gave two reasons.

First, ARTC stated that it considered that Pricing Zones 1 and 2 are in a different 'market' to that of Pricing Zone 3:

> …the Coal Train configurations utilised by Pricing Zone 1 and 2 mines, and Pricing Zone 3 mines are in different markets. As such any access pricing available in one market (Pricing Zone 1/2 mines) would not be necessarily be available in the other market (Pricing Zone 3 mines) and vice versa.[159]
>
> ARTC considers that the IIS and IIS 2 are products realistically offered to customers in geographically distinct locations.[160]

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[154] Ibid., p. 18.
[155] ARTC, *Response to ACCC information request*, 8 March 2012, p. 19.
[156] ARTC, *Supporting documentation*, 2 December 2011, p. 43.
[157] Ibid, p. 18.
[158] ARTC, *Supporting documentation*, 2 December 2011, p. 41.
[159] Ibid., p. 43.
[160] ARTC, *Response to ACCC request for information*, 8 March 2012, p. 18.

Second, ARTC stated that the price adjustment would ensure that ARTC's total revenue from Pricing Zone 3 producers would remain the same after the Initial Indicative Services were implemented. ARTC noted that this would reduce its revenue risk.[161]

More generally, ARTC stated that the Hunter Valley coal network should be considered as 'a system serving mines in all three pricing zones together rather than serving 3 individual pricing zones'.[162] ARTC also submitted that:

> [the idea that] achieving efficiency in certain parts of the Hunter Valley will, in aggregate result in efficiency of the Hunter Valley coal network as a whole… is by no means clear to ARTC.[163]

8.2.2 Pricing transparency

In response to submissions that ARTC should be more transparent regarding how it has calculated the Indicative Access Charges, and how it will calculate other charges, ARTC stated that:

> …with only a few exceptions rail access undertakings/regimes in Australia generally provide for pricing that ensures that revenue collected by the track manager does not cross subsidise other users of the network or other parts of the network. Within that constraint, the track manager is able to exercise a reasonable amount of discretion.[164]

ARTC submitted that it should have a reasonable amount of discretion in setting prices, subject to the broader constraint of the revenue limits, noting that:

> providing the track manager with this discretion has certain investment and efficiency benefits by enabling the track manager to maximise revenue where it can and not be constrained in promoting new entry by restrictive pricing mechanisms. [165]

While ARTC provided some further detailed information on its pricing approach, it did not provide the financial model as requested by the ACCC, submitting that:

> …notification of a particular calculation or determination of access pricing to the regulator and industry may create a precedent and expectation that future pricing will be calculated or determined in the same way, irrespective of whether the method of calculation is explicitly prescribed in the undertaking.[166]

However, ARTC provided some additional explanation to the ACCC about how it had calculated its charges. ARTC stated that its intention in doing so was that:

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161 Ibid., p. 20.
162 Ibid., p. 18.
163 Ibid.
164 ARTC, *Response to ACCC Information Request*, 8 March 2012, p. 10.
165 Ibid., p. 10.
166 Ibid., p. 11.

> Regulatory satisfaction in this regard then provides the industry with confidence that the regulatory requirements have been complied with.[167]

8.3 Submissions in response to the ACCC's Position Paper

The ACCC received a number of submissions in response to the ACCC's Position Paper on the December 2011 Proposed Variation. Below is a summary of the submissions.

8.3.1 Initial Indicative Service

ARTC: ARTC submitted that the proposed Initial Indicative Services have been determined in accordance with section 4.17 of the HVAU. In this regard, ARTC noted that the number of configurations that could be tested was constrained by the limited time frames and modelling constraints.[168]

Vale: Vale submitted that there is likely to be minimal take up of the Initial Indicative Service during the Initial Period as the grandfathering of the existing services and the potential for further change to the Final Indicative Service do not provide certainty to either Access Holders or Operators to make investment decisions to change their method of operation in the short term.[169]

Vale submitted that it is not clear what operational changes Vale would need to complete to accommodate proposed efficient train, but assumes changes would be minimal as Vale can already accommodate the existing 91 wagon train.[170]

QR National: QR questioned the validity of determining an efficient train configuration as a means to promote optimal utilisation of coal chain capacity, given that above rail is only one component of a complex and interrelated coal chain.[171]

QR submitted that there is no certainty that the Initial Indicative Service represents the efficient train configuration in the long term. QR therefore considered that the Initial Indicative Service is of little value, and that a better outcome would be to defer any changes until the development of the Final Indicative Service.[172]

Asciano: Asciano submitted that its position has been that longer trains provide more coal chain system capacity than shorter trains, so ARTC should be providing incentives for longer trains.[173]

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167 Ibid., p. 12.
168 ARTC, *Submission to ACCC Position Paper*, May 2012, p. 11.
169 Vale, *Submission re Position Paper in relation to ARTC's Hunter Valley Rail Network Access Undertaking variation*, 24 May 2012, p. 1.
170 Ibid., p. 1.
171 QR National, *Submission: Position Paper – ARTC's Hunter Valley Rail Network Access Undertaking Variation*, 28 May 2012, p. 2.
172 Ibid., p. 2.
173 Asciano, *Submission to the ACCC in relation to the ACCC Position Paper on the ARTC's HVAU variation*, May 2012, p. 5.

