



AUSTRALIAN RAIL TRACK CORPORATION LTD

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Australian Competition & Consumer Commission
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**PORT WARATAH COAL SERVICES (PWCS), NEWCASTLE
INFRASTRUCTURE GROUP (NCIG) AND NEWCASTLE PORT
CORPORATION (NPC)
APPLICATION FOR AUTHORISATION A91147 – A91149**

ARTC COMMENTS ON REQUEST FOR INTERIM AUTHORISATION

Australian Rail Track Corporation (ARTC) welcomes the opportunity to comment on PWCS, NCIG and NPC application for authorisation of the Capacity Framework Arrangements.

ARTC is proposing to put in place long term track access agreements with coal producers and other access seekers to commence on 1 January 2010. These agreements which will underwrite long term investment in track capacity depend on coal producers having in place long term capacity commitments with terminal operators. The negotiation and agreement of long term ship or pay contracts between terminal operators and coal producers are therefore critical to ARTC's timetable. A delay in the negotiation of such agreements will delay capacity expansion not just at the Port of Newcastle but at all levels of the Hunter Valley coal

chain. Accordingly, ARTC supports the application for interim authorisation.

In principle, ARTC supports the long term solution for which authorisation is sought: long term capacity commitments at the terminal are essential for the expansion of the Hunter Valley coal chain. ARTC has also participated as a member of the Contractual Alignment Group and supports the principle of contractual alignment across the coal chain. However, ARTC has not yet undertaken a full assessment of the authorisation application and is still working through the details with a view to preparing a submission on the application for final authorisation.

The Hunter Valley Rail Network: the need for a long term solution

As you may be aware, ARTC has a lease of certain parts of the NSW rail network including the track and related facilities on the Hunter Valley rail network - that being the track from the Newcastle Port terminals extending through the Hunter Valley to Werris Creek (the Gap) and the Ulan coal mine.

ARTC has submitted a voluntary access undertaking covering access to the Hunter Valley rail network (Hunter Valley Access Undertaking or HVAU) on 22 April 2009. The HVAU introduces a new contractual framework, consistent with the Greiner outcomes whereby coal producers can contract directly with ARTC for track access. This model will exist alongside the current model where access rights are generally held by above rail service providers (rail operators).

The principal objective in contracting directly with producers is for ARTC to obtain greater producer commitment to the long term investments in capacity that will be needed to meet demand, as well as to provide coal producers with a greater degree of control over the transportation of their coal and the alignment of their contracts across the coal chain.

The contractual arrangements proposed by ARTC are premised on an applicant establishing that it has, or will have sufficient terminal capacity to offload the anticipated coal at the port. Without a firm commitment for capacity with a terminal

operator, producers will be unwilling to enter into long term take or pay contracts for track access. Similarly, ARTC's proposed allocation of track access rights depends on allocation of terminal capacity at the port. Under the HVAU, only those applicants with sufficient capacity to offload the anticipated coal at the port will be granted access rights to transport that coal on the Hunter Valley rail network.

Long term agreements between terminal operators and coal producers are therefore essential to the successful operation of the producer contractual model proposed in the HVAU.

It is important to establish a long term capacity framework in the Hunter Valley as soon as possible. ARTC currently has sufficient track capacity to meet the current terminal capacity and is on schedule to finish projects to expand track capacity to meet the next stage of PWCS expansion and the implementation of NCIG Stage 1. In fact, ARTC has already commenced projects to expand track capacity for the subsequent stages of terminal expansion proposed for PWCS and NCIG. ARTC has commenced these projects in order to ensure track access remains sufficient to meet ongoing port expansion. However, any delay to further port expansions will require ARTC to review its investment. ARTC is not willing to take the risk that such capital expenditure becomes stranded and not earning a regulated rate of return as a result of delays in port expansions or because port expansions have simply not proceeded.

Looking further forward, one of the key planks of the HVAU is timely investment in track capacity to ensure there are sufficient track access rights to enable full utilisation of terminal capacity once requirements for system maintenance are met. It is ARTC's view that this can only occur if port expansions take place according to a pre-determined transparent framework and in accordance with a pre-determined timetable. Once such a process is in place for terminal capacity expansion at the ports, the other links in the Hunter Valley coal chain (ARTC and the above rail providers) - will be able to align their investment programmes to meet terminal expansions.

In ARTC's view the only realistic model on which to base long term capacity

commitments is long term take or pay commitments by the producers who ultimately pay for the infrastructure built.

The application for interim authorisation

ARTC is proposing to put in place long term contractual arrangements with coal producers and other access seekers prior to receiving a decision from the ACCC on the Hunter Valley Access Undertaking. The contracts will reflect the new framework contained in the HVAU and will be based on the indicative agreement provided to the ACCC as part of that undertaking.

The proposed timetable for putting in place these arrangements is set out in Appendix 1 to the Contractual Alignment Principles included with the application for authorisation. While ARTC is not changing its contractual arrangements for the six month period 1 July - 31 December 2009, ARTC is proposing to use this period to negotiate and agree the track access agreements, including commitments to expand track capacity to commence on 1 January 2010.

The timetable proposed by ARTC is necessarily interlinked to the PWCS timetable and the meeting of the deadlines in the PWCS timetable has important implications for ARTC's own timetable. In order to ensure that the deadlines in the PWCS (and ARTC) timetables have the best chance of being met, it is important that PWCS and NCIG are able to start to implement the long term solution as soon as possible and to negotiate and agree long term ship or pay contracts with users of terminals to commence 1 January 2010.

ARTC understands that if interim authorisation is not granted, PWCS and NCIG will be unable to obtain binding nominations from producers and proceed further in relation to contractual alignment until (and unless) the ACCC grants final authorisation. This would involve a delay in the implementation of not only the long term solution at the port terminals but also a delay in ARTC's proposed track access agreements with coal producers and rail operators.

Given the tight timeframes and the need to have port, track and also haulage contracts in place before 1 January 2010, ARTC supports the application of PWCS, NCIG and NPC for interim authorisation of the Capacity Framework Arrangements.

This submission contains no information considered 'commercial-in-confidence'.

If you have any queries regarding this submission, please do not hesitate to contact me on (08) 8217 4314, sormsby@artc.com.au or Mr. Glenn Edwards, Research and Planning Manager (08) 8217 4292, gedwards@artc.com.au .

Yours sincerely

A handwritten signature in black ink, appearing to be 'S Ormsby', written over a light grey rectangular background.

Simon Ormsby

General Manager, Commercial