



AUSTRALIAN RAIL TRACK CORPORATION LTD

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7 November 2014

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

By email: [matthew.schroder@accg.gov.au](mailto:matthew.schroder@accg.gov.au)

Dear Mr Schroder

**Variation of Hunter Valley Coal Network Access Undertaking (HVAU) to incorporate the Final Indicative Service – withdrawal of variation application**

ARTC refers to ARTC's application to vary the HVAU submitted to the ACCC for consideration on 31 January 2014 incorporate the final indicative services (**FIS**) and indicative access charges (**FIAC**) developed in accordance with section 4.18 of the HVAU (**Proposed Variation**).

ARTC has worked with the ACCC to address commercial and drafting issues identified by the ACCC in its consideration of the Proposed Variation. ARTC has undertaken an iterative process with the ACCC and industry stakeholders in order to address the various issues and concerns raised by the ACCC in its formal information requests issued on 14 April 2014 and 26 May 2014 (**Information Requests**) and position paper issued on 12 August 2014 (**Position Paper**). It is ARTC's belief that this process has resulted in positive outcomes and a number of amendments which improve the Proposed Variation.

In the Proposed Variation, ARTC indicated that the proposed indicative access charges for 2015 were estimated only and based on best information available information at the time. ARTC reserved the right to revise these prices once the 2015 volumes and forecasts costs were finalised with industry in accordance with the annual review of charges set out in section 4.20 of the HVAU, and would amend the Proposed Variation in due course.

In the Position Paper, the ACCC:

1. indicated that under Part IIIA of the Competition and Consumer Act 2010 (Cth) (**the Act**), it was required to make a decision by 9 November 2014, having regard to known 'clock-stoppers'<sup>1</sup>;

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<sup>1</sup> Position Paper, p 8.



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2. expressed a preliminary view that ARTC has complied with the requirements of the HVAU for its consultation with industry in relation to the characteristics of the Indicative Services<sup>2</sup> and GTK pricing unit<sup>3</sup>;
3. expressed a preliminary view that ARTC has complied with the requirements of the HVAU for its consultation with the HVCCC in relation to modelling for the Indicative Services<sup>4</sup>;
4. expressed a preliminary view that ARTC has undertaken the modelling with the HVCCC within the scope of the HVAU<sup>5</sup>;
5. noted that ARTC has proposed Indicative Services that are capable of operating on the current network in the shorter term without needing such large amounts of investment, and stakeholders' general support for a train configuration which recognises current or near term infrastructure constraints<sup>6</sup>;
6. expressed a preliminary view that the proposed Indicative Services characteristics are likely to be appropriate having regard to subsection 44ZZA(3) of the Act<sup>7</sup>;
7. indicated that it would welcome any views from industry on whether adopting a shorter term view for the Indicative Services is likely to be problematic in relation to investments and the economic life of those investments<sup>8</sup>;
8. expressed a preliminary view that ongoing work to identify the train configurations that contribute to achieving efficient utilisation of capacity in the Hunter Valley will at least assist industry in making appropriate investment decisions by indicating the investments that will promote the overall interests of the coal supply chain<sup>9</sup>;
9. indicated that it was particularly interested in receiving comments from stakeholders on the pricing differentials and forecast access charges in light of additional information provided<sup>10</sup>;
10. considered that ARTC needs to give further consideration to, and provide its rationale for, the weightings applied to the differentiation factors in its calculation of access charges and will be requesting such information from ARTC<sup>11</sup>;
11. considered that further information is necessary before it can make an assessment of whether the forecast access charges for the Indicative Services are appropriate<sup>12</sup>;
- and
12. expressed a preliminary view that the proposed drafting amendments do not provide sufficient clarity in their current form<sup>13</sup>.

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<sup>2</sup> Ibid, p21.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid, p22.

<sup>5</sup> Ibid, p31.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid, p7.

<sup>8</sup> Ibid, p31.

<sup>9</sup> Ibid, p 32.

<sup>10</sup> Ibid, p7.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.



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In its response to the Position Paper, ARTC:

1. provided its rationale for, the weightings applied to the differentiation factors in its calculation of access charges<sup>14</sup>;
2. indicated that it would revise the Proposed Variation to incorporate some clarifications identified by the ACCC<sup>15</sup>.

ARTC considers that its response to the Position Paper largely addressed concerns expressed by the ACCC in the Position Paper.

ARTC understands that following its review of stakeholder submissions in response to the Position Paper, the ACCC has consulted further with stakeholders in relation to the Proposed Variation.

As a result of this further consultation, ARTC understands that the ACCC has now come to a view that the HVCCC modelling has not provided the level of clarity and analysis that the ACCC had expected, and stakeholders have expressed a diversity of views that did not readily allow for the identification of a preferred outcome for both the FIS and the determination of differential prices..

ARTC has indicated in the Proposed Variation, and in subsequent submissions, that the nature of the development of the Indicative Services incorporated in the HVAU as initially sought by the industry, and the attendant pricing differentiation, would have resulted in differing impacts on Hunter Valley customers. Despite broad industry support for the development per se, it is not surprising that stakeholder submissions reflect views in relation to the individual commercial impact on those stakeholders. In such circumstances, industry consensus is unlikely, and any approved outcome may incorporate some compromise. ARTC has sought to have regard to this reality in developing its proposals.

**In order to provide a degree of certainty in relation to Indicative Services and Indicative Access Charges until expiry of the HVAU, ARTC now formally withdraws the Proposed Variation under section 44ZZA(7)(a) of the Act.**

The HVAU provides for the retention of the Initial Indicative Services and the development of Initial Indicative Access Charges during the Initial Period. ARTC proposes to develop Charges for non-Indicative Services until expiry of the HVAU as currently provided under the HVAU, including services proposed in 2015, such as the 82 wagon, 30 TAL configuration proposed as the Indicative Service for Pricing Zone 3 users in the Proposed Variation.

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<sup>14</sup> ARTC Response to ACCC Position Paper, August 2014, Section 3.4.6, p19.

<sup>15</sup> Ibid, Section 4, p27.



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Please do not hesitate to contact myself on [REDACTED] or Gavin Carney on [REDACTED] if you have any queries in relation to the above.

Yours sincerely

Simon Ormsby  
**Executive General Manager, Strategy**