Asciano also submitted that wagon number is an imprecise measure of capacity given that wagon lengths and capacities differ. Asciano submitted that the definition of efficient train in the HVAU should utilise train length or some other clear measure of coal chain capacity.[174]

Asciano considered that ARTC should seek to efficiently expand infrastructure in Pricing Zone 3 to allow longer trains to operate, which would bring benefits by removing smaller trains from the system.[175]

Coal & Allied: Coal & Allied submitted that it is not well placed to assess the likely extent of conversion of existing above rail assets to more efficient configurations on an industry-wide basis; however, it submitted that the pricing signals will play a significant role in driving investment decisions in new above rail assets.[176]

Coal & Allied stated that there is typically a two year lead time to acquire new above rail assets, and that the longest train configuration that can be run using old locomotives and wagons is a 92 wagon service in Pricing Zone 1.[177]

8.3.2 Initial Indicative Access Charges

Efficiency

ARTC: ARTC submitted that some of the comparisons made by the ACCC of direction and magnitude of pricing differentials are unlikely to be relevant, as these are likely to be different to those implied by the current published Interim Indicative Access Charges. ARTC stated that it intends to review the Interim Indicative Access Charges following acceptance of the Proposed Variation.[178]

ARTC further submitted that all parties understood that the modelling and infrastructure constraints explicitly recognised in the section 4.17 process may constrain ARTC's ability to develop the signals for efficient investment and utilisation of the network. ARTC expressed concern that stakeholders are now seeking pricing differentiation beyond the prescribed scope of the section 4.17 process originally sought.[179]

ARTC submitted that the pricing signals given for efficient use and investment in infrastructure are still reasonable.[180]

In its supplementary submission to the Position Paper ARTC stated that 'its response to the ACCC's Position Paper largely addresses the ACCC's concerns and

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174 Ibid., p. 6.
175 Ibid., p. 12.
176 Coal & Allied, *Submission in response to the ACCC's Position Paper of 9th May 2012 regarding ARTC's Hunter Valley Rail Network Access Undertaking variation*, 24 May 2012, p. 2.
177 Ibid.
178 ARTC, *Submission*, May 2012, p. 13.
179 Ibid., p. 21.
180 Ibid. p. 17.

amendments sought by the ACCC in the Position Paper, which have been supported in stakeholder submissions'.[181]

ARTC confirmed in its submission that 'it intends to re-visit 2012 Interim Access Charges and Charges for other Services following approval of the variation' and will base them on a similar methodology to that used in to develop Initial Indicative Access Charges. ARTC noted that any revisions 'will primarily serve to provide an interim indication to stakeholders as to the direction and magnitude of pricing differential to assist with decision making.' [182]

In response to the ACCC's question whether the overall pricing approach reflects the costs of operating services and their relative consumption of coal chain capacity, ARTC submitted that 'it has achieved this in the development of the Initial Indicative Services and Initial Indicative Access Charges', within the constraints inherent in the June 2011 HVAU. [183]

With regard to the ACCC's question in relation to ARTC reducing charges in Pricing Zone 3 to offset the increase in revenue from Pricing Zone 3 producers in Pricing Zone 1, and its effect on the efficient operation of the network, ARTC pointed to the differing views between access holders and reiterated the view given in its response to ACCC's Position Paper, submitting that it has addressed the ACCC's concerns and the amendments sought in the position paper. [184]

Vale: Vale noted and agreed with the ACCC's concerns that current pricing does not consider the loss of Coal Chain Capacity. Vale further submitted that as Coal Chain Capacity is a key driver to the move to the Long Term Solution it must be reflected in the pricing principles.[185]

Vale also disagreed with ARTC that path usage is the same no matter what size train utilises that path. Vale considered that pricing must be set to encourage all stakeholders to move to the use of the efficient train service to achieve the goal of the Long Term Solution is to improve throughput in the system.[186]

QR National: QR submitted that is not in a position to comment on whether the cost allocations are appropriate, however, it considered that the pricing differentials required to drive investment would need to be supported by long term certainty about future pricing.[187]

QR considered that as the Initial Indicative Service is a transitional stage prior to the implementation of the Final Indicative Service, it is premature to implement price

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181 ARTC, *ARTC response to stakeholder submission in response to the ACCC Position Paper in relation to ARTC's application to vary the Hunter Valley Coal Network Access Undertaking (2011 HVAU),* 25 June 2012, p. 3.
182 Ibid.
183 Ibid., p. 6.
184 Ibid.
185 Vale, *Submission*, p. 2.
186 Ibid., p. 2.
187 QR National, *Submission*, p. 2.

signalling that may not be reliable in the longer term and that may drive investment that would not promote long term efficiency.[188]

Asciano: Asciano considered that ARTC's current pricing approach is not appropriate and that the Initial Indicative Access Charges and pricing relativities do not provide efficient pricing signals for the efficient investment in and use of coal chain infrastructure.[189]

