



Amendment notice

Australian Rail Track Corporation's 2024 Interstate Rail Network Access Undertaking

24 October 2024

Acknowledgement of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

Australian Competition and Consumer Commission

Land of the Ngunnawal people

23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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ACCC 10/24

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Amendment Notice

The Australian Competition and Consumer Commission (ACCC) gives this amendment notice to Australian Rail Track Corporation (ARTC) under subsection 44ZZAAA(1) of the *Competition and Consumer Act 2010* (the Act).

The ACCC may issue an amendment notice setting out proposed amendments to an undertaking given to the ACCC under subsection 44ZZA(1) of the Act. On 12 December 2023 ARTC gave the ACCC an undertaking under subsection 44ZZA(1) of the Act (the Proposed Undertaking).

The ACCC's proposed amendments to the Proposed Undertaking, including the nature of the amendments that the Commission proposes be made and the Commission's reasons for the proposed amendments, are set out in this notice. References in this amendment notice to the 'Draft Decision' are references to the ACCC Draft Decision released on 30 July 2024, which is available on the [ACCC's website](#).

In suggesting the proposed amendments to the Proposed Undertaking, the ACCC has had regard to the matters listed in subsection 44ZZA(3) of the Act, as well as stakeholder submissions.

Typographical errors in the Proposed Undertaking should be corrected, and cross references to amended clauses should be updated.

ARTC has until (and including) 8 November 2024 (the due date) to respond to this notice. ARTC may give the ACCC a revised undertaking incorporating one or more of the proposed amendments in response to this notice.

If ARTC does not respond by the due date, the proposed amendments are taken to not be accepted by ARTC and the ACCC will proceed to make its decision on whether to accept the Proposed Undertaking.

Pursuant to subsection 44ZZAAA(6), if the revised undertaking incorporates one or more amendments that the ACCC considers are not of the nature proposed in the amendment notice and do not address the reasons for the proposed amendments given in the amendment notice, the ACCC must not accept the revised undertaking and must return it to the person within 21 days of receiving it.

1. Preamble, Scope, Definitions and the Network

1.1. Interoperability and harmonisation

Proposed amendments

The Proposed Undertaking 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
- a commitment by ARTC to update its users regularly on its actions and engagement with forums related to interoperability and harmonisation.

Reasons

As set out in the Draft Decision,¹ interoperability and harmonisation across rail networks were raised in many submissions by rail operators as a key issue that affects the efficient use of rail infrastructure. Stakeholders observed that the National Cabinet has established rail interoperability as a priority for all Australian governments to maximise investments in rail. The National Rail Action Plan is led by the National Transport Commission to bring network owners, investors, builders and educators together, with particular focus on train control and signalling, systems standards and working rules, rollingstock approval regimes and rail industry skill recognition and credentials. Stakeholders submitted that ARTC, as a Commonwealth-owned entity focussed on establishing an interstate network, is uniquely placed to provide leadership across the networks. They also submitted that there may be opportunities for ARTC to progress interoperability with other networks unilaterally (for example, by aligning its reporting with that of other networks where appropriate), bilaterally (working with adjoining networks to coordinate and communicate maintenance windows) or to lead broader multi-party discussions (for example, identifying ways to work with other networks to improve origin to destination pathing).

After considering stakeholder feedback, ARTC provided a public written response:

One of ARTC's key strategic objectives is to adopt a leading role with the National Transport Commission to develop a National Approach for interoperability of rail systems and it is a signatory to the Intergovernmental Memorandum of Understanding that commits to work to address issues around rail interoperability.

ARTC is proposing to include a recital in the IAU that states it is aware of the importance of this issue and is a signatory to the Intergovernmental Memorandum of Understanding that commits to work to address issues around rail interoperability.²

The ACCC considers ARTC's role as a national rail network is key in furthering interoperability and harmonisation. The proposed amendments seek to recognise ARTC's position and, given its potential impact on the efficient use of rail infrastructure, ensure interoperability and harmonisation are reflected in the Proposed Undertaking, thereby promoting the efficient operation of, use of, and investment in the infrastructure.

¹ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), 26 July 2024, pp 26-27.

² ARTC, [Response to stakeholder submissions – ARTC's Proposed 2024 Interstate Access Undertaking](#), 13 June 2024, p 1.

1.2. Notice to submit a replacement undertaking

Proposed amendment

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.

Reasons

Under clause 2.2(b) of the Proposed Undertaking, ARTC will notify the ACCC if it intends to submit a new undertaking no later than 6 months prior to the undertaking expiring. As set out in the Draft Decision,³ these provisions are valuable in encouraging ARTC to make a timely application for a replacement undertaking to avoid a regulatory gap where there would otherwise be no statutory protections for access seekers. While the Proposed Undertaking requires ARTC to notify the ACCC, the 6-month timeframe would likely require at least one extension to that expiring undertaking, creating administrative costs for all parties.

The ACCC considers notification 12 months prior to the expiry of the Proposed Undertaking would provide a more reasonable opportunity for stakeholders and the ACCC to assess a proposed undertaking without the necessity of an extension. The proposed amendment is in the interests of ARTC and stakeholders, as it seeks to provide greater regulatory certainty.

1.3. Annual stakeholder forum

Proposed amendment

Part 2 of the Proposed Undertaking should include a commitment by ARTC to hold an annual stakeholder forum (Forum) to discuss matters related to the Proposed Undertaking, also attended by the ACCC.

