

1 June, 2001

Ms Margaret Arblaster
General Manager Transport
Regulatory Affairs Division
ACCC
GPO Box 5200
Melbourne VIC 3001

Dear Margaret,

RE: ARTC DRAFT ACCESS UNDERTAKING

Thank you for the opportunity of providing comments on ARTC's draft Access Undertaking.

We have reviewed the draft and would like to make the following comments for your consideration. Our comments are addressed in the order of the draft document for ease of reference.

Should you wish to discuss any of our comments either Ian Rhodes, Great Southern Railway's Chief Financial Officer (telephone 08 8213 4411) or myself would be pleased to meet with you.

Yours sincerely

Stephen Bradford
Chief Executive Officer

Enc.

GREAT SOUTHERN RAILWAY LTD

ARTC Draft Access Undertaking Comments

Reference	Issue
Access Undertaking Part 1	
1 1.1(f)	<p>We note that ARTC has stated that it will not discriminate its prices on the basis of the identity of the customer, the commodity being transported or the market being served. Whilst we appreciate and support the principle that all users should be treated equally, we believe that there will be cases where exceptions to this rule could and should be made.</p> <p>For example we do not see that to offer lower prices to an operator providing a service in the public interest would conflict with either the aims of the Inter-Governmental Agreement referred to in section 1 1.1 (a) of the draft undertaking or the Trade Practices Act. We note that the regulations to the Trade Practices Act would seem to specifically support this point in relation to those services in public interest which relate to:</p> <ul style="list-style-type: none"> • government legislation and policies relating to ecologically sustainable development; • social welfare and equity considerations, <u>including community service obligations</u>; • government legislation and policies relating to such matters such as occupational health and safety, industrial relations and access and equity; • <u>economic and regional development</u> including employment and investment growth; • the interests of consumers generally or of a class of consumers; • the competitiveness of Australian businesses; or • the efficient allocation of resources <p>It also appears to us that this commitment not to discriminate on the basis of the identity of the customer, the commodity being transported or the market being served has been deviated from in at least one respect.</p> <p>The Essential Elements of Access Agreements (schedule C) & the Indicative Access Agreement (schedule D) both propose that ARTC shall be entitled to recover charges and premiums levied by the TAC in Victoria on the ARTC based on the identity of the operator. These premiums should be seen as being part of the cost of operating ARTC as the applicable legislation levies them on the track owner/operator and as such, charges on individual operators should not be varied based on these premiums. ARTC have argued that passing on these charges to individual operators is merely the recovery of costs. We however contend that the effect of this is to increase charges to passenger operators as compared to freight operators. We note in this regard that ARTC is required to bear a number of costs which solely relate to freight operators (eg costs relating to the carrying of hazardous goods) which are not being specifically passed on to freight operators resulting in passenger operators effectively subsidising freight operators.</p>

1.2 (c) (i)	<p>We support the requirement that the Access Undertaking should attempt to reach an appropriate balance between the various objectives and interests noted in this section.</p> <p>We however are unable to locate any mechanism in the undertaking to enable this balance to be achieved or indeed the criteria that ARTC propose to use to measure the achievement of such a balance. The whole thrust of the undertaking is in our opinion directed at economic and business issues and we are unable to identify where any consideration has been placed on the other interests noted here.</p> <p>We believe that ARTC should specifically address each of the identified interests and demonstrate that its proposed regime addresses each of those interests appropriately.</p>
1.2 (c) (ii)	<p>As a passenger operator we believe that the undertaking should specifically acknowledge that ARTC services not just a freight market but also a passenger market. This is an important issue in relation to a number of areas of ARTC's operations where we believe that it should be acknowledged that the needs of passenger operators are different to those of freight operators.</p>
3.9 – 3.11 Negotiation & Dispute Resolution Process	<p>The process for negotiation and dispute resolution process appears to us to be somewhat unwieldy in practice. We suggest that it may be improved and streamlined if ARTC were to:</p> <ul style="list-style-type: none"> • publish details of all available capacity on the network (both current and for the next 5 years); • undertake to accept any proposal to utilise that capacity from an operator which: <ul style="list-style-type: none"> ○ fulfilled the criteria set out in 3.3 (d) ○ agreed to ARTC's standard published contractual terms
3.11.4.(vi) (C) & (F)	<p>It would appear that ARTC are proposing that any arbitrator is not required to take into account either the legitimate business interests of an operator or a person seeking access to access to the network when resolving a dispute. This would appear to be inequitable.</p>
5.2 (a) & (b)	<p>Giving preference to applicant's based on ARTC's commercial interests would seem to potentially automatically give preference to financial considerations whereas we believe that ARTC's role is not that of a commercial operator in the private sector but that it has obligations to consider other factors such as the public interest in the allocation of access to the network.</p>
Schedule C	<p>We believe that safety standards are a legislative matter and therefore this reference should be to "legislated standards" and not to "applicable and appropriate" safety standards. The ARTC proposed wording could have the effect of imposing a further level of safety standards over and above the legislated standards.</p> <p>In this regard we note that section 12 of the Indicative Access Agreement appears to deal adequately with safety issues.</p>

