

3 December 2018

Matthew Schroder  
General Manager  
Infrastructure & Transport – Access & Pricing Branch  
Australian Competition and Consumer Commission  
GPO Box 520  
Melbourne VIC 3001

cc by email: [grant.kari@acc.gov.au](mailto:grant.kari@acc.gov.au)

Dear Mr Schroder

### **Pacific National Response to ARTC's Proposed Extension of the 2008 Access Undertaking**

Pacific National welcomes the opportunity to respond to ARTC's proposal to extend the 2008 Access Undertaking (**2008 AU**) to 28 February 2019.

The ACCC is still to release a draft decision on ARTC's proposed Interstate Access Undertaking (**2018 IAU**). As highlighted in our recent letter (dated 1 November 2018), the looming 21 December 2018 expiry date of the 2008 AU is a significant business risk. The expiry of the 2008 AU prior to the ACCC approving a new replacement access undertaking will create substantial regulatory and commercial uncertainty for the national rail freight industry.

Pacific National notes that ARTC has only sought the extension of the 2008 AU on 20 November 2018, a mere matter of weeks before the expiration of the 2008 AU. We do not consider it tenable for rail freight operators to be left in doubt as to whether the existing 2008 regulatory protections and our existing contractual safeguards will remain in place for the duration of the ACCC's 2018 regulatory process.

For this reason, Pacific National submits that the 2008 AU should be extended to 31 December 2019 or, until a new replacement access undertaking has been approved by the ACCC, whichever is the earliest or at the very least approve ARTC's 2008 AU extension proposal to 28 February 2019.

An extension of slightly over two months as proposed by ARTC is inadequate and insufficient and will only serve to leave rail freight operators in the same position in February 2019, as they were prior to ARTC's current extension proposal. We estimate that a minimum of 20 weeks is required before the ACCC will be able to release a final decision on the 2018 IAU (post the release of a draft decision). This clearly demonstrates that ARTC's 2008 AU extension proposal does not provide the ACCC with sufficient time to conclude its 2018 IAU statutory review process. Our concern is also exacerbated by the fact that ARTC's proposed extension timeframe encompasses the Christmas holiday season when all parties involved in the regulatory process will be under-resourced for much of the holiday season.

As noted above, it is apparent that the ACCC's consideration of the 2018 IAU still has a long way to go. Based on Pacific National's estimated timeframes, we understand the remaining statutory steps the ACCC must follow before releasing a final decision on the 2018 IAU are as follows.

1. ACCC to release the draft decision.
2. Draft decision stakeholder consultation process, with submissions to be lodged with the ACCC at the end of this consultation period (estimated minimum of eight weeks post release of the draft decision).
3. ACCC to consider stakeholder submissions when forming a view on whether to approve or not approve the 2018 IAU (estimated minimum eight weeks to review stakeholder submissions).
4. ACCC to release its Final Decision (estimated minimum four weeks to prepare detailed reasoning on its final decision).
5. Depending on the outcome of the ACCC's statutory review process, a final decision will either be to:
  - a. approve the 2018 IAU, effective as of the approval date; or
  - b. not approve the 2018 IAU, leaving ARTC to consider its next steps.

It is difficult to understand how ARTC reached the view that only a two-month extension to 28 February 2019 was (a) sufficient time for a final decision to be reached on the 2018 AU, and (b) that no further extension of the 2008 AU would be required.<sup>1</sup> We would be very concerned if ARTC, in seeking these short term extensions, was to exert pressure on its customers to agree a new access agreement outside the regulatory framework of an ACCC approved access undertaking.

We believe our recommended approach is reasonable for all parties. Firstly, it will provide ARTC with the certainty that the 2018 IAU will be effective from the date it is approved by the ACCC. Secondly, it will provide rail freight operators and freight end-customers with confidence and certainty that ARTC will continue to negotiate in good faith with the ACCC and rail freight operators on the appropriate terms and conditions to underpin the proposed 2018 IAU.

Should you require more information or have any queries, please do not hesitate to contact me.

Yours sincerely

Tanya Boyle  
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Pacific National  
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<sup>1</sup> ARTC 2008 AU Extension Application to the ACCC, John Fullerton, 16 November 2018.