



AUSTRALIAN RAIL TRACK CORPORATION LTD

14/06/2011

ARTC Hunter Valley Access Undertaking Stakeholders

AUSTRALIAN RAIL TRACK CORPORATION LTD ARTC HUNTER VALLEY COAL NETWORK ACCESS UNDERTAKING TRANSITIONAL ARRANGEMENTS

Dear Stakeholders

Further to ARTC's letter sent to industry on 10 December last year (**Initial Letter**), ARTC wishes to update stakeholders on the its proposed arrangements for transition from the current arrangements under the NSW Rail Access Undertaking (**NSW RAU**) to the new arrangements under the HVAU.

In September 2010, ARTC lodged a revised voluntary access undertaking covering ARTC's Hunter Valley rail network with the ACCC for approval (**2010 Hunter Valley Access Undertaking** or **2010 HVAU**). In April 2011, in response to the ACCC's position paper released on 21 December 2010 (**Position Paper**), ARTC provided a revised version of the 2010 HVAU to the ACCC for consultation (**Revised 2010 HVAU**). Once the HVAU is accepted by the ACCC, it will replace the existing NSW RAU under which ARTC currently grants access to the Hunter Valley network.

Since lodgement, ARTC has had a number of discussions with the ACCC and has had the benefit of reviewing submissions made to the ACCC in response to the ACCC's Position Paper on the HVAU and subsequent submissions made on the Revised 2010 HVAU.

ARTC's commitment to the approach and timing described below is based upon the HVAU having a commencement date of 1 July 2011.

Non-Coal Users

As set out in the Initial Letter:

- It is not proposed that non-coal users adopt the AHA/OSA model unless they request it. Accordingly, ARTC is not intending to renegotiate the longer term contracts that a number of the non-coal users already have for use of the Hunter Valley Network based on the Interstate Track Access Agreement.
- Non-coal users that are on short term extensions of existing contracts pending HVAU commencement will be able to negotiate with ARTC in accordance with the HVAU principles from commencement of the HVAU.

Such users will have the benefit of clause 2.4 of the HVAU which provides that ARTC will reserve, at no charge, existing train paths used for non-coal traffic under agreements existing immediately before HVAU commencement. Those reserved train paths will be made available to Applicants who submit an Access Application for Non-Coal Access Rights, to be used for substantially the same purpose and in respect of the same end-market as the existing train paths, within 30 business days from HVAU commencement.

- While non-coal users are still entitled to seek access in accordance with the NSW RAU, ARTC's position is that any such negotiations should reflect the proposed approach in the HVAU and contracts entered into should be able to operate under the HVAU. For example, such contracts will reflect capacity shortfall provisions as Tier 1 mandatory provisions that will reflect the final ACCC decision.

Coal Users - contracting pre-HVAU

ARTC is currently operating in accordance with the NSW RAU and is bound to negotiate with access seekers.

Where ARTC is negotiating with coal users for access which will have effect beyond the anticipated commencement date of the HVAU:

- ARTC is negotiating on the basis of the current version of the Indicative Access Holder Agreement (**AHA**) and Indicative Operator Sub-Agreement (**OSA**).
- Any coal access agreements finalised prior to commencement of the HVAU will be amended on commencement of the HVAU to reflect Tier 1 uplift provisions (as approved by the ACCC) and retraction of any specific schedules related to the NSW RAU.

Coal Users - transition

ARTC confirms the principles for transition set out in the Initial Letter and provides an update on the proposed steps for transition.

1. Access rights and HVCCC confirmation

Irrespective of whether new contracts involving coal haulage are signed before or after the HVAU commences, producers will need to demonstrate to ARTC that they have network exit capability, ie port entitlements consistent with their request for track access in accordance with the provisions of the HVAU.

In response to industry concerns, ARTC has recently proposed an additional condition precedent (**CP**) related to the utilisation of Path Usages for transporting coal to a coal terminal at the Port of Newcastle. That CP will be satisfied by producers obtaining written confirmation from the Hunter Valley Coal Chain Co-ordinator (**HVCCC**) that there is sufficient Coal Chain Capacity to offload the anticipated coal associated with those Path Usages at the relevant discharge points.

