



AUSTRALIAN RAIL TRACK CORPORATION LTD

24 December 2012

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

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

Dear Mr Schroder

Variation of Hunter Valley Coal Network Access Undertaking (HVAU) to adopt a positive performance incentive scheme (PPIS) – withdrawal of variation application

ARTC refers to its application to vary the HVAU submitted to the ACCC for consideration on 3 August 2012 to incorporate a PPIS developed in accordance with section 13.3 of the HVAU (**Proposed Variation**).

In accordance with section 13.3(b) of the HVAU, and in consultation with Access Holders and stakeholders, ARTC developed, and submitted to the ACCC, the Proposed Variation which had the objective of encouraging ARTC, through financial reward, to improve operating, maintenance and capital expenditure efficiency.

As part of the ACCC's assessment of the Proposed Variation the ACCC sought submissions from Access Holders and stakeholders on 4 September 2012. Industry stakeholders generally supported the principle of having positive performance incentive mechanisms to drive improved efficiency and increase capacity in the Hunter Valley coal chain but did not consider that applying resources to the development and finalisation of such mechanisms underpinning the Proposed Variation to be appropriate at this time. ARTC recognises industry's desire to focus on coal chain capacity issues at this time and is willing to postpone its development of, and delay potential benefits arising from, a PPIS.

As such, after discussions with the ACCC, and in light of industry feedback, ARTC formally withdraws the Proposed Variation under section 44ZZA(7)(a) of the *Competition and Consumer Act 2010*. ARTC seeks confirmation from the ACCC that it does not intend to pursue ARTC for a breach of section 13.3(b)(iii) of the HVAU in the Federal Court as a result of ARTC's withdrawal of the Proposed Variation.

ARTC will re-consider, in consultation with the ACCC and industry, the positive performance measures proposed as part of the Proposed Variation



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as options to form part of, or exist in addition to, a performance incentive scheme that may be developed under the review required to be undertaken in section 13.5 of the HVAU.

If you have any queries, or would like to discuss anything in relation to the withdrawal of the variation application, please contact the writer on (08) 82174314 or sormsby@artc.com.au.

Yours sincerely

A handwritten signature in blue ink, consisting of the letters 'S' and 'O' joined together in a stylized, cursive manner.

Simon Ormsby
Executive General Manager Strategy & Growth