

6 September 2024

Pacific National submission to the ACCC Draft Decision on ARTC's 2024 Interstate Access Undertaking

This is a public submission

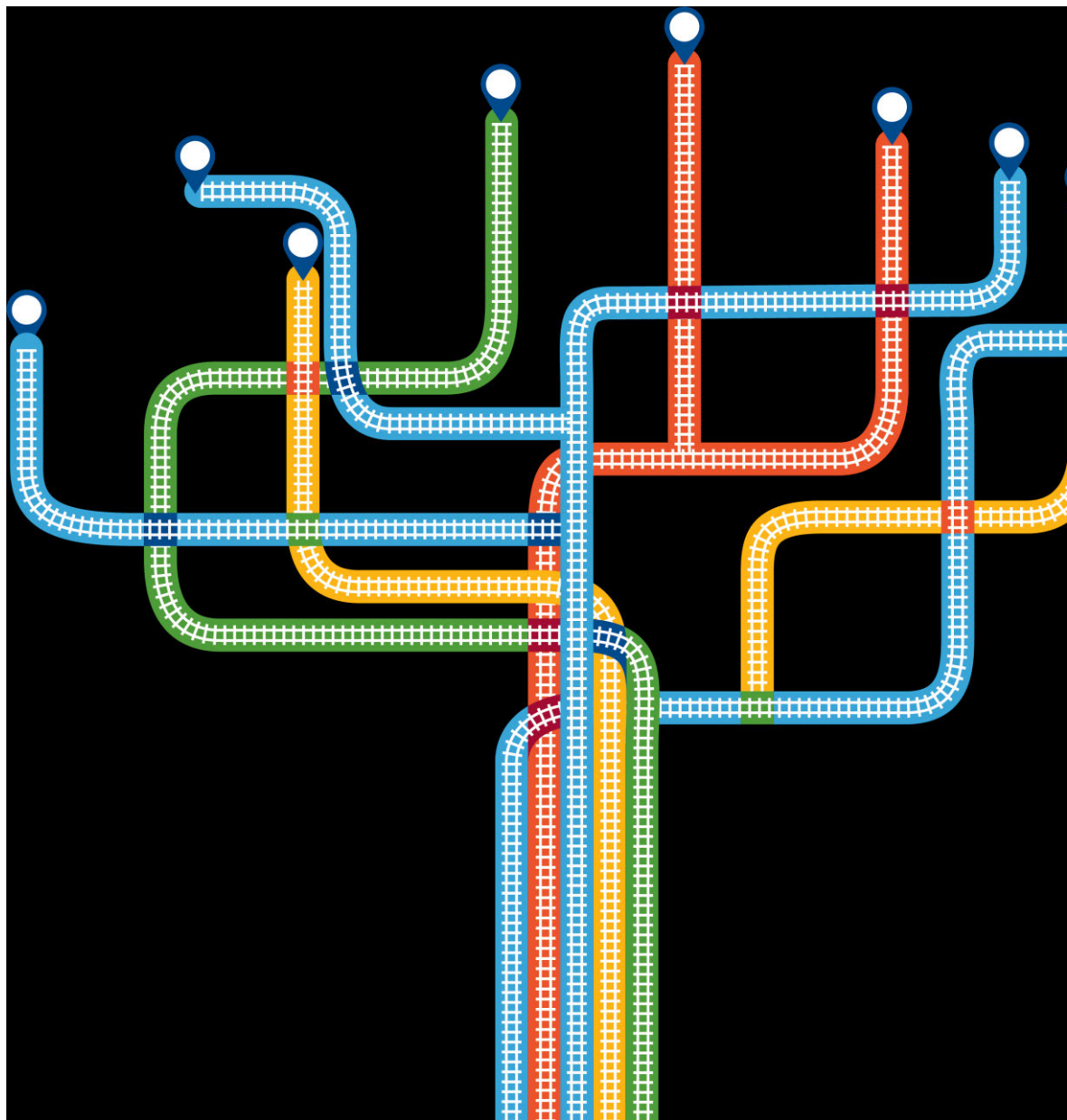


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1 Executive Summary

Pacific National welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission (**ACCC**) Draft Decision (**Draft Decision**) on Australian Rail Track Corporation's (**ARTC**) 2024 Interstate Access Undertaking (**2024 IAU**).

Pacific National acknowledges the decision of the ACCC to accept the Proposed Undertaking provided ARTC enact 18 amendments. This includes amendments that:

- Commit ARTC to an annual Stakeholder Forum hosted by ARTC and attended by the ACCC, to provide feedback on ways to improve access to, and efficient operations of, the Interstate network
- Recognise ARTC taking a lead role in engaging with national forums on interoperability and harmonisation of rail regulations, providing feedback on progress to its users
- Provide greater clarity on the operation of the Interstate Network Development Strategy
- Amend some of the factors a commercial arbitrator must consider in arbitrating a dispute to strike a better balance between the interests of access seekers and ARTC
- Include additional transparency and reporting measures.¹

Pacific National agrees with the ACCC recommendations and welcomes the ARTC announcement that it will accept the ACCC's 18 amendments.

We recognise that the ARTC has sought to engage comprehensively with rail operators and stakeholders during the undertaking process. We also appreciate that the ACCC has taken considerable care to address issues raised by stakeholders and to provide an analysis of each issue as well as a decision. This is most helpful and the ACCC is to be commended for its consultation with stakeholders and the rigor of its analysis.

This submission does not attempt to reopen decisions that are based on a clear rationale and do not have a substantial impact on the workability of the Undertaking. Notwithstanding this, we believe that the issue of **access prices** and annual CPI escalation requires further consideration. We are also calling for greater fairness in the application of Indicative Track Access Agreement (ITAA) clause 9.5

¹ ACCC's Draft Decision on Australian Rail Track Corporation's 2024 Interstate Rail Network Access Undertaking, 26 July 2024

Removal of Train Path for under-utilisation to consider the need for reciprocity and **improved flexibility for rail operators to hand back paths**.

