

Matthew Schroder
General Manager
Infrastructure and Transport – Access and Pricing
Australian Competition and Consumer Commission
GPO Box 3131

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via email: transport@accg.gov.au

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Dear Mr Schroder,

GrainCorp's response to ACCC's draft decision: ARTC's 2024 Interstate Access Undertaking

GrainCorp appreciates the opportunity to provide submissions to the Australian Competition and Consumer Commission (**ACCC**) in response to the ACCC's draft decision dated 26 July 2024 regarding Australian Rail Track Corporation's (**ARTC**) proposed 2024 Interstate Access Undertaking (**IAU**).

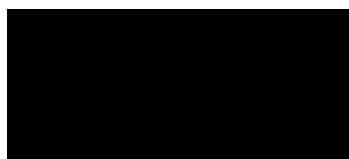
GrainCorp supports the ACCC's recommendations for certain amendments to be made to the IAU including, but not limited to, a commitment by ARTC to an annual stakeholder forum for both rail operators and other interested parties to provide feedback on ways to improve access to, and efficient operation of, the Interstate Network.

Further, in line with ACCC's draft decision, GrainCorp welcomes ARTC's proposal to streamline its process and provide greater transparency in respect of access arrangements such as third-party rail loading access. GrainCorp acknowledges the ACCC's concerns regarding the additional time that may be required to consider changes to the scope of the IAU at this time. To that end, GrainCorp wishes to work with both ARTC and ACCC to capture such changes as part of a separate access undertaking or a future undertaking in line with ACCC's discussion in the draft decision. Should a determination be made that such changes are to be captured in a future undertaking, GrainCorp suggests that, as an interim measure pending such future undertaking, it would be appropriate that the dispute resolution mechanisms in the proposed IAU be extended to cover rail loading operators.

We set out additional submissions in response to ACCC's draft decision below.

GrainCorp looks forward to continuing to work with ACCC, ARTC and rail stakeholders to improve access to the Interstate Network.

Your Sincerely,



General Manager, 

GrainCorp's submission in response to ACCC's draft decision regarding ARTC's proposed IAU

Scope and extent of IAU

The focus of the IAU and description of the Interstate Network has largely been on the track (and track related) infrastructure and Operators. This focus means that the interests of other significant rail access seekers, such as rail loading operators, do not have the benefit of the protection afforded under the IAU. GrainCorp welcomes the opportunity to work with both ARTC and ACCC to capture such changes as part of a separate access undertaking or a future undertaking to reflect rail loading operator access needs and requirements in the IAU.

The infrastructure that rail loading operators, such as GrainCorp, rely on to access the Interstate Network are usually located on the rail loading operators' land and in Interstate Network Sidings throughout the entire Interstate Network.

However, access to this infrastructure can only occur from the Interstate Network and requires the permission of ARTC to access this infrastructure from the Interstate Network. Without this access, rail loading operators would not be able to access the Network nor would the Operators be permitted to enter into the Interstate Network Sidings.

ARTC requires additional commercial arrangements for such access for rail loading operator infrastructure from the Interstate Network that is upgraded or newly constructed as a separate requirement to the existing lease arrangements the rail loading operator has to the Interstate Network.

ACCC has indicated in its draft decision that rail loading operators such as GrainCorp require similar protection in negotiating access and that further discussion and consultation with ARTC, relevant stakeholders and ACCC should occur¹.

To that extent, GrainCorp refers to its proposed changes to the IAU to introduce rail loading operator access and associated definitions in the IAU. GrainCorp submits that such changes provide a strong foundation on which ARTC can build on to address the interests of rail loading operators in the IAU. GrainCorp submits that its proposed drafting be considered as a basis for future amendments to the IAU or in any newly created interstate access undertaking for rail loading operators.

The transparency around negotiations of commercial terms with ARTC for this access by rail loading operators is equally important for the effective operation of the Network and both types of access – Operator and rail loading operator – which GrainCorp maintains should be governed by an IAU. That is, Operators currently have the benefit of fairness and transparency in their dealings and commercial negotiations with ARTC through the IAU and GrainCorp maintains its position that this should extend to both types of access.

Future amendments to the IAU, or indeed the creation of a separate interstate network access undertaking, is required so that the same principles can apply to rail loading operators. GrainCorp notes the ACCC's recognition that further consideration is warranted in respect of GrainCorp's submission that rail loading operators should have similar protections in negotiating access. An interim measure, if the ACCC is minded to recommend that such changes be made in a future IAU, GrainCorp considers that the current IAU could be amended without substantial changes to extend the application of the dispute resolution provisions of the IAU to rail loading operators. GrainCorp submits that such change would go some way to recognising the status of rail loading operators under this IAU.

Consultation 12 months prior to IAU expiring

GrainCorp agrees with ACCC that:

- (a) ARTC should notify relevant parties and stakeholders at least 12 months prior to the expiry of the IAU and invites ARTC to liaise and consult earlier than the 12 months; and

¹ ACCC draft decision ARTC IAU 26 July 2024, p22

- (b) an annual forum run by ARTC be established to consult with relevant parties and stakeholders, noting the added benefit of ACCC's attendance as another mechanism for transparent and more frequent dialogue with ARTC on matters affecting access seekers under the IAU.

