



14th January 2002

Margaret Arblaster  
General Manager – Transport and Prices Oversight Branch  
Australian Competition and Consumer Commission  
GPO Box 520J  
MELBOURNE VIC 3001

Dear Ms Arblaster

**Australian Rail Track Corporation (ARTC)  
Access Undertaking**

Thank you for the opportunity to comment on the Draft Decision of the Australian Competition and Consumer Commission ("**ACCC**") on the undertaking submitted by ARTC on third party access to its rail network.

The NSW Minerals Council ("**Council**") represents the interests of minerals producers in New South Wales. It has an interest in the access undertaking submitted to the ACCC ("**Undertaking**") because of the suggestion that the Undertaking may be extended to other rail lines which come under the control of the ARTC. One of the lines to which it could apply is the Hunter rail network. Members of the Council currently rail around 70 million tonnes of coal annually for export and domestic customers on this network.

The Council has no objection to the Undertaking, amended as suggested in the Draft Decision, being applied to the current ARTC network. It is however concerned at the suggestion that the amended Undertaking could be extended without significant further amendment to other lines that ARTC could control in the future. The reason for this concern is that conditions that apply to the Hunter rail network are significantly different from those which apply to the current ARTC network.

The Undertaking would be inappropriate to apply to the Hunter rail network because in many aspects of the ACCC's Draft Decision, the Undertaking was accepted either because rail was considered to be in competition with other modes of transport for the end market, or because ARTC does not recover Economic Cost on any segment of its network, or because ARTC applies principles of non-discrimination between users. None of these applies or is likely to apply to rail transport of coal on the Hunter rail network.

Consequently, if the Undertaking were to be applied in future to the Hunter rail network, it would be necessary to modify it so that it would be appropriate for conditions on that network.

Further explanation of these conditions and the differences between the ARTC network and the Hunter rail network are set out in the Attachment.

Yours sincerely

John Tucker  
Executive Director

**SUBMISSION TO ACCC**  
**ON**  
**DRAFT DECISION ON**  
**AUSTRALIAN RAIL TRACK CORPORATION ACCESS UNDERTAKING**

## Summary

The Australian Rail Track Corporation ("**ARTC**") submitted an Access Undertaking ("**the Undertaking**") to the ACCC in February 2001. The Undertaking applies to the ARTC rail network, comprising standard gauge tracks linking Wodonga, Melbourne, Adelaide, Broken Hill, Tarcoola and Kalgoorlie. The ACCC has issued a Draft Decision to accept the Undertaking subject to ARTC addressing certain concerns raised by the ACCC.

It has been suggested that the Undertaking could be applied to additional parts of the larger standard gauge rail network in Australia which links the mainland capital cities, and to the rail network in the Hunter Valley of NSW ("**Hunter rail network**"). This network extends from Ulan, Dartbrook and Stratford mines to the Port of Newcastle and south of Newcastle for domestic and export coal. The purpose of this submission is to highlight certain of the provisions of the Undertaking which would be inappropriate if the Undertaking were to be extended to the Hunter rail network.

In general, the reasons that the Undertaking would be inappropriate is that in many aspects of the ACCC's Draft Decision, the Undertaking was accepted either because rail was considered to be in competition with other modes of transport for the end market, or because ARTC does not recover Economic Cost on any segment of its network, or because ARTC applies principles of non-discrimination between users. None of these applies or is likely to apply to rail transport of coal on the Hunter rail network.

The NSW Minerals Council recognises that these considerations do not affect the acceptance by the ACCC of the Undertaking for the existing ARTC rail network. If however the Undertaking is extended in future to the Hunter rail network, or to any part of it, these matters would need to be reconsidered and the Undertaking amended accordingly before approval of the extension were granted.

## Basis for ACCC Draft Decision

In its draft Decision, the ACCC says (piii)

*... in considering the environment in which ARTC operates, the Commission regards the following features as important:*

- *... the majority of ARTC's revenues ... are earned in markets that, in most cases, are subject to a substantial degree of competition from non-rail sectors ...*

- *Existing charges set by ARTC in the marketplace result in revenues that fall significantly below a level that would allow for the business to earn an adequate long-term economic rate of return.*

*... ARTC intends to commit to ongoing reductions in real prices charges to users. This, combined with a proposed curb on price discrimination ...*

The Draft Decision also says (piv)

*The Commission has therefore considered the proposed undertaking from the point of view of setting in place a structure that:*

- *recognises that competition imposes some degree of constraint, particularly in relation to inter-modal freight; ...*

There are several other references (for example, p41) to competition imposing constraints on the conduct of ARTC in applying the Undertaking in practice.

