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9 March 2023

Dear Stakeholder

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

The ACCC invites 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 21 February 2023 pursuant to subsection 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/interstate-rail-network-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-30-june-2024>

### **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.<sup>1</sup>

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.

The ACCC has previously accepted extensions three times, with the latest extending the IAU until 30 June 2023. The more recent extensions of the IAU allowed ARTC and the ACCC time to work through the valuation of the regulated asset base (RAB) and other issues.

On 22 July 2022 the ACCC published a Guidance Paper that set out how the ACCC considered ARTC could improve the 2008 IAU and deal with existing issues with the RAB

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

and the imminent Inland Rail.<sup>2</sup> The paper noted that ARTC would need to submit a replacement IAU by October 2022 for the ACCC to complete its assessment before the current IAU expires.

On 10 October 2022 the ACCC sent a letter to ARTC regarding the potential timing of a replacement IAU and noted that ARTC should consider extending the current IAU to ensure sufficient time for consultation.<sup>3</sup> On 19 December 2022 ARTC provided a response letter to the ACCC notifying that it intended to submit a further extension of the IAU in early 2023 to 'ensure regulatory and contractual certainty whilst the ACCC assesses the proposed replacement 2023 IAU'.

Annex A summarises the timeline of events leading up to the Application.

### **Proposed effect of the Application**

The Application from ARTC is to extend the term of the 2008 IAU for a further period of 12 months. ARTC seeks to do so by amending clause 2.3(a) of the 2008 IAU to replace the words '30 June 2023' with '30 June 2024'. The Application does not propose to make any other amendments to the 2008 IAU.

### **Submissions**

The ACCC invites submissions on the Application by **5:00pm (AEDT) Friday, 31 March 2023**.

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

In making a submission, parties are encouraged to address those matters.

Submissions should be addressed to:

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Infrastructure & Transport – Access & Pricing Branch  
Australian Competition and Consumer Commission  
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CANBERRA ACT 2601  
Email: [transport@acc.gov.au](mailto: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.

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

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<sup>2</sup> Available here: <https://www.acc.gov.au/regulated-infrastructure/rail/interstate-rail-network-access-undertaking/the-regulatory-framework-for-artcs-interstate-network/guidance-paper>.

<sup>3</sup> Available here: <https://www.acc.gov.au/regulated-infrastructure/rail/interstate-rail-network-access-undertaking/timing-of-a-new-interstate-access-undertaking/acc-letter-to-artc>.

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 the Regulated Access - Rail team at [transport@acc.gov.au](mailto:transport@acc.gov.au).

Yours sincerely



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

## Annex A

### Events leading to ARTC's seventh application to extend 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). <sup>4</sup>
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). <sup>5</sup>
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 several terms in the 2008 IAU, including extending the term of the undertaking to 29 February 2020 (third application). <sup>6</sup>
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). <sup>7</sup>
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). <sup>8</sup>
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 (sixth application). <sup>9</sup>
15 June 2021	The ACCC issues a Decision to consent to ARTC's sixth application.
21 February 2023	ARTC submits the Application to extend the term of the 2008 IAU for a further period of 12 months to 30 June 2024.

<sup>4</sup> Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-december-2018>.

<sup>5</sup> Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/artc-interstate-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-february-2019>.

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

<sup>7</sup> 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>.

<sup>8</sup> 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>.

<sup>9</sup> Available here: <https://www.accc.gov.au/regulated-infrastructure/rail/interstate-rail-network-access-undertaking/extension-of-the-2008-interstate-access-undertaking-to-30-june-2023>.

## **Annex B**

### **Subsection 4ZZA(3) of the *Competition and Consumer Act 2010* (Cth)**

(3) The Commission may accept the undertaking, if it thinks it appropriate to do so having regard to the following matters:

- (aa) the objects of this Part;
- (ab) the pricing principles specified in section 4ZZCA;
- (a) the legitimate business interests of the provider;
- (b) the public interest, including the public interest in having competition in markets (whether or not in Australia);
- (c) the interests of persons who might want access to the service;
- (da) whether the undertaking is in accordance with an access code that applies to the service;
- (e) any other matters that the Commission thinks are relevant.