2. 2011 track capacity is sufficient to meet 2011 port requirements

In its Initial Letter, ARTC informed industry that based on:

- previous rounds of non-binding volume nominations from producers;
- the requirement to show network exit capability; and
- the assumption that the producers and operators would continue in the same mode of operation on the network,

the preliminary modelling indicated that ARTC was in a position to meet all producers' below rail requirements for calendar year 2011. This view was based on modelling undertaken with the HVCCC.

Most producers provided new nominations following the request in the Initial Letter. While not all producers provided new nominations, the latest information received has not altered ARTC's view that it is in a position to meet all producers' below rail requirements for 2011 based on the assumptions above.

Accordingly, it remains ARTC's expectation that producers who enter into contracts either before or after the HVAU commences will have unconditional track capacity rights for 2011. That is the ability to use Path Usages in 2011 will not be subject to conditions relating to the construction of new projects.

Additionally ARTC expects that based on current capacity assessments there is adequate track capacity to cover applications for 2012 subject to the previously noted assumptions and assuming that projects identified as being required for 2012 capacity in the Corridor Capacity Strategy and projects being advanced through the Rail Infrastructure Group process are delivered as projected.

3. Information on rail projects required for port expansions is available

Producers have requested that ARTC publish its general capacity review of the Hunter Valley rail network for the 10-year period from 2011.

ARTC has done this in its latest Corridor Capacity Strategy dated March 2011. It also includes an outline of the project options that ARTC considers will be required to meet the future tranches of track capacity required to meet proposed port expansions. Given that the strategy was published by ARTC for consultation only 2 months ago, and no submissions were received from stakeholders, ARTC does not consider it necessary to update this information.

4. No intention that early contractors avoid conditions associated with additional capacity

In the Initial Letter, ARTC addressed the concern that an earlier contracting producer will be able to contract rail capacity to meet port entitlements for expanded port capacity which will not be conditional. That is, a producer could contract "existing" rail capacity to meet expanded port capacity in later years

on an unconditional basis meaning that producers who enter contracts subsequently may need to contract track capacity on a conditional basis in later years to meet their existing entitlements to existing port capacity.

ARTC reaffirms that it is not its intention that a producer will avoid conditions associated with future expansions by being 'first to contract'. ARTC understands the industry supports this principle. ARTC intends on structuring all capacity entitlements, irrespective of when the contract is signed, in accordance with the projects identified in the Corridor Capacity Strategy.

5. Negotiations will be undertaken in accordance with the HVAU process

As set out in the revised timetable below, ARTC will negotiate contracts in accordance with the HVAU, with some adjustments to reflect its proposed transitional timetable.

The HVAU sets out a detailed negotiation process with a number of steps but ARTC's intention is that it be applied flexibly as agreed with the access seeker to suit the circumstances.

As set out in its Initial Letter, ARTC does not consider a rigid approach, based on the experience with Port Waratah Coal Services Limited, to be practical as the track contracts involve more complexity and do not involve a "one size fits all" service. Producers have differing structural, commercial and governance arrangements and this needs to be reflected in the negotiation process.

On the assumption that the HVAU has a commencement date of 1 July 2011:

- ARTC proposes that producers provide revised indicative Train Path nominations or confirmation of their previous nomination within 30 business days from 1 July 2011 (**Transition Period**) and work towards providing an indicative Train Path Schedules within the Transition Period.
- Within 30 business days from the end of the Transition Period, ARTC will provide indicative Train Path Schedules and work with producers toward agreeing final Train Path Schedules.
- At 30 business days from the end of the Transition Period, ARTC will deem and acknowledge the nominations received within the Transition Period and associated Train Path Schedules (reflecting progress at that time) to be Access Applications submitted by the producers in accordance with section 3.8 of the HVAU (**Transition Process Applications**), unless a producer notifies ARTC otherwise.

Further detail about ARTC's proposed transitional timetable is set out in the table below.

The intention in negotiating Train Path Schedules pre-HVAU and in deeming indicative Train Path nominations provided within the Transition Period to be Access Applications made under the HVAU is to:

- ensure ARTC has the best information possible (for both coal and non-coal requirements) for assessing Capacity for the purposes of allocation; and
- enable the industry to move to the new arrangements as soon as possible following the HVAU taking effect. ARTC's experience is that the Train Path Schedules can be complicated where producers' volume or above rail haulage characteristics change during the initial 10 year period and therefore it is beneficial if the schedules can be progressed pre-HVAU.