A new provision should cover the scope of the Forum, such as:

- ARTC will, at least once per calendar year, convene an Interstate Network Rail Access Forum for access seekers (both rail operators and other stakeholders) and the ACCC, for access seekers to raise issues relating to access and discuss:
 - the general operation of the Proposed Undertaking and Indicative Track Access Agreement (ITAA)
 - other issues of relevance to users of the Interstate network relating to the efficient use of the network, such as interoperability, network resilience or transparency
 - general issues relating to access.
- a Terms of Reference with procedural arrangements will be agreed between ARTC and the ACCC and published by ARTC within 6 months after the Proposed Undertaking commences
- ARTC will use best endeavours to maximise attendance but will meet the requirement to hold a meeting despite any party or parties (other than the ACCC) being unable to attend
- the forum will not be for discussion of individual negotiation processes or to discuss any matters that would otherwise require authorisation under the *Competition and Consumer Act 2010* (such as discussions involving individual access seekers' terms and conditions, volumes, individual pricing arrangements, or collective bargaining).

³ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), pp 28-29.

Reasons

As set out in the Draft Decision,⁴ the ACCC considers the Proposed Undertaking would be considerably strengthened by the inclusion of a new clause in Part 2 that provides for an annual forum for ARTC to engage with stakeholders on access issues, with the ACCC in attendance. This would provide for regular engagement between ARTC and its users to discuss and resolve issues regarding access and the operation of the Proposed Undertaking—which is in the interests of both ARTC and users. It would also assist the ACCC’s understanding of the interests of access seekers, of ARTC, and more broadly the public interest.

Following the stakeholder workshop and the ACCC raising the possibility of an annual forum, ARTC provided a written response stating:

ARTC notes ACCC’s suggestion of holding an annual stakeholder meeting (similar to the IAU Roundtable at end April 2024). ARTC is happy to facilitate this meeting and looks forward to continuing to discuss matters relevant to the Undertaking in a proactive setting.⁵

The proposed amendment seeks to create a platform for a more constructive dialogue between ARTC and its customers on ways to improve the efficient operation of, and use of, the Interstate rail network—which appears to have been lacking at times in the past.

1.4. Data working group

Proposed amendment

The Proposed Undertaking should provide that ARTC will establish a working group of stakeholders to discuss improvements including performance indicators and how data is provided, and that the working group will report on progress annually to the Forum.

Reasons

As set out in the Draft Decision,⁶ ARTC held a data workshop on 23 May 2024 to discuss the requests in stakeholder submissions. We understand that subsequently ARTC is considering how it can make additional information available as requested within the constraints of cost and confidentiality, while noting the information already available to stakeholders.

The ACCC notes that data collection and release is complicated, may raise confidentiality issues, and may require dedicated resources within ARTC. As an initial, short-term step, the ACCC proposes that ARTC continue to progress discussions from the data workshop by establishing a working group of stakeholders. The proposed amendment is in the interests of access seekers and persons that use the network in that it seeks to improve their understanding of ARTC’s performance and operation of the network, thereby promoting the efficient use of the infrastructure.

⁴ ACCC, [Draft Decision – ARTC’s 2024 Interstate Access Undertaking](#), pp 29-30.

⁵ ARTC, [Response to stakeholder submissions – ARTC’s Proposed 2024 Interstate Access Undertaking](#), p 1.

⁶ ACCC, [Draft Decision – ARTC’s 2024 Interstate Access Undertaking](#), p 113.

2. Arbitration (Part 3)

2.1. Signing the Arbitration Agreement

Proposed amendment

Amend clause 3.12 (and a cross reference in clause 3.8) to provide that the Arbitration Agreement would 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)).

Reasons

As set out in the Draft Decision,⁷ the ACCC considers the inclusion of a template Arbitration Agreement in Schedule A is appropriate, as such an agreement is essential to provide a basis for a commercial arbitration process where there may be no existing contractual relationship between the parties and they are negotiating for access. However, the Proposed Undertaking should be clearer as to whether the agreement must be signed by the parties prior to negotiating access or at the time a dispute is notified.

It is preferable that such an agreement is entered into early in negotiations so as not to hold up any dispute resolution. This would be in the interests of certainty for both parties as to how disputes will be resolved. However, ARTC has explained in discussions with the ACCC that it often responds to informal requests for pathing where it is unwarranted to complete an Arbitration Agreement in that circumstance.

Having regard to this, the Arbitration Agreement could be signed by the Applicant when it submits an Access Application and signed in response by ARTC when it provides the Indicative Access Proposal. An amendment in the nature proposed would provide necessary clarity to stakeholders as to when the Arbitration Agreement should be signed and is in the interests of both access seekers and ARTC.

2.2. Schedule A template agreement

Proposed amendments

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 (in Schedule A) that a party should consider seeking its own independent legal advice before signing the agreement
- provide that clause 3.12.5 applies where a dispute is referred to arbitration, subject to any agreement between the parties.

Reasons

As set out in the Draft Decision,⁸ we suggested that the template Arbitration Agreement specifically state that the agreement is a template agreement that can be negotiated and that a party should consider seeking its own independent legal advice before entering into

⁷ ACCC, [Draft Decision – ARTC’s 2024 Interstate Access Undertaking](#), pp 46-47.

⁸ ACCC, [Draft Decision – ARTC’s 2024 Interstate Access Undertaking](#), pp 46-47.

the agreement. The first proposed amendment is to make clear to access seekers that such terms are negotiable.

The ACCC also noted that, as per clause 3.12.5(a)(ix), “the Arbitrator will have the power to grant all legal, equitable and statutory remedies”, which will enable the Arbitrator to grant a very broad range of remedies. Given this, we consider an access seeker should be able to negotiate the scope of this power and that this should be clear in the Proposed Undertaking.

