



Australian  
Competition &  
Consumer  
Commission

## **Position Paper**

# Australian Rail Track Corporation's Hunter Valley Coal Network Access Undertaking

## Final Indicative Services variation

1 August 2014



Australian Competition and Consumer Commission  
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

© Commonwealth of Australia 2014

This work is copyright. Apart from any use permitted by the *Copyright Act 1968*, no part may be reproduced without prior written permission from the Commonwealth available through the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2601.

# Contents

<b>Glossary</b> .....	<b>4</b>
<b>Summary</b> .....	<b>5</b>
Indicative Services .....	5
ARTC's proposal .....	5
ACCC's preliminary assessment.....	6
Seeking stakeholders' views .....	7
<b>1 Introduction</b> .....	<b>8</b>
1.1 Indicative timeline for assessment.....	8
1.2 Invitation to make a submission.....	9
1.3 Further information.....	9
1.4 Structure of this document .....	10
<b>2 Background</b> .....	<b>11</b>
2.1 ARTC and the HVAU .....	11
2.2 The staged development of the Indicative Services .....	11
2.3 ACCC's public consultation.....	12
2.4 ACCC's requests for further information from ARTC.....	13
2.5 ACCC's request for claims of confidentiality from ARTC.....	13
<b>3 Decision-making framework</b> .....	<b>14</b>
3.1 Variation of an access undertaking.....	14
3.2 Matters that the ACCC must have regard to.....	14
3.3 Pricing principles.....	14
3.4 Other relevant matters .....	15
<b>4 Preliminary assessment of proposed characteristics of the Indicative Services</b> .....	<b>18</b>
4.1 ARTC's process for determining the Indicative Services characteristics .....	18
4.2 ARTC's proposed Indicative Services characteristics .....	23
<b>5 Preliminary assessment of proposed access charges for the Indicative Services</b> ...	<b>33</b>
5.1 ARTC's proposed access charges for the Indicative Services .....	33
5.2 Transparency of pricing for non-Indicative Services.....	53
5.3 Grandfathering arrangements for pricing.....	55
<b>6 Preliminary assessment of proposed drafting amendments to the HVAU</b> .....	<b>58</b>
6.1 ARTC's proposed drafting changes .....	58
6.2 Stakeholders' views .....	58
6.3 ACCC's preliminary views.....	59
<b>A Detailed outline of ARTC's pricing methodology for the Final Indicative Services</b> .....	<b>58</b>

# Glossary

Capitalised terms used in this Position Paper that are not listed in this glossary are as defined in clause 14.1 of the Hunter Valley Coal Network Access Undertaking.

ACCC	Australian Competition and Consumer Commission
ACCC's Consultation Paper	<i>ACCC Consultation Paper Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking Final Indicative Service Variation dated 18 February 2014</i>
Access Charge	Charge for use of train paths on the Hunter Valley Coal Network
the Act	<i>Competition and Consumer Act 2010 (Cth)</i>
ARTC	Australian Rail Track Corporation
ATMS	Advanced Train Management System
Coal Chain Capacity	The system wide capacity of the Hunter Valley Coal Chain as defined by the HVAU.
FIAC	Final Indicative Access Charge
FIS	Final Indicative Service
gtkm	Gross tonnes multiplied by kilometres
HVAU	The Hunter Valley Coal Network Access Undertaking accepted by the ACCC on 29 June 2011 and varied on 17 October 2012 and 25 June 2014
Hunter Valley Rail Network	The Network covered by the HVAU
HVCCC	Hunter Valley Coal Chain Coordinator
IIAC	Initial Indicative Access Charge
IIS	Initial Indicative Service
Indicative Service	Coal train configuration representing optimised utilisation of capacity of the Hunter Valley Coal Network
the Network	The network of railway lines as defined in section 2.1(b) of the HVAU
ORR	Office of Rail Regulation
Proposed Variation	ARTC's application to include the characteristics of the Final Indicative Services and associated access charges in the HVAU submitted on 31 January 2014.
QCA	Queensland Competition Authority
SRG	Stakeholder Reference Group
TAL	Tonne axle load
TOP	Take or Pay

# Summary

The Australian Rail Track Corporation (**ARTC**) has submitted an application to include the characteristics of the Indicative Services and associated access charges in the Hunter Valley Coal Network Access Undertaking (**HVAU**) (**the Proposed Variation**) to the Australian Competition and Consumer Commission (**ACCC**). ARTC has proposed that the changes take effect from 1 January 2015 and will apply at least until the HVAU expires in 2016.

The ACCC has not yet made a decision on whether to accept the Proposed Variation. While the ACCC is of the preliminary view that the proposed characteristics of the Indicative Services are likely to be appropriate, the ACCC has identified a number of issues relating to the associated access charges that it would like further information and input from stakeholders on before making a decision. Stakeholders are invited to review the issues set out in this Position Paper and provide a submission to the ACCC by 2 September 2014.

## Indicative Services

The characteristics of the Indicative Services are intended to indicate to users the coal train configuration(s) that would contribute to achieving optimum utilisation of Coal Chain Capacity in the Hunter Valley Rail Network. The associated access charges are intended to provide pricing signals to users about the costs of their services and to incentivise the adoption of more efficient train configurations. They are also used as a reference point by ARTC when determining the charges to be applied to non-Indicative Services.

The characteristics of the Indicative Services have evolved over the term of the HVAU and the Proposed Variation is the last of a three stage development of the characteristics that will apply at least until the HVAU expires in June 2016. Importantly, the ACCC notes that the train configurations that will optimise utilisation of capacity of the Hunter Valley Coal Network are expected to continue to evolve over time as additional capital investment is undertaken, innovation occurs and new technology becomes available. The ACCC therefore expects that the characteristics of the Indicative Services will also continue to be a consideration as part of any future access undertakings.

## ARTC's proposal

On 31 January 2014, ARTC submitted the Proposed Variation to the ACCC in accordance with requirements in section 4.18 of the HVAU. On 5 May 2014, ARTC submitted its financial modelling underpinning the forecast access charges set out in the Proposed Variation. On 12 June 2014, ARTC submitted revised financial modelling and revised forecast access charges after the ACCC identified some inconsistencies in the original modelling.

ARTC has proposed Indicative Services characteristics based on modelling undertaken by the Hunter Valley Coal Chain Coordinator (**HVCCC**) that tested 15 different train configurations under three different scenarios. Specifically:

- For coal trains originating in Pricing Zones 1 and 2, ARTC has proposed to retain the existing Indicative Service, being a 96 wagon 30 tonne axle load (**TAL**) configuration with a maximum length of 1543 metres. ARTC has selected the proposed Indicative Service based on the HVCCC's test train configuration 4a under Scenario 3<sup>1</sup>

---

<sup>1</sup> HVCCC test configuration 4a has a train length of 1545 metres, while the proposed Indicative Service has a train length of 1543 metres. Scenario 3 assumes that the Gunnedah Basin in Pricing Zone 3 will be able to accommodate trains with the same axle load and length as the test configuration, which is not expected to occur in the near future due to current infrastructure constraints.

- For coal trains originating in Pricing Zone 3, ARTC has proposed to replace the existing 82 wagon 25 TAL Indicative Service with an 82 wagon 30 TAL configuration that has a maximum length of 1330 metres. ARTC has selected the proposed Indicative Service as being the most efficient train that will be able to operate from the Gunnedah Basin in Pricing Zone 3 in the next five years given infrastructure constraints

Table A below sets out the access charges that ARTC currently forecasts to apply to the proposed Indicative Services in its revised financial modelling submitted to the ACCC on 12 June 2014.

**Table A: Forecast access charges proposed to apply from 1 January 2015<sup>2</sup>**

Segment	Non-TOP component \$/kgtkm (excl. GST)	TOP component \$/kgtkm (excl. GST)
<b>In Pricing Zone 1</b>		
Indicative Service 1 – 96 wagon 30 TAL train	1.023	9.551
Indicative Service 2 – 82 wagon 30 TAL train	1.032	10.675
<b>In Pricing Zone 2</b>		
Indicative Service 1 – 96 wagon 30 TAL train	1.689	8.011
<b>In Pricing Zone 3</b>		
Indicative Service 1 – 82 wagon 30 TAL train	1.718	12.660

## ACCC's preliminary assessment

On 18 February 2014, the ACCC invited submissions from stakeholders on the key issues identified in the ACCC's Consultation Paper<sup>3</sup> as well as any other issues that stakeholders thought relevant to the ACCC's consideration of the Proposed Variation. The ACCC received a total of 11 submissions from a combination of coal producers, above-rail operators and the HVCCC and has taken these submissions into consideration in its preliminary assessment.

Having regard to the matters set out in subsection 44ZZA(3) of the *Competition and Consumer Act 2010 (the Act)*, the ACCC has considered the following key issues in its preliminary assessment of the Proposed Variation:

- (1) Has ARTC satisfied the requirements of the HVAU with regards to the process it must follow for the determination of the Indicative Services characteristics?
- (2) Will ARTC's proposed Indicative Services characteristics promote the efficient use of, and investment in, the Hunter Valley Coal Network and deliver optimum utilisation of capacity?
- (3) Do ARTC's forecast access charges for the Indicative Services represent the relative consumption of capacity and provide appropriate incentives to promote the efficient use of, and investment in, the Hunter Valley Coal Network?

<sup>2</sup> ARTC, *Application to vary the 2011 Hunter Valley Coal Network Access Undertaking to provide for the adoption of the Final Indicative Services and charges in accordance with Section 4.18(b) Response to ACCC 2<sup>nd</sup> information request dated 26 May 2014*, 12 June 2014. 'TOP' refers to 'take or pay' and 'kgtkm' refers to 'thousand gross tonne kilometres'. The non-TOP component is intended to cover variable maintenance costs, while the TOP component is intended to cover all remaining operating and capital costs, including all fixed costs.

<sup>3</sup> ACCC, *Consultation Paper - Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking - Final Indicative Service Variation*, 18 February 2014 (**ACCC's Consultation Paper**).

- (4) Are ARTC's proposed drafting amendments to the HVAU to implement the proposed changes appropriate, including whether they are sufficiently clear and transparent?

While there appears to be some parts of its consultation with industry stakeholders and the HVCCC that were less adequate than others, the ACCC is of the preliminary view that ARTC has complied with the process requirements set out in the HVAU. The ACCC is also of the preliminary view that ARTC has proposed Indicative Services characteristics that signal to users the train configurations that currently contribute to achieving optimum utilisation of capacity in the Hunter Valley. Importantly, the proposed Indicative Services have been identified by the HVCCC's modelling as being train configurations that would most likely contribute toward achieving efficient utilisation of capacity of the Hunter Valley Coal Network over the next five to ten years. Further, industry stakeholders seem largely supportive of the configurations that ARTC has proposed for the Indicative Services. As such, the ACCC is of the preliminary view that the proposed Indicative Services characteristics are likely to be appropriate having regard to subsection 44ZZA(3) of the Act.

In relation to ARTC's proposed pricing differentials and forecast access charges, however, there was little to no support or agreement from industry stakeholders. In the first instance, stakeholders have expressed concerns about a lack of transparency from ARTC in relation to its calculation of differentiation factors and access charges. Further, ARTC has elected to have regard to relative impacts on maintenance costs (driven by speed and axle load), Network Capacity (rail network specific) and Coal Chain Capacity (whole of Hunter Valley coal supply chain) when calculating access charges. The weightings given to each of these factors can have significant impacts on the access charges, and stakeholders are concerned that ARTC has applied an equal weighting to Network Capacity and Coal Chain Capacity without providing any supporting rationale.

In light of these comments, the ACCC has provided a detailed outline of ARTC's pricing methodology (including calculations) in Appendix A of this Position Paper based on information from ARTC's financial modelling. The ACCC is now particularly interested in receiving comments from stakeholders on the pricing differentials and forecast access charges in light of this additional information. The ACCC also considers that ARTC needs to give further consideration to, and provide its rationale for, the weightings applied to the differentiation factors in its calculation of access charges and will be requesting such information from ARTC. The ACCC considers that further information is necessary before it can make an assessment of whether the forecast access charges for the Indicative Services are appropriate having regard to subsection 44ZZA(3) and, in particular, the pricing principles in section 44ZZCA of the Act.

Finally, the ACCC is of the preliminary view that the proposed drafting amendments do not provide sufficient clarity in their current form, which is not in the interests of those who might want access to the services and are therefore unlikely to be appropriate having regard to subsection 44ZZA(3) of the Act.

## Seeking stakeholders' views

The ACCC is now calling for submissions from stakeholders on its preliminary views. Parties are welcome to comment on any aspect of this Position Paper, although the ACCC has identified some specific questions for comment in Chapter 5 of this Position Paper. Parties are encouraged to respond giving consideration to the matters listed in subsection 44ZZA(3) of the Act, which are the matters that the ACCC must give regard to in its assessment of the Proposed Variation (see Chapter 3 of this Position Paper for full details).

**Submissions by interested parties are due by 2 September 2014.** Details on how to make a submission are outlined in Chapter 1 of this Position Paper.

# 1 Introduction

ARTC submitted the Proposed Variation relating to the characteristics of the Indicative Services and associated access charges to the ACCC, with the intention that the changes would apply from 1 January 2015. ARTC submitted the Proposed Variation in order to comply with section 4.18 of the HVAU. Background to the development of the Indicative Services and the Proposed Variation is set out in Chapter 2 of this document.

The ACCC has not yet formed a view on the appropriateness of the Proposed Variation. This document sets out the ACCC's preliminary assessment of the Proposed Variation and the issues in relation to which the ACCC would like further input from stakeholders before making a decision.

The following sections provide an indication of the timeline for the ACCC's assessment of the Proposed Variation and details on how interested parties can make a submission to the ACCC on the issues identified in this Position Paper.

## 1.1 Indicative timeline for assessment

Under subsection 44ZZBC(1) of the Act, the ACCC must make a decision in relation to the Proposed Variation within 180 days, with the first day being the day the application was received (referred to as 'the expected period').

The Act provides for 'clock-stoppers', meaning that certain time periods do not count towards the 180 days of the expected period. In particular, the clock may be stopped:

- by written agreement between the ACCC and the access provider (in this case, ARTC), and such agreement must be published: subsections 44ZZBC(4) and (5);
- if the ACCC gives a notice under subsection 44ZZBCA(1) requesting information in relation to the application;
- if a notice is published under subsection 44ZZBD(1) inviting public submissions in relation to the application; and
- if a decision is published under subsection 44ZZCB(4) deferring consideration of whether to accept the access undertaking, in whole or in part, while the ACCC arbitrates an access dispute.

ARTC formally lodged the Proposed Variation with the ACCC on 31 January 2014. At this stage, the ACCC will be required to make a decision on the Proposed Variation by **9 November 2014**, taking into account the following clock-stoppers:

- 29 days for submissions on the Consultation Paper dated 18 February 2014.
- 22 days for ARTC's response to the ACCC's request for information dated 14 April 2014.
- 19 days for ARTC's response to the ACCC's request for information dated 26 May 2014.
- 33 days for submissions to this Position Paper dated 1 August 2014.

Further detail on the above clock-stoppers is provided in Chapter 2 of this document.

## 1.2 Invitation to make a submission

The ACCC invites public submissions on the Proposed Variation, in accordance with section 44ZZBD of the Act. Under subsection 44ZZBC(2), this has the effect of extending the timeframe by which the ACCC is required to make a decision on the Proposed Variation.

Questions of particular interest to the ACCC are set out in Chapters 4 and 5 of this Position Paper. However, parties are welcome to comment on any aspect of the Proposed Variation and this Position Paper. Parties are also encouraged to address the matters listed in subsection 44ZZA(3) of the Act.

Submissions should be addressed to:

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

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

### 1.2.1 Due date for submissions

Submissions must be received by **2 September 2014**. It is in your interest that your submission be lodged by this date, as section 44ZZBD of the Act allows the ACCC to disregard any submission made after this date.

### 1.2.2 Confidentiality

The ACCC strongly encourages public submissions. Unless a submission, or part of a submission, is marked confidential, it will be published on the ACCC's website and may be made available to any person or organisation upon request.

Sections of submissions that are claimed to be confidential should be clearly identified. The ACCC will consider each claim of confidentiality on a case by case basis. If the ACCC refuses a request for confidentiality, the submitting party will be given the opportunity to withdraw the submission in whole or in part.

For further information about the collection, use and disclosure of information provided to the ACCC, please refer to the ACCC publication '*Australian Competition and Consumer Commission / Australian Energy Regulator Information Policy – the collection, use and disclosure of information*' available on the ACCC's website.<sup>4</sup>

## 1.3 Further information

ARTC's Proposed Variation and other relevant material, including submissions and the accepted HVAU, are available on the ACCC's website at the following link:

<http://www.accc.gov.au/regulated-infrastructure/regulatory-projects/final-indicative-services-variation-2014>

Alternatively, go to the ACCC's homepage at [www.accc.gov.au](http://www.accc.gov.au) and follow the links to 'Regulated Infrastructure' and 'Rail' and 'ARTC Hunter Valley Access Undertaking'.

---

<sup>4</sup> Australian Competition and Consumer Commission / Australian Energy Regulator, *Information Policy – the collection, use and disclosure of information* is available at: <http://www.accc.gov.au/publications/accc-aer-information-policy-collection-and-disclosure-of-information>.

Public submissions made in response to this Position Paper will also be posted at this location.

If you have any queries about any matters raised in this document, please contact:

Renée Coles  
Assistant Director  
Infrastructure & Transport - Access & Pricing Branch  
Phone: +61 3 9290 6921  
Email: [renee.coles@acc.gov.au](mailto:renee.coles@acc.gov.au)

## 1.4 Structure of this document

The remainder of this document is structured as follows:

- **Chapter 2**—Background to the development of the Indicative Services characteristics
- **Chapter 3**—Decision making framework under Part IIIA of the Act
- **Chapter 4**—Preliminary views on ARTC’s proposed characteristics of the Indicative Services
- **Chapter 5**—Preliminary views on ARTC’s proposed access charges for the Indicative Services
- **Chapter 6**—Preliminary views on ARTC’s proposed drafting amendments to the HVAU

## 2 Background

This chapter provides background information on ARTC and the HVAU and also provides context to the development of the Indicative Services.