The Draft Decision makes the comment that (pv)

*The Commission therefore anticipates that further access undertakings covering other parts of the interstate rail network can use ARTC's undertaking, and the Commission's assessment of it, as a guide.*

ARTC is currently discussing with the NSW Government an arrangement whereby it would control interstate track in New South Wales, including the Hunter rail network. The main considerations upon which the ACCC's evaluation of the Undertaking is based, namely competition from other transport modes, non-discrimination between users and lack of full cost recovery, do not apply to the Hunter rail network. Accordingly, any extension of the Undertaking to the Hunter rail network would not be appropriate without a full re-examination of the Undertaking.

### **Hunter rail network**

The reasons why these main considerations do not apply to the Hunter rail network are

- nearly all coal mines in the Hunter are obliged, as a condition of their mining leases or development consents, to use rail to transport coal for export so there is no competition from other transport modes
- price discrimination is currently applied on the Hunter rail network, between coal traffic and non-coal traffic, between export coal traffic and domestic coal traffic, and between export coal traffic from various loading points. Most Hunter coal traffic currently pays both its marginal cost plus all fixed costs and capital-related charges associated with most of the Hunter rail network on a stand-alone basis. All other traffic is thought to pay only the marginal costs of its access to the network

- full cost of the Hunter rail network is currently being recovered, except for the Maitland – Craven line on which coal traffic is minor compared to non-coal traffics

### **Provision of information**

Rail users would not be in a position to establish where ARTC's revenue limits actually lie on any particular segment (p122) unless they were in receipt of all relevant cost information. The additional information volunteered by ARTC as a new clause 3.3 in its letter of 5th December 2001 to the ACCC does not provide this.

As a guide, the information required in the NSW Rail Access Regime as specified in Schedule 5 of that regime may be taken to be the minimum required, with the following additions and qualifications

- cost information needs to be on a forward looking efficient cost basis
- cost information needs to be provided segment-by-segment
  - cost attribution methodology needs to be provided in sufficient detail so that an Applicant can actually determine all costs on a segment-by-segment basis
- the portion of costs that are incremental costs for the purpose of determining the Floor Limit needs to be identified
- full details of the determination of Major Periodic Maintenance need to be provided
- usage needs to be defined precisely, rather than in wide bands

Rail users would need in addition full information on revenues by sector in order to determine the scope for pricing by ARTC where differential pricing is practised.

### **Determination of capacity**

In relation to capacity (pxi and pp52-55), the experience of the NSW Minerals Council on the Hunter rail network is that the active cooperation of the network manager is needed to adequately determine the capacity of that network, because of the high degree of interdependence of the various traffics when demand on a network is nearing capacity.

The Hunter coal industry has received a high degree of cooperation from Rail Infrastructure Corporation in carrying out an analysis of the capacity the Hunter rail network. This cooperation has been necessary in understanding fully the constraints on the network's capacity. The analysis has helped both parties to gain a better understanding of capacity issues on this network.

### **Passenger traffic priority**

The NSW Minerals Council notes the comments in the Draft Decision on priority for passenger traffic (p26). Under s19D(2)(f) of the *Transport Administration Act 1988* (NSW), the current infrastructure owner is required to maintain reasonable priority to passenger train services in NSW, including on the Hunter rail network.

There is a particular problem of applying priority to passenger traffic when differential pricing may result in that traffic paying less than traffic given lower priority. The inequity of this

would be exacerbated if an Applicant were required to pay the full cost of Additional Capacity, and then take a lower priority than passenger traffic to use of that Additional Capacity.

### **Application of Undertaking to additional tracks**

It is noted that ARTC has committed to lodge an undertaking covering access to tracks it does not presently control, if it gains control in the future of tracks not covered by the current Undertaking. It is apparent from this submission that, if ARTC were to gain control over the Hunter rail network, a new undertaking which applies to only that network would be more appropriate than an amendment to the existing Undertaking (see p28, para 1).

