



## AUSTRALIAN RAIL TRACK CORPORATION LTD

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30 April 2014

Mr Matthew Schroder  
General Manager, Fuel, Transport & Prices Oversight  
Australian Competition and Consumer Commission  
GPO Box 520  
MELBOURNE VIC 3001

By e-mail: [REDACTED]

Dear Mr Schroder

### **ARTC Interstate Access Undertaking – Clause 2.4(e) Review**

The ARTC Interstate Access Undertaking was accepted by the ACCC on 31 July 2008 and subsequently varied on 10 April 2013 (IAU).

Clause 2.4(e) of the IAU requires ARTC, as soon as practicable after the fifth (5th) anniversary of the Commencement Date (21 August 2013), to undertake a review of the IAU, in consultation with Operators, potential Operators and other stakeholders. The review will consider any material impact that changes to industry circumstances or Government legislation, rules or regulations may have on the extent to which the Undertaking reasonably meets its intent as prescribed at clause 1.2.

ARTC notes the following from the ACCC's Decision on the IAU:

'The intention is to provide operators with an opportunity to raise concerns they may have with the functioning and effectiveness of the Undertaking, particularly in response to unforeseen industry or policy issues. While such a review is important to gauge the Undertaking's effectiveness, it needs to be balanced against the administrative costs of conducting the review. The five-year review process provides scope for operators, interested stakeholders and ARTC to evaluate the effectiveness of the Undertaking while not incurring the costs and potential uncertainties of a formal review process.'<sup>1</sup>

ARTC also notes that under Clause 2.4 of the IAU, ARTC may seek the approval of the ACCC to vary the IAU at any time during the term of the IAU.

Consistent with the requirements and intent of Clause 2.4(e) of the IAU, ARTC provided a letter to Operators, potential Operators and other stakeholders on 25 October 2013 describing the requirements and scope of the review and seeking comments. A copy of the letter is provided at

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<sup>1</sup> ACCC, Final Decision Australian Rail Track Corporation Access Undertaking – Interstate Rail Network July 2008, p30.



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**Attachment A.** A list of Operators, potential Operators and other stakeholders to whom the letter was sent is provided at **Attachment B**.

ARTC received responses from a number of parties. A listing of responding parties is provided at **Attachment C** and responses are confidentially provided at **Attachment D**.

At **Attachment E**, ARTC has provided a summary of its observations from responses received and intended actions. ARTC has now responded to relevant stakeholders consistent with the intended actions.

In light of the responses received from Operators, potential Operators and other stakeholders in the Section 2.4(e) review, and following its own internal considerations, it is not ARTC's intention to seek to vary the IAU as a consequence of the Clause 2.4(e) review. Whilst ARTC accepts that there could be some technical adjustments made, ARTC considers that the costs associated with seeking a variation will substantially outweigh any benefits that might be achieved.

ARTC considers that it has now met its obligations under Clause 2.4(e) of the IAU, and has conducted the review of the IAU in a manner consistent with the intent of the review as noted from the ACCC's Decision on the IAU as described above.

Should you have any queries, please contact Kylie Gallasch on [REDACTED] or Gavin Carney on [REDACTED].

Yours sincerely

John Fullerton  
**Chief Executive Officer**



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ATTACHMENT A

**Letter to Operators, potential Operators and other stakeholders 25 October 2013**

25 October 2013

(Operator name)  
(Operator address)

Attention: (Name)

Dear Sir

**Review of ARTC Access Undertaking**

In accordance with Clause 2.4(f) of the Access Undertaking (“Undertaking”) given by ARTC to the Australian Competition and Consumer Commission (ACCC), ARTC is undertaking a review of the Undertaking. It should be noted that the part of the ARTC network that is covered by the Undertaking is the Interstate Rail Network as defined by the Undertaking and as specified at Schedule E of the Undertaking.

The purpose of the review is to consider any material impact that changes to industry circumstances, or Government legislation, rules or regulations may have on the extent to which the Undertaking reasonably meets its intent as prescribed at clause 1.2 of the Undertaking (the Objectives of the Undertaking).

As part of that review, ARTC is consulting with Operators, potential Operators and other stakeholders and ARTC therefore invites any comment from your organisation as to any material impact that changes to industry circumstances, or Government legislation, rules and regulations have had on the extent to which the Undertaking reasonably meets the intent of its Objectives.

It is also ARTC’s intention to consider any material impact that changes to industry circumstances, or Government legislation, rules and regulations have had on the extent to which the Undertaking reasonably meets the intent of its Objectives.

ARTC requests that any comments be provided by 5:00pm AEDT on 29 November 2013.