### 2.1 ARTC and the HVAU

ARTC is a Commonwealth Government-owned corporation established in 1998 for the purpose of managing and providing access to the national Interstate Rail Network. ARTC is vertically separated, providing 'below-rail' track access services and not 'above-rail' services such as haulage. ARTC also leases the Hunter Valley Coal Network from the New South Wales (NSW) government under a 60-year lease that was granted on 5 September 2004.

The HVAU provides for the negotiation of access to the Hunter Valley Rail Network operated by ARTC in NSW. The ACCC accepted the HVAU in accordance with subsection 44ZZA(3) of Part IIIA of the Act on 29 June 2011. Under subsection 44ZZA(7) of the Act, an access provider is allowed to vary an accepted access undertaking with the consent of the ACCC. The ACCC consented to an application by ARTC to vary the HVAU to incorporate the characteristics of some initial Indicative Services and associated access charges on 17 October 2012. The ACCC consented to a further variation extending the coverage of the HVAU to include the Gap to Turrawan Segments of the Network in Pricing Zone 3 on 25 June 2014. A copy of the HVAU and subsequent variations is available on the ACCC's website at:

<http://registers.accc.gov.au/content/index.phtml/itemId/1000939>

ARTC submitted the Proposed Variation in order to comply with section 4.18 of the HVAU. The following sections provide background to the development of the Indicative Services and the ACCC's public consultation process and information requests to date.

### 2.2 The staged development of the Indicative Services

The purpose of the Indicative Service is to indicate to users the coal train configuration that would contribute to achieving the optimum utilisation of Coal Chain Capacity in the Hunter Valley based on modelling by the HVCCC. The associated access charges provide pricing signals that are intended to provide incentives to users of the Hunter Valley Coal Network to adopt the efficient coal train configuration. ARTC uses the Indicative Services as a reference point when determining the charges to apply to non-Indicative Services.

Sections 4.17 and 4.18 of the HVAU require ARTC to submit two variations to the ACCC during the term of the HVAU in relation to the Indicative Services. The multi-stage approach to development of the Indicative Services provides for the evolution of a reference service for coal train configurations as follows:

- **Stage one**—Interim Indicative Services applied from the commencement of the HVAU (29 June 2011) in accordance with section 4.19
- **Stage two**—Initial Indicative Services, which utilised existing HVCCC modelling, to be developed within 5 months of commencement of the HVAU (by 30 November 2011) in accordance with section 4.17
- **Stage three (current stage)**—Final Indicative Services, which utilised more advanced HVCCC modelling, to be developed within 30 months of commencement of the HVAU (by 31 December 2013) in accordance with section 4.18

The multi-stage approach was in recognition of the fact that determination of optimal service characteristics that promote efficient utilisation for an optimised coal chain may be a complex exercise. The ACCC considered that it was appropriate for ARTC and industry to have 30 months for development of coal chain modelling and thorough consultation.

In October 2012, the ACCC consented to a variation of the HVAU to implement the Initial Indicative Services characteristics and associated access charges as per stage two above. As a result, the characteristics of the Indicative Services that currently apply to the Hunter Valley Coal Network are:

- For trains originating in Pricing Zones 1 and 2—96 wagon 30 TAL train with maximum length of 1543 metres and maximum speed of 60 kph (loaded) and 80 kph (empty)
- For trains originating in Pricing Zone 3—82 wagon 25 TAL train with maximum length of 1350 metres and maximum speed of 80 kph (loaded) and 80 kph (empty)

## 2.3 ACCC's public consultation

Subsection 44ZZBD(1) of the Act provides that the ACCC may invite public submissions on an access undertaking or variation. As noted in section 1.1 of this Position Paper, the period within which the ACCC requests submissions constitutes a clock-stopper to the expected period for the ACCC's assessment.

The ACCC published a Consultation Paper on 18 February 2014 inviting submissions on the Proposed Variation by 18 March 2014. The ACCC received public submissions from the following parties:

- Asciano Limited (**Asciano**)
- Aurizon Operations Limited (**Aurizon**)
- Centennial Coal Company Limited (**Centennial Coal**)
- Hunter Valley Coal Chain Coordinator (**HVCCC**)
- Hunter Valley Energy Coal Pty Ltd (BHP Billiton Energy Coal Australia) (**HVEC**)
- Idemitsu Australia Resources Pty Ltd (**Idemitsu**)
- Origin Energy Limited (**Origin Energy**)
- Peabody Australia Mining Pty Ltd (**Peabody**)
- Coal & Allied Industries Limited (Rio Tinto Coal Australia) (**Coal & Allied**)
- Whitehaven Coal Limited (**Whitehaven**)

All public submissions are available on the ACCC's website at:

<http://www.accc.gov.au/regulated-infrastructure/regulatory-projects/final-indicative-services-variation-2014/consultation-paper>

## **2.4 ACCC's requests for further information from ARTC**

Subsection 44ZZBCA(1) provides that the ACCC may give a person a written notice requesting the person give to the ACCC, within a specified period, information of a kind specified in the notice that the ACCC considers may be relevant to making a decision on an access undertaking application. As noted in section 1.1 of this Position Paper, the period within which the ACCC requests information constitutes a clock-stopper to the decision making period.

At the time of submitting the Proposed Variation, ARTC undertook to provide its financial modelling supporting its proposed access charges at an unspecified future date. The ACCC considered that the financial modelling was important for its understanding of the development of the access charges and a relevant consideration for the ACCC's assessment. Therefore, on 14 April 2014, the ACCC issued a formal notice requesting that ARTC provide its financial modelling by 5 May 2014. ARTC subsequently provided its financial modelling to the ACCC on 5 May 2014.

The ACCC identified some inconsistencies in the financial modelling provided by ARTC. On 26 May 2014, the ACCC issued a formal notice requesting that ARTC provide further information in relation to its financial modelling by 13 June 2014 addressing those inconsistencies. ARTC's response to the further information request, including revised financial modelling, was received on 12 June 2014.

The ACCC's requests for further information and ARTC's public response to those requests are available on the ACCC's website at:

<http://www.accc.gov.au/regulated-infrastructure/regulatory-projects/final-indicative-services-variation-2014/consultation-paper>

## **2.5 ACCC's request for claims of confidentiality from ARTC**

ARTC provided its financial modelling to the ACCC on a confidential basis. To assist stakeholders to better understand the approach and calculations undertaken by ARTC, the ACCC sought the consent of ARTC to provide additional information in this Position Paper, including Appendix A, that provides a detailed outline of the approach and calculations undertaken by ARTC for the proposed pricing differentials and access charges.

## 3 Decision-making framework

This chapter provides an overview of the framework under which the ACCC will make its decision on the Proposed Variation, noting that this Position Paper does not constitute a formal decision by the ACCC but seeks further input from stakeholders before making a decision.

### 3.1 Variation of an access undertaking

Under subsection 44ZZA(7)(b) of the Act, an access provider may withdraw or vary an access undertaking at any time after it has been accepted by the ACCC, but only with the consent of the ACCC.

If the ACCC consents to the variation, the provider is required to offer third party access in accordance with the varied access undertaking. An access undertaking is binding on the access provider and can be enforced in the Federal Court upon application by the ACCC.

### 3.2 Matters that the ACCC must have regard to

Subsection 44ZZA(7) allows the ACCC to consent to a variation of an accepted access undertaking if it thinks it appropriate to do so, having regard to the matters contained in subsection 44ZZA(3), which are:

- the objects of Part IIIA of the Act,<sup>5</sup> which are to:
  - promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and
  - provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry;
- the pricing principles specified in section 44ZZCA of the Act (see further below);
- the legitimate business interests of the provider of the service;
- the public interest, including the public interest in having competition in markets (whether or not in Australia);
- the interests of persons who might want access to the service;
- whether the undertaking is in accordance with an access code that applies to the service;<sup>6</sup> and
- any other matters that the ACCC thinks are relevant.

### 3.3 Pricing principles

In relation to the pricing principles, section 44ZZCA of the Act provides that:

- regulated access prices should:

---

<sup>5</sup> Section 44AA of the Act.

<sup>6</sup> There is currently no access code that applies to services provided under the HVAU.

- be set so as to generate expected revenue for a regulated service that is at least sufficient to meet the efficient costs of providing access to the regulated service or services; and
- include a return on investment commensurate with the regulatory and commercial risks involved; and
- access price structures should:
  - allow multi-part pricing and price discrimination when it aids efficiency; and
  - not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and
- access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

### 3.4 Other relevant matters

Under subsection 44ZZA(3)(e) of the Act, in deciding whether to accept the Proposed Variation the ACCC may consider any other matters that it thinks are relevant. The ACCC considers that the HVAU, in particular the requirements in section 4.18, and whether ARTC has complied with those requirements are other matters relevant to the current assessment.

Section 4.18 of the HVAU requires ARTC to consult with the HVCCC and industry before requesting the approval of the ACCC to vary the HVAU to implement the proposed Indicative Services:

- (a) *ARTC will develop, in consultation with the HVCCC, the proposed characteristics of the Indicative Services which ARTC considers will deliver the optimum utilisation of Coal Chain Capacity, given certain System Assumptions (“Final Indicative Services”). The intention is that this process will be a more robust modelling exercise than that used for selecting the Initial Indicative Services and will include scenarios under which System Assumptions are also varied in addition to the Coal Train configurations.*
- (b) *Within 30 months of the Commencement Date, ARTC will:*
  - (i) *consult with the HVCCC, Access Holders and Operators on the proposed characteristics of the Final Indicative Services and whether gtkm is the appropriate pricing unit to encourage efficient consumption of Capacity;*
  - (ii) *submit to the ACCC proposed characteristics of the Final Indicative Services developed in consultation with the HVCCC and, having reasonable regard to submissions arising from the consultation at subsection (i) above, if ARTC considers that gtkm is not an appropriate pricing unit to encourage efficient consumption of Capacity, an alternative pricing unit that ARTC considers will encourage efficient consumption of Capacity; and*
  - (iii) *seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the proposed characteristics as those of the Final Indicative Services and the alternative pricing unit (if any).*
- (c) *In consulting with the HVCCC, Access Holders and Operators, ARTC will:*

- (i) *assist the HVCCC to undertake modelling; and*
  - (ii) *will follow the principles of consultation set out in Schedule F, with the objective of determining the Coal Train configuration which will deliver optimum utilisation of Coal Chain Capacity and ARTC will use its best endeavours to agree with the HVCCC the characteristics to be submitted to the ACCC as the proposed Final Indicative Services.*
- (d) *In support of its application to vary the Undertaking for the adoption of the characteristics proposed in section 4.18(b) as the Final Indicative Services, ARTC will submit to the ACCC:*
- (i) *proposed characteristics of the Final Indicative Services which it considers will deliver optimum utilisation of Coal Chain Capacity including:*
    - (A) *maximum train axle load;*
    - (B) *maximum train speed;*
    - (C) *train length; and*
    - (D) *section run times;*
  - (ii) *the proposed indicative access charges for the proposed Final Indicative Services; and*
  - (iii) *supporting documentation.*
- (e) *If the ACCC accepts the characteristics proposed by ARTC in consultation with the HVCCC as the Final Indicative Services, and accepts the variation sought by ARTC to this Undertaking, ARTC will:*
- (i) *promptly publish on its website:*
    - (A) *the characteristics proposed under section 4.18(b) as the Final Indicative Services; and*
    - (B) *the indicative access charges accepted by the ACCC for the Final Indicative Services as the Indicative Access Charges, in the format set out in section 4.14(c);*
  - (ii) *offer the Indicative Access Charges to Applicants seeking Coal Access Rights for the Final Indicative Services (including Access Holders seeking to vary their Access Holder Agreements so as to operate Final Indicative Services on existing contracted Train Paths) to apply in the year immediately following the date the variation to the Access Undertaking accepting the Final Indicative Services and Indicative Access Charges comes into effect and the annual process for the finalisation of Indicative Access Charges under section 4.20 will not apply to the determination of Indicative Access Charges for that year; and*
  - (iii) *determine Charges for Coal Access Rights other than Access Rights for the Final Indicative Services to apply in the year immediately following the date the variation to the Access Undertaking accepting the Final Indicative Services and Indicative Access Charges comes into effect, in accordance with section 4.15 and in doing so will take HVAU ARTC Hunter Valley Coal Network Access Undertaking 23 June*

*2011 (as varied on 17 October 2012) into account the Indicative Access Charges accepted by the ACCC in determining those Charges.*

- (f) If the ACCC does not accept the characteristics proposed by ARTC as the Final Indicative Services, ARTC will, within a timeframe reasonably specified by the ACCC (not to be less than 3 months) having regard to the need for further modelling and industry consultation, submit revised characteristics to the ACCC and seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the revised characteristics as the Final Indicative Services.*

## 4 Preliminary assessment of proposed characteristics of the Indicative Services

In this chapter the ACCC has considered the following key questions:

- Has ARTC satisfied the requirements of the HVAU with regards to the process it must follow for the determination of the Indicative Services characteristics, which is a matter the ACCC considers relevant pursuant to subsection 44ZZA(3)(e) of the Act?
- Will ARTC's proposed Indicative Services characteristics promote the efficient use of, and investment in, the Hunter Valley Coal Network and deliver optimum utilisation of capacity having regard to the objects of Part IIIA and the matters set out in section 44ZZA of the Act?

### 4.1 ARTC's process for determining the Indicative Services characteristics

The HVAU provides that ARTC will develop, in consultation with the HVCCC, the proposed characteristics of the Indicative Services which ARTC considers will deliver the optimum utilisation of capacity, given certain system assumptions.<sup>7</sup> Whether ARTC has complied with the HVAU requirements for consultation is a matter that the ACCC thinks is relevant in assessing the Proposed Variation.<sup>8</sup>

As set out in section 3.4 of this Position Paper, subsection 4.18(b) and (c) of the HVAU also sets out some requirements on how ARTC will consult with stakeholders and the HVCCC. Specifically, Schedule F of the HVAU contains a number of principles, which state that ARTC will use reasonable endeavours to follow certain steps as far as practicable, including that:

- ARTC will request the HVCCC's view and will consider that view in good faith
- Where ARTC disagrees with the HVCCC's view, it will provide its reasons to the HVCCC so that the HVCCC can reconsider its views in light of ARTC's reasons
- Where the HVCCC provides a revised view, ARTC will consider that view in good faith
- Ultimately, however, ARTC is not obliged to follow the HVCCC's recommendation

#### 4.1.1 ARTC's consultation with stakeholders

This section sets out the ACCC's preliminary assessment of ARTC's consultation with industry stakeholders during the development of the Indicative Services characteristics and also consideration of the appropriateness of gtkm as a pricing unit.

##### 4.1.1.1 Previous ACCC decisions

In its Position Paper on the Initial Indicative Services, the ACCC noted the following with regards to ARTC's process for determining the Final Indicative Services characteristics:

the process outlined in section 4.18 requires a more collaborative process than the process for determining the Initial Indicative Service. This is because implementing the Final Indicative Service is

<sup>7</sup> See subsection 4.18(a) of the HVAU.

<sup>8</sup> See subsection 44ZZA(3) of the Act.

likely to require more significant complementary investments by Access Holders, port operators and above rail operators.<sup>9</sup>

#### 4.1.1.2 ARTC's approach

ARTC undertook two separate consultation processes with industry, with one focussing on the selection of the characteristics for the Indicative Services and the other focussing on the appropriateness of gtkm as a pricing unit.

##### *Consultation on Indicative Services characteristics*

ARTC submitted that it convened the Stakeholder Reference Group (**SRG**) to conduct its consultation with industry and meet the consultation requirements in the HVAU.<sup>10</sup> The SRG included two ARTC representatives, one HVCCC representative, five coal producers (Glencore, Whitehaven, HVEC, Coal & Allied, and Yancoal), two above-rail operators (Aurizon and Pacific National) and a port operator (PWCS). ARTC stated that the SRG first met in July 2012 when key issues were discussed to reach consensus on how to progress the Indicative Services. According to ARTC, the topics included:

- Modelling methodology and analysis
- Parameters and constraints
- Basis of measurement of 'optimal'<sup>11</sup>

ARTC advised that the SRG met four times between July 2012 and October 2013 with modelling updates and scenarios being presented for feedback and comment.<sup>12</sup> ARTC stated that it made the minutes and presentations from those meetings available to other coal chain participants. ARTC stated that the modelling progressed from July 2012 with the HVCCC undertaking detailed work guided by feedback from the SRG meetings.

On 25 October 2013, ARTC commenced a formal consultation process with stakeholders on its proposed options for the Indicative Services, releasing a Consultation Paper to industry that discussed 'aspirational' train configurations, which were train configurations that were longer than could currently run on the network due to current infrastructure constraints.<sup>13</sup> Submissions to ARTC's Consultation Paper closed on 22 November 2013. ARTC received twelve submissions from interested parties.<sup>14</sup>

ARTC submitted that stakeholders were largely opposed to the 'aspirational' train configurations. ARTC subsequently submitted to the ACCC characteristics for the Final Indicative Services that were able to operate on the existing network. ARTC submitted the Proposed Variation to the ACCC without conducting further consultation with industry. ARTC explained that:

After consultation between ARTC and the stakeholders, it was decided that the characteristics of the [Indicative Services] should reflect the most efficient service (in each zone) possible to be operational in 2015. As a result, due to passing loop and arrival road length constraints, a 96 wagon/1543m

---

<sup>9</sup> ACCC, *Position Paper in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking variation*, 9 May 2012, p. 72.

<sup>10</sup> ARTC, *Supporting documentation*, 31 January 2014, p. iii.

<sup>11</sup> ARTC, *ARTC Hunter Valley Access Undertaking specification of Final Indicative Service (Efficient Train Configuration) Consultation Paper*, October 2013, p. ii.

<sup>12</sup> *Ibid*, p 2.

<sup>13</sup> See ARTC, *ARTC Hunter Valley Access Undertaking specification of Final Indicative Service (Efficient Train Configuration) Consultation Paper*, October 2013.