In our Draft Decision, we suggested ARTC consider moving clause 3.12.5(a)(ix) into the Arbitration Agreement template itself. However, we consider this can be better achieved by a proposed amendment that provides that the matters in clause 3.12.15 apply where a dispute is referred to arbitration, subject to an agreement between the parties.

These proposed amendments are in the interests of persons who might want access to the service, particularly smaller users, and seek to make clear that the terms governing arbitration are negotiable.

2.3. Matters for an arbitrator to take into account

Proposed amendment

Clause 3.12.5 of the Proposed Undertaking should be amended to:

- remove consideration of 3.12.5(a)(xii)(K) (factors relating to the industry)
- include the interests of the access seeker as a factor that the arbitrator must consider under 3.12.5(a)(xii).

Reasons

As set out in the Draft Decision,⁹ the ACCC is not convinced the factors listed in (K) should be specifically considered by the arbitrator. The relevance or importance of the factors in 3.12.5(a)(xii)(K) is unclear and may be in contrast with the section 44ZZA criterion (the interests of access seekers) due to the potential for ARTC’s interests to be given greater weight over access seekers’ interests. Further, the factors are arguably broadly covered within existing factors under clause 3.12.5(a)(xii).

Separately, if ARTC’s interests are included as a factor the Arbitrator must take into account in arbitrating a dispute in clause 3.12.5(a)(xii)(B), then the ACCC considers the interests of access seekers should be given equal consideration by the arbitrator.

The proposed amendments are in the interests of access seekers and ARTC in that they seek to clarify the matters that the arbitrator is to take into account.

⁹ ACCC, [Draft Decision – ARTC’s 2024 Interstate Access Undertaking](#), pp 53-55.

3. Pricing principles (Part 4)

3.1. Updated Schedule J

Proposed amendment

As ARTC updated its prices at 1 July 2024, an updated Schedule J should be included in the Proposed Undertaking.

Reasons

As ARTC has posted updated prices at 1 July 2024, and the Existing Undertaking has been extended to 31 December 2024, ARTC should include a revised Schedule J prior to the ACCC making its decision as to whether to accept the Proposed Undertaking.¹⁰ These would be the prices effective at 1 July 2024, which are the prices at 1 July 2023 indexed by the increase in the CPI between March quarter 2023 and March quarter 2024, as allowed in the Existing Undertaking. The proposed amendment seeks to remove any potential misunderstanding regarding current prices.

4. Network connections and additions (Part 6)

4.1. Scope of Interstate Network Development Strategy (INDS), now proposed to be titled Rail Network Supply Chain Optimisation Strategy

Proposed amendment

Part 6 of the Proposed Undertaking should be amended to reference all the matters the Rail Network Supply Chain Optimisation Strategy (the Strategy) will cover, including:

- a representation of the Network and its current capabilities
- completed Network investments by ARTC
- Network investments in development and in progress by ARTC
- projections of the interstate rail task (including intermodal, steel, grain, minerals, general freight and passenger)
- Network performance (current state)
- options for Additional Capacity enhancements to meet the projections of the rail task
- rail market challenges and opportunities
- operational and service improvements

¹⁰ ACCC, [Draft Decision – ARTC’s 2024 Interstate Access Undertaking](#), p 71.

- network resilience
- actions taken by ARTC to improve interoperability and harmonisation, including reporting on ARTC's involvement in committees and forums under the Memorandum of Cooperation to support National Rail System Interoperability.

Part 6 should also explain the process and purpose for developing the Strategy each year.

Reasons

As set out in the Draft Decision,¹¹ the ACCC agrees with stakeholders that the proposed full scope of the Strategy should be reflected in the Proposed Undertaking itself. ARTC's Explanatory Guide included an initial list of matters.

Operational improvements, resilience and interoperability and harmonisation can be just as important to the efficient use of the network as capacity expansion.

The proposed amendment seeks to provide clarity as to the scope of the Strategy. This recognises the importance of capital planning, interoperability and harmonisation on the future efficient use of rail infrastructure.

4.2. Network connections

Proposed amendment

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.

Reasons

As set out in the Draft Decision,¹² the ACCC maintains its view from 2018 that, under clause 6.2(b), ARTC should be obliged to provide reasons, if requested, as to why it has refused a Network connection under any of the relevant grounds.¹³ We consider it would make for a fairer process were ARTC to provide reasons for a refusal and would be in the public interest for reasons to be given as to why potential expansions of rail routes through connections are not made. Further, it would be consistent with the approach proposed by ARTC for additional capacity under clauses 6.3(b) and (g) in the Proposed Undertaking whereby ARTC must provide reasons for the basis of decisions made by it in relation to additional capacity.

This proposed amendment is in the interests of access seekers by requiring ARTC to provide reasons for its decision.

4.3. Use of clause 6.3

Proposed amendment

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.

¹¹ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), p 91.

¹² ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), pp 95-96.

¹³ ACCC, [Draft Decision – ARTC's 2018 Proposed Interstate Access Undertaking](#), 20 December 2018, p 206.

Reasons

As set out in the Draft Decision,¹⁴ the operation of clause 6.3(a), is unclear, as it includes three items in the same list with both 'and' and 'or' used. We consider the operation of this clause should be clarified.

It is also not clear whether clause 6.3 allows ARTC and an Applicant proposing Additional Capacity to agree to share the capital costs.

We acknowledge that it may not be appropriate for the clause to *require* ARTC to share the cost if it were a non-commercial investment. However, we consider the Proposed Undertaking should not preclude ARTC choosing to share the cost where it is in its own interest to do so. In some circumstances, ARTC bearing some of the cost would widen the potential range of economic investments that could be supported by clause 6.3, and thereby promote economically efficient investment in the infrastructure.