Should you have any queries, please contact Kylie Gallasch on [REDACTED] or Simon Ormsby on [REDACTED].

Yours sincerely

Simon Ormsby  
**Executive General Manager, Strategy & Growth**



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**ATTACHMENT B**

**Listing of consulted Operators, potential Operators and other stakeholders**

- 1. 3801 Limited**
- 2. Asciano**
- 3. Aurizon Operations Limited (formerly QR Limited)**
- 4. Australian Railway Historical Society (ACT Division) Incorporated**
- 5. Australian Western Railroad Pty Ltd (Aurizon)**
- 6. Bowmans Intermodal**
- 7. Freightliner Australia Pty Ltd**
- 8. Genesee & Wyoming Australia Pty Ltd**
- 9. Great Southern Rail Limited**
- 10. John Holland Pty Ltd**
- 11. Lachlan Valley Railway Society Co-Operative Ltd**
- 12. Qube Logistics (Rail) Pty Ltd (formerly South Spur Rail Services)**
- 13. Rail Motor Society Inc**
- 14. SCT Logistics**
- 15. Southern Shorthaul Railroad Pty Ltd**
- 16. Sydney Trains (formerly RailCorp)**
- 17. V/Line Passenger Pty Ltd**
- 18. Specialised Bulk Rail**
- 19. McConnell Dowell**
- 20. Rhomberg Rail**
- 21. Sydney Rail Services**
- 22. NSW Minerals Council**
- 23. Commonwealth Department of Infrastructure & Transport**
- 24. Commonwealth Department of Finance**
- 25. TransportNSW**
- 26. Department of Transport, Planning and Local Infrastructure, Victoria**
- 27. WA Department of Transport**
- 28. SA Department of Planning Transport and Infrastructure**
- 29. Queensland Department of Transport and Main Roads**
- 30. NT Department of Transport**



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**ATTACHMENT C**

**Listing of responding Operators, potential Operators and other stakeholders**

- 1. Asciano**
- 2. Genesee & Wyoming Australia Pty Ltd.**
- 3. SA Department of Planning Transport and Infrastructure**
- 4. Queensland Department of Transport and Main Roads**
- 5. Freightliner Australia Pty Ltd**
- 6. WA Department of Transport**
- 7. Department of Transport, Planning and Local Infrastructure, Victoria**



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**8. ATTACHMENT D**

**Operator, potential Operator and other Stakeholder responses [CONFIDENTIAL]**

(Separate)



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### ATTACHMENT E

#### Summary of ARTC observations from responses and intended actions

ARTC's observations from responses are as follows.

- The majority of responses acknowledged that there have been no changes in Government legislation, rules and regulations or industry circumstances which materially impact on the IAU meeting its intent. However, Asciano highlighted what it considered to be material industry changes, namely:-
  - Increasing competitive pressure from roads; and
  - Increased congestion on the East/West corridor

Asciano did provide suggestions for consideration which in its view would address the above perceived industry changes. These included proposed changes to pricing levels, pricing structures and pricing escalation factors to address road to rail competitive pressures and suggested investment on the Adelaide to Tarcoola section of the interstate network through extended passing lanes in lieu of crossing loops which would enable opposing trains to pass at track speed;

ARTC is of the view that aggressive competition between road and rail freight has been an enduring factor in the freight market, which sets pricing constraints.

Asciano encouraged ARTC to continue its ongoing active involvement in road charging reform, suggesting that a shift to a more cost reflective road charging regime (similar to the rail access regime) would assist in addressing the competitive position of road freight;

- A number of other responses sought to query a number of specific clauses within the IAU that were either outside of the scope and intent of clause 2.4(e) or were minor definitional adjustments (where the cost associated with a variation would outweigh the benefits);
- The Government of Western Australia Department of Transport noted the fact that Rail Safety National Law is to be introduced in Western Australia in mid 2014 and requested early consultation in the event that ARTC seeks to vary the access regime following the review; and
- The State Government of Victoria – Department of Transport, Planning and Local Infrastructure advised of a recently released freight and logistics plan, Victoria – The Freight State in which the Victorian Government has committed to take further steps to grow freight volumes on rail and to encourage the use of short haul port rail shuttles. A proposed review of access charges for the ARTC Network in inner Melbourne is considered to be outside of the scope or intent of the Clause 2.4(e) review.



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In response to the responses received, ARTC has:

- provided considered responses to those organisations who have formally participated in the review process; and
- provided a written response to all other respondents advising ARTC intention with respect to the Clause 2.4(e) review, and completion of the review.