The Undertaking issues that Pacific National believes should be revisited, along with our suggestions to amplify the ACCC Draft Decision recommendations, are set out below:

1. Underutilisation of the north-south corridor and reduced access charges to support rail freight mode share should be considered as part of the annual Stakeholder Forum and also form a topic within ARTC's future guidance paper.
2. Recognise the requirement for reciprocity in clause 9.5 of the ITAA so that rail operators have the same flexibility to hand back paths that ARTC currently has to remove train paths for underutilisation.
3. Pacific National recommends that ARTC develop an interoperability scorecard to meet its commitment to report on interoperability and harmonisation outcomes throughout the 2024-2029 regulatory period.
4. Pacific National suggests that by November 2024 the ARTC release a document outlining datasets and KPIs it intends to develop, including publication of a timeline for prioritising and actioning these.
5. Pacific National supports ARTC's proposed approach to work with rail operators and stakeholders throughout the 2024-2029 regulatory period on opportunities to maximise capacity and path utilisation, including via the issuing of a guidance paper in 2025. The guidance paper could form the basis for a staged approach to addressing capacity, resumption and utilisation issues, where rail operators may have differing views.
6. Pacific National supports GrainCorp's proposal to reinstate the previous '10 Business Days' timing for the period between the service of a Dispute Notice and when mediation can occur. This shorter timeframe would allow the mediation process to proceed to the next step of mediation sooner.
7. Address outstanding issues relating to the ITAA including: inclusion of captive insurance companies, more flexibility for rail operators on cancellation of train paths, an ARTC warranty on track condition, and an assurance that rail operators don't pay where ARTC is unable to provide a Train Path.

We have addressed additional issues relating to the ITAA within a separately submitted spreadsheet developed by the ACCC. Key points from our spreadsheet response are summarised in Appendix I.

We look forward to engaging further with the ACCC, ARTC and other stakeholders to refine the 2024 IAU and ensure a framework that supports the vital interests of the Interstate rail freight sector, its users, end customers, and the broader community.

We appreciate the opportunity to submit our views and look forward to the ACCC's consideration of our recommendations. If you would like to discuss any of the content in this submission, please contact Pacific National's Regulation Access and Policy Manager, [REDACTED] [REDACTED] [REDACTED]

2 Background and Context

Pacific National welcomes the opportunity to provide further comment and respond to the ACCC Draft Decision on ARTC's 2024 IAU.

In addition to our submission of 23 February 2024, Pacific National appreciates the expanded opportunities rail operators have had to engage with both the ACCC and ARTC throughout the Undertaking process. This includes the individual engagement with ACCC and ARTC, as well as the 2024 IAU Stakeholder Roundtable and the May 2024 ARTC Data Workshop. This level of collaboration helps create an Undertaking process that supports rail freight growth and the efficient and safe operation of the Interstate Rail Network.

The body of this Pacific National submission focuses on ACCC Draft Decisions pertaining to the Undertaking and some key ITAA issues. Our comprehensive response to ITAA is provided as an Appendix in the spreadsheet developed by the ACCC. This spreadsheet is summarised in Appendix I and has also been separately submitted.

This submission does not contain any confidential information and is a public submission.

3 ACCC Amendments to the IAU

Pacific National welcomes the decision of the ACCC to accept the Proposed Undertaking provided ARTC enact 18 amendments. The amendments improve clarity and transparency for access seekers, and it is our understanding that ARTC have agreed to accept each of the 18 amendments:

1. The Preamble (Part 1) should include:
 - a statement recognising ARTC is a signatory to the Memorandum of Cooperation to support National Rail System Interoperability for future major rail investments, and specifying ARTC's positions on relevant reform committees
 - a commitment by ARTC to update its users regularly on its actions and engagement with forums related to interoperability and harmonisation.
2. Clause 2.2(b) should be amended to require a minimum of 12 months' notice of ARTC's intention whether to submit a replacement undertaking or extension
3. Part 2 should include a commitment by ARTC to hold an annual stakeholder forum to discuss matters related to the Proposed Undertaking, also attended by ACCC.
4. Amend clause 3.12 to provide that the Arbitration Agreement be signed by the Applicant when it submits an Access Application and signed in response by ARTC when it provides the Indicative Access Proposal.
5. Amend Schedule A and the body of the Proposed Undertaking (as relevant) to reflect that the form of Arbitration Agreement included in Schedule A is a template agreement that can be negotiated and that a party should consider seeking its own independent legal advice before signing the agreement.

6. Clause 3.12.5 of the Proposed Undertaking should be amended to:
 - remove consideration of 3.12.5(a)(xii)(K)
 - include the interests of the access seeker as a factor that the arbitrator must consider under 3.12.5(a)(xii).
7. As ARTC updated its prices at 1 July 2024, an updated Schedule J should be included in the Proposed Undertaking.
8. Amend the Proposed Undertaking to clarify the interaction of clauses 4.5 (price cap) and 6.4 (additional capacity).
9. Part 6 of the Proposed Undertaking should be amended to reference all the matters the Interstate Network Development Strategy (INDS) will cover, as set out in the Explanatory Guide, including:
 - operational improvements
 - network resilience
 - actions taken by ARTC to improve interoperability and harmonisation.
10. Clause 6.2(b) of the Proposed Undertaking should be amended to require ARTC to provide reasons where a Network connection is refused in all cases.
11. Clause 6.3 should be amended to:
 - clarify the operation of 6.3(a)
 - expressly provide that ARTC can, at its sole discretion, choose to agree to pay some of the capital costs of an Applicant's request for Additional Capacity.
12. ARTC should clarify in the Proposed Undertaking exactly how any price increases pursuant to clause 6.4 would work in conjunction with the CPI indexation constraints in clause 4.5 for Reference Services.
13. Amend clause 8.2 to provide that ARTC will publish all reporting data in numerical format in a timeseries, in addition to any other methods such as charts.
14. Amend clause 8.2 to confirm it requires reporting on an on-going basis.
15. Amend Schedules G and I to clarify the relationship between the performance indicator items in each schedule.
16. Amend Schedules G and I to clarify the relationship between the cost categories in each schedule.
17. Amend Schedule I to specify that the revenue reported annually will include, in addition to Access revenue, all other revenue items relating to access to the Interstate network.
18. Amend clause 8.2 so that Schedule I is referred to in the body of the undertaking.

4 Standing Offer - Reference Services and Pricing

4.1 Reference Services

Pacific National agrees with the ACCC's draft view that the approach to pricing reference services is appropriate, and we support the 2024 IAU amendment that will see ARTC publish eight core regulated services (Reference Services) compared to the current publication of a single Indicative Service (Super Freight).

Pacific National believes that transparency of access pricing is important to minimise the information asymmetry that exists between the track owner and rail operators.

4.2 Price Escalation

Pacific National sought to cap annual price increases to a maximum of 50% of CPI, particularly on the north-south corridor where it competes most with road freight.

We note the ACCC Draft Decision did not support Pacific National's view on the basis that the services were already priced below-cost and ACCC explained that the Proposed Undertaking already provides downwards price flexibility to meet competition, due to the options for negotiation below the price caps for different services.