4.4. Additional capacity proposed by ARTC and the price cap

Proposed amendment

Remove clause 6.4 Additional Capacity sought by ARTC for the benefit of the rail industry.

Reasons

As the Proposed Undertaking would remove the cost-based revenue ceiling, it is notable that clause 6.4(a) would be one of the few avenues remaining for assessing cost-reflective pricing. It is consistent with clause 4.2 which provides that, in formulating its charges, ARTC will have regard to a range of factors which impact on its business, including but not limited to, the cost of any Additional Capacity and capital or other contributions by the Applicant to ARTC's costs. These clauses potentially provide flexibility for new investments to be reflected in prices which should promote efficiency of investment in the network.

However, the potential flexibility from clause 6.4 appears to contrast with the upper limits for prices set in clause 4.5. The ACCC asked ARTC for its views on how clause 6.4 would work in conjunction with the formula for the calculation of the Standing Offer for Reference services in clause 4.5. ARTC responded as follows:

Clause 4.5 is limited purely to the annual variation of prices based on the application of the CPI formula. ARTC therefore considers that any ACCC approval of pricing under Clause 6.4 is separate to the application of Clause 4.5.¹⁵

However, the Proposed Undertaking does not make sufficiently clear how a price increase for a Reference Service under clause 6.4(a) would interact with the price cap provisions of Part 4. Clause 4.5 allows ARTC to vary the Standing Offer for Reference Services by up to an amount determined in accordance with the CPI but does not specifically indicate any exceptions that could allow variations above that limit.¹⁶

¹⁴ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), pp 97-98.

¹⁵ ARTC, [Response to Information request #1 – ARTC's Proposed 2024 Interstate Access Undertaking](#), 18 March 2024, response to 4.7.

¹⁶ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), pp 73 & 98-99.

In our Draft Decision, we suggested ARTC clarify 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. In subsequent discussions ARTC has indicated its intention to remove this clause entirely. To the extent that ARTC wants to seek a variation to its Standing Offer for Reference Services at a later time (assuming the ACCC accepts the Proposed Undertaking), ARTC would need to seek the ACCC's consent to withdraw or vary the undertaking pursuant to subsection 44ZZA(7) of the Act.

This proposed amendment is in the interests of access seekers and ARTC in that it will provide certainty as to prices under the Proposed Undertaking.

5. Performance indicators, annual reporting (Part 8, Schedule G, Schedule I)

5.1. Data format for analysis

Proposed amendment

Amend clause 8.2 to provide that ARTC will publish all reporting data in a downloadable format in a numerical format in a timeseries, in addition to any other methods such as charts, suitable for quantitative analysis.

Reasons

ARTC already collects and publishes performance data in charts on a monthly basis on its website. We consider ARTC should make this raw data available as a cumulative time series in a spreadsheet or software format that allows users to dissect and analyse it for their own purposes to maximise their efficiency and understanding of the network.¹⁷

The proposed amendment clarifies the format of the reported data and, by allowing users to readily use the reported data to maximise their efficiency, will in turn promote the efficient use of the infrastructure more generally. It is also in the interests of access seekers.

5.2. Reporting of new items

Proposed amendment

Amend clause 8.2 to confirm it requires reporting on an ongoing basis.

Reasons

Clause 8.2(a) of the Proposed Undertaking (which mirrors that of the Existing Undertaking) states:

¹⁷ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), pp 115-116.

...ARTC's obligations to report Performance Indicators with annual reporting frequency will not commence until the completion of the first full financial year that is at least twelve months after the date of the acceptance by the ACCC of this Undertaking *and will only relate to performance on the Network during that first full financial year.* [emphasis added]

There is an equivalent provision in clause 8.2(a) relating to quarterly reporting. The ACCC understands that the intention of the Proposed Undertaking is to report the performance measures and unit costs quarterly and annually respectively. However, the last sentence in the above provision is unclear and could suggest that the obligations only relate to the first full financial year that is at least twelve months after the date of the acceptance by the ACCC of this Undertaking.¹⁸

The proposed amendment seeks to clarify the operation of clause 8.2, in the interests of access seekers.

5.3. Performance indicators

Proposed amendment

Amend Schedules G and I to clearly state the relationship between the performance indicator items in each schedule.

Reasons

The proposed Schedule I includes the item 1(a)(i) 'performance indicators for each Segment of the Network'. As set out in the Draft Decision,¹⁹ the ACCC sought clarification from ARTC as to whether these indicators in Schedule I are intended to be the same as those required under Schedule G, or additional. ARTC stated in response:

No. Schedule G details Performance Indicators relating to network performance that a customer would experience day-to-day (such as on-time performance).

Schedule I refers to information in Schedule G and also makes commitments for additional reporting on the broader maintenance and management of the network by 30 November of each year.²⁰

We understand from ARTC's response and the data provided by ARTC that the performance indicator item in Schedule I refers to those listed in Schedule G and are not additional ones, and would be on an annual rather than quarterly basis. However, further clarity is needed on the face of the Proposed Undertaking.²¹

The proposed amendment seeks to clarify the interaction between Schedule I and G and in turn, ARTC's reporting obligations under the Proposed Undertaking. This is in the interests of access seekers.

¹⁸ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), p 116.

¹⁹ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), p 119.

²⁰ ARTC, [Response to Information request #1 – ARTC's Proposed 2024 Interstate Access Undertaking](#), response to 6.1.

²¹ ARTC, [Response to Information request #2 – ARTC's Proposed 2024 Interstate Access Undertaking](#), 7 June 2024, response to 6.1.

5.4. Cost categories

Proposed amendment

Amend Schedules G and I to clearly state the relationship between the cost categories in each schedule and provide further disaggregation of revenue and volume by commodity type.

