

2017 Hunter Valley Coal Network Access Undertaking

Summary of key changes to Draft 2016 HVAU

December 2016

ARTC



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1 Introduction

1.1 Purpose of Summary

The purpose of this document (**Summary**) is to detail, and provide context that aids understanding of the features of the Hunter Valley Coal Network Access Undertaking to commence 1 January 2017 (**2017 HVAU**) submitted to the Australian Competition & Consumer Commission (**ACCC**) in December 2016 for approval.

The undertaking currently in place (**2011 HVAU**) was due to expire on 30 June 2016. In December 2015, ARTC submitted to the ACCC for approval a new undertaking proposed to commence on 1 July 2016 (**Draft 2016 HVAU**). On 14 June 2016, ARTC withdrew its Draft 2016 HVAU from the ACCC's consideration and applied for an extension to the 2011 HVAU, which was approved by the ACCC on 22 June 2016.

On 18 October 2016, ARTC submitted a further extension application to the ACCC for approval to extend the term of the 2011 HVAU until 30 June 2017 (**Extension Application**). The Extension Application was approved by the ACCC on 23 November 2016. This means that the 2011 HVAU will be due to expire on 30 June 2017.

The 2017 HVAU is an evolution from the Draft 2016 HVAU and the focus of this Summary is to identify key changes to the 2017 HVAU compared to the Draft 2016 HVAU. Accordingly, this Summary will be limited to the departures made in the 2017 application from the draft 2016 application and is to be read in conjunction with the explanatory guide prepared for the 2017 HVAU (**Explanatory Guide**).

Please refer to:

- Attachment 1 for a comparison between the 2017 HVAU and the Draft 2016 HVAU; and
- Attachment 2 for a comparison between the 2017 Indicative Access Holder Agreement (**2017 IAHA**) and the draft 2016 Indicative Access Holder Agreement (**Draft 2016 IAHA**).
- Attachment 3 for a comparison between the 2017 Indicative Operator Sub-Agreement and the draft 2016 Indicative Operator Sub-Agreement.

1.2 Status of this document

This Summary is intended as a public document and may be published by the ACCC at its discretion.

This Summary does not comprise part of the 2017 HVAU nor does it seek to repeat the contents thereof, but rather it seeks to provide a summary of the key differences between the Draft 2016 HVAU and the 2017 HVAU. To the extent there may be any apparent inconsistency between this Summary and the 2017 HVAU, the 2017 HVAU shall prevail.

A number of terms used in this document are defined in the 2017 HVAU. Readers are directed to the 2017 HVAU section 15 for those definitions. To the extent that there is any difference in the use of a term in this Summary and its definition in the 2017 HVAU, the definition in the 2017 HVAU prevails.

2 Key changes to the 2017 HVAU

2.1 Changes from Extension Application

A number of changes that appear in the comparison between the Draft 2016 HVAU and the 2017 HVAU are a result of amendments made pursuant to the Extension Application. As the Extension Application followed submission of the Draft 2016 HVAU, the changes appear as differences between the 2017 HVAU and the Draft 2016 HVAU.

These changes appear in sections:

- section 2.2(b) – a change to the commencement and expiry date to incorporate the Extension Period;
- section 5.8(b) – a change to the rate of return to incorporate the Interim ROR;
- sections 4.10(g) to 4.10(j) and 4.23 – new clauses were inserted for the purposes of clarifying the approach to undertaking the compliance assessments for the 2016 calendar year and the Extension Period;
- section 4.22 – a new clause inserted for the purposes of determining the Extension Period Access Charges; and
- consequential definitions as a result of the above changes.

2.2 Minor drafting changes

ARTC has made the following minor amendments:

- **(clause 2.5)** Deletion of the words “negotiated” and “existing” – these words are not necessary as “Access Agreement” is a defined term referring to the agreement between an Access Holder and ARTC for Access Rights.
- **(Schedule D)** ARTC has rectified references in Schedule D to “Network Key Results Areas” for consistency with the defined terminology in the 2017 HVAU.

2.3 Information-gathering power

At the request of the ACCC, an information-gathering right has been given to the ACCC under section 1.5 of the 2017 HVAU.

Please refer to section 2.2.2 of the Explanatory Guide for further details on the rationale of this amendment.

2.4 Scope & administration

2.4.1 Term of Undertaking (Section 2.2)

The Commencement Date of the 2017 HVAU has been amended to 1 July 2017 (rather than 1 July 2016 as proposed in the Draft 2016 HVAU).

Please refer to section 2.3.1 of the Explanatory Guide for further detail on the term of the 2017 HVAU.

2.4.2 Transfer to non-ARTC entity (Section 2.2(c))

Clause 2.2(c) of the Draft 2016 HVAU was inserted in response to a request by its shareholders. Given the prospect of privatisation of ARTC is no longer imminent, ARTC has deleted clause 2.2(c).