Pacific National requests that the ACCC review its price escalation decision, particularly within the context of the significant underutilisation of the north-south corridor. As noted in our February 2024 submission, rail freight is not price competitive with road freight and is consequently losing market share. On the north-south Interstate Network corridor only 11% of freight goes by rail and the mode share proportion gets as low as 2% of freight between Melbourne and Sydney.²

We recommend that pricing and consequent underutilisation of the north-south corridor should be considered during the 2024-2029 regulatory period and become part of the forward agenda of the annual Stakeholder Forum. The issue of capacity utilisation should also form part of the guidance paper that the ACCC recommended ARTC produce within twelve months.

Underutilisation of the north-south corridor and reduced access charges to support rail freight mode share should be considered as part of the annual Stakeholder Forum and also form a topic within ARTC's future guidance paper.

² ARA and FORG, The Future of Freight Combined Report, October 2023 <https://ara.net.au/wp-content/uploads/Future-of-Freight-Combined-Report.pdf>

5 Improved Ability for Rail Operators to Hand Back Paths

The IAU should recognise the legal principles of reciprocity and fairness by granting rail operators' equivalent flexibility to hand back a train path as ARTC currently has to remove a train path from an Operator for underutilisation.

At present there is an imbalance between:

1. The provisions in ITAA clause 9.5 *Removal of Train Path for under-utilisation* that give ARTC the right to remove a Scheduled Train Path from a rail operator if it is not operated 7 or more times (whether consecutively or not) out of any 12 such Services which are consecutively scheduled. This notice is given within 14 days after the seventh occasion of not operating.

And

2. ITAA clause 9.10 *Cancellation of Scheduled Train Paths* that see rail operators continuing to pay flagfall charges for between one and two years after an Operator cancels a train path.³

ARTC has the flexibility to adjust pathing based on underutilisation. Rail operators require this same flexibility to adjust pathing based on economic conditions and reduced commercial demand. Undertaking terms and conditions should be fair and reasonable, and given the monopoly position of ARTC the imbalance between ITAA clauses 9.5 and 9.10 leaves rail operators exposed. It would be more appropriate for Clause 9.10 to specify that flagfall charges cease with immediate effect once an Operator cancels a train path.

The legal principle of reciprocity is crucial in a regulatory setting because it promotes fairness and ensures that the rights of parties are balanced. Ultimately, reciprocity maintains the integrity of the regulatory framework by ensuring that all stakeholders are treated equitably.

Recognise the requirement for reciprocity in clause 9.5 of the ITAA so that rail operators have the same flexibility to hand back paths that ARTC currently has to remove train paths for underutilisation.

6 Interoperability and Harmonisation Across Network

The 2024 IAU gives ARTC an opportunity to adopt a wider network view and take a leadership role in addressing harmonisation.

³ For a Scheduled Train Path of up to 5 years duration, the period of notice required is one (1) year or the balance of the term of the Scheduled Train Path, whichever is the lesser. For a Scheduled Train Path of 10 years duration, the period of notice required is two (2) years or the balance of the term of the Scheduled Train Path, whichever is the lesser.

Pacific National previously outlined a need for improved efficiency across Rail Infrastructure Managers (RIMs) and better coordination of track possessions and closures across RIMs. Specifically, Pacific National suggested the addition of a KPI that measures aligned versus standalone closures and asked that a formal commitment to harmonisation be documented in the Undertaking. We therefore appreciate the ACCC Draft Decision that the Preamble should include:

- A statement recognising ARTC is a signatory to the Memorandum of Cooperation to support National Rail System Interoperability
- A commitment by ARTC to regularly update rail operators on its actions and engagement with forums related to interoperability and harmonisation.

This is a good step forward and further to these amendments we hope to see ARTC driving the development of:

- Interoperable systems and technologies
- Consistent safeworking and communication systems
- Adoption of consistent standards, rules and procedures
- Consistent rail environmental regulation
- National, consistent accreditation for train drivers and rollingstock.

With the strengthened ARTC obligation to interoperability and harmonisation we again recommend that ARTC develop an interoperability scorecard to measure and ensure progress on harmonisation outcomes.⁴ Publication of an interoperability scorecard would facilitate the commitment by ARTC to regularly update rail operators on its actions and engagement with forums related to interoperability and harmonisation. It would also facilitate reporting on progress being made toward a core set of common performance indicators across RIMs, as discussed in the Rail Operator Group (ROG) submission to the ACCC on the ARTC 2024 Draft IAU.

Pacific National recommends that ARTC develop an interoperability scorecard to meet its commitment to report on interoperability and harmonisation outcomes throughout the 2024-2029 regulatory period.

7 Reporting and KPIs

In our February 2024 submission and at the data workshop ARTC held in May 2024, Pacific National provided recommendations for KPIs around:

- Resilience

⁴ The development of an interoperability scorecard that tracks the degree to which ARTC is aligned with other network systems was a recommendation in Pacific National's 24 February submission.

- Reliability
- Volume growth
- Carbon emissions
- Root cause analysis of cancellations and network delays
- The ability to interrogate raw data.

We also called for additional KPIs aligned to the ARTC Corporate Charter and noted that in considering these additional KPIs (as well as ARTC's existing suite of Performance Indicators), ARTC should consult with other networks and align performance definitions, calculations, and parameters across networks where there are similar KPIs in use. The ROG submission also focussed on the adoption of a consistent suite of core KPIs.

Pacific National welcomes the ACCC Draft Decision that ARTC should commit to publishing a number of additional KPIs and the ACCC draft view that ARTC should provide performance data in a form, such as numerical timeseries, that facilitates further analysis. we look forward to working with ARTC on this.

As the ACCC noted in its Draft Decision, the improved transparency should assist access seekers and rail operators in their negotiations with ARTC regarding path availability, service standards and prices and help to identify where services are deteriorating. Pacific National also supports the new requirement in the Proposed Undertaking for ARTC to report annually on financial and volume measures including access revenue, operating costs, capital expenditure and volumes.

We explained in our February 2024 submission that there needs to be an action imperative associated with Performance Indicators to generate improvement and change and we are therefore pleased the ARTC has recommended amending clause 2.10 of the ITAA to improve specificity and create a focus on outcomes that will in turn deliver results.

Following the May 2024 data workshop, the ARTC surveyed customers regarding what information they are comfortable for ARTC to share, and asked how data and KPI development should be prioritised. We recommend that by November 2024 the ARTC release a document outlining datasets and KPIs it intends to develop and publish a timeline for actioning these.

Pacific National supports the new requirement in the Proposed Undertaking for ARTC to report annually on financial and volume measures including access revenue, operating costs, capital expenditure and volumes.

Pacific National suggests that by November 2024 the ARTC release a document outlining datasets and KPIs it intends to develop, including publication of a timeline for prioritising and actioning these.