Schedule C	<p>We believe as a matter of principal that the right to conduct audits should be:</p> <ul style="list-style-type: none"> • a reciprocal right with the Operator entitled to audit ARTC • only exercisable if ARTC have legitimate concerns as to the non-compliance with an Operator's access obligations <p>In this regard we note the Indicative Access Agreement appears to provide for this.</p>
Schedule C	<p>It is not clear what warranties ARTC are seeking here. We believe that an Accredited Operator should be able to use any rolling stock on the Network that it is entitled to use by virtue of its accreditation. We are concerned that ARTC should not be acting in this regard as a second layer of safety regulation.</p>
Pricing	
General	<p>We note that ARTC has utilised the approach of setting "Floor and Ceiling" prices based on the achievement of a set of rates of return.</p> <p>In general terms we do not accept that this is necessarily the best approach to take in that we believe it can in reality be a subjective approach and not an objective one as it is heavily reliant on some potentially arbitrary valuation assumptions.</p> <p>We also contend that the application of the process has resulted in the floor and ceiling prices on each track segment which are so far apart as to be commercially meaningless in the sense that they do not set meaningful constraints on ARTC's indicative prices. This is evident from an examination of the segmental maximum and minimum revenue graphs presented in the submission.</p>
ARTC's Achieved Revenues	<p>We contend that the application of the pricing methodology has resulted in ARTC being able to generate excessive or super profits. In this regard we note that ARTC's audited accounts show after tax profits of \$20.3 million in 2000 and \$13.1 million in 1999 from track access fees of \$87.6 million and \$84.2 million respectively. It also derived positive cashflows of \$22.9million and \$16.3million respectively in those years. We believe that this indicates that acceptable returns could be generated even if track access fees were lowered by as much as 15% across the board.</p> <p>In this regard we note that the segmental revenue graphs indicate that the proposed indicative access fees on all major line segments are set so that prices are significantly above the calculated floor price indicating there is considerable room for reducing prices.</p> <p>In order to be more precise about this figure it would be necessary to consider in detail the likely future cashflows of ARTC as opposed to it's theoretical asset values.</p>

Indicative Access Agreement	
Existing Contracts	We believe that it would be equitable if, on acceptance of the Access Undertaking, existing operators were given the right, without penalty, to convert their existing access arrangements with ARTC to the accepted arrangements.
Absence of Penalties on ARTC for Non-performance of its obligations	<p>Under the current ARTC contractual arrangements there is no provision for reducing the access charges or otherwise compensating an operator should ARTC fail to meet its obligations in regard to the network, apart from the suspension of payments in the case of Force Majeure.</p> <p>As operators, businesses depend on the provision of a reliable and maintained network for which they pay by way of Access Charges. Those businesses will suffer if the network is not provided to an acceptable standard. We believe that an equitable Access Arrangement would contain financial penalties on ARTC in the case of its failure to meet its obligations.</p>