Asciano further submitted that the low magnitude of pricing relativities implicit in ARTC's proposal does not provide strong pricing signals and incentives to adopt the Initial Indicative Service. In particular, Asciano considered that the combination of grandfathering and the pricing relativities means that incentives to quickly move towards efficient trains are unlikely to be addressed prior to December 2014.[190]

Coal &Allied: Coal & Allied submitted that the levels of price differentiation proposed by ARTC do not provide appropriate economic signals to the industry regarding efficient use of and investment in coal supply infrastructure.[191]

Coal & Allied also submitted that the direction of the price relativities is generally appropriate, apart from the 72 wagon Interim Indicative Service; however, Coal & Allied noted that it understands that this will be addressed by ARTC.[192]

Coal & Allied considered that the magnitude of pricing differentiation proposed by ARTC is not appropriate and disagreed with ARTC's view that there should be no differentiation based on the Coal Chain Capacity efficiency component between the two proposed Initial Indicative Services in Pricing Zone 1.[193]

In its supplementary submission to the Position Paper, Coal & Allied submitted that if ARTC considers that the current modelling limitations do not allow measurement/ assessment of the Coal Chain Capacity impact, then the proposed high weighting for this factor is not appropriate at this time. Coal & Allied submitted that industry would only maintain its view that a factor is of high importance if it can actually be measured and assessed.[194]

Coal & Allied considered that a possible solution to ARTC not being able to measure Coal Chain Capacity is for ARTC to reduce the weighting of the Coal Chain Capacity factor (relative to Track Capacity) until appropriate modelling has been developed (for the Final Indicative Services). Coal & Allied argued that the weighting should be reduced to zero or close to zero.[195]

Coal & Allied submitted that pricing differentials are not about "penalising" or "rewarding" producers. Coal & Allied considered that only by applying appropriate

188 Ibid., p. 2.
189 Asciano, *Submission*, May 2012, p. 6.
190 Ibid., p. 9.
191 Coal & Allied, *Submission*, 24 May 2012, p. 1.
192 Ibid., p. 3.
193 Ibid., p. 4.
194 Coal & Allied, *Supplementary submission: Notes for discussion with the ACCC regarding the proposed variation to ARTC's Hunter Valley Access Undertaking*, June 2012, p. 3.
195 Coal & Allied, *Supplementary Submission*, June 2012, p. 3.

differential pricing are producers sent the appropriate signals about investment in new or upgraded infrastructure.[196]

Coal & Allied considered that the proposed reduction in Access Charges in Pricing Zone 3 by ARTC to offset increased revenue from Pricing Zone 3 Producers in Pricing Zone 1 is not appropriate and distorts appropriate, efficient price signals.[197]

Coal & Allied also considered that by favouring mines in one location over another ARTC is discriminatory, sends the wrong pricing signals and promotes inefficient use of and investment in coal chain infrastructure.[198]

Coal & Allied considered that the longer term economic impact of pricing differentiation is contingent on the pricing signals being consistent over time and that any subsequent changes in relative pricing should be demonstrated by ARTC to be driven by changes in fundamental cost drivers rather than pricing methodologies.[199]

Pricing transparency

ARTC: ARTC submitted that it has publicly provided a substantial amount of advice in relation to how it intended to develop the Initial Indicative Access Charges and how charges would be differentiated, despite not being required to under the HVAU.[200]

ARTC also submitted that the ACCC appears to have relied on wider and more general pricing considerations in coming to a view as to what the Initial Indicative Access Charges should achieve.[201]

ARTC submitted that the HVAU already provides for significant information to be made available to Access Holders. ARTC stated that it is unclear what further information is sought by the ACCC to be provided to Access Holders beyond this information.[202]

ARTC submitted that 'it has already provided a significant amount of information in relation to the development of Initial Indicative Access Charges and Interim Indicative Access Charges in earlier relevant documents' including: (i) the key factors in relation to differentiating pricing; (ii) the methodology used by ARTC to determine relative impact of Coat Train configurations regarding these factors; (iii) other practical aspects, and adjustments made, relevant to determining those relativities; (iv) a breakdown of ARTC's costs that can apply to the factors; and (v) the basis for the weighting given to each factors in calculating the Initial Indicative Access Charge.[203]

ARTC submitted that this is 'further complemented' by the ongoing disclosure of information provided for under the June 2011 HVAU, including: (i) cost and volume

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196 Coal & Allied, *Submission*, 24 May 2012, p. 4.
197 Ibid., p. 5.
198 Ibid., p. 5.
199 Ibid., p. 6.
200 ARTC, *Submission to ACCC Position Paper*, 28 May 2012, pp. 15, 18, 31.
201 Ibid., p. 16.
202 Ibid., p. 19.
203 ARTC, *ARTC response to stakeholder submission*, 25 June 2012, p. 6-8

information; (ii) future access pricing for 10 years; (iii) publishing of Coal Access Rights pricing; (iv) an initial estimate of Charges for Access Rights for the Indicative Access Proposal; and (v) the right to dispute pricing during an access negotiation or annually.[204]

In addition, ARTC submitted that it has 'clarified in detail its intentions as to the basis to be adapted to determining Initial Indicative Access Charges, Interim Indicative Access Charges and Charges for non-Indicative Services during the Initial and Interim Periods.' [205]