8 Annual Stakeholder Forum and Management of Capacity

Pacific National supports the ACCC's decision that Part 2 of the Undertaking include a commitment by ARTC to hold an annual Stakeholder Forum. It is expected that this forum will aid collaborative efforts to improve efficiency and network utilisation on the Interstate network.

The ARTC has said it is committed to maximising the efficient utilisation of available paths and noted that this is an area where consensus may not be readily achieved.⁵ We agree that rail operators may have differing views and therefore support the ACCC's recommendation to progress these issues during the 2024-2029 regulatory period. The extended timeframe will allow ARTC and rail operators to reach consensus in a considered manner through one or more of the following processes:

- The annual Stakeholder Forum
- Rail operator working groups
- ARTC publication of a guidance paper outlining the opportunities for rail operators and stakeholders to manage, resume or transfer capacity on the Interstate network.

We agree with the ACCC's observation that ARTC customers seek further information regarding the efficient use of capacity and Pacific National supports the ACCC recommendation that ARTC publish a guidance paper within 12 months of the Proposed Undertaking coming into effect.

The ARTC development of a formal guidance paper will allow rail operators and stakeholders to:

- Prioritise capacity problems within a well-planned process
- Engage in a collaborative process to resolve issues
- Understand accountability for delivering outcomes.

Once ARTC has a clear understanding of priorities we suggest it commences a staged process for tackling various capacity and pathing issues. The ARTC may also want to consider establishing working groups with rail operators and stakeholders that focus on specific issues.

We suggest that the undertaking/ITAA includes a trigger for review of relevant clauses to align with agreed outcomes from the guidance paper and also suggest that ARTC moves quickly to publish a timeline and process for both the annual stakeholder forum and guidance paper.

Pacific National supports ARTC's proposed approach to work with rail operators and stakeholders throughout the 2024-2029 regulatory period on opportunities to maximise capacity and path utilisation, including via the issuing of a guidance paper in 2025. We recommend that the guidance paper forms the basis for a staged approach to addressing capacity, resumption and utilisation issues, where rail operators may have differing views.

⁵ ARTC, Response to stakeholder submissions – ARTC's Proposed 2024 Interstate Access Undertaking

9 Negotiation Framework and Arbitration

9.1 Negotiation Framework

Pacific National agrees with the ACCC draft view that the arrangements for negotiation, executive negotiation and mediation are largely appropriate.

The Proposed Undertaking outlines an updated mediation process and as part of this, the period between the service of a Dispute Notice and when mediation can occur has been extended from 10 to 20 Business Days - or longer if agreed to by both parties in the 2024 IAU.

GrainCorp in its submission proposed to reinstate the previous '10 Business Day' timing to encourage disputes to be resolved faster. Pacific National would support this shorter timeframe so parties can proceed to the next step of mediation sooner, noting that the parties can always deviate from it by mutually agreeing to a different timeframe.

9.2 Arbitration Agreement

There is some discrepancy as to when an arbitration agreement needs to be signed by the parties, and whether it would be at the time an access application is submitted or when a dispute is notified.

We note the ACCC's preference is that the agreement is entered into as early as possible, and we have no objection to the ACCC draft view that it may be more practical for the Arbitration Agreement to be signed by the Applicant when it submits an Access Application (clause 3.2(b)) and signed in response by ARTC when it provides the Indicative Access Proposal (clause 3.2(c)).

We similarly have no objection to the proposal to amend Schedule A and the body of the Proposed Undertaking to reflect that the form of Arbitration Agreement included in Schedule A is a template agreement that can be negotiated and that a party should consider seeking its own independent legal advice before signing the agreement.

9.2.1 Matters for an Arbitrator to take into Account in the Making of an Award

Pacific National disagreed with ARTC's removal of clause 3.12.5(a)(xii)(A) that states in making an award the Arbitrator must take into account the objectives and principles enunciated in Part IIIA of the Competition and Consumer Act 2010 (Cth) (CCA) - formerly the TPA and the Competition Principles Agreement.

The ACCC Draft Decision rejects Pacific National's request to retain the factors from the existing Undertaking which requires the arbitrator to consider objectives and principles of the CCA 2010 (Cth).

We understand and accept the ACCC's reasoning that it would not be appropriate for a commercial arbitrator to take into consideration competition issues, and they should primarily be directed towards balancing the interests of the parties to the dispute in the context of the provision of a service –

notwithstanding that competition does remain relevant to some disputes, for example disputes on pricing or pathing availability.

We are appreciative of ARTC's indication that they will accept Pacific National's amendment that the Arbitrator must consider the Applicant's legitimate business interests. We welcome the ACCC's draft view that if ARTC's interests are included as a factor the Arbitrator must consider in arbitrating a dispute, then the interests of access seekers should be given equal consideration by the arbitrator.

9.2.2 Clause 3.12.5(a)(xiii) Costs

The ACCC Draft Decision rejected Pacific National's request to remove subsections (I), (J), (K) of clause 3.12.5(a)(xiii) that mean the Arbitrator must not require ARTC to bear some or all of the costs of maintaining extensions or interconnections. The ACCC has stated that this goes beyond access to infrastructure and such limitations are consistent with the CCA.

Pacific National can accept the ACCC's position, and our interpretation is that this does not preclude the Arbitrator from making a decision requiring ARTC to make repairs and/or maintenance to a track – it applies to extensions and interconnections only.

Pacific National supports GrainCorp's proposal to reinstate the previous '10 Business Days' timing for the period between the service of a Dispute Notice and when mediation can occur. This shorter timeframe would allow the mediation process to proceed to the next step of mediation sooner.

10 Interstate Network Development Strategy (INDS)

Pacific National remains supportive of the INDS objectives to deliver improved capacity planning and identify actions to address resilience along the Interstate Rail Network.⁶

In our February 2024 submission we called for greater clarity and commitment by ARTC to the INDS process. We explained that because the INDS is not an enforceable document an accountability mechanism was needed within the 2024 IAU to ensure outcomes were delivered in full. Consequently, we agree with the ACCC's view that the Proposed Undertaking should be amended to be clear that the INDS covers all the matters specified in ARTC's Explanatory Guide, including:

- Operational improvements
- Network resilience

⁶ We understand that in future the INDS will be rebranded as the Rail Network Optimisation Strategy.

- Actions taken by ARTC to improve interoperability and harmonisation.

Pacific National also supports the ACCC's recommendation that ARTC:

- Specify the funding source (including government equity vs grant) in the INDS in cases where it is known at an early stage
- Ensure the INDS and its annual updates are clear about any likely interactions between its volume and capacity forecasts and Inland Rail
- Incorporate post-implementation reviews as part of the outcomes of INDS projects and consider how best to incorporate the needs of non-Operators in its planning.

