

Ms Margaret Arblaster  
General Manager – Transport  
Regulatory Affairs Division  
ACCC  
GPO Box 520J  
MELBOURNE VIC 3001

Dear Ms Arblaster

## **ARTC ACCESS UNDERTAKING**

I refer to the Australian Competition and Consumer Commission's (ACCC) review of the draft access undertaking submitted to it by the Australian Rail Track Corporation (ARTC).

### *Background*

Victoria agreed in 1997 to lease its interstate track, the standard gauge track from Serviceton on the South Australian border to Melbourne to Albury on the New South Wales border to the Australian Rail Track Corporation (ARTC) for a period of five years. Subsequently this lease was extended to 15 years from 1 July 1999 in order to provide ARTC with a more appropriate horizon for investment planning for the track.

The lease was entered into pursuant to the Inter Government Agreement of November 1997 in which Governments agreed to the establishment of ARTC as a 'one stop shop' for mainline interstate rail traffic.

Victoria's lease agreement with ARTC required ARTC to submit an access undertaking or code to the ACCC. Under the terms of the lease, if ARTC used reasonable endeavours to have its undertaking accepted the Victorian rail access regime would not be applied to the Victorian section of the ARTC track. The *Rail Corporations Act 1996 (Vic)* contains provision in Part 2A for an access regime to be applied to rail infrastructure.

Victoria is therefore supportive of ARTC submitting an undertaking to the ACCC which provides greater certainty and a dispute resolution process to users of the track. It is also supportive of the ARTC's intention to price services to encourage growth in the rail freight market.

### *General Issues*

The expiry date of the undertaking is not regarded by Victoria as a barrier to ARTC entering contracts which extend beyond this date. However, it should be noted that the lease of the Victorian component of the track does not permit ARTC to enter into an Access Agreement which exceeds the balance of the term of the lease (which expires on 30 June 2014) without obtaining the consent of Victoria's Director of Public Transport, although this consent must not be unreasonably withheld.

The Department regards the proposed five year time frame as appropriate given the changes taking place in the rail industry at present. An alternative may be to have the undertaking expire on 30 June 2006, which would be the same day as the current declarations under Part 2A of the Rail Corporations Act 1996 (Vic) cease.

### *Passenger Issues*

The Department's particular concern about the draft undertaking is that it lacks explicit consideration of passenger rail services which use the interstate track. Victoria has received preliminary advice on the application of Section 10 of the *Transport Act 1983 (Vic)* which

provides for priority of passenger services. This advice suggests that the undertaking should be amended to make explicit reference to this legislation. When I receive written advice on this matter I will be able to confirm this requirement.

Victoria subsidises the Overland Melbourne-Adelaide service operated by Great Southern Railway (GSR) and the CountryLink XPT Melbourne-Sydney service. Both these services operate on the ARTC track utilising "premium" train paths.

Victoria also has concerns about the appropriateness from the perspective of passenger services of the ARTC's proposed method for allocating paths for which mutually inconsistent requests have been made. ARTC proposes that in this circumstance it will, "*as a commercial entity*" select the application which "*is most valuable to ARTC*". Given that passenger services using these tracks will almost always be subsidised by Governments it is not clear that this approach will necessarily produce a socially as well as economically optimum outcome for rail services.

The Victorian Government has announced its intention to standardise the broad gauge corridor from Seymour to Wodonga which is currently leased to Freight Australia and runs parallel to standard gauge track leased to ARTC. It is possible that arrangements may be made under which ARTC would take over management of this track. This project will advantage rail freight movements in the Melbourne-Sydney corridor by providing additional standard gauge capacity, and is part of a Victorian Government program to standardise much of the Victorian non-metropolitan intrastate track, opening up greater opportunities for competition and growth in the national rail freight industry. Work on this track is currently expected to be completed by late 2003, that is, within the life of the proposed undertaking.

The broad gauge track in this corridor carries V/Line Passenger services, which are provided by National Express under a franchise agreement with the State. In the event that ARTC were to take over responsibility for the provision of access for these services the Government would want access to continue to be provided on appropriate terms. The Department is seeking advice on whether the draft undertaking, as it is currently worded, would limit the arrangements that could be made to provide for these services.

Apart from an occasional special train, all scheduled passenger trains operating in Victoria including interstate services receive subsidies from the Victorian Government. The availability of access for these services at reasonable prices is therefore a key concern of the Government. I expect to be able to clarify within the coming week whether Victoria will be seeking amendments to the undertaking to take account of the concerns I have mentioned. If you wish for any further information on this matter, please contact Mary Potter on 03-9655-6418.

Yours sincerely

**John McMillan**  
**Director of Public Transport**

/ /2001

Tel: 03 9655 6418  
Fax: 03 9655 6426  
Email: mary.potter@doi.vic.gov.au  
Ref: 2001/00498  
File: FM/01/010-1

CC: David Marchant, Chief Executive Officer, ARTC