Reasons

As with performance indicators there is a lack of clarity between the cost categories in Schedules G and I:

- Schedule G (Table 2) – Infrastructure Maintenance, Train control and Operations
- Schedule I – maintenance costs and non-maintenance operating costs (including Network control and overheads).

ARTC noted that the costs and categories of the costs should be consistent between Schedule G and Schedule I.²² However, it is not easy to reconcile the cost data between the two schedules. As set out in the Draft Decision,²³ the ACCC considers that ARTC should amend Schedules G and I to state the relationship between the categories in the Proposed Undertaking and publish the data at a level which makes clear how the categories relate to each other, by disaggregating further if necessary.

In the interests of supporting transparency around the use of the network, ARTC should also further disaggregate data where possible, including reporting revenue and volume data by commodity type such as:

- intermodal/steel;
- grain;
- minerals;
- general freight; and
- passenger;

The proposed amendment seeks to provide clarity of the reported data, and is in the interests of access seekers.

5.5. Non-Access revenue reporting

Proposed amendment

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.

Reasons

The Proposed Undertaking provides for ARTC to publish 'total Access revenue earned for each Segment'. That is, revenue earned from Access Charges. Other revenue includes Third-Party Works License applications, infrastructure connection agreements, infrastructure licensing and other types of access. The ACCC understands that the terms and conditions of

²² ARTC, [Response to Information request #2 – ARTC's Proposed 2024 Interstate Access Undertaking](#), response to 6.2.

²³ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), pp 119-120.

these services are not covered by the Proposed Undertaking, but that the resources for providing both regulated and unregulated services would be intermingled. We therefore expect that the costs of providing the related services (for example, shunting and providing sidings) would be part of ARTC's data on operating costs.²⁴

ARTC stated that "the associated revenue is less than 1% of ARTC's revenue under the IAU".²⁵ However, fees for these services could still reflect market power if the services are essential complements to running trains on the network.

ARTC stated it is open to including such non-Access revenue as a separate line item for revenue type under Revenue in Schedule I, noting it is not specific to any rail assets.²⁶

Further, ARTC has committed to increasing transparency on its approach to the terms relating to use of sidings leased or controlled by ARTC. It is also comfortable to commit to publish standing rates for non-Operator services on its website.²⁷

The proposed amendment seeks to improve transparency of reporting on the network, which is in the interests of users. Over time this is expected to promote the efficient use of the infrastructure.

5.6. Reference to Schedule I

Proposed amendment

Amend clause 8.2 so that Schedule I is referred to in the body of the Proposed Undertaking.

Reasons

Schedule G is referenced in clause 8.2 (Reporting) of the Proposed Undertaking. The proposed new Schedule I, which also provides for regular reporting, is not referred to in the body of the Proposed Undertaking.²⁸

The proposed amendment is in the interests of access seekers and ARTC in that it clarifies that Schedule I forms part of the Proposed Undertaking.

²⁴ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), pp 120-122.

²⁵ ARTC, [Response to Information request #2 – ARTC's Proposed 2024 Interstate Access Undertaking](#), response to 2.2.

²⁶ ARTC, [Response to Information request #2 – ARTC's Proposed 2024 Interstate Access Undertaking](#), response to 9.2.

²⁷ ARTC, [Response to Information request #2 – ARTC's Proposed 2024 Interstate Access Undertaking](#), responses to 2.1 and 2.2.

²⁸ ACCC, [Draft Decision – ARTC's 2024 Interstate Access Undertaking](#), p 123.

6. Indicative Track Access Agreement (Schedule D)

Proposed amendment

Amend Schedule D in accordance with the table at Appendix 1.

Reasons

The Proposed ITAA includes a number of differences to the existing ITAA. In response to ACCC consultation on the Proposed Undertaking, stakeholders raised concerns about a number of these changes and also posed a range of additional changes.

At Appendix B of the Draft Decision, the ACCC listed all the changes raised by ARTC and stakeholders in respect of the ITAA and classified each by significance as follows:

- uncontentious change – minor, editorial or no concerns or risks flagged by stakeholders or outstanding questions from the ACCC
- substantial change – may have a material impact on access arrangements and/or ARTC operations.²⁹

Following consultation on these matters, ARTC and operators have been able to arrive at an agreement on some items initially identified as ‘Substantial’, and which can now be categorised as uncontentious. In the interests of both ARTC and access seekers, it is proposed that the Proposed ITAA be updated to reflect the agreement reached.

However, for some proposed ITAA changes there are issues that remain outstanding and we consider would require further consultation with stakeholders. Given this, it is proposed that, in respect of these ITAA changes, and for regulatory certainty, the Proposed ITAA be amended to reflect the status quo in the Existing ITAA.

7. Additional items

7.1. Review Date and Determination Date

Proposed amendment

Clause 4.5(b) should be amended to remove the term Determination Date and replace with Review Date, as it is obsolete.

Reasons

Clause 4.5(b) of the Proposed Undertaking and clause 4.4 of the Proposed ITAA should be amended to remove the term Determination Date. Both Review Date and Determination Date refer to the price change to occur at 1 July each year, applying to both the actual price charged and the maximum formula. The proposed amendment is in the interests of ARTC and access seekers, in that it seeks to simplify the clause.

²⁹ ACCC, [Draft Decision – ARTC’s 2024 Interstate Access Undertaking](#), pp 124-128.