<sup>14</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 19.

configuration was chosen as the [Indicative Service] originating in Pricing Zones 1 and 2 and an 82 wagon/1330m configuration was chosen as the [Indicative Service] originating in Pricing Zone 3.<sup>15</sup>

### *Consultation on gtkm pricing unit*

In October 2013, ARTC also released a Consultation Paper on the appropriateness of gtkm as the pricing unit.<sup>16</sup> In its supporting documentation for the Proposed Variation, ARTC noted:

The use of GTK as a pricing unit seemed to be supported by a number of stakeholders. It was recognised by many that efficiency and incentives arose from the differentiation between service configurations rather than the pricing unit that was used.<sup>17</sup>

ARTC concluded from the submissions that it would seem that the process undertaken to establish the Initial Indicative Service and the differentiation in prices had addressed previous concerns around the gtkm pricing unit.<sup>18</sup> ARTC stated that, while there may be other pricing units which could achieve the same or similar outcome to the use of gtkm, there was no reason to conclude that gtkm was not an appropriate pricing unit. Further, any alternative pricing unit would not deliver significant benefits over it in promoting the efficient consumption of capacity but would result in greater administrative and regulatory costs to industry.<sup>19</sup>

#### 4.1.1.3 Stakeholders' views

Asciano considered that ARTC had undertaken effective consultation on the Indicative Services. However other stakeholders noted some concerns about the consultation process.

HVEC noted that ARTC did not consult with stakeholders on the revised characteristics set out in the Proposed Variation prior to submitting it to the ACCC.<sup>20</sup> HVEC also noted that stakeholders were not provided with information relating to the HVCCC model, including the functional specification of the model, assumptions underpinning the model, and a report explaining the results (and any alternative scenarios) produced by the model. Further, ARTC did not provide an explanation of the significant differences between the October 2013 and January 2014 results of the model.

Aurizon submitted that overall the consultation has not been effective. There was a lack of information provided from ARTC and the HVCCC and SRG meetings were irregular. As a result, the process did not allow for meaningful advice to be provided by stakeholders.<sup>21</sup>

Idemitsu submitted that stakeholders were not provided with direct consolidated feedback from the October 2013 consultation process prior to the Proposed Variation being submitted to the ACCC in order to properly understand the views and concerns of the HVCCC.<sup>22</sup> Idemitsu also submitted that not all stakeholders were members of the SRG.<sup>23</sup>

#### 4.1.1.4 ACCC's preliminary views

The ACCC notes that the HVAU does not have detailed consultation requirements for the development of the Indicative Services or consideration of the appropriateness of gtkm pricing unit, rather it simply requires ARTC to 'consult' with stakeholders and the HVCCC. However, as noted above in section 4.1.1.1, the ACCC has previously noted that ARTC's consultation for

<sup>15</sup> ARTC, *Application to vary the 2011 Hunter Valley Coal Network Access Undertaking to provide for the adoption of the Final Indicative Services and charges in accordance with Section 4.18(b) Response to ACCC 2<sup>nd</sup> information request dated 26 May 2014*, 12 June 2014, pp. 3-4.

<sup>16</sup> ARTC, *Hunter Valley Access Undertaking Section 4.18 Determination of the Final Indicative Service Is GTKM the appropriate pricing unit to encourage efficient consumption of Capacity?*, October 2013.

<sup>17</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 50.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> HVEC submission, 2 April 2014, p. 1.

<sup>21</sup> Aurizon submission, 21 March 2014, p. 29.

<sup>22</sup> HVEC submission, 21 March 2014, p. 2.

<sup>23</sup> Idemitsu submission, 21 March 2014, p. 3.

the current process should be more collaborative than previous Indicative Services processes because implementing the final Indicative Services would require more complementary investment by other coal chain participants.

### *Consultation on Indicative Services characteristics*

The ACCC notes concerns raised by submissions regarding consultation on the Indicative Services that there were not enough stakeholders represented in the SRG, there was not enough engagement with the SRG, and there was no prior consultation with industry on the characteristics that ARTC ultimately submitted to the ACCC in the Proposed Variation.

On one hand, the ACCC understands that the consultation process on the Indicative Services could have benefited from more collaboration with stakeholders. For example, perhaps there could have been more engagement with the SRG at the very early stages when determining the appropriate assumptions adopted in the HVCCC modelling. Further, the ACCC is of the view that it would have been appropriate for ARTC to have provided industry with feedback on the issues coming out of its consultation on the 'aspirational' train configurations and its proposed approach prior to submitting the Proposed Variation to the ACCC.

However, the ACCC also recognises the efforts that ARTC undertook to engage industry on the matter. For example, ARTC established the SRG for the purposes of consulting with industry on the Indicative Services, which the ACCC understands enabled a more collaborative approach than occurred during the development of previous Indicative Services. Further, despite limited stakeholder representation in the SRG, ARTC opened consultation to a broader group of stakeholders in October 2013 through the release of its Consultation Paper. The ACCC also notes that ARTC did appear to take into consideration the concerns raised by stakeholders in what it ultimately submitted to the ACCC. For example, as discussed later in this Position Paper, ARTC submitted characteristics that could currently operate on the network and therefore had a short to medium outlook rather than the original 'aspirational' configurations proposed by ARTC in its own consultation.

On balance, while there appears to be some parts of its consultation with industry stakeholders and the HVCCC that were less adequate than others, the ACCC is of the view that it was more collaborative than previous processes for the Indicative Services. The ACCC considers that ARTC has complied with the requirements of the HVAU for its consultation with industry, which is a matter the ACCC considers relevant in deciding whether to accept the Proposed Variation pursuant to subsection 44ZZA(3)(e) of the Act. Nevertheless, the ACCC notes that whether the train configurations submitted by ARTC in the Proposed Variation are appropriate is a separate question to the process of consultation and is discussed later in this Position Paper.

### *Consultation on gtkm pricing unit*

In relation to ARTC's consultation on the appropriateness of gtkm as the pricing unit, the ACCC notes that stakeholders did not raise any specific concerns with the ACCC around this consultation process. The ACCC considers that ARTC complied with the requirements under the HVAU by releasing a Consultation Paper to stakeholders on the matter. Notably, the HVAU only requires ARTC to submit an alternative pricing unit if it considers that gtkm is not an appropriate pricing unit having regard to submissions.<sup>24</sup> Given that stakeholders' submissions largely supported retaining gtkm as the pricing unit for the time being, the ACCC considers that ARTC has had reasonable regard to submissions and accordingly has complied with the requirements under the HVAU, which is a matter the ACCC considers relevant pursuant to subsection 44ZZA(3)(e) of the Act.

## **4.1.2 ARTC's consultation with the HVCCC**

As set out at section 4.1 of this Position Paper, the HVAU requires ARTC to consult with the HVCCC on the characteristics for the Final Indicative Services. In consulting with the HVCCC,

---

<sup>24</sup> See subsection 4.18(b)(ii) of the HVAU.

ARTC will 'assist the HVCCC to undertake modelling and will follow the principles of consultation set out in Schedule F'.<sup>25</sup>

#### 4.1.2.1 Previous ACCC decisions

In its Position Paper on the Initial Indicative Services, the ACCC stated:

... the process for determining the Final Indicative Service in section 4.18 of the June 2011 HVAU is intended to be a more robust process, which includes principles for consultation between ARTC and the HVCCC.<sup>26</sup>

#### 4.1.2.2 ARTC's proposal

ARTC has not provided the ACCC with a complete record of the documents exchanged between the HVCCC and ARTC. However, the ACCC has discussed with the HVCCC the level and nature of consultation with ARTC for the HVCCC's modelling of the Indicative Services.

The ACCC understands that consultation with the HVCCC started in September 2012, involved the SRG and included discussion on preliminary matters including:

- A discussion of the definition of capacity so as to clarify what would be optimised in the HVCCC modelling exercise
- Sensitivity analysis, including how to deal with the number of train consists and wagons per train operating on the network as different train configurations are tested
- The adoption of system assumptions, which were to assume that current constraints were relaxed such that it was possible for trains that are longer than what is currently operated on the network to be run
- A preliminary case prepared by the HVCCC which tested three different train sizes before undertaking the full testing of the 15 test train configurations. This indicated that the larger the train the more efficiency gains to Coal Chain Capacity. At this time the HVCCC's view was that the "middle" train configuration (with a train payload of about 9600 tonnes) was the optimum train configuration

#### 4.1.2.3 Stakeholders' views

The HVCCC has stated that the consultation process between it and ARTC was collaborative and iterative and that 'questions relating to the modelling of capacity, the analysis conducted and limitations of the work were answered throughout the consultation process within the working group setting that ARTC facilitated throughout the course of the review'.<sup>27</sup>

#### 4.1.2.4 ACCC's preliminary views

Based on the information provided by ARTC and the HVCCC, the ACCC is of the view that ARTC's consultation with the HVCCC has complied with the requirements set out in the HVAU, which is a matter the ACCC considers relevant pursuant to subsection 44ZZA(3)(e) of the Act. In particular, the ACCC understands that ARTC sought the HVCCC's views on the matters pertaining to the modelling for the Indicative Services and that this was an iterative process as was envisaged in Schedule F of the HVAU. The ACCC notes that Schedule F specifies the process by which the ARTC and HVCCC are to consult, but ultimately it does not oblige ARTC to follow the HVCCC's recommendation. As such, what ARTC ultimately selected from the HVCCC's modelling is a separate question to the process of consultation and is discussed in the next section of this Position Paper.

<sup>25</sup> See subsection 4.18(c) of the HVAU.

<sup>26</sup> ACCC, *Position Paper in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking variation*, 9 May 2012, p. 27.

<sup>27</sup> HVCCC submission, 18 March 2014, p. 1.

## 4.2 ARTC's proposed Indicative Services characteristics

The table below sets out the characteristics of the Indicative Services that ARTC has proposed to apply from 1 January 2015 as submitted in the Proposed Variation.

**Table 4.1: Proposed characteristics for the Indicative Services submitted by ARTC in the Proposed Variation**

Proposed Indicative Services characteristics	
<b>In Pricing Zone 1</b>	
Indicative Service 1	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 96 wagon train length 1543 metres maximum train length Section run times as per applicable Hunter Valley standard working timetable
Indicative Service 2	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 82 wagon train length 1330 metres maximum train length Section run times as per applicable Hunter Valley standard working timetable
<b>In Pricing Zone 2</b>	
Indicative Service 1	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 96 wagon train length 1543 metres maximum train length Section run times as per applicable Hunter Valley standard working timetable
<b>In Pricing Zone 3</b>	
Indicative Service 1	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 82 wagon train length 1330 metres maximum train length Section run times as per applicable Hunter Valley standard working timetable

This section discusses the HVCCC modelling used by ARTC to select the proposed Indicative Services characteristics. The ACCC considers that understanding the HVCCC modelling and potential limitations of that modelling is relevant because ARTC has submitted Indicative Services characteristics for all Pricing Zones based on that modelling, specifically:

- The HVCCC tested 15 different train configurations under three different scenarios
- The proposed Indicative Service 1<sup>28</sup> in Pricing Zones 1 and 2 (the 96 wagon 30 TAL train configuration) is based on one of the HVCCC's tested train configurations (test configuration 4a) under Scenario 3<sup>29</sup>
- The proposed Indicative Service 2 in Pricing Zone 1 and Indicative Service 1 in Pricing Zone 3 (the 82 wagon 30 TAL train configuration) was selected in recognition of current infrastructure constraints for trains travelling from the Gunnedah Basin<sup>30</sup>

Drawing from this discussion, the ACCC has considered whether ARTC's proposed characteristics for the Indicative Services promote efficient use of, and investment in, the Hunter Valley Coal Network, which accords with the overall objectives of the HVAU and the objects of Part IIIA of the Act.<sup>31</sup>

## 4.2.2 Previous ACCC decisions

In its Position Paper on the Initial Indicative Services, the ACCC stated that the Initial Indicative Service is intended to 'recognise current network constraints' while the Final Indicative Service is intended to 'represent efficient utilisation of the optimised network'.<sup>32</sup> Further, the ACCC stated:

In accordance with subsection 4.18(a), the determination of the Final Indicative Service 'will be a more robust modelling exercise than that used for selecting the initial Indicative Service under section 4.17 and will include scenarios under which System Assumptions are also varied in addition to the Coal Chain configurations'.<sup>33</sup>

In relation to non-rail infrastructure, the ACCC considered that the efficient use of the rail network by all coal customers should not be constrained by the limitations of any individual customer's private infrastructure adjoining the network. The ACCC stated:

One of the objectives of identifying an efficient train configuration, and providing price signals to adopt this service is to offer incentives for miners and train operators to align their own investments and operating practices with the objective of promoting the efficiency of the entire coal supply chain.<sup>34</sup>

## 4.2.3 ARTC's approach

This section steps through the HVCCC modelling and ARTC's selection of the characteristics for the Indicative Services from that modelling.

### *HVCCC modelling*

ARTC submitted that the HVCCC modelling has tested the maximum volume of coal delivered through the coal chain over a year for 15 test configurations from a 'very small, 2 226 tonne payload through to a very large 19 352 tonne payload'.<sup>35</sup> ARTC stated that the tested train

<sup>28</sup> The HVAU provides that ARTC is to publish Indicative Access Charges for Indicative Services 1 and 2 in Pricing Zone 1 and separate charges for Indicative Services for Pricing Zones 2 and 3. See subsection 4.14(c) of the HVAU.

<sup>29</sup> HVCCC test configuration 4a has a train length of 1545 metres, while the proposed Indicative Service has a train length of 1543 metres.

<sup>30</sup> The HVAU provides that ARTC is to publish Indicative Access Charges for Indicative Services 1 and 2 in Pricing Zone 1 and separate charges for Indicative Services for Pricing Zones 2 and 3. See subsection 4.14(c) of the HVAU.

<sup>31</sup> See section 44ZZA of the Act.

<sup>32</sup> ACCC, *Position Paper in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking variation*, 9 May 2012, p. 26.

<sup>33</sup> *Ibid.*, p. 25.

<sup>34</sup> *Ibid.*, p. 27.

<sup>35</sup> ARTC, *ARTC Hunter Valley Access Undertaking Specification of Final Indicative Service (Efficient Train Configuration) Consultation Paper*, October 2013, p. 13.

configurations covered a variety of different maximum axle loads and lengths<sup>36</sup> and it was assumed that any variations to axle load and length could fit on the infrastructure.<sup>37</sup> ARTC notes that the HVCCC did not model train configurations with changes to current maximum speeds.<sup>38</sup>

ARTC submitted that the model adopted certain assumptions about the distribution of coal volumes across the various load points throughout the system, and the capabilities of load points, coal terminals (train discharging, stockpiling and ship loading), and available train fleet and rail infrastructure.<sup>39</sup>

ARTC advised that 'the model has been set up using the likely near term infrastructure'.<sup>40</sup> These infrastructure constraints were held constant to determine throughput volumes and the train configurations were then varied. The ACCC understands from discussions with the HVCCC that the model assumed infrastructure investments scheduled within the next ten years (i.e. up to the year 2024). The model also assumed that the rail network was 'uncongested' and therefore did not test the effect of the tested train configurations on congestion. ARTC explained that this was a conservative approach which would understate the benefits of larger payload trains (and less train movements) in reducing congestion.<sup>41</sup>

The HVCCC modelling tested the train configurations under three different scenarios. The scenarios effectively varied the volume throughput for the trains originating in the Gunnedah Basin. ARTC states that this was done because the infrastructure challenges on that corridor are likely to be different to those in the central and western Hunter Valley.<sup>42</sup> The three scenarios were:

- Scenario 1 - The Gunnedah Basin network will remain at 25 TAL
- Scenario 2 - The Gunnedah Basin network will move to 30 TAL, a likely near term scenario
- Scenario 3 - The Gunnedah Basin network will move to the same axle load and train length configurations as the central and western Hunter Valley

ARTC advised that, for each scenario, all central and western Hunter Valley hauls were assumed to use the test train configuration and the Gunnedah Basin trains were assumed to use the train configuration of the relevant scenario. ARTC stated that it ultimately adopted the results from Scenario 3 as this reflected the value of all trains operating in each test configuration.<sup>43</sup> The HVCCC modelling also tested an unlimited and restricted shipping queue.<sup>44</sup> ARTC elected to use the results of the restricted shipping queue, which constrained the model to achieve an average queue of 20 ships.

ARTC acknowledged a number of potential limitations of the modelling, which included:

- The model could not reliably model outputs greater than the current contracted capacity of 208 million tonnes per annum (**mtpa**) and as a result the HVCCC and ARTC agreed to cap potential gains of increasing the train payload at 208 mtpa<sup>45</sup>

---

<sup>36</sup> Ibid.

<sup>37</sup> Ibid, p. 14.

<sup>38</sup> Ibid, p. 8.

<sup>39</sup> Ibid, p. 13.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid, p. 12.

<sup>42</sup> Ibid, p. 16.

<sup>43</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 16.

<sup>44</sup> ARTC, *ARTC Hunter Valley Access Undertaking Specification of Final Indicative Service (Efficient Train Configuration) Consultation Paper*, October 2013, p 14.

<sup>45</sup> Ibid, p. iii.

- The HVCCC model could not model the effects of the Advanced Train Management System (**ATMS**). The ATMS is a signalling system which would effectively allow an increase in rail capacity through closer train operation<sup>46</sup>
- The HVCCC model tested the coal chain throughput of different train configurations with different train payloads. The model has not taken into account the cost to the coal chain in adopting the test train configurations

The results of the HVCCC modelling were presented on pages 12 to 16 of ARTC supporting documentation. The ACCC has reproduced the HVCCC modelled coal chain throughput under Scenario 3 (ARTC's selected scenario) in Appendix A of this Position Paper.

### *ARTC's selection of the Indicative Services characteristics*

ARTC stated that it selected the proposed Indicative Services that recognise near term constraints because it appreciated that 'stakeholders have indicated a preference for an Indicative Service train configuration that is reflective of the near-term capabilities of the Network and therefore subject to less uncertainty'.<sup>47</sup>

ARTC stated that the selection of the proposed Indicative Services in Pricing Zones 1, 2 and 3 reflected current or near term infrastructure constraints. Specifically, in relation to Indicative Service 1 in Pricing Zones 1 and 2, ARTC stated:

The Test 4(a) train is the same as the current Initial Indicative Service and is the highest payload configuration that can operate to almost all load points within Pricing Zones 1 and 2.<sup>48</sup>

Regarding the proposed Indicative Service 2 in Pricing Zone 1 and Indicative Service 1 for Pricing Zone 3, ARTC stated:

The rail infrastructure in Pricing Zone 3 is currently rated at a maximum of 25 TAL, but work over the last two years has been undertaken that, when completed as planned in late calendar 2014, will increase the track capability to 30 TAL. ARTC expects that Train Operators will be able to take advantage of this increased capability, at least in part, immediately that it becomes available. Therefore, for the Pricing Zone 3 FIS ARTC has selected a train configuration based on a maximum 30 TAL that also reflects the maximum length that can be accommodated on the Pricing Zone 3 infrastructure.<sup>49</sup>

Further, ARTC stated that the proposed Indicative Services for all three Pricing Zones should be operational in 2015 and operable within the passing loop and arrival road length constraints in the Pricing Zones.<sup>50</sup> In relation to the speeds operable on the network, ARTC submitted that increasing speed (and adopting a shorter train) may provide benefits but these would come at a cost in the form of track degradation and associated maintenance costs.<sup>51</sup> ARTC concluded that the existing speed limits would continue to apply and has not tested train configurations above these speed limits.<sup>52</sup>

<sup>46</sup> See <https://atms.artc.com.au/about/>.

