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Contact officer: Guy Donald
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29 April 2021

Dear Stakeholder

Consultation on proposed extension to the Australian Rail Track Corporation's 2008 Interstate Access Undertaking

The ACCC is inviting submissions on the Australian Rail Track Corporation's (ARTC) application to extend its 2008 Interstate Access Undertaking (the 2008 IAU) (the Application). The Application was submitted on 23 April 2021 pursuant to section 44ZZBB(1) of the *Competition and Consumer Act 2010* (Cth) (CCA).

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

<https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-30-june-2023/application>

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 operate trains on ARTC's Interstate network.¹

On 6 March 2018, ARTC submitted its 2018 Interstate Access Undertaking (the 2018 IAU) to replace the 2008 IAU for assessment by the ACCC. 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.

On 23 August 2019, ARTC proposed to revalue the regulatory asset base (RAB) on the Interstate network using the Depreciated Optimised Replacement Cost (DORC) methodology. On 8 November 2019, the ACCC published its Statement of Approach² stating that the ACCC would appoint a consultant to undertake a DORC valuation of the Interstate network in order to determine the RAB value.

¹ For more information on the ARTC's defined Interstate rail network, see: <https://www.artc.com.au/customers/standards/route/access/defined-interstate/>

² Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-access-undertaking/proposed-valuation-for-the-interstate-network/statement-of-approach>.

On 23 April 2020, the ACCC engaged GHD Advisory to conduct the DORC. Stakeholders will have the opportunity to provide submissions to the ACCC on the draft DORC valuation report, prior to the ACCC publishing the final DORC valuation report.

The Application is the ARTC's sixth application to extend the term of the 2008 IAU. Annex A summarises the timeline of events leading up to the Application.

Proposed effect of the Application

On 23 April 2021, the ACCC received the Application from ARTC to extend the term of the 2008 IAU for a further period of 24 months. ARTC seeks to do so by amending clause 2.3(a) of the 2008 IAU to replace the words '30 June 2021' with '30 June 2023'. The Application does not propose to make any other amendments to the 2008 IAU.

ARTC submits that:³

Given that a draft DORC report is yet to be published and finalisation of this process is a condition precedent to the lodgement of the renewed IAU, ARTC considers that a two year extension is the most appropriate timeframe in order to provide the necessary certainty to stakeholders that a further extension is not required.

Further, recognising that there will be a gap between the DORC valuation date of 1 July 2019 and the likely start date of the replacement IAU of 1 July 2023, ARTC is committed to maintaining the accuracy of the DORC value during this period:⁴

... ARTC acknowledges that this requires a prudency assessment of capital expended on the Interstate Network during that temporal gap period... To this end, ARTC is committed to a process of working with the ACCC to provide necessary documentation and analysis required for this prudency assessment as early a date as possible.

Submissions

The ACCC invites submissions on the Application by **5:00pm (AEST) 13 May 2021**.

In deciding whether to extend the period for which the undertaking is in operation under section 44ZZBB(3) of the CCA, the ACCC must have regard to the matters set out in section 44ZZA(3) of the CCA.

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

Submissions should be addressed to:

Matthew Schroder
General Manager
Infrastructure & Transport – Access & Pricing Branch
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001
Email: transport@acc.gov.au

³ ARTC, Re: 2008 Interstate Access Undertaking (IAU) Extension Application to the ACCC, 23 April 2021.

⁴ ARTC, Re: 2008 Interstate Access Undertaking (IAU) Extension Application to the ACCC, 23 April 2021.

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.

Unless a submission, or part of a submission, is marked as confidential, it will be published on the ACCC's website and may be made available to any person or organisation upon request. If you are providing a confidential submission, the ACCC asks that you provide a full copy of the document and a public version with the confidential information omitted. Sections of submissions that are claimed to be confidential should be clearly identified. The ACCC will consider each claim of confidentiality on a case by case basis. If the ACCC refuses a request for confidentiality, the submitting party will be given the opportunity to withdraw the submission in whole or in part. Submissions that are withdrawn will not be considered as part of this consultation process.

If you have any questions about this consultation letter, please contact Guy Donald on (03) 9290 1857 or at guy.donald@acc.gov.au.

Yours sincerely

A handwritten signature in blue ink that reads "Matthew Schroder". The signature is written in a cursive style.

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

Annex A

Events leading to ARTC's sixth application to the 2008 IAU

Date	Event
30 July 2008	The ACCC accepts the 2008 IAU under Part IIIA of the then <i>Trade Practices Act 1974</i> (Cth). The original expiry date of the 2008 IAU was 21 August 2018.
6 March 2018	ARTC submits the 2018 IAU for ACCC assessment as a replacement to the 2008 IAU.
28 June 2018	ARTC submits an application to extend the term of the 2008 IAU by 4 months to 21 December 2018 (first application). ⁵
25 July 2018	The ACCC issues a Decision to consent to ARTC's first application.
16 November 2018	ARTC submits an application to extend the term of the 2008 IAU by around 2 months to 28 February 2019 (second application). ⁶
12 December 2018	The ACCC issues a Decision to consent to ARTC's second application.
20 December 2018	The ACCC publishes a draft Decision to not accept the 2018 IAU.
25 January 2019	ARTC withdraws the 2018 IAU from ACCC assessment.
29 January 2019	ARTC submits an application to vary a number of terms in the 2008 IAU, including extending the term of the undertaking to 29 February 2020 (third application). ⁷
22 February 2019	ARTC withdraws its third application from the ACCC's assessment, and submits a revised application.
28 February 2019	The ACCC issues a Decision to consent to ARTC's revised third application.
29 July 2019	ARTC submits an application to extend the term of the 2008 IAU for a further period of 4 months to 30 June 2020 (fourth application). ⁸
26 September 2019	The ACCC issues a Decision to consent to ARTC's fourth application.
5 May 2020	ARTC submits an application to extend the term of the 2008 IAU for a further period of 12 months to 30 June 2021 (fifth application). ⁹
19 June 2020	The ACCC issues a Decision to consent to ARTC's fifth application.
23 April 2021	ARTC submits the Application to extend the term of the 2008 IAU for a further period of 24 months to 30 June 2023.

⁵ Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-december-2018>.

⁶ Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-february-2019>.

⁷ Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-access-undertaking/january-2019-variation-of-the-2008-interstate-access-undertaking>.

⁸ Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-30-june-2020>.

⁹ Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-30-june-2021>