Appendix 1 – ITAA amendments

| Clause # | Proposed Amendments | Reason |
|----------|--|---|
| 1.1 | Clarify the definition for “Reference Services”. The definition and/or Schedule 3 should be amended to provide this clarity. | The definition of 'Reference Services' included in clause 1.1 cross references Schedule 3. However, currently Schedule 3 does not provide detail about the Reference Services or information on where to source such details. |
| 2.7 | Revert to wording in the existing ITAA (noting ARTC has agreed to this in its response to Information Request 3). | <p>In its submission on the Proposed Undertaking,³⁰ Pacific National did 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 of the Proposed ITAA. Pacific National’s view is that 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. The Pacific National position was supported in submissions from Aurizon and Qube.³¹</p> <p>In its response to Information Request 3,³² ARTC agreed to revert to the wording of the existing ITAA. The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |

³⁰ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 32.

³¹ Aurizon and Qube, [2024 IAU – Submission to Draft Decision – Appendix B](#)

³² ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

| Clause # | Proposed Amendments | Reason |
|----------|---|---|
| 2.10 | <p>Amend to reflect the intent of the underlined drafting below (noting ARTC has agreed to this in its response to Information Request 3):</p> <p>Key Performance Indicators The parties will meet regularly for the purpose of discussing actual performance against the Key Performance Indicators and <u>identifying any actions that need to be taken to address performance.</u></p> | <p>In its submission to the Proposed Undertaking,³³ Pacific National suggested the underlined drafting. In its response to Information Request 3,³⁴ ARTC agreed to the proposed inclusion, and this was supported by a further submission by Aurizon.³⁵</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter. This is a practical change that will support continuous improvement.</p> |
| 4.4 | <p>Amend to reflect the intent of the underlined drafting below (noting ARTC has agreed to this in its response to Information Request 3) and to align with the terms and conditions of the Interstate Access Undertaking.</p> <p>Clause 4.4(c)(ii) be amended to “(ii) <u>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.</u>”</p> <p>The notice period should also be specified in Schedule 3.</p> | <p>The Proposed ITAA currently states at clause 4.4:</p> <p>...</p> <p>(c) Where access charges for Services are negotiated between ARTC and the Customer:</p> <p>(i) those Charges are set out in Schedule 3; and</p> <p>(ii) ARTC may at any time vary the relevant Charges in accordance with Schedule 3.</p> <p>...</p> <p>In the Proposed Undertaking ARTC has clarified that negotiated charges are not subject to the CPI cap on price increases. Instead, they are subject to an alternative price increase regime as agreed with the rail operator.</p> <p>To provide more clarity and certainty, Pacific National proposed that ARTC must provide an agreed notice period for any variation in changes. Specifically, clause 4.4(c)(ii) be amended to “(ii) <u>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</u></p> |

³³ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 32.

³⁴ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

³⁵ Aurizon, [2024 IAU – Submission to Draft Decision – Appendix B](#)

| Clause # | Proposed Amendments | Reason |
|----------|--|---|
| | | <p><u>Operator</u>.³⁶ Aurizon and Qube supported the amendment in their submissions. In its response to Information Request 3,³⁷ ARTC agreed to the proposed addition.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |
| 5.4 | Revert to the wording in the existing ITAA (noting ARTC has agreed to this). | <p>In its submission on the Proposed Undertaking,³⁸ Pacific National did not support ARTC’s addition of sections (a) and (b) to clause 5.4 of the Proposed ITAA and recommended that clause 5.4 revert back to its original wording.</p> <p>ARTC stated it considers the change to clause 5.4 is appropriate for safety reasons. In its submission on the Draft Decision, Pacific National states that they have met with ARTC and accept ARTC's position is reasonable. However, Pacific National also suggests 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 that 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. Aurizon and Qube also support this approach.³⁹ ARTC has since advised the ACCC that it has further considered the clause and agrees to revert to the existing wording of the ITAA as originally proposed by Pacific National.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |

³⁶ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 33.

³⁷ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

³⁸ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 33.

³⁹ Pacific National, Aurizon and Qube, [2024 IAU – Submission to Draft Decision – Appendix B](#)

| Clause # | Proposed Amendments | Reason |
|----------|---|--|
| 5.5(j) | <p>Amend to reflect the intent of the underlined drafting below (noting ARTC has agreed to this in its response to Information Request 3):</p> <p>...</p> <p><u>(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.</u></p> <p>...</p> | <p>In its submission on the Proposed Undertaking,⁴⁰ Pacific National sought to include clause 5.5(j)(iii) into the Proposed ITAA to incentivise interoperability of communication systems through increased consultation.</p> <p>5.5(j) where ARTC proposes to change communications equipment in the Train Control Centre:</p> <p>...</p> <p><u>(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.</u></p> <p>...</p> <p>Aurizon and Qube supported the amendment in their submissions.⁴¹ In its response to Information Request 3,⁴² ARTC agreed to the proposed addition.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |

⁴⁰ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 33.

⁴¹ Aurizon and Qube, [2024 IAU – Submission to Draft Decision – Appendix B](#)

⁴² ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

| Clause # | Proposed Amendments | Reason |
|----------|---|---|
| 5.6(a) | Amend the reference to 'Services' to be in lower case. | Amend the reference to 'Services' to be lower case since 'Services' in upper case has a particular definition in the ITAA that is not appropriate in this clause. |
| 6.1 | Revert to wording in the existing ITAA (noting ARTC has agreed to this in its response to Information Request 3). | <p>In the Proposed ITAA, ARTC introduced new elements to clause 6.1. In its submission on the Proposed Undertaking,⁴³ Pacific National proposed that these be removed. In their submissions,⁴⁴ Qube and Aurizon supported the amendment proposed by Pacific National.</p> <p>In its response to Information Request 3,⁴⁵ ARTC agreed to revert to the wording in the existing ITAA.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |

⁴³ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 32.

