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6 June 2017

Dear Stakeholder

Re: Consultation on proposed variation to the Australian Rail Track Corporation Limited 2011 Hunter Valley Coal Network Access Undertaking

The ACCC is seeking submissions on Australian Rail Track Corporation Limited's (ARTC) application to vary its 2011 Hunter Valley Coal Network Access Undertaking (the 2011 HVAU) (the Application). The ACCC notes that the current expiry date of the 2011 HVAU is 30 June 2017 and that the ACCC received the Application on 6 June 2017. ARTC is seeking to vary a number of aspects of the 2011 HVAU, including the term and the commercial parameters.

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

<https://www.accc.gov.au/regulated-infrastructure/rail/artc-hunter-valley-access-undertaking/june-2017-variation-of-the-2011-hunter-valley-access-undertaking>

Alternatively, you may go to the ACCC's homepage, www.accc.gov.au, and follow the links to 'Regulated Infrastructure' 'Rail', to the 'June 2017 variation of the 2011 Hunter Valley Access Undertaking'.

Background

In June 2011, the ACCC accepted the 2011 HVAU under Part IIIA of the *Competition and Consumer Act 2010* (Cth) (the Act). The 2011 HVAU sets out the terms and conditions of access for parties seeking to run trains on ARTC's Hunter Valley rail network in New South Wales. The undertaking also sets out the details of the financial model governing ARTC's revenues.

On 23 December 2015, ARTC submitted the proposed 2016 Hunter Valley Coal Network Access Undertaking (the 2016 HVAU) to the ACCC for assessment. However on 14 June 2016, after consulting with industry, ARTC withdrew the 2016 HVAU. On 16 June 2016, ARTC submitted an application to extend and vary the term of the 2011 HVAU to 31 December 2016—which the ACCC accepted on 22 June 2016. On 18 October 2016, ARTC submitted an additional application to extend and vary the term of the 2011 HVAU to 30 June 2017—which the ACCC accepted on 23 November 2016.

On 9 December 2016, ARTC submitted the proposed 2017 Hunter Valley Coal Network Access Undertaking (the 2017 HVAU) to the ACCC for assessment. On 20 April 2017, the ACCC published the draft decision to not accept the 2017 HVAU. On 8 May 2017, ARTC withdrew the 2017 HVAU from the ACCC's consideration.

On 6 June 2017 the ACCC received an application from ARTC to vary the term and the commercial parameters of the 2011 HVAU.

ARTC submits that the Application reflects 'amendments that have the support of the majority of Hunter Valley Coal Producers'.

Proposed effect of the variation

ARTC proposes to vary the 2011 HVAU to:

- extend the term of the 2011 HVAU to 31 December 2021
- specify a real pre-tax rate of return 5.38 per cent and a nominal pre-tax rate of return of 7.91 per cent backdated to 1 July 2016 (new rate of return)
- specify a remaining mine life of 23 years from 1 July 2016 (new remaining mine life)
- amend the annual compliance process to:
 - clarify how annual compliance for 2016 will be conducted
 - set out a process for adjusting the revenue received from pricing zone 3 Access Holders between 1 July 2016 – 30 June 2017
- include an obligation on ARTC to submit a further variation within six months of the Application being approved to incorporate:
 - path based pricing
 - an incremental cost methodology
- include a right for the ACCC to obtain information from ARTC in relation to the undertaking
- provide a revised methodology for corporate overhead allocators
- amend the objectives in the preamble

Compliance assessment

ARTC proposes to conduct a reconciliation that has the effect of backdating the difference between the new rate of return and remaining mine life and the rate of return and remaining mine life that has applied during the previous two extensions. This reconciliation will be backdated to 1 July 2016.

For the purposes of the 2016 and 2017 compliance assessments, the rate of return and remaining mine life that applies from 1 January 2016 to 30 June 2016 will be that of the original term of the 2011 HVAU.¹ Between 1 July 2016 and 30 June 2017, the new rate of return and remaining mine life would apply.

Access prices for the second half of 2017

ARTC notes that it will revise the pricing for the second half of 2017, consistent with the new rate of return and new remaining mine life. The ACCC notes that ARTC has not included this as part of the Application, submitting that 'ARTC will provide that pricing to the ACCC shortly in sufficient time to meet its decision requirements'.² Following discussions with ARTC, the ACCC understands that this pricing will be provided in the next week.

¹ A real pre-tax rate of return of 9.10 per cent and a nominal pre-tax rate of return of 11.83 per cent.

² ARTC, *Application by ARTC to vary the Hunter Valley Access Undertaking to extend term*, 6 June 2017, p.3

Submissions

The ACCC, by publication of this letter, is inviting submissions from interested parties. Under subsection 44ZZBD(2) of the Act, the due date for submissions must be at least 14 days after publishing the notice inviting submissions. Accordingly, the ACCC encourages parties seeking to make a submission on the Application to do so as soon as possible and at the latest by **5:00pm on Tuesday 20 June 2017**. It is in your interest that the submission be lodged by this date, as under section 44ZZBD(3) of the Act, the ACCC may 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' interest to make submissions within this timeframe to allow sufficient time for the ACCC to make a decision prior by 30 June 2017.

In deciding whether to accept a variation of an access undertaking under subsection 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:

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

The ACCC prefers to receive electronic copies of submissions, either in PDF or Microsoft Word format, which allows for the submission text to be searched.

If you have any questions about this consultation letter, please contact Grant Kari on (03) 9290 1807 or at grant.kari@acc.gov.au.

Yours sincerely



Matthew Schroder
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