



Wednesday, 1 June 2011

Mr Anthony Wing
General Manager
Transport and General Prices Oversight
ACCC
GPO Box 520
Melbourne, Victoria 3001

Dear Anthony,

ARTC Hunter Valley Access Undertaking - suggested drafting revisions

This letter is in response to the ARTC documentation provided to the ACCC on 17 May 2011 in connection with the Hunter Valley Access Undertaking (HVAU). In these documents the ARTC put forward drafting refinements in response to comments made by parties on the drafting in the revised HVAU provided on 7 April 2011.

Asciano understands that the ARTC proposed these amendments and refinements following discussions with Hunter Valley coal producers. While Asciano welcomes direct consultation by the ARTC with stakeholders Asciano believes that the ARTC should also seek to conduct similar discussions with operators to ensure that the views of both operators and producers are reflected in the final documentation.

Asciano does not believe that the drafting put forward in this documentation addresses the serious issues that Asciano has been consistently raising for over twelve month in its submissions to the current HVAU review process. In particular Asciano is concerned with:

- inadequate amendments relating to the determination of the efficient train configuration;
- absence of amendments to address issues relating to the continuation of charging differentiation until 2014; and
- ongoing uncertainty concerning transitional arrangements.

Detailed comments on these issues are included below.

Efficient Train Configuration

Asciano has had an ongoing concern with the development of the efficient train configuration in the HVAU. This issue has been raised in some detail by Asciano throughout the current ACCC review, both in submissions which Asciano has made to the review and in face to face meetings and videoconferences.

In the ACCC Position paper released in December 2010 the ACCC proposed that the ARTC should submit an HVAU variation regarding the efficient train configuration within six months of receiving relevant information from the HVCCC, and in any event within twelve months of the commencement of the HVAU.

In the most recent documentation ARTC now propose a new section, 4.16A, which proposes

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that the ARTC will consult with stakeholders in order to determine the indicative service within five months of the commencement date, with this indicative service being determined by existing HVCCC modelling and existing coal service train configurations plus a reasonable number of alternate configurations. The ARTC will then seek to vary the HVAU to provide for the adoption of the service determined in this manner as the indicative service.

Following the “interim” determination of the indicative service under 4.16A a more detailed process to determine the efficient train will be undertaken under 4.17. This process will take two and a half years (i.e. December 2013 at the earliest).

While the changes in 4.16A may have the appearance of addressing the issue of unfeasibly long time frames related to the efficient train determination, the reality is that these changes do not adequately resolve the issue. The changes have several deficiencies:

- they do not address the related pricing issues. When an efficient train configuration has been determined there should be an explicit requirement for ARTC to adjust pricing to reflect this configuration as soon as possible to ensure that congestion is minimised.
- they postpone the certainty of an ultimate decision on the efficient train until December 2013. This lack of certainty means that the total capacity of the Hunter valley coal system is not known with certainty until December 2013. This uncertainty as to the actual capacity of the coal supply chain will impact on investment at all levels of the coal supply chain; and
- they seek to enforce a time frame that is still well in excess of the twelve months outlined in the ACCC Position Paper of December 2010.

Asciano queries whether the determination of the efficient train is as complex as ARTC are implying. Asciano notes that in current processes to determine an efficient train for charging in Port Botany Yard the ARTC appeared to determine the efficient train configuration in several weeks. Even allowing for the additional complexity of the Hunter Valley system Asciano believes the complete process to determine the final efficient train should take less than the twelve months allowed for by the ACCC.

Asciano is concerned that delays in this process will continue to exacerbate congestion in the Hunter Valley rail system. Asciano believes that the revised drafting, like all previous HVAU drafting, does not adequately recognise the linkage between a speedy determination of the final efficient train determination and its direct impact in optimising coal chain capacity. While ever inefficient trains are operating on the Hunter Valley rail system the Hunter Valley coal chain capacity will not be optimised and thus the amount of track capacity that can be contracted by the ARTC will be materially impacted if the efficient train determination is not addressed immediately.

Overall, Asciano strongly believes that the immediate determination of the efficient train configuration and pricing is the key component in determining track capacity and coal chain capacity. The HVAU is a document relating to the contracting of track capacity and thus the issue of the efficient train configuration must be resolved prior to the finalisation of the HVAU. To finalise the HVAU prior to determining the potential level of track capacity to be contracted is a fundamental flaw that must be addressed. Not determining the efficient train configuration prior to the finalisation of the HVAU will create significant coal chain uncertainty as the total track capacity to be contracted is unknown. Given the current congestion in the

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coal chain train capacities must be maximised through the determination of the efficient train configuration and implementation of efficient prices as soon as possible.

Asciano is currently the largest rail operator in the Hunter Valley coal system. In making the above arguments Asciano is seeking only to increase the total capacity in the Hunter Valley coal system. Such an increase in capacity will benefit all participants in the Hunter Valley coal system, including Asciano.

Continued Charging Differentiation until December 2014

Asciano has previously raised concerns with clause 4.15 a) ii) G). This clause undermines any attempt to use the efficient train to drive efficient behaviours. The clause guarantees continued inefficient pricing, and hence continued congestion, until December 2014 regardless of any outcome of the efficient train configuration process. This completely undermines any attempt to determine the efficient train and implement efficient pricing with a view to driving efficient operation and so reducing congestion.

ARTC has proposed in 4.15 a) i) that in formulating charges for non – indicative services ARTC will now reflect the:

...commercial impact on ARTC's business of the relative consumption of Capacity and Coal Chain Capacity compared to the Indicative Service and the logistical impact on ARTC's business of the relative reduction in Capacity and relative reduction in Coal Chain Capacity compared to the Indicative Service

However, no changes are proposed to the clause (now clause 4.15 a) ii) G)) which explicitly allows price differentiation to be continued until December 2014.

While the changes proposed by the ARTC to section 4.15 have the appearance of allowing the ARTC to take efficiency concerns and capacity concerns into account when considering charging for non – indicative services, these changes are not sufficient as they do not address the major issue which is the explicit carve-out in clause 4.15 a) ii) G which guarantees inefficient pricing and consequently inefficient behaviours and congestion until December 2014.

Rather than delay the implementation of efficient pricing until 2014, efficient pricing should be determined now and implemented via a transition pricing path - this approach minimises short term price shock while allowing efficient outcomes to be achieved in the medium term.

Transitional Arrangements

Asciano remains concerned that transitional arrangements still have not been fully determined despite the fact that the implementation of the HVAU is intended to occur in approximately one month. Given this lack of certainty and the absence of any full set of proposals by the ARTC Asciano notes that other respondents to the HVAU process, such as the Hunter Rail Access Task Force, are putting forward time frames and proposals for transitional provisions, Asciano believes that the ARTC should act to put forward a complete set of transitional proposals with associated time frames as soon as possible.

In addition to the issues addressed above Asciano is concerned that the relationship between the HVAU and Gunnedah Basin operations has not been explicitly addressed by

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the ARTC. Asciano does not believe that different regulatory approaches can be applied to the Gunnedah Basin and the Hunter Valley. Asciano would welcome an opportunity for the to discuss the issue of the relationship between the HVAU and Gunnedah Basin operations with the ARTC.

If you wish to discuss this issue please contact me on (03) 9248 7274.

Yours sincerely,



Dr Tim Kuypers
Group General Manager Safety, Access and Regulation

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