⁴⁴ Aurizon and Qube, [2024 IAU – Submission to Draft Decision – Appendix B](#)

⁴⁵ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

| Clause # | Proposed Amendments | Reason |
|-----------|--|--|
| 9.3(b)(i) | <p>Amend to reflect the intent of the underlined drafting below:</p> <p>...</p> <p>(b)...</p> <p>(i) take all reasonable steps to minimise any disruption to the Scheduled Train Paths <u>including, without limiting ARTC's discretion to undertake maintenance under this clause 9.3, having regard to peak demand periods, such as retail and agricultural peaks where relevant;</u></p> <p>...</p> | <p>In its submission to the ACCC on the Proposed Undertaking,⁴⁶ Pacific National suggested an amendment to 9.3(b)(i) which focusses on repairs, maintenance or upgrading of the Network, the carrying out any new work on the Network, or taking possession of the Network and that work is reasonably likely to materially affect the Scheduled Train Paths. It proposed an amendment to "(i) take all reasonable steps to minimise any disruption to the Scheduled Train Paths and commercial impact on the Operator". GrainCorp supported this amendment.</p> <p>ARTC stated that it 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.⁴⁷</p> <p>Pacific National met with ARTC, and in its submission on the Draft Decision indicated that ARTC's position was largely reasonable. Pacific National discussed the importance of avoiding disruption during peak demand periods. In its submission on the Draft Decision, Qube supported an amendment which requires ARTC to minimise the impact to rail freight services during periods of known peak demand. Aurizon accepted ARTC's concerns about the difficulty in assessing individual operators commercial positions, and suggested that a clear gauge of commercial impact is the utilisation on the service, and suggested that the amendments to (i) be adjusted to highlight peak periods of demand.⁴⁸</p> <p>ARTC has informed the ACCC that it agrees to adjust 9.3(b)(i) and add "including, without limiting ARTC's discretion to undertake maintenance under this clause 9.3, having regard to peak demand periods, such as retail and agricultural peaks where relevant;"</p> <p>Noting ARTC has indicated that avoiding peak periods is the current practice, there is nevertheless value in recognising it in clause 9.3(b)(i) of the ITAA to improve certainty for rail operators. The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |

| Clause # | Proposed Amendments | Reason |
|----------|--|--|
| 9.3 | <p>Amend clause 9.3 to reflect the intent of the underlined drafting below:</p> <p>"... (d) <u>ARTC will take all reasonable steps to keep the rail corridor clear of equipment</u>".</p> | <p>In its submission to the ACCC on the Proposed Undertaking,⁴⁹ Pacific National stated that ARTC should have an obligation during maintenance activities to keep tracks and related areas clear of equipment where they can. Its view is that currently there is an issue on the ARTC Interstate Network of track machines being parked. Pacific National drivers will go out to stable a train or load a train, only to find there are track machines in the area. In instances where Pacific National gets a confirmed path and then arrives to find a track machine parked there, it creates operational complexity. It also creates additional costs if an operator is required to commit extra crews to taking the train to another point to stable, or compelled to change arrangements with customers to load.</p> <p>ARTC stated in its response to Information Request 3⁵⁰ that it does not consider the addition of (d) to be appropriate because 'Related areas' is not defined and introduces uncertainty. In its submission on the Draft Decision,⁵¹ Pacific National stated that it understands that 'related areas' is not defined. As an alternative, it has suggested the wording could be updated to "ARTC will take all reasonable steps to keep the rail corridor clear of equipment". Pacific National welcomes ARTC's commitment to engage further on this. The ACCC is of the view that if this is current practice, it should be uncontentious to include a general statement. ARTC has subsequently advised the ACCC that it will include a general statement.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |
| 15.2 (a) | <p>Revert to wording in the existing ITAA (noting ARTC has agreed to this in its response to Information Request 3).</p> | <p>In the Proposed ITAA, ARTC removed the words "Term of this Agreement". In the Draft Decision the ACCC noted that this clause was not clear. ARTC has agreed to revert to</p> |

⁴⁶ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 37.

⁴⁷ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

⁴⁸ Pacific National, Aurizon and Qube, [2024 IAU – Submission to Draft Decision – Appendix B](#)

⁴⁹ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 32.

⁵⁰ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

⁵¹ Pacific National, [2024 IAU – Submission to Draft Decision – Appendix B](#)

| Clause # | Proposed Amendments | Reason |
|----------|--|---|
| | | the original wording. The proposed amendment will provide regulatory certainty as to the operation of this clause. |
| 15.2 (c) | Amend the threshold for a Prohibited Claim from \$50,000 to \$100,000. | <p>Given the threshold of “less than \$50,000” has been in place since the 2008 Undertaking, Pacific National suggested in its submission on the Consultation Paper that this be adjusted for inflation and increased to “less than \$100,000”.⁵² In their submissions, Qube and Aurizon supported the amendment proposed by Pacific National.⁵³</p> <p>In its response to Information Request 3,⁵⁴ ARTC accepted this change and provided further advice to the ACCC regarding its claims history to explain that this change would not have a negative impact on small operators.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |
| 15.9(d) | <p>Amend clause 15.9(d) to reflect the intent of the underlined drafting below:</p> <p>“... within 14 days of being requested in writing by the Indemnified Party to do so, <u>or within 28 days for complicated insurance structures.</u>”</p> | <p>The only amendment proposed to this clause is the inclusion of a longer timeframe for payment proposed by ARTC under 15.9 (d). The proposed amendment will provide both parties with a longer timeframe to respond to payment requests. Other amendments proposed by stakeholders to 15.9 require further consultation.</p> <p>While this change was proposed by ARTC subsequent to consultation on the Draft Decision, it is not an amendment that will cause financial or other difficulties for any party. The existing 14-day timeframe is short for matters that relate to compensation payments.</p> <p>The ARTC amendment appears uncontentious and does not disadvantage any operator.</p> |

⁵² Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 38.