Pacific National welcomes the ACCC amendment ensuring that matters such as operational improvements, network resilience and improved interoperability and harmonisation will be referenced in the Proposed Undertaking.

11 ITAA amendments

We appreciate the significant ITAA amendments the ARTC has agreed to across areas of insurance, key performance indicators, track access rights, operator's instructions, repair and maintenance of the network, and force majeure. We also note that there is widespread agreement among the Rail Operator Group (ROG) on several ITAA clauses, as you will observe when reviewing each rail operator's spreadsheet responses.

Within the ITAA Pacific National has several remaining concerns that are summarised below. A more fulsome explanation of our concerns is provided in Pacific National's spreadsheet response which has been submitted as a separate document and is summarised in Appendix I.

- Clause 5.4 Rolling Stock
 - Pacific National questions ARTC's addition of sections (a) and (b) to clause 5.4 that result in additional operator requirements as these are matters relating to safety accreditation and for consideration by the ONRSR.
- Clause 9.3 Repairs, Maintenance and Upgrading of the Network
 - Pacific National had requested an amendment requiring ARTC to minimise the impact to rail freight services during periods of known peak demand. ARTC have advised that they already seek to minimise disruption and don't want to impact during peak periods. Given this is the current practice there still may be value in formalising it in clause 9.3 (b) (i) to improve certainty for rail operators.
- Clause 16.1 (b) Operator's Insurance Policies
 - We request that ARTC includes captive insurance companies.

11.1 Additional ITAA Amendments

We also propose three additional amendments to ITAA sections for consideration so that clauses apply more fairly and equally to both parties. In light of ACCC's request not to add rows or columns to its ITAA excel spreadsheet, the issues below have not been included in the separate spreadsheet that Pacific National has submitted.

11.1.1 Clause 9.10 Cancellation of Scheduled Train Paths

As discussed in section 5, we recommend amending clause 9.10 to specify that flagfall charges cease with immediate effect once an Operator cancels a train path.

11.1.2 Clause 6.1 ARTC to Repair and Maintain the Network

It would be preferable for clause 6.1 to include an ARTC warranty that the track is of a condition that is fit for the operation of locomotives, rolling stock and other rail equipment. The obligation for ARTC to maintain the track is important but the Operator should also have a baseline assurance of the condition of the track.

A warranty of this nature would allow the Operator to have certainty of the quality of the track and increase the safety of rail operations throughout the industry.

11.1.3 Clause 4.1 Flagfall Charges

We request that ACCC consider amendments to clause 4.1 (b) of the ITAA *"except where the failure to provide the Train Path is a result of an Incident, Third Party Works or an emergency."*

The Operator should not be required to pay where ARTC is unable to provide a Train Path, regardless of the cause. If ARTC is not able to provide a train path and it is caused by ARTC then it is reasonable that the Operator does not pay; and if it is caused by another party, then ARTC would be entitled to claim against that party.

Pacific National has concerns regarding clauses 5.5, 9.3 and 16.1 (b) that we have addressed in the separately submitted spreadsheet. Pacific National has also proposed additional amendments to ITAA sections we believe could be improved. These include clause 9.10 cancellation of scheduled train paths, clause 6.1 repair and maintenance of the network and clause 4.1 (b) flagfall charges.

Appendix I – Indicative Track Access Agreement (ITAA)

Pacific National sought a number of amendments to the ITAA, several of which have been accepted by ARTC.

We have addressed ITAA issues in the spreadsheet developed by the ACCC and provided the spreadsheet as a separate attachment. Our primary focus was on those amendments originally classified by ACCC as being of 'substantial' significance and our responses for those items are summarised below.

We appreciate the work both the ACCC and ARTC have undertaken to develop the spreadsheet as an efficient feedback mechanism for the ITAA.

