



Our ref: 63159
Contact officer: Grant Kari
Contact phone: (03) 9290 1807

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Peter Winder
Group Executive Interstate Network
Australian Rail Track Corporation Ltd
PO Box 10343
Gouger Street
Adelaide SA 5000

By email: pwinder@artc.com.au; jteubner@artc.com.au

Section 44ZZBCA request for information – 2018 Interstate Rail Network Access Undertaking

On 6 March 2018, the Australian Rail Track Corporation (**ARTC**) submitted the 2018 Interstate Access Undertaking (**IAU**) application to the Australian Competition and Consumer Commission (**ACCC**).

On 22 May 2018, the ACCC sent a request for information to ARTC (**22 May 2018 information request**). On 7 July 2018, ARTC provided its initial response to the 22 May 2018 information request, claiming confidentiality over the majority of its response.

On reviewing these claims, ACCC staff requested that ARTC reconsider these classifications. On 13 September 2018, ARTC provided the ACCC with final versions of its public and redacted response to the 22 May 2018 information request.

Having considered the information ARTC has provided as its final response to the 22 May 2018 information request, the ACCC now seeks further information to assist the ACCC in making its decision on whether to accept the 2018 IAU (**20 September 2018 information request**). The particulars of this request for information are set out at Attachment 1 to this letter.

Please provide the requested information specified in this notice in electronic format, by 31 October 2018, by emailing it to transport@acc.gov.au. To help expedite the assessment process, ARTC can provide its response or parts of its response to the ACCC prior to this date.

This letter, including Attachment 1, is a notice under section 44ZZBCA of the *Competition and Consumer Act 2010* (**the Act**). A copy of this notice will be published on the ACCC's website.

Identifying commercial-in-confidence information

Unless information provided in response to this notice is marked confidential, it will be published on the ACCC's website. Any information that is confidential should be clearly identified. The general policy of the ACCC on the collection, use and disclosure of

information is set out in the *ACCC & AER information policy: collection and disclosure of information*.¹

Where ARTC seeks to claim that particular material is confidential, it should:

- identify the title and page no. of the document where the redacted material is located
- provide a description of the confidential information
- identify why the confidential information is commercially sensitive
- specify reasons explaining how and why detriment would be caused from disclosing the confidential information.²

The ACCC will then consider ARTC's claims. In doing so, the ACCC is committed to ensuring that there is an appropriate balance between protecting parties' genuinely confidential information and promoting confidence in the robustness of the ACCC's regulatory processes by providing sufficient transparency over the basis for the ACCC's decision.

If ARTC intends to submit confidential responses, it should also provide a public version of the submission for publication on the ACCC's website. In the public version the confidential information should be redacted (that is, removed) and the place where information has been removed should be surrounded by brackets identifying the redaction as confidential (or [c-i-c]).

This process will ensure confidential information is clearly identified, minimise the risk of accidental disclosure by another party, enable the publication by the ACCC of public versions of submissions on its website, and facilitate the disclosure of confidential information with appropriate protections.

If you have any questions about the contents of this letter, including Attachment 1, please contact Grant Kari at grant.kari@accc.gov.au or on (03) 9290 1807.

Yours sincerely



Matthew Schroder
General Manager
Infrastructure & Transport – Access & Pricing Branch

¹ Available on the ACCC website: <https://www.accc.gov.au/publications/accc-aer-information-policy-collection-and-disclosure-of-information>

² See the template at Attachment 2 for further guidance.

Attachment 1

Competition and Consumer Act 2010

SUBSECTION 44ZZBCA(1)

NOTICE REQUESTING INFORMATION

The ACCC gives this notice, requesting ARTC to provide the information specified below, pursuant to subsection 44ZZBCA(1) of the Act. The ACCC notes that the period from 20 September 2018 to 31 October 2018 constitutes the specified period for a response to this notice pursuant to subsection 44ZZBCA(1) of the Act.