ARTC also submitted that while stakeholder submissions supported the ACCC's view that access seekers should have sufficient information to calculate the likely direction and estimated magnitude of pricing relativities, the submissions 'did not provide any further information of what would constitute a satisfactory means to provide such information'.[206]

Asciano: Asciano submitted that the level of information provided by ARTC regarding the proposed Initial Indicative Access Charges and how they had been derived is insufficient.[207]

Asciano also agreed with the ACCC's position in the Position Paper and considered that ARTC should provide additional information on its approach to differentiating between charges for particular services including non-indicative services.[208]

Asciano submitted that ARTC should provide a reasonable level of transparency in regard to its pricing model and how the model would apply to non-indicative services. Alternatively, Asciano considered that ARTC should provide sufficient price data points to allow access holders and operators to interpolate and/or extrapolate a likely price from the existing series of determined price points.[209]

Asciano also submitted that pricing of non-efficient trains should be determined in reference to the efficient train benchmark.[210]

Coal & Allied: Coal & Allied submitted that ARTC should provide full transparency to the ACCC to demonstrate that there is no cross-subsidisation across the Pricing Zones. Coal & Allied expressed concern that there may be cross-subsidisation between Pricing Zones 1 and 2 but is unable to confirm this with the current level of information.[211]

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204 Ibid., p. 4-5.
205 Ibid., p. 5.
206 Ibid.
207 Asciano, *Submission*, May 2012, p. 10.
208 Ibid., p. 6.
209 Ibid., p. 10.
210 Ibid., p. 10.
211 Coal & Allied, *Submission*, 24 May 2012, p. 6.

Coal & Allied submitted that it is unclear why the non-TOP component of the Access Charge in Pricing Zone 2 is a much higher proportion of the total Access Charge relative to Pricing Zone 1 and 3.[212]

Coal & Allied submitted that in addition to information already provided to Access Holders, ARTC should provide to Access Holders:

- the relevant characteristics of each Indicative and non-Indicative Service; and
- the estimated proportion of gtkms by train type by Pricing Zone to facilitate producers' understanding of how charges are determined across Pricing Zones and amongst various Services.[213]

Grandfathering

QR National: QR submitted that the ACCC has not provided a view on QR's concerns about the timing of the grandfathering arrangements for the Initial Indicative Service. QR submitted that the grandfathering provisions should extend to match the term of above rail contracts entered into under the arrangements in place at the time they were negotiated as competitively negotiated contracts should not be jeopardised by subsequent regulatory changes.[214]

Asciano: Asciano submitted that the grandfathering protections applying to 'evidently inefficient trains' should be removed so that these trains pay their true cost. However, Asciano submitted that grandfathering protections for train consists that are operating at the maximum length allowed by infrastructure constraints should remain, as these trains are in essence efficient trains and should not be penalised by regulatory changes.[215]

8.3.3 Drafting changes

The ACCC received a number of submissions in response to its Position Paper on the drafting in both ARTC's formally submitted December 2011 Proposed Variation and the 8 March 2012 draft revision.

ARTC: ARTC submitted that the dispute resolution process in 4.20 will apply to disputes concerning Interim Indicative Access Charges during the Interim Period.[216] ARTC also submitted that in order to address the ACCC's concerns, the two-thirds threshold is to be applied separately to those Access Holders who have contracted Interim Indicative Services and Initial Indicative Services.[217]

ARTC submitted that it does not consider it appropriate to require charges for non-indicative services to be specified at the same time as Indicative Access Charges,

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212 Ibid.
213 Ibid., p. 7; Coal & Allied, *Supplementary Submission*, June 2012, p. 12.
214 QR National, *Submission*, 28 May 2012, p. 3.
215 Asciano, *Submission*, May 2012, pp. 6-7.
216 ARTC, *Submission to ACCC Position Paper*, 28 May 2012, p. 37.
217 Ibid., p. 38.

because ARTC is required to consider Indicative Access Charges for Indicative Services when determining charges for non-indicative services.[218]

Regarding variations to existing agreements, ARTC submitted that an amendment to the HVAU is not required as Access Holders have the ability to vary their Access Holder Agreements in order to allow them to run an Initial Indicative service.[219]

Vale: Vale submitted that it is supportive of the ACCC's views regarding drafting changes.