2.4.3 Mandatory review of Undertaking (Section 2.3)

ARTC has made the following change to section 2.3 (as proposed in the Draft 2016 HVAU):

- In response to the ACCC’s preliminary views on the Draft 2016 HVAU, ARTC has amended section 2.3 to remove the mandatory referral to the Australian Competition Tribunal in circumstances where the ACCC decides to reject a variation application arising from the periodic review. Instead, ARTC will have the right to refer the matter to the Tribunal and if ARTC does so, it must accept and incorporate the outcome of the Tribunal’s decision.
- ARTC has made a minor amendment to the definition of “Review Date” to clarify that the Review Date is 6 years prior to the current End Date. ARTC has also made a consequential change to section 2.3(a) to clarify that the review process

must commence on or before the Review Date. This ensures that the variations take effect from the date that is 12 months after the Review Date (being from 1 January of the relevant year).

- ARTC has amended the review process for the average remaining mine life to align with the changes made to section 4.7. At the Review Date, ARTC must review the weighted average remaining mine to remove any Operating Mines which have been placed into care and maintenance or in respect of which the renewal of a licence, approval or other requirement has not been granted, as well as Prospective Mines that no longer satisfy the requirements of a Prospective Mine.

Please refer to section 2.3.1 of the Explanatory Guide for further detail on the mandatory review process.

2.4.4 Minor Variation (Section 2.4)

In response to the ACCC's preliminary views on the Draft 2016 HVAU, ARTC has removed the minor variation regime from the 2017 HVAU.

The ACCC expressed concerns that the specific categories of 'minor variations' go beyond what the ACCC would consider as minor and could affect the ACCC's view of the subsection 44ZZA(3) matters to which it must have regard in deciding whether to accept a variation of the undertaking. Accordingly, the deletion of the minor variation regime appears as a difference between the 2017 HVAU and the Draft 2016 HVAU.

Consequential changes as a result of this deletion include:

- deletion of the definition "Administrative HVAU Provisions";
- amendment to section 13 to remove reference to variations under section 2.4;
- amendments to the definitions of "Segment" and "Services Envelope" to remove references to amendments pursuant to section 2.4;
- amendment to Annexure 1 to remove the drafting that the map may be changed through the minor variation mechanism; and
- amendment to Schedule D Performance Measures to remove the variation of Network Key Result Areas by agreement with the RCG.

2.5 Access Pricing Principles

2.5.1 Amendment to Floor Limit / Ceiling Test

A number of amendments have been proposed to the 2017 HVAU (that did not appear in the Draft 2016 HVAU) to address issues raised by the ACCC's final determination on the 2013 compliance assessment.

These changes were not provided in the Draft 2016 HVAU as the ACCC's assessment of ARTC's compliance with the 2011 HVAU for the 2013 calendar year was not finalised at the time the Draft 2016 HVAU was submitted to the ACCC for its consideration.

Please refer to section 2.5.1 of the Explanatory Guide for further details.

2.5.2 Depreciation of Segment Specific Assets (Section 4.7)

In HRATF's submission on the Draft 2016 HVAU submitted on 9 March 2016, HRATF expressed concerns in relation to the weighted average mine life (**WAML**) methodology. In particular, that the methodology should include a mechanism to account for the mine life of Prospective Mines.

In response to these views, ARTC has amended section 4.7 of the 2017 HVAU from that proposed in the Draft 2016 HVAU to reflect the inclusion of Prospective Mines in the calculation of the WAML.

As a result of these changes, sections 2.3(a), 3.7(a) and 4.18(a) and 4.18(d) have also been amended. Please refer to section 2.5.3 of the Explanatory Guide for further details on the changes to these sections and section 4.7.

2.5.3 Rate of Return (Section 4.8)

The 2017 HVAU includes a rate of return of 6.51% real pre-tax and 7.86% nominal.

Please refer to section 2.5.4 of the Explanatory Guide for further detail.

2.5.4 Annual TUT Audit (Sections 4.11)

A new 4.11(o) has been included to clarify the process for the TUT Audit for the 2017 calendar in accordance with the position proposed under the Extension Application. In particular, that the TUT Audit will be conducted for the entire 2017 year notwithstanding that the period from 1 January 2017 to 30 June 2017 was governed under an expired undertaking.

2.5.5 Standard Access Charge (Section 4.15)

ARTC has removed the precise pricing in the table of Charges in section 4.15 given that Charges are dependent on the outcomes of the new opex regime being developed.

Accordingly, this will appear as a difference between the 2016 Draft HVAU and the 2017 HVAU.

2.6 Investment & industry consultation

2.6.1 Operating costs & incentive proposal (Section 9.3)

In response to a request by the ACCC, ARTC has amended section 9.3 of the 2017 HVAU (from that contained in the Draft 2016 HVAU) to reflect the new opex regime that ARTC is proposing to submit in the revised version of the 2017 HVAU to be lodged with the ACCC in H1 2017. Please refer to section 2.7.4 of the Explanatory Guide for more detail on section 9.3.

As a result of the proposed new opex regime, any changes made in the Draft 2016 HVAU relating to the Efficiency Incentive regime, as well as the cost allocation and costing manual regimes have been deleted.