On 22 May 2018, the ACCC sought information from ARTC on its Regulated Asset Base (**RAB**) and capital expenditure (**capex**). On 7 July 2018, and again on 13 September 2018, ARTC provided information in response to the 22 May 2018 information request. Having considered ARTC's response, the ACCC has identified some instances where it considers that ARTC has not provided the entirety of the information sought. Additionally, the ACCC considers that certain further information is necessary in respect of some issues in order to assist in the assessment of the 2018 IAU.

The ACCC notes that in response to the 22 May 2018 information request, ARTC did not provide historical expenditure information pertaining to the 2017–18 year, stating that data would not be available until the end of the financial year and accounts had been audited.³ The ACCC considers ARTC should now be able to provide the relevant data for the 2017–18 year, and requests this information below.

Consistent with the 22 May 2018 information request, for the purposes of this notice the term '**all Segments**' includes:

- Appleton DJ – Footscray
- Cootamundra – Parkes
- Crystal Brook – Parkes
- Dry Creek – Melbourne (Spencer St)
- Dry Creek – Parkeston
- Dry Creek – Pelican Point
- Melbourne (Tottenham) – Macarthur
- Metropolitan Freight Network (**MFN**)
- Moss Vale – Unanderra
- Newcastle – Queensland Border
- Port Augusta – Whyalla
- Queensland Border – Acacia Ridge

³ ARTC, Submission No 2 to ACCC, cover sheet, 2018 Interstate Access Undertaking – 22 May 2018 Information Request, 7 July 2018, p. 1.

- Southern Sydney Freight Line (**SSFL**)
- Tarcoola – API

Access revenue, ceiling limits and floor limits

In the 22 May 2018 information request, the ACCC sought all calculations and underlying data for ARTC’s annual actual access revenue, Ceiling Limits and Floor Limits for all years between 2007–08 and 2017–18 on all Segments (question 1). In response, ARTC provided hard coded values for the actual revenue, Ceiling Limit and Floor Limit for all Segments for the years between 2007–08 and 2016–17.

The ACCC seeks the following further information as well as the data for the 2017–18 year:

1. The underlying calculations and data demonstrating how the Ceiling Limits and Floor Limits have been calculated based on actual Gross Tonne Kilometres (**GTK**), actual costs and actual revenue for all Segments for all years between 2007–07 and 2017–18.
2. The annual actual access revenue, Ceiling Limit and Floor Limit for the 2017–18 year for all Segments.

Maintenance expenditure

In the 22 May 2018 information request, the ACCC sought information on ARTC’s actual maintenance expenditure disaggregated into major periodic maintenance (**MPM**) and routine corrective and reactive maintenance (**RCRM**) for all Segments for each year between 2007–08 and 2017–18 (question 2). The ACCC additionally sought information on why a 10 per cent margin should apply to RCRM activities (question 26).

In reviewing the maintenance expenditure spreadsheet, some activities have not been labelled as either MPM or RCRM. Additionally, a 10 per cent margin has been applied to all RCRM activities from 2012–13 to 2016–17, however not to prior years of the term of the 2008 IAU. Further, the ACCC seeks clarification as to when ARTC allocated costs to Segments that were not part of the Interstate Rail Network at the start of the 2008 IAU term, namely:

- MFN
- Queensland Border to Acacia Ridge
- SSFL

(new Segments).

The ACCC seeks the following information as well as data for the 2017–18 year:

3. Actual maintenance expenditure for all Segments for the 2017–18 year disaggregated into MPM and RCRM by activity.
4. Clarification over whether the following project activities are MPM or RCRM:

• 103	• 280	• 707	• 778
• 109	• 326	• 711	• 779
• 142	• 329	• 720	• 780
• 157	• 700	• 726	• 786

- 252
- 260
- 702
- 703
- 776
- 777
- 791
- 793

5. The date that ARTC began applying a 10 per cent margin on RCRM activities.
6. The dates that ARTC began allocating maintenance expenditure to the following Segments:
 - MFN
 - Queensland Border – Acacia Ridge
 - SSFL.

Operating expenditure (opex)

In the 22 May 2018 information request, the ACCC sought information on ARTC’s actual opex disaggregated into asset management, network control and corporate overheads for all Segments for each year between 2007–08 and 2017–18 (question 3).