Vale submitted that the dispute resolution provisions should apply separately between Access Holders holding Interim Indicative Services and those holding Initial Indicative Services, as an Access Holder is required to obtain two thirds of contracted gtkm.[220]

Asciano: Asciano submitted that it does not have any concerns with ARTC's and the ACCC's proposed drafting changes.[221]

Asciano submitted that there is a lack of clarity around the application of the dispute resolution sections in the December 2011 Proposed Variation. Asciano submitted that the dispute resolution provisions in subsection 4.20(f) should apply separately to those Access Holders holding Interim Indicative Services and those holding Initial Indicative Services.[222]

Coal & Allied: Coal & Allied agreed with the drafting changes proposed by ARTC and the additional changes proposed by the ACCC.[223] However, Coal & Allied did not agree with the dispute resolution provisions relating to the Initial and Interim Indicative Services. Coal & Allied submitted that it would be appropriate for a consistent position to apply between Indicative and non-Indicative Services.[224]

Coal & Allied submitted that applying the 'two-thirds' rule imposes too high a hurdle for Access Holders to dispute Charges.[225] Coal & Allied submitted that section 4.20(f) should be amended to provide that Access Holders holding two-thirds or more of the contracted rights for a particular Initial or Interim Indicative Service in a Pricing Zone may dispute the Indicative Access Charges for that Service in that Pricing Zone, as well as the relative Indicative Access Charges of other Initial or Interim Indicative Services in that Pricing Zone. Coal & Allied considered that this would provide a reasonable balance between the ability of a majority of unaffected Users to dispute a charge being applied to them without each individual producer being able to unilaterally dispute a charge.[226]

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218 Ibid., p. 39.
219 Ibid., p. 40.
220 Vale, *Submission*, 24 May 2012, p. 2.
221 Asciano, *Submission*, 28 May 2012, p. 12.
222 Ibid., p. 13.
223 Coal & Allied, *Submission*, 24 May 2012, p. 7.
224 Ibid., p. 7
225 Ibid., p. 7
226 Ibid., pp. 7-8.

8.4 Submissions in response to ARTC's deferral of access charges proposal

The ACCC received three submissions in response to its targeted consultation on ARTC's proposal to defer implementation of Initial Indicative Access Charges until 2013.

Asciano: Asciano expressed concern that 'the ongoing delays in the implementation of the efficient train and the attendant pricing are resulting in ongoing congestion in the Hunter Valley coal chain'. Asciano submitted that ARTC's deferral proposal is an indication of ARTC's reluctance to address the congestion issue in a timely manner, and that the concerns raised by ARTC are largely within ARTC's control and are not valid reasons for a delay.[227]

Xstrata: Xstrata submitted that every available incentive for achieving the optimum efficiency of the rail network should be 'fast tracked', and that track capacity is the constraint in the Hunter Valley coal chain. Xstrata submitted that it is possible for ARTC and Access Holders to agree to vary existing agreements, and that a retrospective rebate could be applied to address the timeframes for implementing revised charges. Xstrata also noted that it is already running the 96 wagon Initial Indicative Service.[228]

Yancoal: Yancoal submitted that it has no objection to the implementation of the December 2011 Proposed Variation being deferred until the beginning of 2013.[229]

8.5 Consultation on the Revised Variation

The ACCC received five submissions in response to its 12 September 2012 letter to industry commencing public consultation on ARTC's Revised Variation.

8.5.1 Coal & Allied

Coal & Allied submitted that 'given the current industry context of severe Coal Chain Capacity constraints... sending pricing signals regarding the efficient use of Coal chain capacity is of critical importance.'[230]

Coal & Allied considered that although ARTC has increased the level of pricing differentiation between the Initial Indicative Services in the revised variation the magnitude of the differentiation remains substantially lower than the appropriate level.[231] In particular Coal & Allied expressed the view that shifting the relative weighting between Network and Coal Chain Capacity from 33%/67% to 50%/50%

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227 Asciano, *Submission to ACCC further consultation on the ARTC Proposal to defer implementation of Initial Indicative Access Charges*, 7 August 2012.

228 Xstrata, *Submission re Initial Indicative Service Variation – ARTC proposal to defer implementation of IIA Charges*, 8 August 2012.

229 Yancoal, *Submission re Variation to the Hunter Valley Coal Network Access Undertaking*, 7 August 2012.

230 Coal & Allied, *Submission in response to the ACCC's Consultation Paper in reaction to ARTC's revised HVAU variation*, 26 September 2012, p. 1.

231 Ibid., p. 1.

and retaining a zero impact on Coal Chain Capacity between the two Initial Indicative Services does not achieve an appropriate level of differentiation.[232]

Coal & Allied considered that although factors other than Track Capacity could affect the relative use of Coal Chain Capacity, it is Coal & Allied's view that in the near term Track Capacity represents the largest constraint on Coal Chain Capacity. Coal & Allied argued that this is evident from the current 'contracted capacity gap' and the initiative identified by the HVCCC to increase train lengths in order to mitigate the impact on Coal Chain Capacity and ARTC's contracted capacity gap.[233]

As a result, Coal & Allied stated that they find it difficult to understand how ARTC can maintain a position that there should be no reflection of the negative impact on Coal Chain Capacity by utilising the 82 wagon train rather than the 96 wagon train.[234]

Coal & Allied submitted that it is strongly supportive of ARTC's decision to not incorporate the distortionary price adjustments to pricing Zone 3 producers, however, is concerned that this may only extend to the price adjustments in the initial pricing and not to the formulation of the all future charges.[235]

Coal & Allied submitted that ARTC's pricing methodology still lacks sufficient transparency:

> Coal & Allied still has concerns regarding the transparency of the pricing methodology ARTC will use in revising Access Charges for the Interim Indicative Services. ARTC has provided only an indication as to the methodology it will use with no clear statement that the methodology will be the same as that for Initial Indicative Services.[236]