<sup>47</sup> ARTC, *Supporting Documentation*, 31 January 2014, p. 21.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> ARTC, *Application to vary the 2011 Hunter Valley Coal Network Access Undertaking to provide for the adoption of the Final Indicative Services and charges in accordance with Section 4.18(b) Response to ACCC 2<sup>nd</sup> information request dated 26 May 2014*, 13 June 2014, p 3-4.

<sup>51</sup> ARTC, *ARTC Hunter Valley Access Undertaking Specification of Final Indicative Service (Efficient Train Configuration) Consultation Paper*, October 2013, p 8.

<sup>52</sup> Ibid.

## 4.2.4 Stakeholders' views

### *HVCCC modelling*

Some stakeholders expressed concerns around the limitations of the modelling. One concern was that the modelling did not take into account the costs to coal chain participants of adopting the tested train configurations. Aurizon submitted that the testing on the Indicative Services should demonstrate that:

ARTC has, through detailed modelling, correctly and accurately identified the most efficient train configuration that provides the lowest reasonable cost to meet the reasonably foreseeable demand having regard to the all relevant operating models and their respective cost structure of all elements of the supply chain.<sup>53</sup>

The requirement of s.4.18 refers to optimum utilisation of Coal Chain Capacity. As the assessment of Coal Chain Capacity includes future access rights and demand then what comprises 'optimum utilisation' must necessarily consider the respective costs of achieving that demand. It is incongruent to consider coal chain capacity and not simultaneously consider total coal chain costs.<sup>54</sup>

Aurizon noted that the relevant costs which should be considered include the costs to coal producers of modifying load out points to fit longer trains and the estimated demurrage costs of the restricted queue length.<sup>55</sup> Idemitsu also noted that it was 'concerned the Indicative Services analysis and assumptions took no account of the requirement for, nor cost to provide the necessary infrastructure to allow any particular train configuration'.<sup>56</sup>

In addition, Asciano noted a concern around adopting 'likely near-term' infrastructure assumptions. It noted that in the medium to long term there will be changes to mine size and location, below-rail infrastructure, port infrastructure, locomotive power, wagon capacity and commercial arrangements. These changes could impact on capacity and it cannot be currently stated that the proposed Indicative Services would deliver optimum outcomes in a changed environment in the medium to longer term. Similarly, HVEC stated that 'it has not been demonstrated that the proposed Indicative Services has optimised throughput beyond the short term, as the current system assumptions are based around infrastructure investments endorsed or planned only to the expiry of the HVAU in June 2016'.<sup>57</sup>

Aurizon also had a number of other concerns around the modelling, specifically:

- There is no confidence that the modelling is accurate, and in particular, the modelling does not demonstrate delivery of 208 mtpa<sup>58</sup>
- The exclusion of ATMS will produce highly erroneous capacity modelling results<sup>59</sup>
- An artefact of the modelling constraint is that the number of train sets in the system is limited to a fixed number (i.e. the number of train services is held constant across all test train configurations)<sup>60</sup>
- The HVCCC modelling has not taken into account the use of the apparent latent network paths available in Pricing Zone 1 as published in ARTC's 2013-2022 Corridor Strategy document<sup>61</sup>

---

<sup>53</sup> Aurizon submission, 21 March 2014, p. 14.

<sup>54</sup> Ibid, p. 20.

<sup>55</sup> Ibid.

<sup>56</sup> Idemitsu submission, 21 March 2014, p. 3.

<sup>57</sup> HVEC submission, 21 March 2014, p 4.

<sup>58</sup> Aurizon submission, 21 March 2014, p. 15.

<sup>59</sup> Ibid, p. 19.

<sup>60</sup> Ibid, pp. 15-16.

- Given that ARTC has relaxed load-out constraints, it should also relax other system constraints<sup>62</sup>
- By assuming the system operates with only one type of train configuration, the modelling does not provide an accurate representation of the interaction of multiple train configurations and how system throughput might vary accordingly<sup>63</sup>

### *ARTC's selection of the Indicative Services characteristics*

Stakeholders generally expressed support for a train configuration which recognises current or near term infrastructure constraints, although Aurizon submitted that it does not consider that the proposed Indicative Services characteristics are appropriate.<sup>64</sup>

Asciano submitted that it 'broadly supports the proposed Indicative Services as it reflects train configurations which can currently be operated in the Hunter Valley coal chain and it appears to facilitate the efficient utilisation of system capacity'.<sup>65</sup>

Whitehaven stated that lengthening passing loops in Pricing Zone 3 would be a huge cost requiring significant lead time. This tends to support an Indicative Service in Pricing Zone 3 which recognises the current length constraints of the rail network.<sup>66</sup>

Peabody stated that the Indicative Services are 'overly simplistic in nature ... the size of a train is not directly proportional to velocity and consequential throughput of a supply chain with short term theoretical modelling incapable of assessing the long term operations of a dynamic operational environment'.<sup>67</sup>

HVEC submitted that the train lengths are sub-optimal, and reflect a model which is not sufficiently robust.<sup>68</sup> HVEC cited examples where it could run longer trains than the Proposed Final Indicative Service. For instance, the proposed Indicative Services have a length of 1 543 metres, however, HVEC can run trains of 1 629 metres from its Mr Arthur Coal train load out facility.<sup>69</sup>

Stakeholders also confirmed that the proposed Indicative Services can be operated on the network in the current/near term. Specifically, Idemitsu has submitted for Pricing Zones 1 and 2, the passing loops limits are about 1 550 to 1 570 metres in length.<sup>70</sup> Aurizon and Asciano have submitted that a 35 TAL train is not a feasible option given current rail network infrastructure.<sup>71</sup> ARTC has suggested that increasing speeds to 80 kilometres per hour (kph) or 100 kph would be impractical and likely result in higher maintenance costs. Consistent with this, Aurizon noted that increasing train speeds to 100 kph could put excessive dynamic forces on rail infrastructure.<sup>72</sup>

In relation to the proposed Indicative Services for trains travelling from the Gunnedah Basin, Idemitsu submitted that Gunnedah Basin trains remain restricted to train length of 82 wagons

---

<sup>61</sup> Ibid, p. 16.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid, p. 31.

<sup>65</sup> Asciano submission, March 2014, p. 4.

<sup>66</sup> Whitehaven submission, 18 March 2014, p. 5.

<sup>67</sup> Peabody submission, 21 March 2014, p. 2.

<sup>68</sup> HVEC submission, 2 April 2014, p. 3.

<sup>69</sup> Ibid.

<sup>70</sup> Idemitsu, submission *Letter to ARTC Section 4.18 of the Hunter Valley Access Undertaking – Determination of the Final Indicative Service (Efficient Train Configuration & Appropriate Pricing Unit)*, 22 November 2013, p 5.

<sup>71</sup> Aurizon submission, 21 March 2014, p 17; Asciano, *Submission to the ARTC Hunter Valley Access Undertaking Response to Section 4.18 – Specification of Final Indicative Service*, November 2013, p. 7.

<sup>72</sup> Aurizon submission, 21 March 2014, p. 17.

and a maximum of 1350 metres length is approaching existing limits of the passing loops in the region<sup>73</sup>. Idemitsu stated that ‘to undertake the necessary rail infrastructure upgrades required to increase train length would be cost prohibitive’.<sup>74</sup> Idemitsu acknowledged that ARTC has ‘addressed this issue to an extent by providing two Indicative Services in Pricing Zone 1 and a single Indicative Service in Pricing Zone 3’, however it did have concerns around the pricing differentials.

#### 4.2.5 ACCC’s preliminary views

##### *HVCCC modelling*

The ACCC notes that the HVCCC modelling is based on ‘likely near-term’ assumptions, with infrastructure investments that are planned to take place in the next ten years.<sup>75</sup> As raised by Asciano, there appears to be some potential issues around adopting ‘likely near-term’ infrastructure assumptions in the modelling and then using the outcomes of that modelling for selecting Indicative Services with a longer term outlook. The ACCC considers that the adoption of assumptions with a ten year horizon is appropriate where infrastructure investment beyond this timeframe becomes increasingly uncertain. Given that ARTC’s forecast and outlook documents generally consider a ten year horizon, the ACCC is of the view that this assumption appears appropriate. The ACCC notes that this first assumption likely supports the selection of Indicative Services with a short to medium term focus.

The ACCC also notes the concerns by stakeholders around ARTC’s use of the modelling results from Scenario 3, which assumed that operators in the Gunnedah Basin would be using trains with the same axle load and length as the rest of the Hunter Valley. For example, for test configuration 4a, this would assume that a 96 wagon 30 TAL train was being run in the Gunnedah Basin, which is not currently the case due to infrastructure constraints and is unlikely to be the case in the short to medium term. The ACCC notes that the Scenario 3 assumption appears inconsistent with the general assumption of likely near term infrastructure investment as discussed above.<sup>76</sup> Nevertheless, the ACCC also notes that ARTC has proposed to include two Indicative Services in Pricing Zone 1 (being the 96 wagon 30 TAL train and the 82 wagon 30 TAL train) and one Indicative Service in Pricing Zone 3 (being the 82 wagon 30 TAL train configuration) that appears to go part way toward taking account of the current infrastructure constraints for trains travelling from the Gunnedah Basin.

The ACCC considered whether adopting Scenario 2, which assumes that the Gunnedah Basin network will move to 30 TAL, a likely near term scenario, would have been more consistent with ARTC’s proposed Indicative Service for Pricing Zone 3. However, ARTC stated that ‘in practice, Scenario 2 delivered results very similar to Scenario 3 for train sizes operating at 30 TAL as Scenario 2 only affected only 15 per cent of the throughput volumes with payload difference of only 15 per cent’.<sup>77</sup> The ACCC confirmed this outcome during its discussions with the HVCCC. As such, the ACCC is of the view that there may not be a significant concern with adopting the results of Scenario 3 as it does not appear to materially affect the modelling results.

In relation to the HVCCC modelling being capped at 208 mtpa volume throughput, ARTC stated that this was because the results beyond 208 mtpa were unreliable due to sensitivities around the distributions of coal volumes.<sup>78</sup> The HVCCC has indicated to the ACCC that, despite the capping of volume outputs, the relative performance of one train configuration measured against another tested train configuration remains accurate in relative terms. That is, the modelling is ultimately intended to look at the relative output of train configurations and the

---

<sup>73</sup> Idemitsu submission, 21 March 2014, p. 5.

<sup>74</sup> Ibid.

<sup>75</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 9.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid, p. 11.

<sup>78</sup> Ibid, p. 9.

relative throughput of track capacity utilised.<sup>79</sup> Notably, the ACCC understands that the HVCCC modelling was not necessarily intended to assess the total system capacity. The ACCC is of the view that the modelled results do not appear to have been undermined by the capped volume throughput. That being said, the ACCC notes that the intention of the modelling and what the outputs represent are likely to be an important consideration of the appropriateness of using those results for calculating differentiation factors for pricing purposes (discussed later in Chapter 5 of this Position Paper).

Some stakeholders have noted potential effects that the ATMS could have on assessing the Indicative Services. Aurizon submitted that the ATMS will allow trains to be operated closer which would shift efficiency gains to favour shorter trains.<sup>80</sup> Whitehaven also suggested that the ATMS rollout may favour smaller trains at faster speeds thereby reducing cycle time and increasing capacity.<sup>81</sup> Aurizon also stated that an ATMS rollout could increase capacity on the rail network to an extent that no additional rail or rolling stock investment could be required to meet current contracted capacity and beyond.<sup>82</sup>

The ACCC understands from its discussions with the HVCCC that the model does not currently incorporate the assumption that ATMS will be rolled out, and that modelling the effects of ATMS is complex and as yet untested. Further, ARTC has indicated that ATMS is unlikely to be rolled out in the short to medium term. The ACCC considers that the uncertainty around whether the ATMS will be rolled out appears to support the adoption of a shorter term outlook for the Indicative Services for this assessment. This matter could of course be reconsidered if it was likely that ATMS was to be rolled out in the Hunter Valley and when the effects of ATMS on capacity are clearer and can be modelled by the HVCCC. In light of these factors, the ACCC is of the view that excluding ATMS for the current selection of the Indicative Services appears appropriate.

Lastly, Aurizon and Idemitsu raised concerns around the HVCCC modelling not taking into account the costs of changing infrastructure to determine the least cost method of optimising coal chain capacity throughput. The HVCCC has indicated that:

any capital or operating expense associated with increases in train fleet size or infrastructure suitable to accommodate such train capacity/length was explicitly removed from the scope of work sought of HVCCC.<sup>83</sup>

ARTC has also advised that the HVCCC modelling:

took no account of the requirement for, nor cost to provide, the infrastructure necessary to allow any particular train configuration. Nor did the analysis attempt to quantify the benefit that might accrue to Train Operators, load points or Terminal Operators through the use of different train sizes; the HVCCC modelling was solely based on the coal chain delivered tonnage. It is ARTC's view that evaluation of the infrastructure and operational costs to the various Coal Chain participants is beyond the scope of the FIS evaluation as contemplated in HVAU Section 4.18 and that to undertake such work would require very substantial time and resources.<sup>84</sup>

The ACCC notes that section 4.18 of the HVAU does not place explicit requirement on ARTC to undertake a cost benefit analysis as part of the development of the Indicative Services, nor does the ACCC envisage that this is within the remit of the HVCCC. While the ACCC understands that an extensive costs benefit analysis of all the potential options may be a significant exercise, the ACCC is of the view that there does need to be at least some consideration of the likely costs of changing infrastructure when considering the appropriate selection of the Indicative Services. This view aligns with the objects of Part IIIA set out in

---

<sup>79</sup> HVCCC submission, 18 March 2014, p. 1.

<sup>80</sup> Aurizon submission, 21 March 2014, p. 18.

<sup>81</sup> Whitehaven submission, 18 March 2014, p. 3.

<sup>82</sup> Aurizon submission, 21 March 2014, p. 18.

<sup>83</sup> HVCCC submission, 18 March 2014, p. 2.

<sup>84</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 10.

section 44A of the Act, which not only promotes the efficient use of existing infrastructure but also promotes prudent and economically efficient investment.

The HVCCC has indicated in discussions with the ACCC that moving to a train payload of 11 800 tonnes (which aligned with ARTC's original 'aspirational' train configurations proposed to industry) would likely involve billions of dollars in investment.

The ACCC is of the view that ARTC has to a certain extent taken costs into consideration when selecting the proposed Indicative Services. The ACCC notes that ARTC has ultimately proposed Indicative Services that are capable of operating on the current network in the shorter term without needing such large amounts of investment. Further, the ACCC is aware of efforts amongst industry participants to increase productivity within the existing network. The ACCC is of the view that ARTC has undertaken the modelling with the HVCCC within the scope of the HVAU, which is a matter the ACCC considers relevant pursuant to subsection 44ZZA(3)(e) of the Act.

### *ARTC's selection of the Indicative Services characteristics*

The ACCC notes that ARTC has ultimately proposed train configurations for the Indicative Services that are capable of operating on the Hunter Valley Coal Network in the short term in line with planned investments / upgrades over the next ten years. The HVCCC has specifically suggested that the Indicative Services in the Proposed Variation have a focus of five years to about 2019.<sup>85</sup>

As discussed above, a number of the matters relating to the HVCCC modelling appear to support the view that adopting a shorter term outlook for the Indicative Services at the current time is likely to be appropriate. The HVCCC has indicated in discussions with the ACCC that it considers that the 96 wagon 30 TAL train configuration (i.e. test configuration 4a from the HVCCC's modelling and proposed by ARTC as Indicative Service 1 in Pricing Zones 1 and 2) is the most appropriate selection with a five year focus. Further, the 82 wagon 30 TAL train configuration (Indicative Service 2 in Pricing Zone 1 and Indicative Service 1 in Pricing Zone 3) is consistent with this approach as it is generally accepted as the most efficient train travelling from the Gunnedah Basin that can currently (or in the near future) be operated on the network.

However, the ACCC does also note some factors that favour a longer term view. For example, the ACCC understands that contracts between Access Holders and ARTC are based on a ten year term. This might favour a train configuration which incentivises investment over a longer term period to provide certainty to contracting parties about infrastructure investments undertaken to meet contractual obligations.

Similarly, ARTC has stated that the remaining economic life of the Hunter Valley network is currently 19 years<sup>86</sup> and that the current life of rolling stock is about 20 years.<sup>87</sup> These longer asset lives might also support a longer term focussed efficient train configuration to provide more regulatory certainty to Access Holders when investing in rolling stock and the rail network. The ACCC would welcome any comments from industry on whether adopting a shorter term view for the Indicative Services is likely to be problematic in relation to investments and the economic life of those investments.

Nevertheless, the ACCC notes stakeholders' general support for a train configuration which recognises current or near term infrastructure constraints. Moreover, the ACCC is of the view that the proposed Indicative Services align with the most efficient train configurations that can operate on the network given current infrastructure constraints. As such, the ACCC is of the view that the proposed Indicative Services at least signal to users the train configuration(s) that currently contribute to achieving efficient utilisation of capacity in the Hunter Valley and are

---

<sup>85</sup> See subsections 44ZZA(7) and 44ZZA(3)(e) of the Act.

<sup>86</sup> ARTC, *ARTC Hunter Valley Access Undertaking Specification of Final Indicative Service (Efficient Train Configuration) Consultation Paper*, October 2013, p. 5.

<sup>87</sup> *Ibid.*

therefore likely to be appropriate having regard to the objects of Part IIIA set out in section 44A of the Act.

Finally, the ACCC notes that the current HVAU expires in June 2016. At this point in time, it will be up to ARTC to propose the terms of the replacement undertaking and the nature of Indicative Services at that time. Importantly, the ACCC recognises that the most efficient train configuration will evolve over time as additional capital investment is undertaken, innovation occurs and new technology becomes available (for example, ATMS is rolled out). The ACCC is of the view that ongoing work to identify the train configuration(s) that contribute to achieving efficient utilisation of capacity in the Hunter Valley will at least assist industry in making appropriate investment decisions by indicating the investments that will promote the overall interests of the coal supply chain.