Proposed transitional timetable for Transition Process Applications and Non-coal applications

<p>1. Pre-HVAU Transition Period is 1 July – 12 August 2011</p>	<p>Producers provide indicative non-binding nominations for Train Paths to ARTC, or confirm their nominations provided in December 2010, within 30 business days from 1 July 2011 (Transition Period) for Train Path Schedules from 1 July 2011. ARTC has attached a nominations template to this letter.</p> <p>Parties continue to negotiate indicative Train Path Schedules.</p> <p>Producers may, but are not required to, submit other information which is required for an Access Application or a pre-condition to negotiation under the HVAU.</p>
<p>2. Within 30 business days of HVAU commencement (this timetable assumes the HVAU has a commencement date of 1 July 2011) By 12 August 2011</p>	<p>Non-coal users to submit Access Applications within the reservation period (section 2.4 HVAU). Negotiations to occur in accordance with section 3 of HVAU and will continue until execution of an Access Agreement.</p> <p>Coal users to submit any additional information required for an Access Application in accordance with section 3.7 of the HVAU to the extent not already provided. Coal users to have right to submit revised additional information for a further 30 days i.e. by 23 September.</p>
<p>3. Within 30 business days from the end of the Transition Period By 23 September 2011</p>	<p>ARTC will provide indicative Train Path Schedules in response to the producers' nominations for consideration and work with producers to agree final Train Path Schedules.</p>

<p>4. At 30 business days from the end of the Transition Period</p> <p>At 23 September 2011</p>	<p>ARTC deems and acknowledges any indicative non-binding nominations for Train Paths provided within the Transition Period, and associated Train Path Schedules reflecting progress as at that date, as Access Applications made in accordance with the HVAU and those nominations will be considered "Transition Process Applications".</p> <p>Given the number of Access Applications that will arise from the transition to the HVAU and the resources available at ARTC to deal with applications, ARTC intends to prioritise negotiations with parties who have lodged Transition Process Applications.</p> <p>Applications from coal users which are not Transition Process Applications will not have the benefit of this transitional timetable or this priority. (An Access Application is not a binding obligation and producers may withdraw it at any time, but once withdrawn or materially modified outside the Transition Period and 30 business days from the end of the Transition Period, that Application will cease to be a Transition Process Application.)</p> <p>ARTC to advise of the following in relation to the remainder of 2011:</p> <ul style="list-style-type: none"> • Maintenance Months, Maintenance Losses and Network Path Capability (clause 3.2 AHA) • Monthly Tolerance Cap (clause 3.3 AHA)
<p>5. Subsequently - 3-month negotiation period (or as extended by the parties)</p> <p>23 September to 23 December 2011, unless extended</p>	<p>Unless the Applicant notifies that it does not intend to proceed with its Access Application based on the indicative Train Path Schedule provided by ARTC, the 3-month negotiation period referred to in section 3.12 of the HVAU is taken to commence at 30 business days from the end of the Transition Period.</p> <p>Except as set out in this table, the parties will negotiate to enter into an Access Agreement in accordance with section 3.12 of the HVAU.</p> <p>If ARTC and a producer cannot reach agreement within the 3-month negotiation period contemplated in section 3.12(b) of the HVAU, the parties can agree to extend the negotiation period. In considering whether to extend that period, the parties will have regard to:</p> <ul style="list-style-type: none"> • the status of the negotiations;

	<ul style="list-style-type: none"> • any user funding agreement required; • the complexity of the arrangements involved; and • the need for certainty in finalising agreements, in the interest of both parties. <p>The parties may also agree to extend the 3-month negotiation period to take into account any concerns the Applicant may have about the final Train Path Schedules which ARTC expects to provide within the first month of the negotiation period. Any extension agreed will, at the very least, accord with the timeframes provided for under the HVAU.</p> <p>Any disputes relating to ARTC's response to such concerns can be resolved via the dispute resolution process contemplated in section 3.11 of the HVAU.</p> <p>Treatment of, and allocations of Access Rights relating to, Transition Process Applications will be undertaken in accordance with section 3.13 of the HVAU ("Application of mutually exclusive Access Rights").</p>
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In the 2010 HVAU, the HVAU was set to take effect 21 days after it is published by the ACCC under section 44ZZA(3) of the *Competition and Consumer Act 2010*. However, ARTC now intends to nominate 1 July 2011 as the commencement date of the HVAU even though this date may fall within that 21-day period.