### **Mutually exclusive capacity**

Mutually exclusive capacity is considered (pp61-64) only in the context of a contracted timepath. Because the nature of the coal transport task on the Hunter rail network makes regular contracted timepaths irrelevant, a different approach is needed for such traffic. This would need to be addressed in a separate undertaking.

### **Pricing principles**

Pricing principles in the Undertaking are summarised in the Executive Summary (pix) and discussed at some length in pp90-146. If the pricing principles in the Undertaking were to be applied to the Hunter rail network, some parts of the principles could be contradictory.

For example, the Undertaking imposes a ceiling limit for revenue from all operators of a segment or group of segments. The ceiling limit is based on the Economic Cost of the relevant segment or segments. There is also a limit on the extent to which the Indicative Access Charge can be increased. There has been a large amount of debate directed to clause 4.6(c) of the Undertaking which deals with the upper limit of any increase. Most or all of that debate has been directed at circumstances where revenue is well below the ceiling limit. It might be expected that under conditions where revenue is at the ceiling limit, this clause would not apply, or at least be overridden by the ceiling test.

There has been little attention directed to the ceiling test, because under current conditions on the network subject to the undertaking, it is only of academic interest. Clause 4.3(b) of the Undertaking provides that in formulating Charges ARTC will not differentiate between Applicants in circumstances where the Applicants are operating within the same end market. It is possible under this clause that revenue on a particular segment or segments could be at the Ceiling Limit, and an Applicant could already be paying all the fixed and capital-related costs of that segment or segments in its Charges while using only a relatively small proportion of trainpaths. If other traffic on that segment or segments, supplying different end markets, took up all remaining capacity, and the Applicant wished to increase its usage by a small amount which required Additional Capacity to be provided, the Applicant could be required to pay for all that Additional Capacity under Clause 6.2 of the Undertaking.

In the Hunter rail network that Additional Capacity could represent the duplication of a segment of track. The situation would then be that the Applicant is required to pay the full fixed costs and capital-related charges of a duplicate track when it needs much less than the capacity of a single track. Clearly for the Undertaking to be applied in circumstances where

price differentiation is permitted and revenue does reach the ceiling limit, it needs a provision to limit the charges imposed on any particular traffic or group of traffics so that no traffic pays for more capacity than it needs on a stand alone basis.

It is noted that discussion in the Draft Decision of the pricing principles is in the context of an asset that is significantly underutilised. This does not apply to the Hunter rail network. It is also noted that the pricing principles are generally presented in the context of non-discrimination between traffics, and that in practice the pricing proposed by ARTC does not discriminate in any way between users. This may not be the case in pricing on the Hunter rail network.

### **Charge differentiation and revenue limits**

The provisions relating to Charge differentiation are very general and non-prescriptive. The Undertaking allows Charge differentiation and specifies that the revenue generated by ARTC on a Segment or group of Segments will not exceed a specified Ceiling Limit. These two provisions taken together mean that it is possible for ARTC to charge a small group of Applicants the total Economic Cost of a Segment or group of Segments, even though the capacity of that Segment or group of Segments is far greater than that required by that group of applicants on a stand alone basis.

The Ceiling Limit needs a safeguard to protect Applicants against being required to pay for more capacity than they need if ARTC were to exercise its rights under the Undertaking to apply price differentiation.

### **Two-part tariffs**

While the Council in principle supports two-part tariffs as a means of encouraging optimum track utilisation, maximising train lengths may not result in the most efficient utilisation of the Hunter rail network. Trials have recently commenced in the Hunter rail network of train lengths that are around 2/3 of the maximum possible. It is expected that this will result in an increase in coal capacity of the order of 10%. Accordingly, a two-part tariff for the Hunter rail network would need to be carefully designed so that it is consistent with the capacity characteristics of that network.

### **Conclusion**

The Draft Decision has quite reasonably been based on the ARTC network to which it specifically applies. Many aspects of the Undertaking have been accepted by the ACCC because of the conditions that apply to that network and the traffic that currently uses it. If however ARTC gains control of additional track, in particular the Hunter rail network, these conditions and traffic types will be different. In that case it will not be practicable to simply extend the Undertaking to that network. Major modifications would be required to the Undertaking for it to accommodate conditions that apply to the Hunter rail network.