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20 November 2018

Dear Stakeholder

Re: Consultation on proposed extension and 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**) (**the Application**). The Application was submitted on 16 November 2018.

The Application is available on the ACCC's website at:

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

Alternatively, you may go to the ACCC's homepage, www.accc.gov.au, and follow the links to 'Regulated Infrastructure', 'Rail', to the 'Extension of the 2008 Interstate Access Undertaking (to February 2019)'.

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. This application constitutes the second application to extend the term of the 2008 IAU.

On 6 March 2018, ARTC submitted the proposed 2018 Interstate Access Undertaking (**the 2018 IAU**) to the ACCC for assessment under Part IIIA of the *Competition and Consumer Act 2010 (Cth)* (**the Act**). This undertaking is intended to replace the 2008 IAU.

The ACCC published the proposed 2018 IAU on 7 March 2018 and released a consultation paper on 26 March 2018. Documents relating to the proposed 2018 IAU are also available on the ACCC's website.

The ACCC has issued ARTC with two information requests as part of its assessment process.

First information request

After receiving submissions to the ACCC's consultation on the 2018 IAU, on 22 May 2018 the ACCC issued ARTC with an information request under section 44ZZBCA of the Act.

ARTC provided its initial response on 6 July 2018 and claimed confidentiality over the entirety of the information and documents provided. The ACCC reviewed ARTC's claims of confidentiality in relation to this response.

On 13 September 2018 ARTC provided the ACCC with revised final versions of its public response to the first information request, agreeing to make the majority of its response publicly available.¹

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 to provide regulatory certainty as the assessment of the undertaking continued. The 2008 IAU was originally due to expire on 21 August 2018.

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.²

Second information request

On 20 September 2018, the ACCC issued ARTC with a second information request under section 44ZZBCA of the Act. This information request followed the ACCC's consideration of ARTC's finalised response to the first information request.

ARTC provided its public response to the ACCC on 30 October 2018.

Proposed effect of the extension and variation

The current Application submitted by ARTC is seeking to extend the 2008 IAU while the assessment process for the proposed 2018 IAU is finalised.

ARTC proposes to vary clause 2.3(a) of the 2008 IAU to extend the term by slightly over two months to 28 February 2019. The Application does not propose to make any other amendments to the 2008 IAU.

ARTC submits that it 'believes that this is sufficient time for a final decision to be reached on the renewed 2018 IAU and therefore sees no reason that any further extension of the 2008 IAU could be required.'³

The ACCC notes that a range of factors impact the timing of the assessment of an undertaking under Part IIIA. The finalisation of the regulatory process depends primarily on the timeliness and completeness of the information the ACCC is provided.

If the ACCC is not provided with the information required to make a determination, it will seek the information it requires in order to assess the undertaking in line with the relevant statutory criteria.

The ACCC also notes that it will release a Draft Decision on the 2018 IAU shortly. The timing of the assessment process will be influenced by ARTC's response to, and stakeholder's submissions on, the Draft Decision.

Submissions

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 (AEDT) on Tuesday, 4 December 2018**. It is

¹ Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-rail-access-undertaking/interstate-rail-access-undertaking-2018/information-request-1>

² 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>

³ ARTC, *Re: 2008 Interstate Access Undertaking Extension Application to the ACCC*, 16 November 2018.

in your interest that the submission be lodged by this date, as section 44ZZBD of the Act allows the ACCC to disregard any submissions made after this date.

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 in section 44ZZA(3) of the Act.

In making a submission, parties are encouraged to address the matters listed in section 44ZZA(3) of the Act.

Submissions should be addressed to:

Mr Matthew Schroder
General Manager
Infrastructure & Transport – Access & Pricing Branch
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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
General Manager
Infrastructure & Transport – Access & Pricing Branch