Arbitration

GrainCorp acknowledges a number of stakeholders made positive comments about the changing of the arbitration framework from ACCC to a commercial arbitrator.

GrainCorp welcomes ACCC's recognition that ARTC needs to amend some of the factors the commercial arbitrator will need to consider in any dispute in order to balance the interests of access seekers with ARTC and that the terms of the arbitration agreement itself can be negotiated by the access seeker.

GrainCorp also welcomes additional processes for smaller users to be able to access to resolve disputes with ARTC under the IAU so that arbitration is the last resort.

Pricing Principles

GrainCorp acknowledges that the ACCC has endorsed the changes to the IAU that there is no explicit floor or ceiling limit, rather the imposition of a standalone CPI-indexed cap for the 8 Reference Services is being introduced into this IAU. GrainCorp echoes its previous support for CPI being the best rate to use to adjust the price cap on the basis that cost of labour and materials tend to track with CPI and would provide better certainty and forecasting predictability for access seekers.

GrainCorp, however, remains cautious that the absence of a floor or ceiling limit (in particular) may not achieve the economically competitive market that the ACCC seeks to regulate in the IAU, as charges rarely reach the ceiling limit. As has been previously discussed with ACCC, the bulk grain industry is vulnerable to volatility and sudden movements in access charges and the cost and pricing mechanism due to seasonality and the dynamic nature of bulk grain freight movements.

GrainCorp restates its previous submission that pricing reliability and relative predictability will promote long term investment and improve efficiencies, which in turn can be recovered through increase charges so as the real benefit can be quantified. It is important that the mechanism for how this benefit is quantified is set out in the IAU, particularly in relation to Inland Rail where an assumption may be made of the benefit that may or may not be fully realised and may not reflect the end users and access seekers' experience.

GrainCorp will continue to work with ARTC and key stakeholders in providing feedback as ACCC has requested throughout the term of the IAU to gauge the appropriateness of the approach for two part access charging, noting too the pricing, performance and revenue reporting requirements ARTC will need to comply with.

In addition to its previous submissions to the ACCC, GrainCorp wishes to amplify the need for rail loading operators access to be regulated under a revised IAU or a new interstate access undertaking is to ensure charges ARTC issue to such access seekers are cost reflective, fair and transparent. This is particularly important given rail loading operators also pay access charges for access to the Interstate Network through its Operators.

Any charges to the rail loading operator's access to the Interstate Network that are above those charges should be covered in an IAU to ensure fairness and transparency. The groundwork has partially been done in the transparent reporting requirements the ACCC encourages ARTC to include and GrainCorp welcomes the opportunity to develop and resolve this.

Capacity

The Interstate Network plays a significant role in Australia's grain industry domestically and internationally. There is a need for some certainty around pathing, including ad hoc pathing capabilities, so that rail access seekers can identify and progress long term capital investment that increases the movement of freight on rail.

Seasonality is a key factor of grain being moved on ad hoc paths, as well as harvest size and shipping schedules, which means ad hoc paths allocation needs to be competitive. This includes unused paths and network capacity and

the impact of track possessions and maintenance. ARTC's capacity allocation process reinforces a gradual reduction in the availability of capacity for ad hoc paths.

The seasonality inherent to grain leaves the grain industry exposed to loss in the Interstate Network capacity over time. Any "spare" capacity in the Interstate Network to allow grain movements through the Interstate Network has been critical to grain and needs to be protected so that it is not "lost" to other users that can sustain higher rail costs, like coal. This is also influenced by the optimisation opportunities of the existing infrastructure and how ARTC will implement the Interstate Network Development Strategy (**INDS**) to actively achieve this.

While the concept of an ad hoc path itself is not in and of itself the concern, the reliability and availability of ad hoc pathing for the grain industry is critical. GrainCorp welcomes ACCC's calls for increased transparency in path allocation decisions and analysis that informs those decisions in a guidance paper to be released by ARTC in the next 12 months as a starting basis, as well as the use of the INDS as a mechanism to consult to optimise capacity allocation amongst the various rail access seekers.

Interstate Network Development Strategy

Rail loading operators such as GrainCorp are a key stakeholder of the Interstate Network, both as an access user through its infrastructure and through its engagement of Operators for the movement of bulk grain and other commodities via rail on the Interstate Network.

Additional performance reporting by ARTC to capture more regional sections and even industry specific performance data will assist the INDS in considering the performance information relevant to a number of rail access seekers. Understanding Interstate Network capacity pathing availability, spare capacity, utilisation and delays will enhance the opportunities the INDS can identify and build on.

GrainCorp broadly welcomes the development and introduction of the INDS, noting greater clarity is required for how this strategy will be implemented to identify and address operational improvements, network resilience, interoperability, harmonisation and the reinvestment of revenue income to support this. GrainCorp looks forward to engaging with ARTC and other rail access seekers in respect of the INDSs.