Coal & Allied also considered that additional information, such as GTK's for each service by Pricing Zone would be useful; aggregated if necessary to address any confidentiality concerns.[237]

8.5.2 Whitehaven

Whitehaven stated that it supports the principle of efficient investment in, and operation of the Hunter Valley Rail Network as an element of achieving optimum utilisation of Coal Chain Capacity. However, Whitehaven stated that it has serious concerns with the preliminary view of the ACCC in its Position Paper; the approach advocated by Coal & Allied and with the Access Charges now proposed in ARTC's Revised Variation Proposal.[238]

Whitehaven considered that ARTC's Revised Variation:

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232 Coal & Allied, *Submission*, 26 September 2012, p. 2.
233 Ibid., p. 2.
234 Ibid.
235 Ibid.
236 Ibid., p. 3.
237 Ibid.
238 Whitehaven Coal, *Submission to the ACCC in relation to ARTC's Revised Initial Indicative Service Variation for the HVAU*, 26 September 2012, p. 3.

> penalises existing Gunnedah producers for factors beyond their control (i.e. their inability to operate the same train configurations as Zone 1 producers because of Zone 3 infrastructure limitations) which are recognised by ARTC, the rail operator in Zone 3, Asciano, and the ACCC.[239]

In support of this argument, Whitehaven noted the comments of Asciano in its submission on the Revised Variation that:

> - The 82 wagon train is currently the most efficient train which can operate in pricing zone 3, and as such it should not be discouraged from operating by the proposed increase in pricing differentials;
>
> - 82 wagon trains originating in pricing zone 3 will effectively have to pay higher tariffs to ARTC due to infrastructure constraints which could largely be addressed by ARTC;
>
> - "these higher access charges will not send a pricing signal which will change train operators or access holder's behaviour in implementing a more efficient train as the implementation of the efficient train is limited by infrastructure constraints. These constraints need to be addressed before larger and more efficient trains can operate"; - "Asciano believes that a better solution to the issue of the 82 wagon trains originating in pricing zone 3 potentially creating additional congestion costs in pricing zone 1 is for ARTC to invest in infrastructure in pricing zone 3 to allow longer trains to operate in pricing zone 3. This infrastructure investment will produce benefits for access holders in both pricing zone 3 and pricing zone 1. These access holders in both pricing zone 3 and pricing zone 1 should fund the infrastructure to the extent that they benefit from the increased coal chain efficiency which results from having larger trains being able to be operated from pricing zone 3 through pricing zone 1".[240]

Further, Whitehaven submitted that the Revised Variation does not:

> take into account that the Zone 3 infrastructure limitations were also recognised in the HVAU by the inclusion of a distinct Indicative Service to grandfather the position of those services in Zone 1, as the position of 74 and 91 wagon trains in Zone 1 was also grandfathered. It is inequitable to penalise efficient Zone 3 trains during any period when the grandfathering protection for 74 and 91 wagon trains in Zone 1 continues to operate.[241]

Whitehaven also submitted that Zone 3 coal producers already have very strong incentives to pursue train configuration improvements and that the Gunnedah producers have already demonstrated their commitment to making train configuration improvements to the extent that the track infrastructure allows it.[242] Whitehaven notes that the Gunnedah Basin producers have paid for track improvements to allow the producers to move from using a 54 wagon train to an 82 wagon train, as well as looking at increasing the axle load to 30 tonnes (from 25 tonnes):

> In 2007, the maximum size train in Zone 3 was 54 wagons with a payload of 3400 tonnes. Since then, major capital has been injected, either directly by the

239 Ibid., p. 5.
240 Ibid., p. 5.
241 Ibid., p. 12.
242 Ibid., pp. 7-8.

> Gunnedah Basin producers or through take or pay arrangements with ARTC and the CRIA, to upgrade the track to cater for 72 wagon trains with a payload of 5400 tonnes. Subsequently, using shorter wagons with the same payload per wagon, the train size has been increased to 82 wagons with a train payload of 6000 tonnes - the maximum size that can utilize the new 1360m passing loops constructed by ARTC in Zone 3. Feasibility studies are underway to examine the potential for 30 tonne axle loads, which, if approved, would increase the train payload to about 8000 to 8200 tonnes.[243]

In addition, Whitehaven submitted that feasibility studies of infrastructure upgrades beyond an increase in axle load in the Liverpool Ranges are prohibitive and there is no expectation that upgrades will become feasible. Therefore, Whitehaven submitted that existing Gunnedah producers should not be penalised for factors beyond their control.[244]

Whitehaven also considered that the access charging differentials are not a reliable guide to efficient train configurations and are unlikely to achieve the intended objective of efficient use of Coal Chain Capacity. Whitehaven considered this because the weightings associated with the differentials are arbitrary.[245]

Whitehaven stated that:

> It is clear from consideration of the Initial Indicative Service and related access pricing issues, that accurate determination of the most efficient train configuration for the Indicative Service, the Indicative Access Charges and the charging differentials that should apply will need much more work, the provision of more information to stakeholders and a rigorous consultation process.
>
> A particular challenge will be correctly and meaningfully determining the impact of train configurations on Network Capacity and Coal Chain Capacity and the relationship between the two in the context of meeting the fundamental objective of optimum utilisation of Coal Chain Capacity.[246]

