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By email

Mr Matthew Schroder
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Dear Mr Schroder

HRATF supplementary submission

The Hunter Rail Access Taskforce (**HRATF**) wishes to acknowledge the continued work of the ACCC staff team and ARTC in relation to the request for consent submitted by ARTC on 21 December 2017 to vary the 2011 HVAU (**HVAU Variation**).

The HRATF provided detailed submissions in response to the HVAU Variation on 14 February 2018 (**February Submission**). In light of subsequent engagement with the ACCC and ARTC, the HRATF wishes to make the following supplementary submissions.

Support for the HVAU Variation as a package

As noted in the HRATF's February Submission, there are several elements introduced through the HVAU Variation, including:

- amendments required to implement path based pricing, including new multi-part tariffs;
- the recovery of incremental capital cost through take or pay charges (rather than through non-take or pay);
- a change in the basis of recovery of ICC, from Contracted TKM to Contracted Gtkm; and
- amendments to the dual ceiling framework to clarify the contribution of Pricing Zone 3 users in respect of Pricing Zone 1 costs (to align with the position adopted following the ACCC's 2013 compliance assessment).

As noted in the February Submission, the members of the HRATF view the HVAU Variation as a "package". There are individual elements of the package that may be unattractive to individual members, if proposed in isolation. However, with one exception, HRATF members see the overall package of changes as preferable to the alternative, which is that the 2011 HVAU continues in its current form until the end of its term on 31 December 2021.

The nature of the "propose-respond" model governing voluntary undertakings under Part IIIA is that the ACCC's role is limited to either accepting or rejecting the HVAU Variation in the form submitted, having regard to the factors in section 44ZZA(3). In doing so, the ACCC will necessarily have regard to an appropriate counterfactual, which HRATF acknowledges in this case is likely to be a continuation of the status quo (i.e. the HVAU as extended in 2017, but otherwise unchanged).

Put simply, in this case, the ACCC is required to consider whether the HVAU Variation, if accepted, would better achieve the factors in section 44ZZA(3) than the status quo (i.e. no variation at all).

Taken as a package, the HRTAF considers that this is the case and therefore supports acceptance of the HVAU Variation.[1]

Interaction of the changes with the loss capitalisation position in Pricing Zone 3

During the process of consulting on the HVAU Variation, ACCC staff identified concerns about the manner in which the amendments to the dual ceiling framework may operate in the future, particularly in the event that the loss capitalisation account for Pricing Zone 3 is fully paid down.

The HRATF is grateful for the high degree of interest in this issue and for the quality of the engagement by the ACCC staff team with ARTC and producers.

HRATF wishes to use this opportunity to make clear that its support for the package of amendments comprising the HVAU Variation is limited to the period over which loss capitalisation is occurring. The HRATF does not necessarily accept that the tariff framework being implemented will continue to be appropriate once the entire Hunter Valley network becomes constrained.

ARTC has provided assurances to producers (both publicly through its Explanatory Guide in December 2017 as well as during discussions with the HRATF and individual producers) that it does not expect the loss capitalisation account to be paid down prior to the end of the term of the current HVAU, on 31 December 2021. The HRATF accepts those assurances. This means that any debate about the future pricing approach to apply post loss-capitalisation is a debate that can, and should, be undertaken only as part of the next HVAU reset. It is not a debate that needs to prevent acceptance of the HVAU Variation now.

The HRATF would be disappointed if acceptance of the package of changes proposed in the HVAU Variation was derailed by concerns that do not arise during the term of the current HVAU.

In saying this, we also wish to stress that support for the package of changes comprising the HVAU Variation should not be seen as HRATF supporting the current model in the future. The HVAU Variation should not be viewed as any kind of 'precedent' or as entrenching a preferred position for ARTC or the ACCC ahead of the next reset. To the contrary, a number of members of the HRATF would object to the continuation of the dual ceiling model and potentially to other elements of the pricing framework (such as path based pricing) once the Pricing Zone 3 loss capitalisation account has been paid down. The HRATF do not currently share a common position on the pricing approach which should apply once loss capitalisation is paid down in Pricing Zone 3.

[1] Subject to one exception, Anglo American.

In light of these concerns, HRATF understands that ARTC is prepared to include in the HVAU Variation a new clause that provides comfort that all of the elements of the current pricing approach will be reviewed in the lead up to the next reset, having regard to the end of loss capitalisation. HRAFT supports the inclusion of this rider, which provides comfort for all stakeholders.

For these reasons, and given the commitment by ARTC to review the entire pricing approach as part of the next reset, the HRATF strongly supports the acceptance by the ACCC of the package of changes comprising the HVAU Variation.

Please direct any correspondence in relation to the issues raised in this submission to me, copying our HRATF advisers, Alex Sundakov (Alex.Sundakov@castalia-advisors.com) and Simon Muys (smuys@gtlaw.com.au).

Yours Sincerely,

Craig Forster
Chair – Hunter Rail Access Taskforce