

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

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1. Background

GrainCorp Limited (**GrainCorp**) welcomes the opportunity to engage with the Australian Competition and Consumer Commission (**Commission**) and provide a submission on the Australian Rail Track Corporation's (**ARTC**) application to extend its 2008 Interstate Access Undertaking (the **2008 IAU**) (the **Application**) submitted by ARTC on 21 February 2023 pursuant to subsection 44ZZBB(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

2. GrainCorp supports ARTC's Application

GrainCorp supports ARTC's Application for a 12-month extension of the 2008 IAU to 30 June 2024 to allow for consultation with ARTC's stakeholders on its replacement undertaking and to provide the ACCC with sufficient time to complete its assessment of the same.

In the Application, ARTC highlighted the importance of "*continuing stakeholder engagement on its proposed replacement undertaking*".

In Section 1.1 of the Commission's Guidance Paper titled "*ARTC's Interstate network access undertaking 2023*" published in July 2022, the Commission outlined its expectation that:

- (i) ARTC seek feedback from stakeholders on a proposed replacement undertaking prior to submitting a replacement undertaking to the Commission; and
- (ii) that this process is intended to give ARTC the opportunity to consider feedback before submitting a replacement undertaking for consideration by the Commission.

As an access seeker directly impacted by the Interstate Network access arrangements, GrainCorp supports the Application on the basis that ARTC seeks feedback from GrainCorp regarding the terms of any proposed replacement undertaking.

3. Crucial for ARTC to seek feedback from GrainCorp and consult on a proposed replacement undertaking prior to submitting to the Commission

It is not clear to GrainCorp whether the preliminary consultation set out in (i) above has commenced aside from reference in ARTC's Application to "continuing" stakeholder engagement". The latter suggests that ARTC has commenced seeking feedback from stakeholders on a proposed replacement undertaking.

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However, to date, aside from attending an industry-wide Q&A session run by ARTC in mid-2022, there has been no further engagement by ARTC with GrainCorp regarding the terms of a proposed replacement undertaking nor has a proposed replacement undertaking been provided to GrainCorp for review. It is GrainCorp's expectation that as both a direct and indirect access seeker and key stakeholder, it would be included in this important process.

GrainCorp relies heavily on access arrangements with ARTC across the Interstate Network directly, to facilitate access to GrainCorp's key grain loading infrastructure that must be accessed above rail on the Network, and indirectly through pass through arrangements in place with GrainCorp's rail haulage providers.

GrainCorp has twenty-three (23) active storage and handling sites and ten (10) inactive sites situated on the Interstate Network, with a prospective ten (10) additional sites following completion of the Inland Rail Project.

On 22 December 2021, GrainCorp provided detailed submissions to the Commission on the need for review of the regulatory framework of ARTC's Interstate Network including the need for greater efficiency across the Interstate Network for all users (**GrainCorp's 2021 Submission**). The issues addressed in GrainCorp's 2021 Submission remain pertinent and relevant and continue to present challenges for GrainCorp when seeking access to the Interstate Network. It is GrainCorp's view that the issues raised in the submission should be considered during the preparation of a proposed replacement undertaking.

Since GrainCorp's 2021 Submission, GrainCorp continues to experience impediments to access (during the access negotiation process and operationally on ongoing basis). In line with Section 44AA of the Act which sets out the objects of the Part, any proposed replacement undertaking should through its terms promote economically efficient operation of, use of and investment in the Interstate Network infrastructure and provide a framework and guiding principles to encourage a consistent approach to access regulation across the Interstate Network.

When afforded an opportunity to provide feedback on a proposed replacement undertaking, GrainCorp will be seeking a more efficient, transparent and consistent means for access seekers to negotiate access arrangements and mitigate against the risk of ongoing operational impediments once access is provided.

At a high level, it is GrainCorp's view that the terms of a proposed replacement undertaking should consider the following matters to address the objects of the Part, the pricing principles in section 44ZZCA of the Act and the interests of access seekers:

- detailing clear timeframes and deliverables for responding to access seekers.
- ensuring timeframes cannot be used to delay or otherwise hinder access. That is, the negotiation process should not be protracted and act as a barrier to access.
- requiring clear, advanced communication of ARTC's operational requirements that may be ancillary to the access arrangement but necessary for access to be granted by ARTC (for example, expert reports required to be provided prior to access being granted).
- providing transparency to access seekers regarding ARTC's terms and conditions for both standard and non-standard access arrangements including through publication of standard and non-standard access terms and conditions on ARTC's website.
- ensuring contractual terms and conditions are balanced and fair.
- ensuring contractual terms and conditions avoid the use of overly onerous, one-sided arrangements and access seekers are provided a genuine opportunity to negotiate. That is, such terms are not provided on a 'take it or leave it' basis.
- ensuring operational constraints are not used as a mechanism to reduce operating costs (for example, the reduction of track speeds, closure of rail sidings, loops and yards and the imposition of heat restriction limits). These constraints create delays, higher cycle times and equipment adjustments on Network users with little incentive to pass on cost savings.
- where operational constraints are unavoidable, ensuring appropriate advance consultation with access users.
- including a mechanism to incentivise performance improvement.

- reviewing the current access charges framework to provide incentives to reduce costs and/or improve productivity in line with the pricing principles in section 44ZZCA of the Act. Access costs increasingly burden rail access seekers. Rail freight has traditionally been the more cost-effective and efficient means to transport bulk commodities over long distances. However, existing rail network inefficiencies have increased rail costs and forced bulk grain onto the road network.
- ensuring a fair process for prioritisation of access to the Network based not only on commercial return but the provision of equitable access for all Network users.
- addressing road freight access impediments to ARTC managed road-rail level crossing interfaces.

4. Conclusion

For the reasons expressed above, subject to ARTC seeking feedback from GrainCorp and consulting on the terms of a replacement access undertaking, GrainCorp supports the Application.