## 5 Preliminary assessment of proposed access charges for the Indicative Services

In this chapter, the ACCC has considered the following key issues:

- Has ARTC satisfied the requirements of the HVAU in determining proposed access charges for the Indicative Services, which is a matter the ACCC considers relevant pursuant to subsection 44ZZA(3)(e) of the Act?
- Do ARTC's forecast access charges for the Indicative Services represent the relative consumption of capacity and provide appropriate incentives to promote the efficient use of, and investment in, the Hunter Valley Coal Network having regard to subsection 44ZZA(3) and the pricing principles in section 44ZZCA of the Act?

### 5.1 ARTC's proposed access charges for the Indicative Services

The HVAU does not prescribe how ARTC must determine access charges, but contains general principles and objectives for setting prices, including the structure of charges for coal access rights and pricing objectives (see sections 4.11 and 4.13 of the HVAU respectively). Further, section 4.14 of the HVAU sets out the process by which ARTC will determine access charges for the Indicative Services, having regard to certain system assumptions set out in that section. These principles and objectives were originally assessed and deemed appropriate having regard to the pricing principles in section 44ZZCA of the Act during the ACCC's assessment of the HVAU between 2009 and 2011.

The following table sets out the access charges that ARTC has forecast to apply to the Indicative Services from 1 January 2015, subject to the acceptance of the proposed characteristics discussed in Chapter 4.<sup>88</sup> As previously noted, the most significant change from the existing Indicative Services is for trains commencing in Pricing Zone 3. Specifically, ARTC has proposed that the Indicative Service for these trains be an 82 wagon 30 TAL configuration, replacing the existing 82 wagon 25 TAL configuration.

---

<sup>88</sup> Note that the forecast access charges set out in the table are the revised charges submitted by ARTC on 13 June 2014 in response to the ACCC's information request that identified some inconsistencies in ARTC's financial modelling. These charges will be further revised when ARTC updates its cost forecasts and after any outstanding issues with the financial modelling are addressed.

**Table 5.1: Details of the forecast access charges to apply from 1 January 2015<sup>89</sup>**

Segment	Non-TOP component \$/kgtkm (excl. GST)	TOP component \$/kgtkm (excl. GST)
<b>In Pricing Zone 1</b>		
Indicative Service 96 wagon 30 TAL train	1.023	9.551
Indicative Service 82 wagon 30 TAL train	1.032	10.675
<b>In Pricing Zone 2</b>		
Indicative Service 96 wagon 30TAL train	1.689	8.011
<b>In Pricing Zone 3</b>		
Indicative Service 82 wagon 30 TAL train	1.718	12.660

Section 8 of ARTC's supporting documentation provides information on the methodology it has used to calculate the forecast access charges set out above. ARTC also provided the ACCC with confidential financial modelling. The ACCC's understanding of ARTC's pricing methodology is summarised in box 5.1 below while the ACCC has provided a detailed outline of ARTC's assumptions and calculations in Appendix A of this Position Paper.

<sup>89</sup> ARTC, *Application to vary the 2011 Hunter Valley Coal Network Access Undertaking to provide for the adoption of the Final Indicative Services and charges in accordance with Section 4.18(b) Response to ACCC 2<sup>nd</sup> information request dated 26 May 2014*, 12 June 2014, p. 3.

## **Box 5.1: Summary of ARTC's pricing methodology**

### **Structure of charges**

Coal producers contract for paths with ARTC based on their expected volumes. ARTC charges the producers a combination of an actual usage charge and a take-or-pay (TOP) charge, referred to as the non-TOP and TOP component respectively.

The non-TOP component of the charge is designed to cover the 'direct costs' of the rail network, which are specifically defined in the HVAU as variable maintenance costs. Producers only pay the non-TOP component of the charge for the contracted paths that they actually use in the calendar year.

The TOP component of the charge covers all remaining operating and capital costs of the rail network, including all fixed costs. Producers pay the TOP component of the charge for all contracted paths irrespective of whether or not they actually use those paths in the calendar year.

### **Calculation of the non-TOP component**

ARTC estimates total variable maintenance costs for the Indicative Service in each Pricing Zone by applying forecast variable cost rates to expected volumes. ARTC then divides the total variable maintenance cost by total gtkm so as to determine the non-TOP component of charges for the Indicative Service. For services other than the Indicative Service, ARTC has regard to average axle load and average speed to calculate the relative impacts on variable maintenance costs and differentiates charges accordingly.

### **Calculation of the TOP component**

ARTC uses the existing TOP component of charges for the Indicative Services as a starting point. For services other than the Indicative Services, ARTC has regard to maximum axle load and maximum speed, total cycle gross mass<sup>90</sup> and coal throughput to calculate the relative impacts on fixed maintenance costs, Network Capacity and Coal Chain Capacity respectively and differentiate charges accordingly. Once the TOP component of all charges has been determined, ARTC then adjusts all charges in each Pricing Zone by the same percentage so as to ensure that expected revenue recovers Full Economic Cost.

For a more detailed outline of ARTC's approach, underlying assumptions and calculations, see Appendix A of this Position Paper.

## **5.1.1 Appropriateness of gtkm as a pricing unit**

Subsection 4.18(b)(iii) of the HVAU specifically requires ARTC to consult on whether gtkm is an appropriate pricing unit to encourage efficient consumption of coal chain capacity as part of the development of the Indicative Services. The ACCC's preliminary views on ARTC's consultation processes are set out in Chapter 4 of this Position Paper. This section provides the ACCC's views on the appropriateness of the pricing unit.

### **5.1.1.1 Previous ACCC decisions**

The ACCC's assessment of the Initial Indicative Services did not include consideration of whether gtkm is the appropriate pricing unit as this was expected to be undertaken as part of the development of the Final Indicative Services. Importantly, when the HVAU was accepted in June 2011, ARTC had committed to not changing the basis of its gtkm pricing while grandfathering arrangements applied until 31 December 2014.<sup>91</sup> The ACCC considered that gtkm based pricing was appropriate in the short term, provided that longer term price signals to run efficient trains were implemented.<sup>92</sup>

### **5.1.1.2 ARTC's proposal**

ARTC has submitted that gtkm remains an appropriate pricing unit to encourage efficient consumption of coal chain capacity and, as such, ARTC has not sought to adopt an alternative pricing unit in the Proposed Variation. ARTC stated that 'whilst there may be other pricing units

<sup>90</sup> ARTC has calculated: total cycle gross mass = 2\*train tare mass + train payload.

<sup>91</sup> ACCC, *Decision in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Undertaking*, 29 June 2011, pp. 49-55.

<sup>92</sup> ACCC, *Position Paper in relation to the Australian Rail Track Corporation's proposed Hunter Valley Rail Network Access Undertaking*, 21 December 2010, pp. 123-125.

that could be used that would achieve the same or similar outcome to the use of gtkm, there would not appear to be any basis upon which to conclude that gtkm is not an appropriate pricing unit to encourage efficient consumption of capacity, nor to propose an alternative pricing unit at this time<sup>93</sup>.

#### 5.1.1.3 Stakeholders' views

Asciano submitted that gtkm is an appropriate pricing unit for non-TOP charges whilst net tonnes would be a more appropriate pricing unit for TOP charges. Asciano submitted that the issue of the appropriateness of gtkm as a pricing unit should be re-examined during the assessment of the replacement HVAU.

Aurizon agreed with ARTC that the choice of metric is irrelevant as the price differentiation is based on a measure of Coal Chain Capacity and gtkm is simply the conversion of that measure into a billing unit. However, Aurizon noted that this did reinforce its concerns regarding the repeatability and transparency of the Indicative Services modelling.

Whitehaven submitted that it had previously supported gtkm as a pricing unit on the basis that: (1) differentiating price is about incentivising efficient utilisation of capacity and (2) recognition was given to efforts of an access holder to operate the most efficient train that was physically possible through all sections of the network in which they operate.

#### 5.1.1.4 ACCC's preliminary views

The ACCC notes ARTC's submission that the process undertaken to establish the Initial Indicative Services and the differentiation in prices appears to have addressed previous concerns around the gtkm pricing unit. Further, ARTC submits that, as long as there is appropriate price differentiation to encourage efficient utilisation of the rail network, the choice of pricing unit is immaterial.

As discussed in later sections, the ACCC is of the view that access charges should provide important signals to users about the relative costs of their services and this can be achieved through appropriate price differentiation. In this way, the ACCC agrees that the pricing unit used is not as important as the differentiation between charges for various services. That said, the ACCC also considers that the appropriateness of gtkm as a pricing unit should continue to be reviewed for future undertakings, particularly in light of any amendments made to the methodology for applying differentiation factors.

Based on the submissions received, the ACCC understands there to be little appetite for change at this point in time by ARTC and stakeholders alike. The ACCC considers that, while there may be other pricing units that could be used, there does not appear to be a sufficient basis to change to an alternative pricing unit at the current time. As such, the ACCC is of the preliminary view that retaining gtkm as the pricing unit is likely to be appropriate for the current assessment. The ACCC considers that the pricing unit, in conjunction with the application of appropriate pricing differentiation, accords with the objects of Part IIIA and the pricing principles specified in section 44ZZCA of the Act by encouraging the economically efficient operation of, use of and investment in the infrastructure by which services are provided.

### 5.1.2 Structure of charges

Subsection 4.11(a) of the HVAU requires that the structure of charges for coal access rights must be based on a combination of an actual usage charge (non-TOP component, being a function of distance and gross mass (\$/gtkm) for a Pricing Zone) and a TOP component. As set out in box 5.1 above, the non-TOP component of the charge is intended to cover the 'direct costs'. The TOP component covers all remaining operating and capital costs of the rail network, including all fixed costs.

---

<sup>93</sup> ARTC, *Supporting documentation*, 31 January 2014, pp. 48-51.

The ACCC notes that ARTC has proposed access charges that contain a non-TOP and TOP component. As discussed in the sections that follow, the ACCC is satisfied that the non-TOP component of ARTC's proposed access charges cover only the variable maintenance costs of the rail network, with the remaining costs included in the TOP component of the access charges.

The ACCC's preliminary view is that ARTC's proposed structure of charges for the proposed Indicative Services meets the requirements under subsection 4.11(a) of the HVAU, which is a matter that the ACCC considers relevant in assessing the Proposed Variation pursuant to subsection 44ZZA(3)(e). The ACCC also notes that these requirements were deemed appropriate having regard to the pricing principles in section 44ZZCA of the Act during the ACCC's assessment of the HVAU in 2011. For these reasons, the ACCC's preliminary view is that ARTC's proposed structure of charges with a split between non-TOP and TOP components is appropriate.

However, as discussed in the following sections, the ACCC is seeking further views from stakeholders on some specific aspects of the non-TOP and TOP component of charges before it is able to form a view on whether the magnitude of those components and pricing relativity between various train service types are appropriate.

### 5.1.3 Non-TOP component of charges

The non-TOP component of the access charges is intended to cover the 'direct costs' of the rail network, which are specifically defined in section 14.1 of the HVAU as variable maintenance costs:

"Direct Cost" means maintenance expenditure, including major periodic maintenance that varies with usage of the Network, and may include other costs that vary with the usage of the Network but excluding Depreciation, assessed on an Efficient basis.

The ACCC notes that producers only pay the non-TOP component of the charge for the contracted paths that they actually use in the calendar year.

#### 5.1.3.1 Previous ACCC decisions

During its assessment of the Initial Indicative Services, the ACCC considered it appropriate that ARTC reflect the impact of differences in axle load and speed on maintenance in setting the access charges.<sup>94</sup> The ACCC notes that ARTC used average axle load and average speed in its calculation of the maintenance differentiation factors for the non-TOP component of charges for the Initial Indicative Services.

#### 5.1.3.2 ARTC's proposal

ARTC has forecast the total variable maintenance costs for each train service type in each Pricing Zone based on expected volumes and forecast variable cost rates. The non-TOP component of the access charges for Indicative Service 1 in each Pricing Zone has been determined by dividing the total variable maintenance costs by the total gtkm for that train service type.

ARTC has then proposed to apply the following differentiation factors to Indicative Service 1 in each Pricing Zone to determine the non-TOP component of the access charges applying to other services.<sup>95</sup>

---

<sup>94</sup> ACCC, *Decision in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking – Initial Indicative Service variation*, 17 October 2012, p. 37.

<sup>95</sup> Indicative Service 1 in each Pricing Zone is effectively the benchmark from which all other charges in that Pricing Zone will be differentiated, including Indicative Service 2 where applicable and non-Indicative Services.

**Table 5.2: Non-TOP component differentiation factors<sup>96</sup>**

Pricing Zone	Indicative Service 96 wagon 30 TAL	Indicative Service 82 wagon 30 TAL	Non-Indicative Service 82 wagon 25 TAL
1	1.000	1.009	0.978
2	1.000	n/a	n/a
3	n/a	1.000	0.969

In determining the above non-TOP component differentiation factors, ARTC has stated that it has had regard to axle load and speed factors. ARTC has submitted that the average axle load and speed would mainly affect variable maintenance costs and, therefore, the non-TOP component of the access charges.<sup>97</sup> ARTC has relied on a United Kingdom (**UK**) study for determining the extent to which axle load and speed each impact on maintenance costs, and has proposed to assume that the variability of infrastructure maintenance costs with axle load is 45 per cent and with speed is 50 per cent.<sup>98</sup>

ARTC has provided example calculations for the non-TOP component maintenance differentiation factors using sample train configurations on pages 28-30 of its supporting documentation. ARTC has also provided the ACCC with details of actual train configurations used in the Proposed Variation and calculations in its financial modelling provided to the ACCC. The ACCC has reproduced the train configurations used by ARTC and stepped through the calculations in detail in Appendix A of this Position Paper.

### 5.1.3.3 Stakeholders' views

Idemitsu queried why the 82 wagon 30 TAL Indicative Service in Pricing Zone 1 would have a differentiation factor of more than one:<sup>99</sup>

It remains unclear to Idemitsu why FIS 2 in Pricing Zone 1 has a factor greater than one with respect to maintenance at least with respect to average axle load, although the axle load of the train is the same as FIS 1 (30 TAL), the gross weight of 96 wagon (FIS 1) train is estimated to be 15 per cent heavier than the 82 wagon train (FIS 2) and therefore having a greater track degradation impact.

Aurizon noted that 'the methodology used to obtain the non-TOP charge is reasonably well documented to allow an operator to understand how a variation from any of the indicative services would affect the access charge'.<sup>100</sup>

### 5.1.3.4 ACCC's preliminary views

ARTC has proposed to use average speed and average axle load as the basis for differentiating the various train service types and calculate the non-TOP component of access charges, which is the same approach that the ACCC accepted for the Initial Indicative Services. ARTC has stated that speed and axle load are generally regarded as drivers of maintenance costs and that it is generally accepted that higher speed and higher axle load lead to higher track degradation and hence higher maintenance expenditure, with speed having a greater impact.<sup>101</sup> In its calculations, ARTC has also assumed that the variability of infrastructure maintenance costs with axle load is 45 per cent and with speed is 50 per cent, which are also the same figures that the ACCC accepted for the Initial Indicative Services. The ACCC noted as part of the assessment for the Initial Indicative Services that ARTC's approach appeared reasonable based on the reports by the Queensland Competition Authority (**QCA**) and the UK's

<sup>96</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 30.

<sup>97</sup> *Ibid*, pp. 27-30

<sup>98</sup> *Ibid*, January 2014, p. 28.

<sup>99</sup> Idemitsu submission, 21 March 2014, pp. 8-9.

<sup>100</sup> Aurizon submission, 21 March 2014, p. 25.

<sup>101</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 27.

Office of Rail Regulation (**ORR**), which are the same reports that ARTC has relied on for the proposed Indicative Services. The ACCC has confirmed that ARTC's approach broadly aligns with the approach adopted in the reports by QCA and UK ORR on the variability of maintenance costs with speed and axle load.

Stakeholders have not raised any specific concerns with the general approach proposed by ARTC in relation to differentiation of variable maintenance for the calculation of the non-TOP component of charges and the ACCC is not aware of any new or alternative evidence which suggests that a different approach should be used for the proposed Indicative Services. The ACCC considers that ARTC's proposal to use average speed and average axle load in the calculation of the non-TOP component appears reasonable for the current assessment and the proposed non-TOP access charges are likely to be appropriate having regard to subsection 44ZZA(3) of the Act.

However, the ACCC notes Idemitsu's specific query as to why the 82 wagon 30 TAL service in Pricing Zone 1 has a differentiation factor of more than one. The ACCC has reproduced ARTC's calculations of the differentiation factors in Appendix A of this Position Paper. In particular, the ACCC notes that ARTC has calculated a higher average axle load for a loaded 82 wagon 30 TAL train compared to a loaded 96 wagon 30 TAL train, which has resulted in a differentiation factor of more than one.<sup>102</sup>

It is important to note that the ACCC assesses the efficiency of ARTC's operating costs (including maintenance) as part of the annual compliance assessment process that occurs at the end of each calendar year to ensure that ARTC receives no more revenue than to cover prudent and efficient costs (including a return on investment commensurate with the risks). As set out in Appendix A of this Position Paper, ARTC has forecast total variable maintenance costs for 2015. The ACCC has not assessed ARTC's forecast operating costs as part of this assessment of the Proposed Variation as it will do so during the annual compliance assessment process.

### Question

- Do stakeholders have any comment on the train configurations and assumptions used by ARTC in its calculation of the differentiation factors relating to variable maintenance in the non-TOP component of charges?

## 5.1.4 TOP-component of charges

The TOP component of the charge covers all remaining operating and capital costs of the rail network, including all fixed costs, once variable maintenance costs are removed. The ACCC notes that producers pay the TOP component of the charge for all contracted paths irrespective of whether or not they actually use those paths in the calendar year, which ensures that ARTC is able to recover its Full Economic Cost. Section 4 of the HVAU outlines the process that ARTC must follow in calculating its Full Economic Cost and the annual reconciliation of access revenue with Full Economic Cost.

