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

21 September 2010

Dear Mr Wing

ARTC Hunter Valley Access Undertaking 2010

I refer to the revised Hunter Valley Access Undertaking (**HVAU**) application lodged by Australian Rail Track Corporation Limited (**ARTC**) on 7 September 2010 and to previous correspondence between the Australian Competition and Consumer Commission (**ACCC**) and Coal & Allied Industries Limited (**C&A**).

As the ACCC is aware, since ARTC lodged its original HVAU application on 23 April 2009, and continuing in the period between ARTC's withdrawal of the original HVAU on 19 April 2010 and its lodging of the revised HVAU on 7 September 2010, C&A has proactively sought to engage with ARTC, the ACCC and other industry stakeholders in relation to ARTC's draft HVAU and Indicative Access Holder Agreement (**IAHA**). C&A has pursued this positive engagement in an attempt to resolve outstanding issues with the HVAU and IAHA and to assist resolution of an Access Undertaking in a timely manner.

Following ARTC's withdrawal of the original HVAU, C&A appreciated the ACCC's correspondence to industry stakeholders dated 2 July 2010, in which you encouraged ARTC and industry participants to engage in relation to the revised draft HVAU. To that end, as well as engaging with the ACCC and ARTC directly, C&A successfully worked with other members of the Hunter Rail Access Task Force (**HRATF**) to identify five key issues which Hunter Valley coal producers considered to be of the highest importance for inclusion by ARTC in any HVAU. (In this respect, I wish to emphasise that C&A's concerns were not limited to those five issues – as the ACCC is aware, C&A has also had concerns with various other aspects of the HVAU and IAHA, however C&A chose to focus with the other members of the HRATF on those five issues in the interests of seeking an expeditious resolution with ARTC and achieving an HVAU that, on balance, C&A would be likely to find acceptable despite our other concerns.)

Having devoted considerable time and effort to this process, C&A is disappointed that (based on our preliminary review of the revised HVAU and IAHA lodged with the ACCC on 7 September), ARTC has made few, if any, substantive changes to the HVAU and IAHA that address the five key issues raised with it by the HRATF and by C&A, nor has ARTC provided any explanation to C&A or, as far as we are aware, the HRATF as to why it has rejected the positions put to it in relation to those five key issues.

Following the ACCC's invitation, C&A will seek to provide a comprehensive submission on the revised HVAU to the ACCC which will include, but not be limited to, the key issues previously identified and discussed with the ARTC and ACCC. It is C&A's intention to provide a submission that not only raises concerns with the HVAU but, where possible, proposes alternative solutions to the identified issues.

With this form of submission in mind, C&A was surprised that the ACCC has provided what C&A considers a short timeframe for making submissions (October 11), considering that the revised HVAU was only lodged on 7 September and that the ACCC has requested that parties provide detailed submissions including suggested drafting amendments. C&A will make every effort to meet the ACCC's requested deadline but asks that the ACCC give consideration to extending this deadline to allow substantive and constructive submissions from C&A and other industry stakeholders.

In closing, I would like to stress that, despite our concerns in relation to the approach which ARTC has adopted in formulating its revised application, C&A remains willing to positively engage with ARTC, the ACCC and other industry stakeholders in the hope of expeditiously reaching a satisfactory outcome that appropriately balances the interests of all stakeholders. Further, we will continue to devote significant resources to this matter, given the significance of the proposed HVAU to the future growth and success of the Hunter Valley coal industry.

Yours sincerely



Timothy Renwick
General Manager – Infrastructure
Rio Tinto Coal Australia