Whitehaven submitted that the ARTC's Revised Variation does not adequately address the importance of new coal production capacity in the Gunnedah Basin which is needed to meet current market demand. Therefore Whitehaven submitted that the Revised Variation does not have sufficient regard to the promotion of competition in upstream and downstream markets; the public interest of the economic development in the Gunnedah region and the interests of the Gunnedah producers.[247]

Whitehaven considered that the adjustment to Pricing Zone 3 access charges should be maintained 'to promote an equitable and competitive environment' and therefore supported ARTC's initial proposal to include an adjustment because there was no strong basis, given the network infrastructure constraints, to incentivise Pricing Zone

243 Ibid., p. 15.
244 Ibid.
245 Ibid., p. 6.
246 Ibid., p. 8.
247 Ibid., p. 6.

3 users to move beyond the most efficient Coal Train configuration that could feasibly be utilised by those users.[248]

Consequently, Whitehaven considered that the ACCC's justification in the Position Paper that a decision to operate in particular location is a commercial decision is incorrect:

> the ACCC's justification for the removal of the downward adjustment that "the decision by a coal producer to operate in a particular location in the Hunter Valley and to transport a particular quantity of coal to port is a commercial decision by that producer" and that "it is important that these commercial decisions are based on costs that accurately reflect the consumption of resources", could only apply to a producer making a decision after a change in regulation. Whitehaven and other Gunnedah producers have made commercial decisions to develop coal mines based upon available rail cost information at the time, well before the commencement of HVAU in 2011. Subsequently imposed "pricing signals" will not change commercial decisions that have already been made and, as noted earlier in this submission, cannot change the infrastructure limitations in Zone 3.[249]

Whitehaven submitted that if the offsetting adjustment is not made then Whitehaven will face an overall increase in access charges of 40 cents per tonne, equating to $10 million extra based on targeted production of 25Mtpa.[250]

In light of this Whitehaven considered that the ACCC should agree to the 'offset' and confirm that ARTC has the discretion under the HVAU to do so.[251]

Whitehaven submitted that its preferred approach to pricing is as follows:

- the Initial Indicative Service proposed by ARTC should include an Indicative Service in Zone 1 for an efficient train coming from Zone 3. This service should be based on an 82 wagon train compared to the 72 wagon train used in the HVAU;

- the Initial Indicative Access Charge for the Initial Indicative Service in Zone 1 for an efficient train coming from Zone 3 should not be differentiated on the basis of Network Capacity and Coal Chain Capacity from the access charge for the 96 wagon train;

- if the Initial Indicative Access Charge for the Indicative Service in Zone 1 for an efficient train coming from Zone 3 is differentiated from the access charge for the 96 wagon train, the ACCC should:

    - limit the weighting of Network Capacity to Coal Chain Capacity to one to one;

    - confirm that, for the HVAU, the future development of the HVCCC modelling should focus on determining the impacts of coal train configurations on the fundamental objective of optimising Coal Chain Capacity;

248 Ibid., p. 18.
249 Ibid.
250 Ibid., p. 19.
251 Ibid., p. 6.

- confirm that ARTC has the discretion in future pricing decisions to make offsetting adjustments to the Initial Indicative Access Charge for the 82 wagon train in Zone 3.

In addition, Whitehaven considered that these principles should apply until the Indicative Service and Indicative Access Charges are determined.[252]

8.5.3 Idemitsu

Idemitsu submitted that ARTC's assessment of the two proposed Initial Indicative Services is reasonable[253]

Idemitsu considered the potential capital investment required to address infrastructure constraints in Pricing Zone 3 with the view to moving to longer trains (such as the 96 wagon train) would be prohibitive.[254]

Idemitsu submitted that producers with trains originating in Pricing Zone 3 incur significantly higher above and below rail unit costs compared to the rest of the coal industry due to the long haul distance, lower payloads and substantial capital investments. Idemitsu submitted that these higher unit costs already provide strong incentives to seek efficient utilisation of rail assets.[255] Idemitsu considered the use of pricing signals with significant differentials to be non-beneficial.[256]

Idemitsu submitted that producers in Pricing Zone 3 should not be penalised for using the most efficient train configuration as determined by current HVCCC modelling.[257]

Regarding the 50/50 weighting split between Coal Chain Capacity and track capacity, Idemitsu submitted that the rebalancing is arbitrary but appropriate rather than the Coal and Allied position of reducing Coal Chain Capacity weighting to zero.[258] Idemitsu considered that ARTC's rebalancing is appropriate so as not to overstate differentials in the short term in the absence of more robust HVCCC modelling.[259]

Idemitsu considered that the 8 per cent premium proposed for the 82 wagon train in pricing zone 1 is not appropriate as it is not clear that a higher maximum speed would lead to significantly higher maintenance costs if trains are not actually running at that speed.[260]

Idemitsu submitted that the price per path for 82 wagon trains should be less than the price per path for longer trains, while still being at a premium on a cost per GTK basis