### 5.1.4.1 Previous ACCC decisions

#### *Fixed Maintenance*

In its assessment of the Initial Indicative Services, the ACCC considered that ARTC's analysis of speed and axle load on the relative impacts of each service on maintenance costs appeared

<sup>102</sup> ARTC has calculated average axle load (loaded train) as follows:  $[(Wagons \times 4 \times \text{Maximum axle load}) + (1.1 \times \text{Locos} \times \text{Loco tare})] / [(Locos \times 6) + (Wagons \times 4)]$ .

appropriate. In particular, that the use of maximum speed and maximum axle load in the calculation of the TOP component of access charges appeared appropriate.<sup>103</sup>

### *Network Capacity*

For the Initial Indicative Services, ARTC concluded that all relevant coal train configurations consume the same amount of network capacity (in each Pricing Zone) on a per train basis (i.e. each train consumes one train path). Also, ARTC proposed to differentiate access charges to reflect each train service type's consumption of network capacity only on the basis of tonnage since charges apply on a per gtkm basis. The ACCC considered that ARTC's approach was appropriate.<sup>104</sup>

### *Coal Chain Capacity*

The ACCC's Decision on the Initial Indicative Services noted that access charges should appropriately reflect the relative consumption of Coal Chain Capacity so as to provide appropriate signals for efficient use of, and investment in, coal supply chain infrastructure.<sup>105</sup> In response to concerns by producers that access charges would 'penalise' producers in Pricing Zone 3 for factors beyond their control (such as infrastructure constraints), the ACCC stated that:

The ACCC accepts that (at least in the short term) any pricing differentials applied to the 82 wagon train will not provide incentives for Pricing Zone 3 producers to move to a more efficient, longer train, as they are unable to do so. However, the ACCC considers that the purpose of differentiating charges for particular services is not solely to incentivise efficient behaviour; it is also to ensure that charges for particular services reflect the efficient costs of providing those services, including the consumption of capacity.<sup>106</sup>

The ACCC also noted that, if producers were paying supply chain costs that did not accurately reflect the consumption of capacity by that producer, competition in the export of coal may be distorted.<sup>107</sup> Also, that the application of pricing differentials is not about 'penalising' certain producers, but about ensuring that charges accurately reflect their efficient costs, including the consumption of Network Capacity and Coal Chain Capacity. The ACCC considered that access charges applied in a particular pricing zone should reflect the costs and capacity impacts in that pricing zone in order to promote efficient use of and investment in infrastructure and the interests of access seekers in being levied charges that accurately reflect their efficient costs.<sup>108</sup>

### *Weightings of differentiation factors*

In relation to the weightings applied to each of the differentiation factors, the ACCC noted that applying a relatively higher weighting to Coal Chain Capacity (compared to Network Capacity) would be appropriate in circumstances where the modelling was sufficiently accurate. However, the ACCC noted that there were limitations in the modelling used for the Initial Indicative Services and, therefore, accepted ARTC's proposal to apply equal weightings to Coal Chain Capacity and Network Capacity. The ACCC considered that ARTC should have regard to improvements in the accuracy of modelling for the Final Indicative Services and the appropriateness of weightings applied to each of the factors.<sup>109</sup>

---

<sup>103</sup> ACCC, *Position Paper in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking variation*, 9 May 2012, pp. 51-52.

<sup>104</sup> Ibid, pp. 48-49.

<sup>105</sup> ACCC, *Decision in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking – Initial Indicative Service variation*, 17 October 2012, pp. 26-27.

<sup>106</sup> Ibid, p. 28.

<sup>107</sup> Ibid, p. 30.

<sup>108</sup> Ibid, p. 32.

<sup>109</sup> Ibid, pp. 33-35.

#### 5.1.4.2 ARTC's proposal

ARTC has forecast its Full Economic Cost (minus variable maintenance costs) for each Pricing Zone based on expected capital and maintenance programs and expected volumes. The TOP component of the access charges for Indicative Service 1 in each Pricing Zone (i.e. the 96 wagon 30 TAL service in Pricing Zones 1 and 2 and the 82 wagon 30 TAL in Pricing Zone 3) have been determined by applying an adjustment to the existing access charges.

ARTC has proposed to apply certain differentiation factors to the TOP component of the access charge for Indicative Service 1 in each Pricing Zone to determine the TOP component of the access charges applying to other services charges. ARTC has elected to have regard to the relative impacts of each train service type on fixed maintenance costs, Coal Chain Capacity and Network Capacity and has applied certain weightings to each of these elements in order to determine an overall differentiation factor for the TOP component. ARTC has described its methodology in its supporting documentation as follows:

- Once each of the three factors has been calculated, they need to be combined to generate the differential proportion to the TOP and non-TOP charges in comparison to the FIS in each Pricing Zone on some reasonable basis.
- The proportion of each factor in the TOP charge varies according to proportion of maintenance costs compared to the total economic cost of the Pricing Zone.
- To calculate estimates of the 2015 differentiated prices, ARTC has applied the differentiation factors in accordance with weightings as follows:
  - Differentiation based on maintenance impacts were weighted by reference to the proportion of maintenance expenditure forecast in Economic Cost for each Pricing Zone in 2015. The differential was applied across the non-TOP and TOP components on the FIAC. These proportions are 20% (Pricing Zone 1), 31% (Pricing Zone 2) and 19% (Pricing Zone 3) as forecasted in 2015.
  - The remaining weightings in each Pricing Zone (representing other operating costs, capital costs and returns) were allocated equally to the Capacity and Coal Chain Capacity factors.
  - The above weightings were determined on a consistent basis to that carried out by ARTC for variations from the Initial Indicative Service in respect of charges in 2012, 2013, and 2014. The same determination has been used in the initial evaluation to determine the FIAC and is consistent with the guiding principles referred to in section 8.1.
  - These weightings were then applied to the TOP and non-TOP charges in ARTC's pricing model. These formed the base from which revenue could be varied for each Service type while retaining the proportional differences between the non-Indicative Services and the FIS, while at the same time conforming to the Ceiling revenue limit (where applicable).<sup>110</sup>

The ACCC notes that, while ARTC's supporting documentation provides details of the methodology used, it does not include details of the forecast Economic Cost used in its calculations, the calculation of the differentiation factors applied to each element and the overall differentiation factors. ARTC provided this information to the ACCC in its confidential financial modelling. The ACCC has reproduced some of the information below, with other details provided in Appendix A of this Position Paper.

---

<sup>110</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 33.

## Fixed Maintenance

ARTC has proposed to apply the following differentiation fixed maintenance differentiation factors to Indicative Service 1 in each Pricing Zone<sup>111</sup> in the calculation of the TOP component of the access charges applying to other services.

**Table 5.3: TOP component fixed maintenance differentiation factors<sup>112</sup>**

Pricing Zone	Indicative Service 96 wagon 30 TAL	Indicative Service 82 wagon 30 TAL	Non-Indicative Service 82 wagon 25 TAL
1	1.000	1.000	0.925
2	1.000	n/a	n/a
3	n/a	1.000	0.925

ARTC has stated that it has had regard to axle load and speed factors in determining appropriate adjustments for impacts on maintenance costs. ARTC has submitted that the maximum axle load and speed would mainly affect fixed maintenance costs and, therefore, the TOP component of the access charges.<sup>113</sup> ARTC has relied on the same UK study for determining the extent to which axle load and speed each impact on maintenance costs and assumption that the variability of infrastructure maintenance costs with axle load is 45 per cent and with speed is 50 per cent.<sup>114</sup>

ARTC has provided example calculations for the TOP component maintenance differentiation factors using sample train configurations on pages 28-30 of its supporting documentation. ARTC has also provided the ACCC with details of actual train configurations used in the Proposed Variation and calculations in its financial modelling provided to the ACCC. The ACCC has reproduced the train configurations used by ARTC and stepped through the calculations in detail in Appendix A of this Position Paper.

## Network Capacity

ARTC has submitted that the most appropriate basis for comparing and differentiating Network Capacity is the train and its operating characteristics. In particular, that the consumption of Network Capacity is driven by the average speed of a train and by its maximum length.<sup>115</sup>

ARTC has stated that there currently appears little basis for differentiation based on: (i) train length having regard to infrastructure constraints expected to exist up until the expiry of the HVAU and (ii) all train configurations equal to, or shorter than, the relevant Indicative Service in each Pricing Zone operated at a length that would not exceed any crossing loop where relevant. In relation to speed, ARTC has stated that it would be difficult to justify the application of differentiation with respect to Network Capacity based on speed due to limitations in the ability of the modelling to accurately estimate these.<sup>116</sup>

ARTC has submitted that, given the above, each train service will be assumed to consume a single train path regardless of size. However, ARTC has also noted that because pricing is on a per gtkm basis, there needs to be a conversion of the 'price per train path' into 'price per gtkm' as the 'cost' without this conversion would differ with differing train sizes. ARTC noted that it

<sup>111</sup> The HVAU provides that ARTC is to publish Indicative Access Charges for Indicative Services 1 and 2 in Pricing Zone 1 and separate charges for Indicative Services for Pricing Zones 2 and 3. See subsection 4.14(c) of the HVAU.

<sup>112</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 30.

<sup>113</sup> *Ibid*, pp. 27-30.

<sup>114</sup> *Ibid*, p. 28.

<sup>115</sup> *Ibid*, pp. 30-31.

<sup>116</sup> *Ibid*, p. 31.

therefore applies a conversion factor.<sup>117</sup> ARTC provided details of this conversion calculation to the ACCC in its confidential financial modelling and the ACCC has reproduced this in the table below.

**Table 5.4: TOP component Network Capacity differentiation factors**

Pricing Zone	Indicative Service 96 wagon 30 TAL	Indicative Service 82 wagon 30 TAL
1	1.000	0.866
2	1.000	n/a
3	n/a	1.000

The ACCC has detailed ARTC’s calculations of the TOP component network capacity differentiation factors in Appendix A of this Position Paper.

### *Coal Chain Capacity*

ARTC has submitted that the most appropriate basis for comparing and differentiating Coal Chain Capacity is the tonnes of coal delivered to terminals. ARTC has stated that, on the basis that the Indicative Services have been selected as the most efficient train configurations, a tonne carried on the Indicative Service would consume the least Coal Chain Capacity compared to other configurations. ARTC also noted that, as Coal Chain Capacity is measured with reference to the Hunter Valley Coal Chain as a whole, there is little justification for differentiating between pricing zones.<sup>118</sup>

ARTC provided some detail of the modelled Coal Chain Capacity in its supporting submission and provided further detail to the ACCC in its financial modelling provided to the ACCC. The ACCC has reproduced the Coal Chain Capacity differentiation factors in the table below.

**Table 5.5: TOP component Coal Chain Capacity differentiation factors**

Pricing Zone	Indicative Service 96 wagon 30 TAL	Indicative Service 82 wagon 30 TAL
1	1.000	0.900
2	1.000	n/a
3	n/a	1.00

The ACCC has provided the details of the modelled Coal Chain Capacity and calculations of the Coal Chain Capacity factors in Appendix A of this Position Paper.

### *Weightings of differentiation factors*

ARTC has outlined the weightings given to each of the differentiation factors in calculating an overall factor on page 34 of its supporting documentation. However, because maintenance expenditure has a variable and a fixed component, ARTC adjusts the weighting of the maintenance factor in TOP component calculations based on the proportion of fixed maintenance expenditure forecast in the Economic Cost (excluding variable maintenance costs). The following table sets out ARTC’s forecasts.

<sup>117</sup> Ibid, pp. 31-32.

<sup>118</sup> Ibid, pp. 32-33.

**Table 5.6: Forecast Full Economic Cost for 2015 as submitted by ARTC in the Proposed Variation<sup>119</sup>**

Pricing Zone	Variable maintenance (\$million)	Fixed maintenance (\$million)	Full Economic Cost (\$million)
1	30.14	26.27	282.75
2	11.91	7.49	62.57
3	15.33	13.32	153.09

ARTC then rebalances the weighting allocated to the Coal Chain Capacity and Network Capacity pricing differentiation factors so that they total 100 per cent. The following table sets out the rebalanced weightings that ARTC has given to each of the differentiation factors for 2015.

**Table 5.7: Rebalanced TOP component weightings for differentiation factors<sup>120</sup>**

Pricing Zone	Fixed Maintenance	Coal Chain Capacity	Network Capacity
1	11.50%	44.25%	44.25%
2	17.65%	41.17%	41.17%
3	10.66%	44.67%	44.67%

Except for the adjustment for maintenance, ARTC has not provided any further detail in its Proposed Variation relating to its rationale for the proposed weightings of differentiation factors. The table below provides the overall TOP component differentiation factors determined by applying the rebalanced weightings to each of the individual TOP component differentiation factors. The ACCC has provided the details of the calculations in Appendix A of this Position Paper.

**Table 5.8: Overall TOP component differentiation factors**

Pricing Zone	Indicative Service 96 wagon 30 TAL	Indicative Service 82 wagon 30 TAL
1	1.000	1.118
2	1.000	n/a
3	n/a	1.000

#### 5.1.4.3 Stakeholders' views

Stakeholders have raised concerns about the transparency of ARTC's calculation of TOP charges, how constraints beyond their control have been factored into the proposed charges as well as each of the individual differentiation factors that ARTC applies and the weightings given to those factors.

<sup>119</sup> ARTC provided this information to the ACCC in its confidential financial modelling.

<sup>120</sup> As presented in, or derived from figures contained within, ARTC's Confidential Pricing Differentiation Model – Pricing Differentiation and 2015 Economic Cost tabs, revised version dated 12 June 2014.

## *Transparency for calculation of TOP charges*

A number of stakeholders raised concern about the level of transparency that has been provided by ARTC in its calculations for the differentiation factors and resulting access charges. For example, HVEC stated that:

Many decisions with significant financial implications are going to need to be made by many stakeholders based on the model, and it needs to withstand scrutiny. For this reason, HVEC considers that the model should comply with an effective quality management system (such as ISO 9001), as is the case with any other engineering deliverables. The known constraints, limitations and inputs of the model must be clearly articulated in a functional specification that is endorsed by stakeholders. This is not the case at present.<sup>121</sup>

Idemitsu submitted that additional information enabling comparisons with the access charges for the existing Indicative Services would be beneficial to access holders to properly understand the proposed pricing.<sup>122</sup> Idemitsu also submitted that:

ARTC has been reasonably consistent with applying the weightings for the 2015 FISAC when compared with IIAC, however to improve access holder understanding ARTC should provide the necessary transparency between the weightings and the TOP and Non-TOP components.<sup>123</sup>

Asciano stated that it does not oppose the factors being used as inputs into pricing decisions more generally, but the applicability of using these factors to determine prices for the proposed Indicative Services should be clarified.<sup>124</sup>

Coal & Allied noted that it had consistently called for improved transparency from ARTC on the basis that it is important to ensure that all stakeholders can develop a clear understanding of the assumptions that underpin ARTC's modelling and price formulation.<sup>125</sup>

## *Infrastructure constraints*

Aurizon is of the view the Final Indicative Service seemingly disadvantages Pricing Zone 3 users.<sup>126</sup> Aurizon notes ARTC's proposed price differentiates access to Pricing Zone 1 for services originating in Pricing Zone 3, even though it is the rail infrastructure that constrains Pricing Zone 3 services to the shorter length. Aurizon submits this outcome seems incompatible with the overarching intent to incentivise longer trains. Aurizon notes the practical effect of the pricing differential is to impose higher shared and common costs on Gunnedah coal producers. Aurizon considers that price differentiation should not be permissible between train services where the cause of the difference is attributable to a below rail infrastructure constraint.<sup>127</sup>

Idemitsu welcomes the recognition of the need for two Indicative Services to address the rail infrastructure limitations in Pricing Zone 3. However, Idemitsu disagrees with the magnitude of the pricing differential.<sup>128</sup> Idemitsu notes that the price differential imposed on Pricing Zone 3 access holders travelling through Pricing Zone 1 represents more a penalty than an incentive due to infrastructure limitations in Pricing Zone 3 rather than a choice by access holders of train configuration.<sup>129</sup> Idemitsu does not consider access holders in Pricing Zone 3 should be penalised in Pricing Zone 1 for using the most efficient train configuration available as determined by current HVCCC modelling. Idemitsu understands and appreciates the objective of pricing signals in particular environments and would propose trains originating from Pricing

---

<sup>121</sup> HVEC submission, 21 March 2014, p. 5.

<sup>122</sup> Idemitsu submission, 21 March 2014, p. 7.

<sup>123</sup> Ibid, p. 10.

<sup>124</sup> Asciano submission, March 2014, pp. 14-15.

<sup>125</sup> Coal & Allied submission, June 2014, p. 1.

<sup>126</sup> Aurizon submission, 21 March 2014, p.5.

<sup>127</sup> Ibid, p.24.

<sup>128</sup> Idemitsu submission, 21 March 2014, p.5.

<sup>129</sup> Ibid, p. 2.

Zone 3 is a unique circumstance in which pricing signals with significant differentials (relative to other Pricing Zone 1 services) to drive efficiency behaviour are not an appropriate mechanism.<sup>130</sup>

Centennial Coal operates its trains on the Sydney Trains, Country Regional and ARTC rail networks to deliver coal to the Newcastle port terminals. Centennial Coal submits it is unable to operate the Indicative Service because of infrastructure limitations on the Sydney Trains and Country Regional networks. The Sydney Trains and Country Regional Network are limited to a 25 tonne axle load and trailing load of 4 600 tonnes. Centennial Coal considers the access charge as proposed represents a discriminatory and unfair impost on its ability to compete on a level playing field when exporting through the port of Newcastle.<sup>131</sup> Centennial Coal also submits that its trains from Newstan can be made available at short notice to fill gaps in the system when issues prevent Hunter Valley trains from arriving on time. Centennial Coal notes that it is unlikely that the HVCCC modelling can predict the advantage of this capability.<sup>132</sup>

Origin Energy delivers coal to Eraring Power Station on rail via the Hunter Valley rail network and the Transport for NSW Network between Newcastle and Sydney. Origin Energy notes it is only able to use 42 wagon trains due to physical and timetable constraints on the Transport for NSW network. Origin Energy is of the view that the proposed access charges discriminate against users of shorter trains on the Transport for NSW network and that the Proposed Variation penalises users that promote efficient use of spare capacity for the carriage of domestic coal.<sup>133</sup>

Coal & Allied submits that the Indicative Service access charge regime must send efficient economic pricing signals to industry in order to ensure the efficient use of and investment in coal supply chain infrastructure. Coal & Allied believes that there is no sound basis for the access charges in a given pricing zone to be structured in a way that essentially compensates for the inability of some users to utilise the most efficient service in that zone.<sup>134</sup>

### *Network Capacity*

Idemitsu considers that ARTC's assumption that all train configurations consume the same amount of train path related capacity in each Pricing Zone, and that each service will consume a single train path regardless of size is reasonable.<sup>135</sup>

Coal & Allied submitted that the efficient pricing of Network Capacity consumption is the more critical component to directing efficient investment in and operation of the stand-alone network, and is particularly relevant where the network is currently considered to be the key constraint on overall coal chain capacity.