In response, ARTC provided opex allocated to a subset of Segments based on its 2008 IAU financial model. The ACCC seeks information on how costs have been actually allocated, rather than modelled allocations. ARTC stated that it has not calculated a breakdown of costs at the Segment level because there is no requirement for compliance tests in the 2008 IAU.⁴ Although there is no requirement in the 2008 IAU, the ACCC seeks this information if ARTC has a record, or can calculate, actual allocations. If so, the ACCC seeks actual opex for each year at the Segment level.

Additionally, as ARTC provided allocations based on a financial model from 2008, this does not include any new Segments. The ACCC seeks information on how costs have been allocated to new Segments.

The ACCC seeks the following information as well as data for the 2017–18 year:

7. To the extent available, actual opex for all Segments for each year between 2007–08 and 2017–18 disaggregated into asset management, network control and corporate overheads.
8. To the extent available, actual opex for each year between 2007–08 and 2017–18 disaggregated into asset management, network control and corporate overheads for the following Segments:
 - MFN
 - Queensland Border – Acacia Ridge
 - SSFL.
9. The dates that ARTC began allocating opex to the following Segments:
 - MFN
 - Queensland Border – Acacia Ridge
 - SSFL.

⁴ ARTC, Submission No 3 to ACCC, cover sheet, 2018 Interstate Access Undertaking – 22 May 2018 Information Request, 7 July 2018, p. 1.

10. The underlying calculations and data demonstrating how ARTC has allocated opex between the Interstate Rail Network and ARTC's other businesses.

Volume and train services

In the 22 May 2018 information request, the ACCC sought information on ARTC's annual actual train paths, GTKs, Train Kilometres (**Train Km**) and track kilometres between 2007–08 and 2017–18 (question 4). The ACCC additionally sought information on the characteristics of train services that ran on the Interstate Rail Network for each year between 2007–08 and 2017–18 (questions 27 and 28).

In response, ARTC provided information for the following three time periods:

- 1 May 2015 to 30 June 2015
- 1 July 2015 to 30 June 2016
- 1 July 2016 to 30 June 2017.

For these time periods, ARTC provided information on contracted GTKs and Train Kms. However ARTC did not provide information on actual train path, GTKs, Train Kms or track kilometres, or any explanation as to why it did not provide this information in its formal response to the ACCC.

Additionally, for these time periods, ARTC did not provide information on the axle load, maximum speed or length of each train service. The ACCC notes that these characteristics are included in ARTC's current access charges.

Further, for these time periods, ARTC did not provide information on total number of train paths, GTKs, Train Kms or access charges of each train service.

The ACCC seeks the following information on volume and train services as well as data for the 2017–18 year:

11. For the three time periods provided by ARTC (1 May 2015–30 June 2015; 1 July 2015–30 June 2016; 1 July 2016–30 June 2017) plus the 2017–18 year, for all Segments, the actual annual:

- train paths
- GTKs
- Train Kms
- track kilometres.

12. For the three time periods provided by ARTC (1 May 2015–30 June 2015; 1 July 2015–30 June 2016; 1 July 2016–30 June 2017) plus the 2017–18 year, the following characteristics for all train services:

- Axle load
- Maximum speed
- Length.

13. For each train service included in the three time periods provided by ARTC (1 May 2015–30 June 2015; 1 July 2015–30 June 2016; 1 July 2016–30 June 2017) plus the 2017–18 year, the total number of:

- train paths

- GTKs
- Train Kms
- access charges.

Capex

In the 22 May 2018 information request, the ACCC identified a number of circumstances where for a Segment in a year either:

- the actual capex exceeded approved capex by more than 20 per cent
- no capex had been approved but capex was undertaken.

The ACCC sought evidence from ARTC as to why these circumstances should be considered prudent (question 5).

In reviewing the information provided by ARTC, further information is required to assist the ACCC in its assessment of the 2018 IAU.

The ACCC seeks the following additional information in respect of capex:

14. In instances where ARTC received a government grant for a project:

- the financial years that these grants were received
- the associated funding agreements for each project (including the rate of return that ARTC used to assess whether to undertake the associated project)
- the approval documents for each stage of each project.

