

Rio Tinto Coal Australia Pty Limited  
GPO Box 391  
Brisbane Queensland 4001  
Australia  
T +61 (0) 7 3625 3000  
F +61 (0) 7 3625 3001

11 October 2012

Mr Grant Kari  
Assistant Director  
Fuel, Transport & Prices Oversight  
Australian Competition & Consumer Commission  
Level 35, 360 Elizabeth Street  
Melbourne VIC 3000

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

Dear Mr Kari

**Hunter Valley Coal Network Access Undertaking (HVAU)  
Application for Variation under Section 13.3 – Request for Submissions**

I refer to the ACCC's Consultation Paper dated 4 September 2012 seeking submissions from interested parties in relation to the application for variation of the HVAU submitted by Australian Rail Track Corporation Limited (**ARTC**) to the ACCC on 3 August 2012 pursuant to Section 13.3 of the HVAU (the **Section 13.3 Variation Application**). Specifically, the Section 13.3 Variation Application seeks to amend the HVAU to make provision for a performance incentive scheme as contemplated by Section 13.3 of the HVAU.

Coal & Allied Industries Limited (**C&A**) has been an active participant in the development of the HVAU as ultimately accepted by the ACCC in June 2011, and in relation to the subsequent implementation of the HVAU and the steps taken by ARTC in that regard (including, most recently, by making submissions to the ACCC in relation to ARTC's application to vary the HVAU pursuant to section 4.17 to provide for the adoption of "Initial Indicative Services" and related access charges). At all times, C&A has sought to engage proactively with ARTC, the ACCC and other stakeholders.

In relation to including positive performance mechanisms within the HVAU framework, C&A's submissions to the ACCC in relation to the draft HVAU included in principle support to the development of a package of incentives that provide upside for ARTC to improve network performance and to better align the interests of ARTC and Access Holders. Further, in February 2012 C&A provided written comments to ARTC in response to its Consultation Document on Options for Positive Performance Mechanisms published in December 2011.

Since that time, however, C&A has become increasingly concerned by the significant capacity constraints currently faced by Hunter Valley producers and the resulting shortfalls forecast by the HVCCC between available system capacity and the below rail capacity which ARTC has

contracted to provide. In C&A's assessment, based on ARTC's Corridor Capacity Strategy, the capacity shortfall is unlikely to be alleviated until 2018. C&A considers that ARTC has failed to acknowledge formally the significance of the track capacity shortfall and, as yet, has failed to outline to the industry its plans to address the issue and to take steps to practically deliver its contractual commitments to producers. C&A has expressed its concerns directly to ARTC, as have the HVCCC and (via the HVCCC) other industry participants.

Against this backdrop, C&A considers that this is not the appropriate time for amendments to be made to the HVAU to introduce positive performance incentives. Accordingly, C&A has decided not to provide specific comments in relation to the Section 13.3 Variation Application in response to the ACCC's Consultation Paper, and wishes to make it clear that it does not support the Section 13.3 Variation Application being considered at this time. In short, C&A submits that the ACCC should not accept the Section 13.3 Application, or, at very least, should defer its consideration of the application until such time as the ACCC, the HVCCC and the industry are satisfied that ARTC has taken appropriate steps to address the below rail capacity shortfall issues and that those steps are reflected in satisfactory contractual and regulatory arrangements by ARTC.

In this regard, as ARTC has noted in its Consultation Paper, section 13.5 of the HVAU provides for a subsequent variation application to be made by ARTC, following two full years after commencement of the HVAU, in relation to the introduction of "TUT-related performance incentives". Whether or not it will be appropriate for the ACCC to consider any variation application made by ARTC under section 13.5 will, in C&A's current view, also depend on whether ARTC has taken appropriate steps at that time to address adequately the below rail capacity shortfall issues confronting the industry. If ARTC has taken adequate steps by that time, it may be appropriate for the ACCC to consider the Section 13.3 Variation Application (or a replacement application) at that point in conjunction with an application under section 13.5.

Please contact me if you would like to discuss these matters further.

Yours sincerely,



**Timothy Renwick**

General Manager – Infrastructure  
Rio Tinto Coal Australia