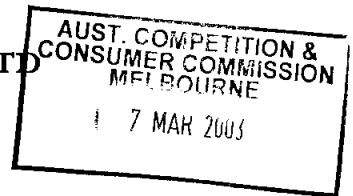




**AUSTRALIAN RAIL TRACK CORPORATION LTD**



4 March 2003

Ms Margaret Arblaster  
General Manager  
Transport and Prices Oversight  
Australian Competition and Consumer Commission  
GPO Box 520J  
Melbourne VIC 3001

FILE No:
DOC: D03/9601
MARS/PRISM:

Dear Ms Arblaster

**RE: ARTC ACCESS UNDERTAKING**

Your attention is drawn to the terms of the Access Undertaking entered into by ARTC in May of 2002, and in particular to the definition of the 'Network' contained therein.

It has come to the attention of ARTC that the defined Network in Schedule E of the Undertaking includes a minor section of intermediary track owned, operated and maintained by another party (namely TransAdelaide, the operator of the Adelaide metropolitan commuter train service). While this section is a sub-section of an ARTC Segment, over which ARTC has rights of transit and has traditionally been the sole seller of access, further review has suggested that ARTC cannot meet the criteria for "provider" within the meaning of section 44ZZA of the Trade Practices Act (1974) (and as subsequently clarified in ARTC's case by the ACCC<sup>1</sup>) in relation to this specific section.

As ARTC cannot satisfy the definition of 'provider', ARTC would not appear to be able to make any undertaking, nor would the ACCC be able to accept any undertaking in respect of this section of track, and so it would seem necessary that the access undertaking be amended at this time to remove the reference to it in the Network definition.

The track in question is in the Adelaide Metropolitan Area, between Dry Creek and Outer Harbour. Specifically, it includes all track and infrastructure between Port Adelaide Junction (signal 1155) and Glanville (signal 1456).

We propose that clause 6.2 of Schedule E be deleted and the following words inserted;

6.1 From Dry Creek including all tracks, points and signals forming the Dry Creek triangle to Port Adelaide Junction (signal 1155).

6.2 From Glanville (signal 1456) to Pelican Point/Outer Harbour.

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<sup>1</sup> ACCC Legal Advice M2000/160 dated March 30,2000 forwarded to ARTC.

We further propose that the description of the Segment remain as currently provided (ie Adelaide – Pelican Point), and that no change to the indicative access charges contained in clause 4.6 of the Access Undertaking be made. The charge based on \$/kgtkm or \$/km is not inconsistent with the revised Network description.

We apologise for the oversight that has necessitated this action and look forward to your comments on the appropriate process to effect the necessary amendments to the Access Undertaking.

Yours faithfully,

**AUSTRALIAN RAIL TRACK CORPORATION LTD.**

A handwritten signature in dark ink, appearing to read 'David Marchant', written in a cursive style.

David Marchant  
Chief Executive Officer