

## **Submission in response to the Australian Competition and Consumer Commission (ACCC's) Draft Decision on Australian Rail Track Corporation's (ARTC) 2004 Interstate Rail Access Undertaking**

### **Executive Summary**

ARTC acknowledges and appreciates the significant efforts of the ACCC and all stakeholders in the comprehensive review of the regulatory framework for the Interstate Access Undertaking (IAU), submitted on 12 December 2023.

In response, ARTC is committed to implementing the amendments outlined in the ACCC's conditional acceptance of the proposed IAU. Furthermore, ARTC is dedicated to meeting the expectations set by the ACCC and stakeholders to enhance rail's competitiveness in the freight market. This includes the publication of a guidance paper within the first 12 months, outlining its approach to the management of network capacity.

### **Background**

Following an extensive engagement process, ARTC submitted an application for a replacement Interstate Access Undertaking (IAU) on 12 December 2023. As noted by the ACCC in its Draft Decision, while this IAU drew upon elements of the existing framework, it introduced several key changes, including:

- Expanding the number of core regulated services from one to eight
- Introducing a standalone price cap for regulated services, addressing issues with the existing Regulatory Asset Base
- Revising the arbitration framework to use a commercial arbitrator instead of the ACCC, and
- Enhancing transparency and financial reporting.

ARTC engaged in significant stakeholder consultation during the preparation of this submission and continued to do so throughout the ACCC's review process and following the publication of the Draft Decision. ARTC believes this collaborative approach is reflected in the ACCC's Draft Decision to conditionally accept its proposed IAU, subject to incorporating the recommended amendments.

### **Proposed Amendments**

The ACCC's Draft Decision to accept ARTC's proposed IAU is conditional upon ARTC implementing 18 proposed amendments to the IAU. Additionally, it requires ARTC to ensure that the Indicative Track Access Agreement (ITAA) does not proceed with any amendments classified as "Substantial" in the ACCC's accompanying spreadsheet.

ARTC has reviewed the ACCC's list of proposed amendments and is aligned with the principles behind each. ARTC is actively working on implementing these changes in an updated IAU, following the ACCC's preferred process and timeline.

In its response to the ACCC's Request For Information (RFI), provided on 20 August 2024, ARTC identified several clauses classified as "Substantial" by stakeholders that it could accept, and proposed they be reclassified as "Uncontentious." ARTC has continued stakeholder consultation on the ITAA amendments, clarifying its position on the remaining "Substantial" clauses. This constructive dialogue is expected to reduce the number of substantial clauses. Additionally, ARTC has agreed to include the amendment

requested by Aurizon regarding captive insurers in clause 16.1(b)(i). An updated amendment table and spreadsheet are provided to reflect this change.

## **ACCC Expectations**

While the ACCC's Draft Decision conditionally accepts the IAU, it also highlights the need for improvements in the efficient operation of ARTC's network. ARTC values the ACCC's analysis and commits to working with customers, freight owners, stakeholders, and the ACCC to meet these expectations.

In reviewing the Draft Decision, ARTC believes that the proposed Interstate Network Development Strategy (INDS) has broader implications than originally envisioned. As such, ARTC has renamed it the Rail Network Supply Chain Optimisation Strategy (the Strategy) to better reflect its scope and purpose in optimising the rail network.

Throughout its responses to the ACCC's RFIs and during the IAU review process, ARTC has emphasised the value of the new IAU framework in providing the commercial flexibility needed to meet challenges in the freight market. ARTC is mindful of the expectations this places on it and is committed to working collaboratively across the industry to address these issues.

## **Public Accountability**

ARTC acknowledges that many stakeholder concerns about rail freight productivity, such as network interoperability and harmonisation, lie outside the scope of the IAU and do not require court-enforceable regulatory obligations. However, as the national rail network manager, ARTC agrees with the ACCC that it is well-positioned to address these broader issues and embraces this responsibility.

The proposed annual Stakeholder Forum and the Strategy offer platforms for ARTC to work with key stakeholders to advance these items. ARTC welcomes this and commits to these processes.

## **Guidance Paper**

As part of its Draft Decision, the ACCC recommended that within 12 months ARTC publish a guidance paper addressing key access issues raised by Access Seekers. This paper would outline opportunities for Operators and non-Operators to seek, manage, resume, or transfer capacity on the Interstate network, and explain ARTC's approach to risk allocation and insurance arrangements.

In its stakeholder consultations on the ITAA, ARTC has noted support for this guidance paper and accepts the ACCC's recommendation. The paper will be published in time to inform the first annual Stakeholder Forum under the new IAU.

ARTC looks forward to continuing to work with the ACCC and key stakeholders in a practical and proactive manner.