2.7 Innovation incentive mechanism

ARTC has removed the references to "Additional Capacity" in section 14 and replaced those references with a reference to the "increase in the capability of the Network". This is because the defined term of "Additional Capacity" relates to an enhancement or improvement of infrastructure and section 14 is designed to capture innovations that increase capacity beyond those only involving infrastructure improvements.

2.8 Transitional provisions

ARTC has deleted section 15 (Transitional provisions) proposed in the Draft 2016 HVAU as the 2017 HVAU no longer requires these transitional provisions for the final 2011 HVAU compliance assessment and the final 2011 TUT.

Instead, the transitional arrangements with respect to the compliance assessments for the 2016 calendar year and for H1 2017 are being dealt with under surviving obligations of the 2011 HVAU.

Please refer to the Extension Application for further details in relation to the transitional arrangements under the 2011 HVAU.

3 Key change to 2017 IAHA

3.1 Changes from Extension Application

The changes that appear in clause 5.4 of the 2017 IAHA are a result of amendments made pursuant to the Extension Application. As the Extension Application followed submission of the draft 2016 undertaking application, this change appears as a difference between the 2017 IAHA and the Draft 2016 IAHA.

3.2 Efficiency Incentive Charge

As a result of the proposed new opex regime, all changes made in the Draft 2016 IAHA relating to the calculation and payment of the Efficiency Incentive Charge have been deleted.

3.3 Minor drafting amendments

ARTC has made the following minor amendments:

- **(Terminology)** Deletion of the definition of “Key Performance Indicators” and the associated Schedule 4 (Key Performance Indicators) as this concept has been replaced in the 2017 HVAU with “Network Key Result Areas”. The definition of “Network Key Result Areas” was included in the Draft 2016 HVAU but the deletion of the replaced term was omitted. ARTC has also replaced references in clause 3.13 to “Key Performance Indicators” with “Network Key Results Areas” for consistency with the terminology in the 2017 HVAU.
- **(Definitions)** Amendment to the definition of “System Assumptions” to rectify the reference to “System Assumptions Document” and the consequential reinsertion of the definition of “System Assumptions Documents” as this was erroneously deleted from the Draft 2016 IAHA.
- **(Columns)** Deletion of the specified references to “columns of the Train Path Schedule Spreadsheet” throughout the 2017 IAHA. ARTC intends to update the format of the Train Path Schedule Spreadsheets to be more user-friendly. Accordingly, the references to specified columns throughout the 2017 IAHA may be inconsistent with the final format of the Train Path Schedule Spreadsheet prepared by ARTC. To avoid any such inconsistencies, ARTC has proposed to simply refer to the Train Path Schedule Spreadsheet rather than the specified column names.

3.4 Destination specific train paths

In the Draft 2016 IAHA, the two coal terminal owners were separately defined to reflect the move to destination specific train paths. This amendment was made as an issue of some concern for Coal Chain Capacity was the aggregation of Train Paths to a single Newcastle port destination. To assist with this, ARTC agreed to modify its contracting approach in the Draft 2016 IAHA to require that Access Holders specify the use of the Port Waratah Coal Services or Newcastle Coal Infrastructure Group coal terminals. ARTC understands that this change is no longer being pursued by industry and accordingly, ARTC has reverted to the original drafting and terminology in the 2011 HVAU.

3.5 Conditions precedent (Clause 2.2)

Clause 2.2 has been amended by ARTC from that proposed in the Draft 2016 HVAU by requiring that Security provided by an Access Holder include the amount of GST payable. Subject to this clarification change, clause 2.2(a) remains largely the same as the 2011 HVAU (and as such, the requirement regarding the need to have an OSA has been removed on the basis that it is not necessary).

Please refer to section 4.2 of the Explanatory Guide for further details.

3.6 Identification of Allocation Period (Clause 3.5)

ARTC has amended clause 3.5. Please refer to section 4.4 of the Explanatory Guide for more detail.

3.7 Change to TOP Rebate & Ad Hoc Charge Rebate (Clause 5.4)

To facilitate a transition between the 2011 HVAU and 2017 HVAU, clause 5.4 was inserted as part of the Extension Application to address the requirement to deal with two part year reconciliations.

The 2017 IAHA drafting amends the wording proposed in the Extension Application to align with the revised terminology in the 2017 HVAU. The amendments do not change the approach taken in the Extension Application – ie that as part of the 2017 rebate process, ARTC will undertake a reconciliation of the 2016 rebates to take into account the revised rate of return and remaining mine life.

3.8 Notices (Clause 20)

ARTC has made a minor amendment to clause 20 of the IAHA to allow for email notification under the agreement.

**ATTACHMENT 1
DRAFT HVAU**

MARK-UP 2017 HVAU COMPARISON TO 2016

**ATTACHMENT 2
DRAFT IAHA**

MARK-UP 2017 IAHA COMPARISON TO 2016

**ATTACHMENT 3
DRAFT OSA**

MARK-UP 2017 OSA COMPARISON TO 2016