### *Coal Chain Capacity*

A number of stakeholders comments on Coal Chain Capacity were tied in with their comments on infrastructure constraints (set out above).

Idemitsu considers that based on HVCCC modelling there is minimal impact to coal chain volumes which is not appropriately reflected in the pricing differential between Indicative Service 1 and Indicative Service 2. Idemitsu does not consider access holders in Pricing Zone 3 should be penalised in Pricing Zone 1 for using the most efficient train configuration available as determined by current HVCCC modelling.<sup>136</sup> Idemitsu also submitted that as Pricing Zone 3 infrastructure projects come online to improve Coal Chain Capacity and the

---

<sup>130</sup> Idemitsu submission, 21 March 2014, p. 8.

<sup>131</sup> Centennial Coal submission, 18 March 2014, p. 3.

<sup>132</sup> Ibid, p.2.

<sup>133</sup> Origin Energy submission, 28 March 2014, p. 2.

<sup>134</sup> Coal & Allied submission, June 2014, p. 2.

<sup>135</sup> Idemitsu submission, 21 March 2014, p. 9.

<sup>136</sup> Ibid, p. 8.

development of efficient train configurations, the direct benefits which flow to Pricing Zone 1 access holders should not be overlooked.<sup>137</sup>

Whitehaven submitted that ARTC's proposal to increase the pricing differential between the Indicative Services in Pricing Zone 1 is not consistent with the benefit that Pricing Zone 3 brings to all of the coal chain volumes in Pricing Zone 1:

Given the investment and efficiency gains of moving from a 6300tn 82 wagon payload to a 8000tn 82 wagon payload Whitehaven expected a reduced TOP \$/kgtkm cost in Zone 1 ... Whitehaven's investment in track and rolling stock is not only the most cost efficient capacity expansion for the Gunnedah Network but also creates whole of coal chain efficiencies in Zone 1 for all Access Holders. Whitehaven would therefore expect to benefit from lower Zone 1 Access Charges as we bridged the gap between Gunnedah Basin FIS2 train characteristics and the FIS1 characteristics.<sup>138</sup>

### *Weightings of differentiation factors*

Whitehaven submitted that the weightings applied to the key differentiation factors does not appear to take into account the minimal difference between the Indicative Services in Pricing Zone 1 on total coal chain volume.<sup>139</sup>

Peabody submitted that the weightings outlined in ARTC's supporting documentation are difficult to be verified. Peabody recommended that the weightings be reviewed with above rail operators and across several heavy haul operations to gain comparative information for effective modelling.<sup>140</sup>

Idemitsu and Asciano were concerned with ARTC's statement that 'it should not be assumed that ARTC will base future differentiation of coal pricing on the same weightings of each of these factors nor any prescribed methodology for considering such factors'. Idemitsu noted that such inconsistency coupled with a lack of transparency would make it extremely difficult for access holders to properly assess pricing impacts.<sup>141</sup> Idemitsu also queried the magnitude of the increase in the weighting of the maintenance factor in Pricing Zone 3 (an increase from 13 per cent to 19 per cent) given that much of the infrastructure will be new.<sup>142</sup>

Coal & Allied supported differentiated charges but submitted that ARTC's approach of equally weighting Network and Coal Chain capacity continues to appear arbitrary, with no supporting evidence or assumptions as to why the split is appropriate. For some train configurations, the relative weighting of Network and Coal Chain Capacity can be shown to have a material impact on the overall pricing of a service, therefore, Coal & Allied is of the view that it is essential that ARTC works to improve this area of price formulation. Coal & Allied also noted its support for a higher weighting of Network Capacity in the TOP charge.<sup>143</sup>

#### 5.1.4.4 ACCC's preliminary views

The ACCC recognises that the most efficient train configuration will evolve over time as additional capital investment is undertaken, innovation occurs and new technology becomes available (for example). However, the ACCC is of the view that identifying the coal train configuration(s) that contribute to achieving optimum utilisation of capacity in the Hunter Valley will at least assist industry in making appropriate investment decisions by indicating the investments that will promote the overall interests of the coal supply chain in the Hunter Valley. As discussed above in Chapter 4, the ACCC is of the preliminary view that ARTC has appropriately selected the train configurations of the Indicative Services.

---

<sup>137</sup> Ibid, p. 10.

<sup>138</sup> Whitehaven submission, 18 March 2014, p. 8.

<sup>139</sup> Ibid, p. 10.

<sup>140</sup> Peabody submission, 21 March 2014, p. 2.

<sup>141</sup> Idemitsu submission, 21 March 2014, p. 9.

<sup>142</sup> Ibid, p. 10.

<sup>143</sup> Coal & Allied submission, June 2014, pp. 2-4.

The ACCC also acknowledges that pricing will be only one of many incentives for users of the Hunter Valley Coal Network to strive toward adopting more efficient coal train configurations over time. However, the ACCC is of the view that determining prices for the Indicative Services based on the efficient costs of providing those services and then using those services as a reference point for differentiating prices for other services will at least provide important signals to users about the relative costs of their services. In this way, it will at least ensure that the prices paid by users are cost reflective and accord with the pricing principles in section 44ZZCA of the Act.

As such, it is the ACCC's preliminary view that ARTC's general approach to pricing and pricing differentiation is appropriate for encouraging the efficient use of, and investment in, the Hunter Valley pursuant to Part IIIA of the Act. However, the ACCC also has some views on specific aspects of ARTC's approach, such as the magnitude of the differentiation factors applied to determine pricing relativity, the weighting given to those differentiation factors and how ARTC has taken account of other limitations (such as infrastructure constraints beyond the control of users) in its pricing. These aspects and the ACCC's views are discussed below.

### *Transparency for calculation of TOP charges*

The ACCC notes stakeholders' concerns regarding a lack of sufficient detail being provided by ARTC in its public documentation to enable them to fully comment on the differentiation factors. The ACCC received additional information from ARTC in its financial modelling that the ACCC considered would assist stakeholders in better understanding the approach and calculations undertaken by ARTC.

The ACCC is of the view that stakeholders need to be given sufficient information to enable them to fully consider and provide comment on the assumptions, methodology and outputs. Therefore, as far as practicable, the ACCC has presented the additional information throughout this Position Paper with further detail provided in Appendix A. See section 2.5 of this Position Paper for further information on the ACCC's process regarding ARTC's claims for confidentiality.

### *Infrastructure constraints*

Several submissions from stakeholders have commented on the infrastructure constraints faced by producers operating in Pricing Zone 3 and/or other rail networks and that the pricing differentials applied by ARTC are effectively 'penalising' them for factors beyond their control. The ACCC acknowledges that not all producers are able to immediately move toward the use of the Indicative Services due to various infrastructure constraints and, therefore, are not incentivised to do so by pricing differentials. However, the ACCC reiterates that the purpose of differentiating charges for particular services is not solely to incentivise efficient behaviour; it is also to ensure that charges for particular services reflect the efficient cost of providing those services, including the utilisation of capacity.

Having regard to subsection 44ZZA(3)(aa) and the objects of Part IIIA of the Act, the ACCC considers that charges which reflect the efficient costs of providing services will promote the economically efficient operation of, use of, and investment in the infrastructure by which services are provided. Charges that are cost-reflective will send pricing signals that efficient utilisation of the Hunter Valley Coal Network will be promoted by the use of longer more efficient trains. It will also help inform decisions about whether to make particular investments in infrastructure. For example, the ACCC notes that Pricing Zone 3 is in the process of being upgraded to accommodate a 30 TAL to enable the operation of heavier trains.

That being said, the ACCC also acknowledges that there may be some instances where a non-Indicative Service may not necessarily impact on the efficiency or capacity of the rail network in practice. The ACCC notes for services other than the Indicative Services, ARTC has some discretion as to what charges apply taking into account a range of factors that are set out in section 4.15 of the HVAU. For these services, ARTC has the flexibility to set access charges higher or lower than the charges for the Indicative Services based upon its consideration of the

various factors in section 4.15, which includes consideration of logistical impacts and impacts on other services operating on the network and the relative consumption of capacity (for example). The ACCC encourages ARTC and its customers to work together in these instances to determine appropriate charges. ARTC is also required to publish these charges on its website to ensure transparency amongst industry participants. The HVAU allows producers to raise a dispute about prices, which the ACCC may be called upon to arbitrate.<sup>144</sup>

The ACCC considers that differentiating charges promotes the interests of all persons who might want to access the service by applying charges that more accurately reflect the consumption of capacity by each producer (subsection 44ZZA(3)(c)) and also accords with the pricing principles in section 44ZZCA. That being said, the ACCC notes that this is a different question to the appropriateness of the magnitude of the pricing differentials applied. As discussed in the sections that follow, the ACCC has some concerns with ARTC's application of the pricing differentiation factors.

### *Fixed Maintenance*

The ACCC is of the view that the prices paid by users should reflect the efficient costs of providing services and should provide sufficient revenue to enable ARTC to cover its Full Economic Cost (subsection 44ZZCA(a) of the Act). Notably, fixed maintenance costs are included in the calculation of ARTC's Full Economic Cost pursuant to section 4.5 of the HVAU. As such, the ACCC considers it appropriate that the TOP component of access charges include an appropriate apportionment of fixed maintenance costs across the various train service types (noting that variable maintenance costs are recovered through the non-TOP component of charges).

ARTC has proposed to use maximum speed and maximum axle load as the basis for differentiating the various train service types and calculate the TOP component of access charges, which is the same approach that the ACCC accepted for the Initial Indicative Services. ARTC has stated that speed and axle load are generally regarded as drivers of maintenance costs and that it is generally accepted that higher speed and higher axle load lead to higher track degradation and hence higher maintenance expenditure, with speed having a greater impact.<sup>145</sup> In its calculations, ARTC has also assumed that the variability of infrastructure maintenance costs with axle load is 45 per cent and with speed is 50 per cent, which are also the same figures that the ACCC accepted for the Initial Indicative Services.

The ACCC noted as part of the assessment for the Initial Indicative Services that ARTC's approach appeared reasonable based on the reports by the QCA and UK ORR, which are the same reports that ARTC has relied on for the Proposed Variation. In particular, the ACCC notes that ARTC splits maintenance costs between fixed and variable based upon an engineering assessment of the extent to which the activity varies in proportion with volume. ARTC submitted during the annual compliance process that fixed maintenance expenditure depends more on movements in cyclic maintenance requirements which can vary independently of volume changes.<sup>146</sup> That said, the ACCC also notes from ARTC's annual compliance submission that fixed maintenance costs may also be attributed to lightning strikes, wheel burns, derailments related track and structure damage and damage caused by flooding. Some of these factors do not appear to be directly related to maximum axle load and speed, which may raise some questions about the appropriateness of using these factors to differentiate the various train service types.

Nevertheless, stakeholders have not raised any specific concerns with the approach proposed by ARTC in relation to differentiation of fixed maintenance and the ACCC is not aware of any new or alternative evidence which suggests that a different approach should be used for the Final Indicative Services. The ACCC's preliminary view, therefore, is that ARTC's proposal to use maximum speed and maximum axle load in the calculation of the TOP component appears

---

<sup>144</sup> See subsections 4.20(f) and 3.15 of the HVAU.

<sup>145</sup> ARTC, *Supporting documentation*, 31 January 2014, p. 27.

<sup>146</sup> ARTC, *Annual Compliance Submission for 2013, May 2014*, pp. 20-21.

reasonable for the current assessment and the proposed TOP access charges are likely to be appropriate having regard to subsection 44ZZA(3) of the Act.

However, the ACCC notes concerns that were raised by stakeholders regarding the level of transparency of underlying figures for determining the magnitude of the maintenance differentiation factors. The ACCC has included further detail surrounding ARTC's forecast Economic Cost, maintenance costs and train configurations that underpin the magnitude of the maintenance differentiation factors in this Position Paper. The ACCC also specifically notes Idemitsu's query regarding the reason for the increase in the differentiation factor in Pricing Zone 3, which is related to ARTC's forecast economic costs.

It is important to note that the ACCC assesses the efficiency of ARTC's operating costs (including maintenance) as part of the annual compliance assessment process that occurs at the end of each calendar year to ensure that ARTC receives no more revenue than to cover prudent and efficient costs (including a return on investment commensurate with the risks). As such, the ACCC has not assessed ARTC's forecast operating costs as part of its assessment of the Proposed Variation as that will occur during the annual compliance assessment process.

### **Question**

- Do stakeholders have any comment on the train configurations and assumptions used by ARTC in its calculation of the differentiation factors relating to fixed maintenance in the TOP component of charges?

### *Network Capacity*

The ACCC notes ARTC's proposal to assume that all train configurations consume the same amount of train path related capacity regardless of size, which is the same assumption that was accepted by the ACCC during its assessment of the Initial Indicative Services. In particular, according to ARTC, the consumption of Network Capacity is largely driven by the average speed and maximum length of a train. However, because all trains identified as being equal to, or shorter than, the Indicative Services are expected to be able to operate on the Network there appears little basis for differentiating trains on the basis of length. Similarly, while trains could technically operate at different speeds on the Network, there appear to be operational benefits of having all trains running at the same speed in each Pricing Zone.

Further, stakeholders did not appear to raise any specific concerns with ARTC's proposed methodology for calculating Network Capacity. The ACCC has reproduced the detailed calculations undertaken by ARTC in Appendix A of this Position Paper and would welcome any further comments from stakeholders on the specifics of those calculations to inform the ACCC's final view on ARTC's calculation of the Network Capacity component.

Finally, the ACCC notes the submission from Coal & Allied that Network Capacity is the more critical component to the overall objective of the optimising the Hunter Valley Coal Network. The ACCC is of the view that the extent to which the rail network is the key constraint on the overall coal supply chain should be a key consideration in the appropriateness of the weightings that ARTC applies to each of the differentiation factors (see discussion below).

### **Question**

- Do stakeholders have any comment on the assumptions used by ARTC in its calculation of the differentiation factors relating to Network Capacity in the TOP component of charges?

## *Coal Chain Capacity*

The ACCC notes that stakeholders' comments on Coal Chain Capacity were largely tied in with their comments on infrastructure constraints (discussed above) and application of weightings to the various differentiation factors (discussed below). Although, some stakeholders did query whether the modelling accurately captured differences between various services in relation to the consumption of Coal Chain Capacity.

While the ACCC has discussed infrastructure constraints above and application of weightings below, the ACCC has some preliminary observations about ARTC proposed methodology for calculating the Coal Chain Capacity differentiation factor. As set out above and in more detail in Appendix A, ARTC calculates the differentiation factor by applying linear interpolation to the HVCCC modelled throughput and then looks at the relativities between different services.

As set out in Chapter 4 of this Position Paper, the ACCC understands that the HVCCC modelling relaxed a number of assumptions in order to consider the effect on Coal Chain Capacity of running trains that cannot currently be operated on the network but could potentially do so in the longer term. While the ACCC's preliminary view is that the HVCCC modelling is appropriate to select the indicative services characteristics (see section 4.2.5), there might be limitations around using the model to reflect consumption of Coal Chain Capacity when determining access charges.

For example, the Scenario 3 results of the HVCCC model adopted by ARTC assume that all the trains have the same configuration.

As a result, rather than evaluating the effect on Coal Chain Capacity of one access seeker using a train configuration other than the Indicative Service 1 in Pricing Zone 1, the model has evaluated the effect of all access seekers using that other configuration. In this way, the model's output might not reflect the effect on Coal Chain Capacity of one access seeker using that other train.

The ACCC would welcome any comments from stakeholders on the application of the HVCCC's modelling to the calculation of the Coal Chain Capacity differentiation factor.

Also, inherent in the modelling for Coal Chain Capacity appears to be considerations of axle load, train length and payload. The ACCC notes that these are also considerations in the Network Capacity and Maintenance differentiation factors. As such, the ACCC questions whether there may potentially be some overlap between the differentiation factors. The ACCC is of the view that these matters should be taken into consideration in the appropriateness of the weightings that ARTC applies to each of the differentiation factors (see discussion below).

### **Question**

- Do stakeholders have any comment on the methodology used by ARTC in its calculation of the differentiation factors relating to Coal Chain Capacity in the TOP component of charges?
- Do stakeholders have any comment on the use of the HVCCC modelling in the calculation of the differentiation factor relating to Coal Chain Capacity for the TOP component of the charges?

## *Weighting of differentiation factors*

The weighting of differentiation factors was one of the most significant issues of concern with stakeholders and was often tied in with discussions of infrastructure constraints (see discussion above). While stakeholders were generally supportive of pricing differentiation, numerous

stakeholders queried the rationale behind ARTC's application of an equal weighting to Network Capacity and Coal Chain Capacity. For example, some stakeholders suggested that because the capacity of the network is currently the most significant limitation on the supply chain then Network Capacity should have a higher weighting than Coal Chain Capacity (Coal & Allied and Aurizon), while others suggested that the weightings did not appear reflective of the HVCCC modelling (Whitehaven) or that they did not result in prices that provided the intended incentives due to factors outside their control (such as infrastructure constraints).

The ACCC notes that ARTC has not provided in its Proposed Variation its rationale for applying equal weightings to Network Capacity and Coal Chain Capacity in the calculation of the TOP component of charges. While the ACCC accepted an equal weighting being applied for the Initial Indicative Services, the ACCC specifically noted in that assessment that ARTC should have regard to improvements in the accuracy of modelling for the Indicative Services and the appropriateness of weightings applied to each of the factors in light of that modelling. Importantly, as set out in Chapter 4 of this Position Paper, ARTC has submitted that more advanced HVCCC modelling has been used for the development of the proposed Indicative Services. The ACCC therefore expects that ARTC would be able to provide more detailed analysis and justification for the weightings that have been applied.