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Manner of Control of the Network by ARTC	2.7	Substantial	Change. So far as is reasonably practicable , ARTC agrees at all times during the Term to control the Network in a manner which facilitates:	Pacific National does not agree with ARTC qualifying its responsibility to control the network by adding the caveat - "so far as is reasonably practicable" - in clause 2.7. In its Statement of Expectations for ARTC, the Australian Government has set an objective for ARTC to operate, manage, maintain and improve track infrastructure owned or controlled by ARTC. The Government does not include a caveat in its objective for ARTC, and nor should clause 2.7. ARTC should have a positive duty to control the Network.	PN	<p>ARTC accepts the proposed deletion of "so far as is reasonably practicable".</p> <p>Pacific National appreciates that ARTC has accepted our proposed deletion of "so far as is reasonably practicable".</p>	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Key Performance Indicators	2.10	Substantial		Add the bolded text Key Performance Indicators (b) The parties will meet regularly for (i) the purpose of discussing actual performance against the Key Performance Indicators and (ii) identifying any actions that need to be taken to address performance. (Key Performance Indicators for ARTC and individual operators are set out in Schedule 5 of ITAA)	PN	ARTC accepts the proposed addition of (ii) to clause 2.10. Pacific National appreciates that ARTC has accepted the proposed addition of (ii) "identifying any actions that need to be taken to address performance" to clause 2.10.	Uncontentious
Variation of Charges	4.4	Substantial	New clauses c) Where access charges for Services are negotiated between ARTC and the Customer: (i) those Charges are set out in Schedule 3; and (ii) ARTC may at any time vary the relevant Charges in accordance with Schedule 3	Amend proposed clause. ARTC has added clause 4.4(c). Pacific National proposes that ARTC must provide at least 30 days notice of a price change to negotiated charges. “(ii) ARTC may at any time vary the relevant Charges in accordance with Schedule 3 by giving not less than 30 days written notice to the Operator. ”	PN	ARTC accepts the proposed addition of “by giving not less than 30 days written notice to the Operator”. Pacific National appreciates that ARTC accepted the proposed addition of “by giving not less than 30 days written notice to the Operator”.	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Rolling Stock	5.4	Substantial	<p>Change.</p> <p>The Operator agrees as at the Commencement Date and at all material times during the Term to maintain each Train operated by the Operator on the Network in a condition which is fit for use on the Network having regard to the terms of this Agreement so that at all times each Train is:</p> <p>(a) in a condition which is fit and proper for use on the Network; and</p> <p>(b) operated by properly trained and qualified personnel who exercise due diligence and care during the operation of each Train on the Network.</p>	does not support ARTC's addition of sections (a) and (b) to clause 5.4 of the ITAA (bolded) and recommends that clause 5.4 is reverted back to its original wording.	PN	<p>In its response to ACCC Information Request 3 - ITAA changes spreadsheet, ARTC considers the change to clause 5.4 is appropriate for safety reasons and that explicitly requiring properly trained staff to exercise due care is a reasonable requirement and clarifies existing obligations and expectations.</p> <p>The requirement that each Train be in a fit and proper condition and operated by properly trained and qualified personnel exercising due diligence and care is already required under the warranty that each Operator must give under clause 7.1 (Accreditation Warranty) of the TAA.</p> <p>We accept following a meeting with ARTC that this is reasonable. However, we suggest that if the ACCC supports the inclusion of the amendment, the clause should be made reciprocal and apply to ARTC's track being fit and proper for use by the Operator's rolling stock, and all ARTC operational and infrastructure maintenance staff and all contractors should be properly trained and qualified, and exercise due diligence and care when providing access to the network.</p>	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Operator's Instructions	5.5	Substantial		<p>Add subclause 5.5. (j) (iii) The 2024 IAU and ITAA should incentivise interoperability of communication systems through increased consultation. Additional clause with key stakeholders with a view to supporting national rail productivity improvements.</p> <p>5.5(j) where ARTC proposes to change communications equipment in the Train Control Centre:</p> <p>(iii) where the proposal in clause 5.5(j)(ii) constitutes a significant change to the communications equipment and / or system, ARTC will further consult with other rail network managers, rail safety governance organisations, and the National Transport Commission and Interoperability Advisory Group to discuss the proposed changes.</p>	PN	<p>ARTC accepts the proposed 5.5(j).</p> <p>Pacific National appreciates that ARTC has accepted the proposed addition of (iii) to clause 5.5(j).</p> <p>Interoperability of communication systems could also become a standing agenda item of one or both of the following processes/amendments the ACCC recommended in its Draft Decision:</p> <ul style="list-style-type: none"> - Commit ARTC to an annual stakeholder forum hosted by ARTC and attended by the ACCC, for both rail operators and other interested parties to provide feedback on ways to improve access to, and efficient operations of, the Interstate network - Recognise ARTC taking a lead role in engaging with national forums on interoperability and harmonisation of rail regulations, providing feedback on progress to its users. 	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Conduct of ARTC	5.6 (a)	Substantial	<p>Changes:</p> <p>(a)In formulating its Indicative Access proposed Charges, ARTC will not differentiate between operators in circumstances where:</p> <p>(i) the characteristics of the Indicative Services are alike; and</p> <p>(ii) the operators are operating within the same end market.</p> <p>In determining whether the characteristics of two Indicative Services are alike ARTC may have regard to matters including but without limitation the applicable non-price terms, location, duration and quality of the Train Path, nature of Train consist, characteristics of the Indicative Service, longevity of access, arrival and departure times of the day and week.</p>	Remove "the applicable non-price terms" from section 5.6(a)(ii):	PN	<p>ARTC does not agree with the proposed deletion. It is appropriate to enable differentiation on the basis of different risk allocation in terms and conditions.</p> <p>ARTC would be willing to add the following words in brackets below (to the extent they differ from the standard terms for Reference Services):</p> <p>"In determining whether the characteristics of two Services are alike ARTC may have regard to matters including but without limitation the applicable non-price terms (to the extent they differ from the standard terms for Reference Services), location, duration and quality of the Train Path, nature of Train consist, characteristics of the Service, longevity of access, arrival and departures time of the day and week."</p> <p>Rationale: Consistent with the IAU, ARTC is permitted to have regard to applicable non-price terms when determining whether characteristics of two Services are alike. Note also the list is not exhaustive so it has always been open for ARTC to consider this.</p> <p>The proposed ARTC draft wording is probably reasonable, however there could be opportunity for ARTC to engage with rail operators on this further during the 2024-2029 regulatory period.</p>	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Conduct of ARTC	5.6 (b)	Substantial	Changes: (b) Without limiting clause 5.6(a), if: (i) ARTC sells a Train Path for an Indicative a Service to a third party ("Third Party Train Path"); and 18 (ii) the Operator considers, acting reasonably having regard to the matters in clause 5.6(a) , that the Third Party Train Path is a like Train Path when compared to a Train Path for an Indicative a Service purchased by it under this Agreement ("Like Train Path"); and			See above	Uncontentious
ARTC to Repair and Maintain the Network	6.1	Substantial	Addition: Subject to clauses 6.2, 9.3 and 9.4 ARTC agrees at all times during the Term to maintain the Network (but only in so far as the Network is relevant to the Operator's Scheduled Train Paths) in a condition which is fit for use by the Operator to provide rail transport services in accordance with all proper restrictions or Instructions issued from time to time by ARTC.	Remove the additional text	PN	ARTC accepts to revert clause 6.1 back to its original wording Pacific National appreciates that ARTC has agreed to revert clause 6.1 back to its original wording.	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Issue of Instructions by ARTC	8.1	Substantial		<p>Change clause 8.1(c) of the ITAA. In addition, Schedule C in the 2024 IAU should include a requirement to incorporate arrangements associated with recovery from in-service failures and incidents.</p> <p>8.1(c) ARTC will:</p> <p>(i) in giving any Instruction have due regard to minimising the disruption to the Operator's Services, including consideration of a staged recovery operation; and</p> <p>(ii) other than in an emergency, consult with the Operator in giving an Instruction concerning the use of an Operator's locomotive and its crew for the purpose of assisting in the clearing of a Network blockage. When breakdown recoveries reach a [to be specified] threshold, ARTC will initiate and publish root-cause analysis of breakdowns. In instances where one rail operator is rescuing the locomotive of another rail operator, the operators may agree on a schedule of reciprocal charging.</p>	PN	<p>ARTC does not agree with these changes. ARTC's monthly reports already provide information on any disruption causing more than 60 minutes delay. The monthly reports are shared with all Operators. Operators are also free to negotiate costs related to recovery as they see fit.</p> <p>Pacific National notes ARTC's comment that operators are able to negotiate costs and charging related to locomotive recovery.</p> <p>Pacific National accepts that ARTC currently provides data on delays, nonetheless there remains an opportunity for transparency of information and performance to continue to evolve. As such, root cause analysis/data should be progressed in line with best practice reporting as part of continued discussions from the ARTC data workshop and at the annual stakeholder forums with ARTC, ACCC and rail operators.</p>	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Repairs, Maintenance and Upgrading of the Network	9.3 (a)	Substantial		Change: (a) Notwithstanding any other provisions to the contract in this clause 9, but subject only to clauses 9.3(b), 9.3(c) and 9.4 ARTC may, with reasonable notice , perform repairs, maintenance or upgrading of the Network, carry out any new work on the Network, or take possession of any part of the Network, at any time.	PN & GrainCorp	<p>ARTC does not accept the proposed addition. First, clause 9.3(a) is subject to clauses 9.3(b) and (c), each of which requires consultation and reasonable notice where there is an effect on scheduled paths or closure of the part of the network. That is, the agreement already provides for consultation and notice for planned outages/maintenance impacting and Operator.</p> <p>Second, there are times for safety or emergency where it is not possible to give notice and ARTC must have the ability to take action. Inclusion of "reasonable notice" requires a hurdle (over which reasonable mind may differ) which is not appropriate for operational people to have consider.</p> <p>Pacific National can accept this.</p>	Uncontentious
Repairs, Maintenance and Upgrading of the Network	9.3 (b) (i)	Substantial		Change: (b) If repairs.....: (i) take all reasonable steps to minimise any disruption to the Scheduled Train Paths and commercial impact on the Operator;	PN & GrainCorp	<p>ARTC does not consider the addition of "and commercial impact on the Operator" to be appropriate. ARTC should not be required to consider each individual operator and their individual commercial positions (to the extent ARTC is aware of them).</p> <p>We accept following a meeting with ARTC that this is largely reasonable. PN discussed the importance of avoiding disruption during peak demand periods and ARTC noted they already seek to minimise disruption and don't want to impact during peak periods. Given this is the current practice there may still be value in recognising it in clause 9.3 (b) (i) of the ITAA to improve certainty for rail operators.</p>	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Repairs, Maintenance and Upgrading of the Network	9.3 (b) (iv)	Substantial		Add: (iv) Coordinate maintenance plans with interface networks to minimise the impact on rail operators;	PN & GrainCorp	<p>ARTC does have discussions with other networks on maintenance alignment and will continue to do so. However, ARTC does not agree that it is appropriate to include a contractual obligation to achieve a vague standard of minimising impact on rail operators in circumstances where the outcomes are not within ARTC's control and also do not factor in the costs and disruption to the networks.</p> <p>This will continue to be a key issue for rail operators. Pacific National understands from ARTC that coordinating with interface networks will be a topic at the annual stakeholder forums with ARTC, ACCC and rail operators.</p>	Uncontentious
Repairs, Maintenance and Upgrading of the Network	9.3 (b) (v)	Substantial		Addition: (v) take all reasonable steps to avoid disruption to the Scheduled Train Paths during peak retail periods (e.g., Christmas, Easter) and peak agricultural seasonal periods.	PN & GrainCorp	<p>ARTC does not consider the addition of (v) to be appropriate.</p> <p>ARTC's pricing structure already incentivises ARTC to maximise freight volume so it is cognisant of disruptions to operators. See also ARTC's obligations to consult in clause 9.3(b) and (c).</p> <p>This addition could materially impact the cost of, and ARTC's ability to undertake, maintenance.</p> <p>See comments on Item number 27 above</p>	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in striketrough , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Repairs, Maintenance and Upgrading of the Network	9.3 (c)	Substantial		Change: c) Possession of the Network means closure of the relevant part of the Network to all traffic for the purpose of effecting repairs, maintenance or upgrading. ARTC will consult with the Operator a reasonable time before taking possession of the Network (except in the case of an emergency) and undertakes to involve the Operator in the planning process as early as reasonably practicable , with a view to efficient possession planning and with a view to minimising disruption to Services and ARTC may at its discretion waive the flagfall charge applicable to any Services affected by this clause."	PN & GrainCorp	<p>ARTC does not agree to the addition of "undertakes to involve the Operator in the planning process as early as reasonably practicable".</p> <p>The proposed words are not necessary as ARTC must consult with the Operator a reasonable time before taking possession and would create two potentially different timing tests.</p> <p>Pacific National accepts ARTC's response and notes that it could be discussed as needed in annual stakeholder forums with ARTC, ACCC and rail operators.</p>	Uncontentious
Repairs, Maintenance and Upgrading of the Network	9.3 (d)	Substantial		Addition: (d) ARTC will take all reasonable steps to keep tracks and related areas clear of equipment when it is possible to do so.	PN & GrainCorp	<p>ARTC does not consider the addition of (d) to be appropriate.</p> <p>'Related areas' is not defined and introduces uncertainty. ARTC will engage further with stakeholders to understand the concerns driving this request.</p> <p>Pacific National understands that 'related areas' is not defined. As an alternative wording could be updated to "ARTC will take all reasonable steps to keep the rail corridor clear of equipment". We welcome ARTC's commitment to engage further on this.</p>	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Review of Scheduled Train Paths	9.6	Substantial		Change to allow ARTC to reschedule train paths where an operator has consistent poor reliability performance, to provide that in doing so, · ARTC has greater flexibility around what the alternate path needs to reflect, while preserving the principle that it intended to not disadvantage the existing operator given its typical actual practice; and · a rail operator should have an obligation to use its best endeavours to negotiate variations to agreements defining network entry and exit times to accommodate that varied schedule. Time limits should be included in CI 9.6 (similar to those applied in CI 9.2) in order to limit the opportunity for an operator to frustrate the process through delay.	Aurizon	<p>ARTC is committed to maximising the efficient utilisation of its available paths and will work with all customers to develop pathing solutions that grow freight volumes. ARTC understands that a change to these conditions and the stricter review rights suggested in row 32 would have a varying impact on operators and may not be an area where consensus could be readily achieved. Nonetheless, ARTC is happy to engage with operators in the 2024-2029 period to attempt to arrive at a set of utilisation rates that satisfy all operators.</p> <p>Pacific National agrees with ARTC that this should be considered in the 2024-2029 period and within the process suggested by ACCC that ARTC publish a guidance paper outlining the opportunities to manage, resume or transfer capacity on the Interstate network.</p>	Substantial

