



Our ref: 63159  
Contact officer: Emma Ansell  
Contact phone: (03) 9290 6930

30 January 2019

Dear Stakeholder

### **Consultation on proposed variation to the Australian Rail Track Corporation Limited 2008 Interstate Access Undertaking**

The ACCC is seeking submissions on the Australian Rail Track Corporation Limited's (ARTC) application to extend and vary its 2008 Interstate Access Undertaking (**the 2008 IAU**) (**January 2019 Variation**). The January 2019 Variation was submitted to the ACCC on 29 January 2019.

The January 2019 Variation, together with supporting materials from ARTC, is available on the ACCC's website at:

<https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-rail-access-undertaking/january-2019-variation-of-the-2008-interstate-access-undertaking>

Alternatively, you may go to the ACCC's homepage, [www.accc.gov.au](http://www.accc.gov.au), and follow the links to 'Regulated Infrastructure', 'Rail', 'January 2019 variation of the 2008 Interstate Access Undertaking'.

### **Background**

The ACCC accepted the 2008 IAU in July 2008. The 2008 IAU sets out the terms and conditions of access for parties seeking to run trains on ARTC's Interstate Rail Network. The original expiry date of the 2008 IAU was 21 August 2018. This application constitutes the third application to extend the term of the 2008 IAU (as well as variation of other terms and conditions of the 2008 IAU).

On 6 March 2018, ARTC submitted the proposed 2018 Interstate Access Undertaking (**the 2018 IAU**) to the ACCC for assessment. On 20 December 2018, the ACCC published a draft decision to not accept the 2018 IAU. On 25 January 2019, ARTC withdrew the 2018 IAU from the ACCC's consideration.

The two previous extension applications occurred during the ACCC's assessment of the 2018 IAU.

#### *First extension application*

ARTC submitted an application on 28 June 2018 to vary the term of the 2008 IAU by four months to 21 December 2018. ARTC considered that this extension would provide regulatory certainty as the assessment of the 2018 IAU continued.

Stakeholder submissions supported ARTC's proposal to extend the term of the 2008 IAU to 21 December 2018 and on 25 July 2018, the ACCC issued a Decision to consent to ARTC's application.<sup>1</sup>

### *Second extension application*

On 16 November 2018 ARTC submitted an application to vary the term of the 2008 IAU by approximately two months to 28 February 2019. ARTC considered that this extension was sufficient time for the ACCC to complete its assessment of the 2018 IAU.

Stakeholder submissions supported ARTC's proposal to extend the term of the 2008 IAU to 28 February 2019. However, one submission raised concerns regarding the ability for the ACCC to complete its assessment of the 2018 IAU, and the uncertainty it would provide rail operators with respect to access agreements. On 12 December 2018, the ACCC issued a Decision to consent to ARTC's application, acknowledging the concerns raised regarding the length of the extension.<sup>2</sup>

### **Proposed effect of the January 2019 Variation**

On 29 January 2019 the ACCC received an application from ARTC to extend the 2008 IAU and vary a number of other sections in the 2008 IAU and associated Indicative Track Access Agreement. In its application letter, ARTC states that the January 2019 Variation seeks to extend the 2008 IAU while it works with the ACCC and industry to lodge a replacement IAU.

In the January 2019 Variation, ARTC proposes to:

- extend the term of the 2008 IAU to 29 February 2020
- set new Indicative Access Charges based on current charges escalated by CPI, except segments between Adelaide and Kalgoorlie, which ARTC proposes to escalate by CPI + 2 per cent.
- include an obligation for ARTC to draft a reconciliation mechanism into any future replacement IAU, or a further extension to the 2008 IAU, that reconciles the charges set out in the January 2019 Variation against the charges in any replacement IAU or further extended 2008 IAU accepted by the ACCC.

### **Submissions**

The ACCC, by publication of this letter, is inviting submissions from interested parties. Submissions are due by **5:00pm (AEDT) on 13 February 2019**. It is in stakeholders' interests that submissions are lodged by this date, as section 44ZZBD(3) of the *Competition and Consumer Act 2010 (the Act)* allows the ACCC to disregard any submission made after this date.

Further, the ACCC notes that there is limited time until ARTC's current access undertaking expires. It is therefore in parties' interests to make a submission within this timeframe to allow sufficient time for the ACCC to make a decision by 28 February 2019.

Appendix A sets out a range of questions related to aspects of ARTC's application. However, this list of questions is not exhaustive, nor do stakeholders need to respond to all of these questions.

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<sup>1</sup> Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-rail-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-december-2018>

<sup>2</sup> Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-rail-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-february-2019>

In deciding whether to consent to a variation of an access undertaking under section 44ZZA(7) of the Act, the ACCC must have regard to the matters set out under subsection 44ZZA(3) of the Act. In making a submission, parties are encouraged to address the matters listed under subsection 44ZZA(3) of the Act.

Submissions should be addressed to:

Matthew Schroder  
General Manager  
Infrastructure & Transport – Access & Pricing Branch  
ACCC  
GPO Box 520  
MELBOURNE VIC 3001  
Email: [transport@acc.gov.au](mailto:transport@acc.gov.au)

If you have any questions about this consultation letter, please contact Emma Ansell on (03) 9290 6930 or at [emma.ansell@acc.gov.au](mailto:emma.ansell@acc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Matthew Schroder', is positioned above the printed name and title.

Matthew Schroder  
General Manager  
Infrastructure & Transport – Access & Pricing

## **Appendix A**

This appendix sets out various questions, related to ARTC's January 2019 Variation, for which the ACCC seeks stakeholder views. The questions posed are not designed to limit stakeholders' submissions. Similarly, stakeholders do not need to respond to all questions in their submissions.

### **Extension to 29 February 2020**

1. Is an extension to 29 February 2020 appropriate?

### **Proposed Indicative Access Charges for 2019/2020**

2. Are the proposed Indicative Access Charges set out in section 4.6 of the January 2019 Variation appropriate?
3. Is the rationale for escalating Charges for Segments between Adelaide and Kalgoorlie by CPI + 2 per cent clear and appropriate?

### **Reconciliation mechanism**

4. Are the timeframes for undertaking the reconciliation process clear and appropriate?
5. Is the proposed approach to reconciling 2019/2020 Indicative Access Charges against a subsequent undertaking clear and appropriate?
6. Is it appropriate that the ACCC verifies the reconciliation calculation?

### **Indicative Track Access Agreement (ITAA)**

7. Is ARTC's proposed approach to varying Charges under the ITAA clear and appropriate?

### **Other matters**

8. Does ARTC's proposed changes to the 2008 IAU and ITAA have any implications for other parts of the IAU and/or ITAA that are not proposed to be varied under this application?
9. Are there any other concerns with the proposed drafting in the January 2019 Variation?