

29 January 2019

Emma Ansell
Regulated Access – Rail
Australian Competition and Consumer ACCC
GPO Box 520
MELBOURNE VIC 3001

By email: emma.ansell@accc.gov.au

Dear Emma

RE: 2018 INTERSTATE ACCESS UNDERTAKING – EXTENSION REQUEST

I refer to the Australian Competition & Consumer Commission (**ACCC**) draft decision on the Australian Rail Track Corporation's (**ARTC**) 2018 Interstate Access Undertaking (**2018 IAU**) dated 20 December 2018 (**ACCC Draft Decision**).

Extension request

The 2018 IAU is intended to replace the current 2008 Interstate Access Undertaking (**2008 IAU**) which expires on 28 February 2019. ARTC intends to work with the ACCC and industry to lodge a revised access undertaking to replace the 2008 IAU (**2019 IAU**).

The 2019 IAU will not be in place by 1 March 2019. Therefore, in accordance with section 44ZZA(7) of the CCA, ARTC requests the ACCC's consent to a variation of the 2008 IAU to:

- Extend its operation for 12 months until 29 February 2020.
- Set new Indicative Access Charges to apply from 1 July 2019 (**2019/2020 prices**), being the existing charges escalated by CPI except for the Adelaide to Kalgoorlie segment which will be escalated by CPI plus 2%. This pricing is consistent with the '2018 IAU Standing Offer' prices published by ARTC on its website on 25 September 2018 and discussed with all customers.
- ARTC understands the ability for the ACCC to approve such pricing is dependent upon the approval of the 2019 IAU and not this extension request. Therefore, ARTC will provide for a reconciliation of the 2019/2020 prices against the final outcomes of the 2019 IAU. As the precise form of the 2019 IAU and its approach to pricing is not yet finalised, the detailed mechanism cannot yet be defined. However, ARTC commits to include a reconciliation clause in the 2019 IAU. This clause will assess the amount paid for Indicative Services in 2019/20 and the amount which would have been paid under the final approved Regulatory arrangements for the Interstate Network and adjust for the difference. This calculation will be subject to ACCC review.
- ARTC commits to ensure that the conditions of extension for existing Track Access Agreements (**TAA**) or any new TAA's will give full effect to the 2019 IAU reconciliation clause.

ARTC submits the variation meets the criteria for consent by the ACCC set out in section 44ZZA(3) for the following reasons:

- It is in the interest of operators using the interstate network and their customers that an undertaking remains in place and there is regulatory certainty as to access and pricing until the 2019 IAU is accepted by the ACCC.


- In the absence of an approved ACCC undertaking, parts of the interstate network will become subject to state based economic regulation which will add complexity and administrative burden for operators and ARTC which is not preferable for an interim period.
- The reconciliation mechanism will provide protection for operators and ARTC that the pricing for the period of extension will be reconciled against the approved regulatory positions under the 2019 IAU, once accepted.

The documentation relating to ARTC's extension application of the 2008 IAU is intended for publishing should the ACCC wish to do so and includes:

- This application for the further 12-month extension of the 2008 IAU which outlines ARTC's proposed changes to the 2008 IAU and TAA including reasons for the proposed changes.
- A marked-up version of the 2008 IAU incorporating the changes required to extend the term for a further 12 months, set new Indicative Access Charges to apply from 1 July 2019 and provide for a reconciliation of the 2019/2020 prices against the final outcomes of the 2019 IAU.
- A clean version of the amended 2008 IAU.
- A marked-up version of the TAA which removes the previous 10-year CPI mechanism that is no longer applicable and includes a reconciliation clause. The TAA will only apply during the period of this extension and therefore will incorporate, in Schedule 3 of the TAA, the 2019/2020 prices specified in the accepted subsequent undertaking.
- A clean version of the amended TAA.

For further information regarding this letter, please contact Simon Ormsby on (08) 8217 4314 or sormsby@artc.com.au or Gavin Carney on (08) 8217 4189 or gcarney@ARTC.com.au.

Yours sincerely



John Fullerton
Chief Executive Officer