

**NEW SOUTH WALES MINERALS COUNCIL LTD**

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6 October 2010

Mr Anthony Wing  
General Manager  
Transport and General Prices Oversight Branch  
Australian Competition and Consumer Commission  
GPO Box 520  
**MELBOURNE VIC 3001**

Via email: [transport@acc.gov.au](mailto:transport@acc.gov.au)

Dear Mr Wing

**ARTC Hunter Valley Coal Network Access Undertaking**

The NSW Minerals Council (NSWMC) writes on behalf of the Hunter Rail Access Task Force (HRATF), an associated group comprising all 14 Hunter Valley coal producers using the Australian Rail Track Corporation (ARTC) Hunter Valley Coal Network (HVCN).

We refer to the ARTC's proposed Hunter Valley Coal Network Access Undertaking submitted to the ACCC on 7 September 2010 (the 2010 HVAU) and the Consultation Paper issued by the Australian Competition and Consumer Commission (ACCC) on 16 September 2010. The ACCC is seeking submissions from interested parties by 11 October 2010.

NSWMC requests a two week extension of time, to 25 October, for its submission and the submissions of individual Hunter coal producers. The extension is required because review of the 2010 HVAU and preparation of the NSWMC submission on behalf of the producers is a major task:

- The 2010 HVAU and Annexures comprise 242 pages and there are 259 pages of explanatory notes including detailed appendices on Remaining Mine Life, Rate of Return and Interim Indicative Access Charges
- The 2010 HVAU includes extensive changes from ARTC's April 2009 Undertaking as well as other new material, a significant amount of which we have only seen since the HVAU was lodged on 7 September
- The five key issues that NSWMC and individual producers discussed in detail with ARTC and the ACCC in late July and early August have not been adequately addressed. Critical deficiencies remain in relation to:
  - Lack of certainty of access to capacity
  - No transition arrangements
  - Insufficient incentives for effectiveness and efficiency
  - Not adequately balancing needs of ARTC and coal producers
- There are many other detailed issues, particularly in the area of access pricing, that also need amendment
- ARTC was not available until 30 September to meet with NSWMC and producers to explain the most recent changes to the draft



- NSWMC needs to consult in detail with the 14 Hunter coal producers on the new provisions relating to the five key issues and the other new material and also needs to review its submission with the producers.

NSWMC strongly supports the ACCC's request that respondents to the Discussion Paper provide changes that could be made to address their concerns, including drafting amendments where possible. This is a significant task and will require time.

Further, although many of the issues were identified in the ACCC draft decision and submissions from stakeholders in March 2010, ARTC did not consult with NSWMC about changes to the HVAU at that time. NSWMC only saw the revisions to the April 2009 HVAU in July 2010 and the more recent revisions to address the five key issues which we highlighted only became available with the submission of the 2010 HVAU to the ACCC on 7 September. There is an imbalance between the six months ARTC has had to revise the HVAU and the four weeks that are effectively available if stakeholders have to make submissions by 11 October.

NSWMC supports the ACCC's endeavour to issue a statement in relation to the proposed 2010 HVAU prior to the end of 2010. The Hunter coal producers are anxious to secure commitments of track access capacity to match their port terminal access commitments. They are very disappointed that an appropriate undertaking is now unlikely to be in place by 1 January 2011.

Nevertheless, the Hunter coal producers believe that it is more important to allow reasonable additional time for submissions in the interests of effectively addressing the serious concerns they still have with the proposed 2010 HVAU. Under the HVAU, the producers will be required to enter long-term, take-or-pay commitments to ARTC totalling more than \$2 billion. It is essential to achieve an effective undertaking that will allow alignment of the producers' rail access and port terminal contracts and ensure the efficient operation and timely, aligned expansion of the Hunter Coal Rail Network and the Hunter Coal Chain as a whole.

NSWMC acknowledges the extensive and diligent efforts of the ACCC in considering the proposed 2009 HVAU and its commitment to considering the 2010 HVAU as expeditiously as possible. NSWMC looks forward to facilitating that work with its submission.

NSWMC notes that extension of the consultation period will be covered by the 'clock-stopper' provisions of the Trade Practices Act 1974. NSWMC would greatly appreciate your agreement to allow our requested extension of time.

For further information regarding NSWMC's concerns and proposed course of action, please contact Mr Geoff Andrews on (02) 9386 9957 or [an53696@bigpond.net.au](mailto:an53696@bigpond.net.au).

Yours sincerely



*per*

**Dr Nicole B Williams**  
CHIEF EXECUTIVE OFFICER

Cc Mr P O'Grady, Chair, Hunter Rail Access Task Force