New Segments

In the 22 May 2018 information request, the ACCC sought information from ARTC on the RAB and actual capex, including why actual capex should be considered prudent, in respect of the following Segments:

- MFN
- Queensland Border to Acacia Ridge
- SSFL (questions 8–24).

Additional information to that provided is required in order for the ACCC to assess whether actual capex is prudent.

The ACCC seeks the following further information on new Segments:

15. All approval documents for all capex, including project management, planning processes and associated Budget Investment Committee or Board documents, for the following Segments:

- MFN
- Queensland Border to Acacia Ridge
- SSFL.

16. Explanation of the criteria and process ARTC uses to attribute corridor capital and documentation demonstrating the scope of all corridor capital, for the following

Segments:

- MFN
- Queensland Border to Acacia Ridge
- SSFL.

17. The Project Proposal Reports for the following projects:

- MFN in 2011–12 costing \$21.2 million
- Port Botany Rail Upgrade Stage 1 in 2009–10 costing \$6 million
- Port Botany Rail Upgrade Stage 3 in 2017–18 costing \$52.9 million.

18. Evidence supporting actual capex amounts for the MFN Segment, such as project Close-out reports.

19. Explanation and supporting documentation of why the Port Botany Rail Line Upgrade Stage 2 was classified as entirely track capex.

Forecast maintenance expenditure, opex and capex

In the 22 May 2018 information request, the ACCC sought information on forecast maintenance expenditure, opex and capex for all Segments over the term of the 2018 IAU (question 25).

In reviewing ARTC's forecast maintenance expenditure spreadsheet, it is noted that a 10 per cent margin has been applied to all variable costs of maintenance activities, irrespective of whether these activities are RCRM or MPM activities. No margin appears to have been applied to fixed costs of all maintenance activities. ARTC's Explanatory Guide accompanying ARTC's 2018 IAU application states that:

RCRM costs incur a 10% margin reflecting the efficient market price of maintenance services.⁵

In addition:

- ARTC has not provided forecast maintenance expenditure by Train Km
- forecast maintenance amounts have been adjusted by an 'Interstate Efficiency Dividend' and 'E&I Corridor Management (South)'.

In reviewing ARTC's forecast opex spreadsheet, it also appears that ARTC's forecasts include costs for non-IAU Segments.

ARTC states that it has no forecast capital projects beyond Inland Rail, and therefore has not provided any capex forecasts.⁶ The ACCC seeks corroborating evidence to support this.

The ACCC seeks the following information on forecast maintenance expenditure, opex and capex:

20. Explanation of why ARTC has applied a 10 per cent margin to all variable costs of all forecast maintenance activities, rather than only RCRM activities.

5 ARTC, Submission to ACCC (Explanatory Guide), 2018 Interstate Access Undertaking, 6 March 2018, p. 29.

6 ARTC, Submission No 25 to ACCC, cover sheet, 2018 Interstate Access Undertaking – 22 May 2018 Information Request, 7 July 2018, p. 1.

21. Forecast maintenance expenditure for all Segments over the term of the 2018 IAU by Train Km.
22. Explanation and supporting documentation demonstrating how ARTC calculated the forecast maintenance and opex values provided in its response to question 25 of the 22 May 2018 information request.
23. Explanation of what the 'Interstate Efficiency Dividend' and 'E&I Corridor Management (South)' is and why associated adjustments to forecast maintenance expenditure should be considered efficient.
24. Explanation of why ARTC has allocated opex to the following non-IAU Segments:
 - Portland – Maroona
 - Oaklands Benalla.
25. ARTC's latest 10 year Asset Management Plan.

Attachment 2 – Confidentiality Template

Information request to ARTC in respect of the 2018 Interstate Access Undertaking

Submissions under section 44ZZBCA of the *Competition and Consumer Act 2010* (Cth) identifying information that should not be published because of its confidential commercial nature.

Information that you have highlighted as commercial-in-confidence			
Title and page no. of document	Description of the confidential information	Why the confidential information is commercially sensitive	Specify how and why detriment would be caused by disclosing the confidential information