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[252] Ibid., p. 7.
[253] Idemitsu, *Submission on ARTC's Hunter Valley Rail Network Access Undertaking variation: Initial Indicative Service and Access Charges*, 26 September 2012, p. 2.
[254] Ibid., p. 2.
[255] Ibid., p. 3.
[256] Ibid.
[257] Ibid., p. 4.
[258] Ibid., p. 5.
[259] Ibid., p. 6.
[260] Ibid.

given that 82 wagon trains require shorter passing loops, have higher average running speeds and faster loading and unloading capabilities.[261]

Idemitsu stated that the Coal Chain Capacity considerations can only be properly considered once more rigorous modelling has been undertaking in accordance with determining the Final Indicative Service.[262]

Idemitsu stated that the pricing offset in Pricing Zone 3 is in the public's interest as it promotes the development and expansion of the New South Wales coal industry. Idemitsu considered that the development and exploration of new opportunities in Pricing Zones 3 and 4 and beyond are the future of the NSW coal industry.[263] Idemitsu supported the requirement for a pricing offset in Pricing Zone 3, and ARTC retaining discretion to apply an offset.[264]

Idemitsu stated that the substantial portion of coal currently being produced in Pricing Zone 3 is thermal coal, with some minor tonnages of semi soft coking coal and pulverised coal injection and not 'higher margin coking coal'.[265]

8.5.4 Xstrata

Xstrata submitted that it is 'extremely supportive of the speedy implementation' of the Revised Variation.[266] Xstrata considered that the Hunter Valley rail network is currently 'under severe strain with insufficient track capacity likely to be the major constraint in the coal chain for several years'.[267] Xstrata submitted that moving to efficient train configurations is an example of the 'easier' gains that must be accelerated to minimise capacity losses.

Xstrata submitted that the pricing discount for the Initial Indicative Service still appears to be such that its actual ability to incentivise investment in efficient trains may be debated, and that the differential should be maximised to ensure the incentive is accordingly maximised.[268]

Xstrata submitted that the timeliness of the Initial Indicative Service process is concerning – in particular Xstrata disagreed with the period of time allowed for the 'grandfathering' of existing trains and for the adoption of the Final Indicative Service.[269]

Xstrata submitted that ARTC should commit to applying Initial Indicative Service pricing retrospectively in order to immediately incentivise the restructuring of existing fleets.[270]

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[261] Ibid., pp. 6-7.
[262] Ibid., p.7.
[263] Ibid., pp. 7-8.
[264] Ibid., p. 8.
[265] Ibid.
[266] Xstrata, *Submission re ARTC revised Initial Indicative Service Variation*, 26 September 2012.
[267] Ibid.
[268] Ibid.
[269] Ibid.
[270] Ibid.

Xstrata stated that it is not clear what rates would be charged if a train satisfying the requirements for an 'Initial Indicative Service 2' was for some reason to run solely in Pricing Zone 1.[271]

8.5.5 Asciano

Asciano submitted that it remains frustrated that the ongoing delays in the implementation of both the efficient train and the attendant pricing are resulting in ongoing congestion in the Hunter Valley coal chain.[272]

Asciano submitted that train length rather than wagon count should be the determining factor in whether a train is an efficient train, given the potential for there to be variability in the length of wagons. Asciano submitted that the amendment to the Initial Indicative Service characteristics to include a train length as well as a wagon count may lead to confusion.[273] For example, Asciano notes that some 91 wagon configurations currently in operation approach the length specified in the Revised Variation (1543 metres).

Asciano stated that the ongoing low magnitude of the pricing relativities between the proposed Initial Indicative Access Charges and the Interim Access Charges does not create strong incentives to move towards the efficient train.[274]

Asciano submitted that the different train characteristics of the 82 wagon service are largely driven by infrastructure constraints which limit the length of the efficient train in Pricing Zone 3. Asciano expressed concern that 82 wagon trains originating in Pricing Zone 3 would have to pay higher tariffs to ARTC due to infrastructure constraints which could largely be addressed by ARTC.[275]

Asciano submitted that any pricing signal for Pricing Zone 3 producers to move to a larger train will be ineffective. Asciano submitted that a better solution to the issue of the 82 wagon train originating in Pricing Zone 3 is for ARTC to invest in infrastructure in Pricing Zone 3 to allow longer trains to operate in Pricing Zone 3.[276]

Asciano submitted that the weightings in the ARTC supporting submission should be confirmed and made transparent going forward in order to ensure efficient investment and operating decisions.[277]

Asciano submitted that the extension of the Interim Period until the implementation of the Final Indicative Service will add to Hunter valley rail congestion by continuing the Interim Access Charges, thereby removing efficient price signalling which would otherwise have encouraged the operation of efficient trains.[278]

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[271] Ibid.
[272] Asciano, *Submission to ACCC Consultation on the ARTC Revised Application to vary the Hunter Valley Access Undertaking*, 26 September 2012, p. 1.
[273] Ibid., p. 2.
[274] Ibid., p. 3.
[275] Ibid.
[276] Ibid.
[277] Ibid., p. 4.
[278] Ibid.