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Cancellation of Scheduled Train Paths	9.10	Substantial		To reduce the opportunity for anti-competitive path hoarding, the path resumption provisions in Cl 9.10 of ARTC's Proposed ITAA be amended to: <ul style="list-style-type: none"> · modify the resumption utilisation threshold to be either at least 50% utilisation over 3 months or at least 75% utilisation over 6 months, with a path only measured as 'utilised' where it is used for a train service of at least 50% of its usual length/weight; · add a new resumption trigger, being the loss of a connecting path on an adjoining network, except only if the operator has continued to operate a modified train service not reliant on that connecting path; · allow ARTC the option of either resuming a path or rescheduling it to the nearest otherwise available time. 	Aurizon	<p>ARTC is committed to maximising the efficient utilisation of its available paths and will work with all customers to develop pathing solutions that grow freight volumes. ARTC understands that a change to these conditions and the stricter review rights suggested in row 32 would have a varying impact on operators and may not be an area where consensus could be readily achieved. Nonetheless, ARTC is happy to engage with operators in the 2024-2029 period to attempt to arrive at a set of utilisation rates that satisfy all operators.</p> <p>Pacific National agrees with ARTC that this should be considered in the 2024-2029 period and within the process suggested by ACCC that ARTC publish a guidance paper outlining the opportunities to manage, resume or transfer capacity on the Interstate network.</p>	Substantial
Definitions	15.2 (c)	Substantial		Change: amend Clause 15.2(c). Given the threshold of "less than \$50,000" has been in place since the 2008 Undertaking, Pacific National suggests this be adjusted for inflation and increased to "less than \$100,000".	PN	<p>ARTC accepts the proposed amendment. The increase from \$50,000 to \$100,000 reflects application of the annual CPI to the original amount since 2008.</p> <p>Pacific National appreciates that ARTC has supported our suggestion on this.</p>	Uncontentious