Nevertheless, the ACCC does have some preliminary observations regarding the weighting of differentiation factors. The ACCC has analysed the effect of varying the weightings applied to Network Capacity and Coal Chain Capacity on the overall differentiation factor. In summary, the higher the weighting given to Network Capacity, the higher the overall pricing differential for the 82 wagon 30 TAL train from the 96 wagon 30 TAL train in Pricing Zone 1 which would result in an increase the TOP charge for those services in that Pricing Zone. Moreover, the 82 wagon 25 TAL non-Indicative Service was more sensitive to changes in the weightings, meaning that there would be a larger increase in the TOP charge for those services. Indeed, the ACCC notes calls from some stakeholders that a higher weighting should be given to Network Capacity. Given the effect that variations in the weightings applied can have on the overall differentiation factors, the ACCC is of the view that ARTC needs to give further consideration to, and provide its rationale for, the weightings given to Network Capacity and Coal Chain Capacity.

The ACCC also notes the issue of transparency that is consistently raised by stakeholders, particularly in relation to how the differentiation factors and TOP component charges are calculated. As demonstrated in Appendix A, the calculation of the TOP component of charges is a complex process. The ACCC questions whether this needs to be the case. As previously noted, ARTC's revenues and costs are reconciled each year through the annual compliance assessment process so as to ensure that ARTC receives revenue no more than to cover prudent and efficient costs (including a return on investment commensurate with the risks). As such, the effective prices paid by producers in each year following that reconciliation process ultimately differ from the access charges determined at the beginning of the period, and the magnitude of the variance depends on the accuracy of ARTC's cost and volume forecasts.

For this reason, the ACCC considers that an important purpose of the access charges is to provide price signals to users about the relative costs of their services on the network to encourage efficient use of, and investment in, infrastructure. The ACCC is of the view that there may be some benefit in ARTC giving consideration to whether there may be less complex approaches that still achieve the same objective as well as supporting more transparent methodologies.

The ACCC also recognises that Pricing Zone 3 producers have raised concerns about their increasing costs due to higher access charges. On this point, the ACCC notes that the largest increase in access charges faced by Pricing Zone 3 producers is a result of ARTC's [c-i-c] per cent uplift in the TOP component of Pricing Zone 3 charges. ARTC has stated that the increase reflects its intent to maximise cost recovery in Pricing Zone 3 (including recovery of previous capitalised losses) in 2015.

The ACCC is of the view that ARTC needs to provide further information regarding its underpinning assumption for weightings given to each of the differentiation factors before it is able to form a view as to their reasonableness. The ACCC will be sending a request to ARTC for further information on this matter. The ACCC would also welcome any comments from industry on the weightings applied by ARTC in light of the additional information that the ACCC has presented in this Position Paper.

Finally, the ACCC notes concerns from stakeholders in relation to ARTC's comment that its methodology may change over time. The ACCC is of the view that ARTC should consult with stakeholders prior to making any changes to its methodology so as to ensure open and transparent pricing practices. Further, where the ACCC has assessed and accepted a methodology following significant consultation with industry stakeholders, it is the ACCC's view that it would be inappropriate for ARTC to then make changes to that methodology.

## Questions

- Do stakeholders have any further comment on the weightings applied to the differentiation factors by ARTC in its calculation of the TOP component of charges in light of the additional information presented in this Position Paper?

## 5.2 Transparency of pricing for non-Indicative Services

Subsection 4.15 of the HVAU prescribes a range of factors which ARTC will take into account in coming to a pricing decision for non-Indicative Services. In addition, as part of the Proposed Variation, ARTC has provided some guiding principles it intends to apply in determining charges for non-Indicative Services.<sup>147</sup>

### 5.2.1 Previous ACCC decisions

The ACCC has previously noted that access seekers should be provided with sufficient information to be able to calculate, with a reasonable degree of certainty, the likely direction and estimated magnitude of pricing relatives between various services. The ACCC noted that such transparency was necessary to inform investment and contractual decisions by coal industry participants.<sup>148</sup>

As part of its Initial Indicative Services application accepted in 2012, ARTC proposed the set of guiding principles that it would apply in determining Initial Indicative Access Charges and charges for non-indicative services.<sup>149</sup>

In its decision on the Initial Indicative Services, the ACCC was of the view that the guiding principles proposed by ARTC and the requirements in the HVAU should provide sufficient pricing transparency for non-Indicative Services. In addition, the ACCC considered that ARTC's methodology accorded with the requirements in section 4 of the HVAU.<sup>150</sup>

<sup>147</sup> ARTC, *Supporting documentation*, Annexure A.

<sup>148</sup> ACCC, *Decision in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking - Initial Indicative Service variation*, 17 October 2012, p. 39.

<sup>149</sup> ARTC, *Application by ARTC to vary the Hunter Valley Access Undertaking to provide for the initial indicative services and initial indicative access charges*, 7 September 2012, p.8.

<sup>150</sup> ACCC, *Decision in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking - Initial Indicative Service variation*, 17 October 2012, p. 41.

## 5.2.2 ARTC's proposal

ARTC has submitted that the same guiding principles (as proposed for the Initial Indicative Service) will continue to apply in determining charges for non-Indicative Services. The guiding principles are detailed below and also provided at Annexure A of ARTC's supporting documentation.<sup>151</sup> ARTC states that:

The following outcomes could be expected to arise where the above basis for determining Initial Indicative Service, Interim Access Charges and Charges for non-Indicative Services is applied.

Where:

- all other material aspects of the terms and conditions of access are equal;
- there are no pricing impacts based on factors prescribed at Sections 4.15(a)(ii), 4.15(a)(iii); and
- there is no reasonable basis to adjust impacts based on practical considerations,

the following could be expected in a Pricing Zone:

- a negative(positive) price differential will arise where a Service operates with a higher(lower) average or maximum axle load than the IIS due to variable and fixed maintenance impact;
- a negative(positive) price differential will arise where a Service operates with a higher(lower) average or maximum speed than the IIS due to variable and fixed maintenance impact;
- a negative(positive) price differential will arise where a Service operates with a lower(higher) gross mass than the IIS due to Capacity impact;
- a negative(positive) price differential will arise where a Service is shown by available HVCCC modelling in the circumstances (or as contemplated under the 2011 HVAU) consumes more(less) Coal Chain Capacity;
- an overall price differential will result from the weighted combination of the above differentials, but a Service consuming, on balance, more of ARTC's maintenance and Capacity resources, and Coal Chain Capacity will result in a negative price differential; and
- Services other than the relevant IIS will result in a negative price differential.

ARTC submits it intends to apply these guiding principles in determining Indicative Access Charges and charges for non-Indicative services following approval of the proposed Indicative Services in order to maintain the existing level of pricing transparency and consistency.

## 5.2.3 Stakeholders' views

Asciano considers there is a need for a clear and consistent approach in negotiating access pricing for non-Indicative services.<sup>152</sup> Asciano notes there are numerous train configurations operating in the Hunter Valley which, for various reasons, do not meet the Final Indicative Services characteristics. Asciano considers that in order to allow access seekers to make a relatively accurate estimation of non-indicative access pricing ARTC should provide a reasonable level of transparency in regard to its pricing model and approaches, and how the model would apply to non-Indicative services. Alternatively, Asciano considers ARTC should provide sufficient data points to allow access holders and operators to interpolate or extrapolate a likely price from a series of determined price points.<sup>153</sup>

---

<sup>151</sup> ARTC, *Supporting documentation*, Annexure A.

<sup>152</sup> Asciano submission, March 2014, p. 4.

<sup>153</sup> *Ibid*, pp. 8-9.

Aurizon does not consider ARTC's approach to determining the TOP charge is sufficiently transparent or predictable to allow an access seeker to understand or derive a charge for a train configuration which does not conform to the Final Indicative Services.<sup>154</sup>

#### **5.2.4 ACCC's preliminary views**

The ACCC considers that the legitimate business interests of ARTC in retaining a certain level of discretion regarding the prices it sets must be balanced against the interests of access seekers in having charges that are sufficiently transparent (subsections 44ZZA(3)(a) and (c) of the Act). The ACCC is of the preliminary view that the guiding principles proposed by ARTC and the requirements in the HVAU appear to provide a degree of pricing transparency.

However, the ACCC recognises that concerns regarding transparency continue to be raised by stakeholders in submissions. The ACCC has provided greater transparency of ARTC's calculation of non-TOP and TOP charges for the Indicative Services throughout this Position Paper and in Appendix A. The ACCC considers that this additional level of information should further assist stakeholders in understanding how ARTC differentiates charges for the Indicative Services which will assist stakeholders in also understanding how ARTC may differentiate charges for non-Indicative Services. The ACCC also notes its views outlined above in relation to the weightings applied for the calculation of the TOP charges, specifically that ARTC should give consideration to whether the current approach continues to support the overall objectives, which includes transparent methodologies. Nevertheless, the ACCC's view is that it remains appropriate for ARTC to retain a certain level of discretion regarding prices for non-Indicative Services.

The ACCC encourages ARTC to continue to work with industry as to the nature and level of information that may be provided to industry on an ongoing basis so as to provide sufficient transparency. The ACCC also welcomes comments from industry on this matter in response to this Position Paper.

#### **Question**

- What further information, if any, do stakeholders consider will provide the appropriate level of transparency regarding the basis upon which ARTC differentiates charges for services other than the Indicative Services?

### **5.3 Grandfathering arrangements for pricing**

The grandfathering provisions in subsection 4.15(a)(iii) of the HVAU require that ARTC charges the same TOP and non-TOP price for the Interim Indicative Services in Pricing Zones 1 and 2 (that is, the 91 and 74 wagon services) until 31 December 2014. The grandfathering provisions allow pricing parity between the Interim Indicative Services to continue despite the introduction of the Initial Indicative Services.

The grandfathering provisions do not preclude ARTC from differentiating the charges for other coal access rights, including the charges for the 91 and 74 wagon trains, from the Initial Indicative Services charges.

#### **5.3.1 Previous ACCC decisions**

The ACCC's Decision to accept the HVAU notes statements made by ARTC in a letter dated 6 May 2009, including that it was committed to maintaining pricing parity between the two existing train types in the Hunter Valley for not less than 5 years. The ACCC took the view that while the 6 May 2009 letter should not limit its consideration of the appropriate pricing approach under the HVAU, it was appropriate for the HVAU to incorporate grandfathering arrangements

<sup>154</sup> Aurizon submission, 21 March 2014, p. 33.

to ensure that those parties that had invested in good faith on the basis of ARTC's statement have sufficient time to adjust to the new arrangements, once determined. The ACCC also considered that the grandfathering should apply until 30 June 2014 to allow sufficient time for parties to adjust.<sup>155</sup>

In the Decision on the Initial Indicative Service Variation<sup>156</sup> the ACCC considered that subsection 4.15(a)(iii) formed part of the overall 'package' of terms which were negotiated by ARTC and coal industry stakeholders and subsequently incorporated into the HVAU. Consequently, the ACCC did not consider it would be appropriate to reopen its decision to accept the balance of terms and conditions contained in the HVAU in its assessment of the Initial Indicative Service variation by removing or extending the scope of the grandfathering provisions.<sup>157</sup>

### 5.3.2 ARTC's proposal

ARTC has not proposed any amendments to the grandfathering provisions in subsection 4.15(a)(iii) as part of the Proposed Variation. This means that if the Proposed Variation is accepted the Final Indicative Services provisions will apply in all instances from 1 January 2015, including to those Access Holders that remained with the Interim Indicative Services after the Initial Indicative Services took effect.

### 5.3.3 Stakeholders' views

Aurizon states that the Proposed Variation disadvantages a rail operator who responded to a previously given pricing signal which promoted optimisation of gross to net ratio by investing in an optimised train configuration associated with that price. Aurizon notes that in normal commercial practice parties would be able to specify the pricing methodology for the term of a contract. Aurizon submits that the grandfathering provisions should extend to the duration of haulage agreements.<sup>158</sup> Aurizon proposes the grandfathering should apply to above rail agreements contracted prior to a determined transition date up to the earlier of the termination of haulage rights or a determined transition terminal date.<sup>159</sup>

HVEC submits that some form of grandfathering mechanism should be considered to address the following risks<sup>160</sup>:

- the Indicative Services proposal does not take into account the long term economic life of rolling stock that is currently in service; and
- where producers enter into take or pay contracts with above rail service providers, any future variations in price will undermine the commercial context in which the take or pay agreement is struck with the above rail service provider.

### 5.3.4 ACCC's preliminary views

The ACCC notes that ARTC has not proposed to extend the grandfathering provisions in the HVAU. However, submissions in response to the Consultation Paper have called for both amendments to, and extension of, the current grandfathering period.

The ACCC previously accepted grandfathering arrangements as part of a negotiated package incorporated into the HVAU to allow time for industry to adjust to new arrangements. The ACCC considers industry has been on sufficient notice about the requirement for ARTC to

---

<sup>155</sup> ACCC, *Decision in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Undertaking*, 29 June 2011, p. 54.

<sup>156</sup> ACCC, *Decision in relation to Australian Rail Track Corporation's Hunter Valley Rail Network Access Undertaking - Initial Indicative Service variation*, 17 October 2012.

<sup>157</sup> *Ibid.*, p. 42.

<sup>158</sup> Aurizon submission, 21 March 2014, p. 11.

<sup>159</sup> *Ibid.*, p. 12.

<sup>160</sup> HVEC submission, 21 March 2014, p. 5.

develop the Indicative Service and the movement towards achieving the most efficient utilisation of Coal Chain Capacity. Further, the Indicative Service is intended to indicate to users the coal train configuration that would contribute to achieving the most efficient utilisation of capacity of the Hunter Valley coal network. The ACCC is of the view that allowing grandfathering provisions to continue undermines the purpose of the Indicative Services.

Having regard to the matters in subsection 44ZZA(3) and recognising that the grandfathering arrangements form a part of the overall 'package' of terms negotiated by ARTC and industry incorporated into the HVAU, the ACCC does not consider it appropriate to extend the scope of the grandfathering provisions in subsection 4.15(a)(iii) as part of the Proposed Variation.

## 6 Preliminary assessment of proposed drafting amendments to the HVAU

In this chapter the ACCC has considered the following key question:

- Are the proposed drafting amendments to the HVAU to implement ARTC's proposed changes appropriate, including whether they are sufficiently clear and transparent having regard to subsection 44ZZA(3)(c) of the Act?

### 6.1 ARTC's proposed drafting changes

ARTC has proposed a number of drafting amendments in the Proposed Variation in order to:

- implement the proposed Indicative Services and associated access charges;
- clarify that Initial Indicative Services (now Initial Services) and Interim Services are not Indicative Services;
- recognise that the Interim Period, during which the Interim Services and Interim Access Charges apply, will expire upon acceptance of the Proposed Variation;
- clarify that the dispute resolution in section 4.15 and section 4.20 apply to both the Indicative Services and Initial Services,

The proposed drafting amendments are attached to ARTC's variation application at Attachment A, which is available on the ACCC's website.<sup>161</sup>

### 6.2 Stakeholders' views

Asciano considers that the drafting of the Proposed Variation is sufficiently clear and transparent.<sup>162</sup>

Aurizon submits that the drafting changes appear appropriate. However, Aurizon is of the view the drafting of the various interactions of Interim, Initial and Final Indicative Services is not clear. For example section 4.17(a) compared to section 4.18(b) of the HVAU.<sup>163</sup>

HVEC will not support the draft changes in the Proposed Variation until the model proposed by ARTC is capable of validation.<sup>164</sup>

Whitehaven stated it was not in a position to provide informed comments about the proposed drafting amendments at the time.<sup>165</sup>

---

<sup>161</sup> ARTC, *Application to vary the 2011 Hunter Valley Coal Network Access Undertaking to provide for the adoption of the Final Indicative Services and charges in accordance with section 4.18(b) Supporting Documentation*, 31 January 2014, p.12.

<sup>162</sup> Asciano submission, March 2014, p. 15.

<sup>163</sup> Aurizon submission, 21 March 2014, p. 37.

<sup>164</sup> HVEC submission, 21 March 2014, p. 6.

<sup>165</sup> Whitehaven submission, 18 March 2014, p. 11.

## 6.3 ACCC's preliminary views

ARTC's drafting amendments propose that the Indicative Services characteristics and associated access charges will apply from the first day of the year following approval by the ACCC.<sup>166</sup> The ACCC notes that it is ARTC's intention that the proposed changes take effect from 1 January 2015.

Under section 4.18(e)(ii) of the current HVAU the Indicative Service Access Charges proposed by ARTC in the Proposed Variation are to apply from the start of the calendar year immediately following the date the Proposed Variation is accepted by the ACCC (i.e. if the Proposed Variation is accepted in 2014, the Indicative Service Access Charges will apply from 1 January 2015). As the ACCC approves the Final Indicative Access Charges as part of section 4.18 the annual process for finalisation of Indicative Access Charges under section 4.20 does not apply for that year. The ACCC's preliminary view is that ARTC's proposed amendments to section 4.18(a)(i) may not reflect this position and ARTC should clarify that the section 4.20 process does not apply to the Final Indicative Access Charges in the year 'immediately following' the ACCC's acceptance of the Proposed Variation.

Section 4.17 of the HVAU currently specifies the Initial Indicative Services and Initial Indicative Access Charges. The ACCC notes that ARTC has proposed to amend this section so that it redefines the Initial Indicative Services as 'Initial Services' and also defines an 'Initial Period' from 1 November 2012 to 30 June 2016 in which the characteristics of the Initial Services apply.

The ACCC notes that these changes mean the Initial Services would appear to continue to apply until the expiry of the existing HVAU, rather than up until the Final Indicative Services come into effect. That said, ARTC submits that defining the Initial Period to 30 June 2016 recognises that the Initial Services account for the majority of current contracted capacity under Access Holder agreements and enable Access Holders to transition to the Final Indicative Services. ARTC notes that access charges applicable to the Initial Services are not Indicative Access Charges and will be determined each year in accordance with section 4.15 of the HVAU. The ACCC considers that ARTC needs to provide further clarification of how these two sections are intended to operate.

The ACCC also notes the proposed amendments to subsection 4.10(a)(iii) of HVAU in which ARTC has removed reference to the Interim Access Charges. The ACCC understands that if the proposed changes come into effect on 1 January 2015, the section 4.10 would require ARTC to submit annual compliance documentation for the 2014 calendar year by 30 April 2015. As the Interim Access Charges continue to apply during the 2014 calendar year, the ACCC's preliminary view is that this reference should not be deleted.

---

<sup>166</sup> Subsection 4.18(b) of the HVAU.