The timing of the negotiation process for later Access Applications, which are not Transition Process Applications, will occur as set out in the HVAU. If those timeframes in the HVAU do not suit a producer, ARTC encourages that producer to inform it of this, so that the parties can work together to agree a timeframe which is suitable to them both.

Arrangements until producers are transitioned over

There is no change to the approach set out in the Initial Letter:

- Most producers currently obtain track access indirectly through their haulage contracts with QR National (**QR**), Pacific National (**PN**) and Freightliner (**FL**).
- As it has been doing over the last 12 months, ARTC proposes to extend the existing track access agreements with each of QR, PN and FL during the transition period and for the extension to include their existing contracted rights to track access. However, ARTC will have the right to remove track access rights from the QR, PN and FL contracts as producers transition over to AHAs and hold those rights directly. All

charges will be invoiced directly to producers (i.e. Access Holders) once they are transitioned over to AHAs.

- Until all producers are transitioned over to AHAs there will be a mix of access arrangements in place. ARTC does not expect there to be any day-to-day practical impact during this transition phase as ARTC expects the process for nominating and allocating path usages through the HVCCC to be largely the same as occurs now, other than for the additional monitoring to ensure such allocations are consistent with contracted entitlements. ARTC will be discussing transitional arrangements with the rail operators.

Non-binding

The purpose of this letter is to provide information on the proposed transitional arrangements. It is not a legally binding document and does not create a legal relationship between ARTC and its addressee. Once the HVAU is accepted, the proposed transitional timetable for Transition Process Applications set out in the letter should be binding on ARTC and export coal producers unless otherwise agreed by the parties. To the extent that these letters contain statements of anticipated events, ARTC makes no representation or warranty that those events will occur or that the assumptions on which it has relied are complete or correct.

If you have any queries, please do not hesitate to contact Simon Ormsby on (08) 8217 4314 or Gavin Carney on (08) 8217 4189.

Yours sincerely



John Fullerton
Chief Executive Officer

ARTC Information Request

Provided commercial in confidence to ARTC. The nominations are non-binding and indicative only.

Load point:

Start date:

Volumes (in tonnes)*:

Start date of volume increase (if any):

* If volume is expected to change in stages during the year please indicate the date on which the changes will commence

ETC (Expected train configuration) KEY	
•	ETC1 - 3 x 90 class* + 91 x 120 tonne wagons
•	ETC2 - 2 x 5000 class* + 74 x 120 tonne wagons
•	ETC3 - 3 x 82 class* + 72 x 100 tonne wagons
•	ETC4 - If other - please specify details
* or equivalent motor power	

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Tranche 1 (mTpa)	5	5	5	5	5	5	5	5	5	5
Start date	1 Jan 2011									
Tranche 2 (mTpa)		1	1	1	1	1	1	1	1	1
Start date		2 Feb 2012								
Tranche 3 (mTpa)		2	2	2	2	2	2	2	2	2
Start date		30 Nov 2012								
Tranche 4 (mTpa)				1	1	1	1	1	1	1
Start date				20 May 2014						
ETC and % of above volume expected to be hauled for each ETC				ETC1 - 50% ETC3 50%			ETC1 - 100%			

[Duplicate and complete for each load point. If there is more than one load point on a balloon loop, then those load points may be aggregated. Note that years are calendar years.]

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Start date:

Volumes (in tonnes)*:

Start date of volume increase (if any):

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	2015	2016	2017	2018	2019	2020
Tranche 1 (mTpa)						
Start date						
Tranche 2 (mTpa)						
Start date						
Tranche 3 (mTpa)						
Start date						
Tranche 4 (mTpa)						
Start date						
ETC and % of above volume expected to be hauled for each ETC						