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Obligation to Pay	15.9 (d)	Substantial		Change: The Responsible Party will, subject to amounts being agreed by the parties or their loss adjusters (i) reimburse the Indemnified Party all costs or expenses incurred by the Indemnified Party in repairing or reinstating plant, equipment or other assets, and (ii) pay any other Loss or Damage which is the subject of the indemnity, within fourteen 14 days (14) of being requested in writing by the Indemnified Party to do so.	PN	ARTC accepts the change proposed. The current process is for each party's loss adjusters to determine and agree on loss. Note, ARTC proposes to extend the timeframe at clause 15.9(d)(ii) of the ITAA from 14 days to 28 days to allow for various payment and administrative procedures that are involved in the process. Pacific National appreciates ARTC's acceptance of our change and we have no objection to proposed additional drafting	Uncontentious
Operator's Insurance Policies	16.1 (b) (i)	Substantial		Change: 16.1(b)(i) Any insurance policy required to be effected and maintained by the Operator pursuant to clause 16.1, may at any time, be placed in whole or in part with a wholly owned captive insurance company, reinsured with various insurers in Australia and London (Lloyds and company markets) with a minimum Standard & Poor's rating of A-	Aurizon	ARTC does not agree to the proposed amendments to clause 16.1(b)(i). This is a very specific issue for some operators (where the individual captive arrangements can be properly assessed) and should be a negotiated point between ARTC and the operator, rather than a change to the standard terms and conditions of the TAA. Note, ARTC has agreed to captive insurance arrangements in the past for some operators after review so ARTC confirms that it is open to such arrangements where appropriate. Pacific National supports Aurizon's suggested amendment, and notes that other RIMs have agreed to include captive insurance companies.	Substantial

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Operator's Insurance Policies	16.1 (b) (ii)	Substantial		Change: recognise that rail operators do not have readily available liability insurance and therefore cannot confirm ahead of time that any additional limits are reasonably procurable. 16.1(b)(ii) have a limit of liability of not less than \$250,000,000 (or such other amount as ARTC may reasonably require and notify to the Operator from time to time) for any one occurrence.	PN Aurizon also requested reducing the limit of liability from \$250m to \$150m.	ARTC agrees to accept the deletion of 'such other amount as ARTC may reasonably require and notify to the Operator from time to time'. ARTC does not agree to reduce the limit of liability from \$250,000,000 to \$150,000,000 since this amount is a requirement of Clause 18.1 of ARTC's NSW lease requires ARTC to maintain at least \$250,000,000 of third party liability coverage for Rail Operations by Access Seekers. Pacific National appreciates ARTC agreeing to remove "or such other amount as ARTC may reasonably require and notify to the Operator from time to time" to recognise that rail operators cannot confirm ahead of time that any additional limits are reasonably procurable. We also support Aurizon's request to reduce the limit of liability to \$150m.	Uncontentious
Operator's Insurance Policies	16.1 (c)	Substantial		Delete: requirement in Cl 16.1(c) for an operator to provide a copy of insurance policies to ARTC be deleted. We are required to treat our actual policies of insurance as commercially confidential and are not in a position to release these policies to external parties. A requirement for evidence of insurance by way of Certificates of Currency should be sufficient.	Aurizon	ARTC accepts the proposed deletion. Pacific National supports Aurizon's request and welcomes ARTC's decision.	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
ARTC's Insurance Policies	16.2	Substantial	Delete: (c) ARTC will : (i) deliver to the Operator when reasonably requested by the Operator copies of such parts of the liability insurance policy referred to in clause 16.2(a) and the Certificates of Currency deliver to the Operator when reasonably requested by the Operator copies of such parts of the liability insurance policy referred to in clause 16.2(a) and the certificates of currency in relation to such policy, subject to the details of such policy being kept confidential by the Operator (other than for the purpose of seeking indemnification thereunder); (ii) publish annually the amounts paid by it by way of premiums for the insurance referred to in clause 16.2(a). (d) In the event that there is a substantial reduction in the amounts paid by way of premiums as disclosed under clause 16.2(c)(ii), ARTC will, in consultation with all operators granted access to the Network, apply any such savings towards repairs, maintenance or upgrading of the Network or as otherwise agreed between the parties.	Do not delete: CI 16.2 the ITAA requirement for ARTC to reinvest its money saved in insurance premiums to repairs, maintenance or upgrades to the Interstate Network that would benefit users of the ARTC Interstate Network.	PN & GrainCorp	ARTC agrees to revert to the original drafting. Pacific National appreciates ARTC agreeing to revert to the original drafting.	Uncontentious

Clause	Clause #	Significance	ARTC Change (deletions are in strike through , additions are in bold)	Stakeholder change	Name of stakeholder	Pacific National Comments Notes in red are taken from ARTC's response to ACCC Information Request 3 - ITAA changes spreadsheet	PN view of significance
Exclusions from 'Confidential Information'	18.2	Substantial		Add: It is necessary for the ITAA to be amended to allow the IAU to define the data to be released, in order to ensure that access agreements do not hinder implementation of data sharing arrangements ultimately included in the IAU. 18.2 iv) required to be disclosed under the terms of ARTC's Access Undertaking	Rail Operators Group	ARTC agrees to the addition of "required to be disclosed under the terms of ARTC's Access Undertaking". Pacific National appreciates ARTC's agreement on this.	Uncontentious
Force Majeure	20.3	Substantial	Change: In this clause 20 "Force Majeure" means a circumstance beyond the reasonable control of a party which occurs without the negligence of that party and includes inevitable accident, storm, flood, fire	Do not remove the definitional requirement for a Force Majeure event to exclude negligence.	PN	ARTC agrees to revert clause 20.3 back to its original wording. Pacific National appreciates that ARTC has agreed to reinstate the original wording.	Uncontentious