⁵³ Aurizon and Qube, [2024 IAU – Submission to Draft Decision – Appendix B](#)

⁵⁴ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

| Clause # | Proposed Amendments | Reason |
|-------------|--|---|
| 16.1(b)(ii) | <p>Amend 16.1(b)(ii) by removing the text shown in 'strikethrough' below" (noting ARTC has agreed to this in its response to Information Request 3):</p> <p>"... 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."</p> | <p>In its submission to the ACCC on the Proposed Undertaking,⁵⁵ Pacific National requested ARTC revert to the original wording of the clause to 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.</p> <p>In its response to Information Request 3,⁵⁶ ARTC agreed to the change. The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |
| 16.1(c) | <p>Amend clause 16.1 (c) to require the operator to provide ARTC with certificates of currency rather than copies of liability insurance policies.</p> | <p>In its submission to the ACCC on the Proposed Undertaking,⁵⁷ Aurizon sought to delete the requirement in clause 16.1(c) of the Proposed ITAA for an operator to provide a copy of insurance policies to ARTC. ARTC advised that they are required to treat 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.</p> <p>In its response to Information Request 3,⁵⁸ ARTC agreed to the change. This appears to be uncontentious and does not disadvantage any operator. In their submissions on the Draft Decision, Qube and Pacific National support the Aurizon change.⁵⁹ The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |

⁵⁵ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 38.

⁵⁶ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

⁵⁷ Aurizon, [Aurizon – 2024 IAU – Submission to Consultation Paper](#), p. 39.

⁵⁸ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

⁵⁹ Aurizon and Pacific National, [2024 IAU – Submission to Draft Decision – Appendix B](#)

| Clause # | Proposed Amendments | Reason |
|----------|--|--|
| 16.1 | <p>Amend clause 16.1 to reflect the intent of the below underlined drafting:</p> <p>...</p> <p><u>(f) 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-</u>.</p> | <p>In its submission to the ACCC on the Proposed Undertaking,⁶⁰ Pacific National requested clause 16.1 of the Proposed ITAA be amended to recognise contemporary insurance arrangements in the industry by adding:</p> <p><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-</i></p> <p>In its response to information Request 3,⁶¹ ARTC agreed to the change. This appears to be uncontentious and does not appear to disadvantage any operator.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |
| 16.2 | <p>Amend clause 16.2(c)(ii) and 16.2(d) to revert to wording in the existing ITAA to reflect the intent of the underlined drafting below (noting this was agreed to by ARTC in its response to Information Request 3):</p> <p>...</p> <p><u>(c)(ii) publish annually the amounts paid by it by way of premiums for the insurance referred to in clause 16.2(a).</u></p> <p><u>(d) In the event that there is a substantial reduction in the amounts paid by way of</u></p> | <p>In the Proposed ITAA, ARTC deleted clauses 16.2(c)(ii) and (d) which contains a 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. In their submissions to the ACCC on the Proposed Undertaking, both GrainCorp⁶² and Pacific National⁶³ requested that these clauses be retained and this obligation preserved. In its response to Information Request 3,⁶⁴ ARTC agreed to revert to the wording of the existing ITAA.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |

⁶⁰ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 38.

⁶¹ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

⁶² GrainCorp, GrainCorp – [2024 IAU – Submission to Consultation Paper](#), p.8.

⁶³ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 38.

⁶⁴ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

| Clause # | Proposed Amendments | Reason |
|----------|--|---|
| | <p><u>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.</u></p> | |
| 18.2 | <p>Amend to reflect the intent of the underlined drafting below:</p> <p><u>18.2(e) required to be disclosed under the terms of ARTC’s Access Undertaking.</u></p> | <p>In its additional submission to the ACCC on the Proposed Undertaking,⁶⁵ the Rail Operators Group stated that 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. In its response to Information Request 3,⁶⁶ ARTC agreed to the addition.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |
| 20.3 | <p>Revert to wording in the existing ITAA regarding Force Majeure (noting ARTC has agreed to this in its response to Information Request 3).</p> | <p>In the Proposed ITAA, ARTC deleted aspects of clause 20.3. In its submission to the ACCC on the Proposed Undertaking,⁶⁷ Pacific National stated that ARTC should not remove the definitional requirement for a Force Majeure event to exclude negligence. In its response to Information Request 3,⁶⁸ ARTC agreed to revert to the wording of the existing ITAA.</p> <p>The proposed amendment proposes that, in the interests of both ARTC and stakeholders, the Proposed ITAA be updated to reflect the agreement reached on this matter.</p> |

⁶⁵ Rail Operators Group, [Rail Operators Group – 2024 IAU – Supplementary Submission](#), p.8.

⁶⁶ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

⁶⁷ Pacific National, [Pacific National – 2024 IAU – Submission to Consultation Paper](#), p. 39.

⁶⁸ ARTC, [Response to Information request #3 – ITAA changes spreadsheet](#)

| Clause # | Proposed Amendments | Reason |
|----------|--|--|
| Sch 3.2 | Amend to reflect the intent of the underlined drafting below: ARTC may vary the Charges set out in this section 2 of Schedule 3, <u>by giving not less than 30 days written notice to the Operator,</u> as follows... | ARTC has suggested updates to Schedule 3 to align with updates to 4.4(c)(ii) of the Negotiated Changes section. The proposed amendment seeks to reflect the agreement reached on other aspects of the ITAA. |