Dear Sir/Madam

**Australian Rail Track Corporation exclusive dealing notification N 95429 - Interested party consultation**

The Australian Competition and Consumer Commission (the ACCC) has received a notification from the Australian Rail Track Corporation (ARTC). The ACCC considers you are a party potentially interested in this matter and invites you to comment on the notification. Attached is a summary of the notification process including how to make a submission to the ACCC.

**Notified conduct**

ARTC proposes to supply services under agreements consistent with the Indicative Access Holder Agreement subject to the condition that access holders can demonstrate sufficient network exit capability at the Port of Newcastle and obtain and provide evidence or advice from the Hunter Valley Coal Chain Coordinator in relation to the impact on Coal Chain Capacity.


**Context**

As you would be aware, the ACCC has been assessing a Hunter Valley Access Undertaking proposal from ARTC, which has been through a number of iterations.

Ongoing negotiations between industry and ARTC meant that the current statutory deadline would not be met. As a result, ARTC requested a ‘clock stopper’ to extend the statutory time period to 30 June 2011. The Commission has agreed to this request.
Previous consultation on involvement of the HVCCC

The concept that an Access Holder, for the purposes of the HVAU, have network exit capability (referred to as a capacity condition precedent in the most recent version of the HVAU) was originally included in the version of the undertaking that was submitted to the ACCC on 22 April 2009. The obligation to have sufficient capacity allocated at the port to be able to offload the coal being sought to be transported, has also been included in the various iterations of the HVAU since the April 2009 version.

The revised versions of the HVAU have been subject to public consultation. The requirement to have matching port and track capacity is part of the capacity management arrangements that were finalised in December 2009 and were developed over a number of years between industry participants and the New South Wales Government at the Port of Newcastle. The ACCC granted authorisation to the capacity framework arrangements in December 2009.

Request for submissions

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the proposed conduct.

Given that stakeholders are familiar with these arrangements and in light of previous consultation processes, the ACCC is proposing to provide a short period for consultation on this notification in the first instance.

If you have any comments or concerns in relation to ARTC’s notification, please provide them to the ACCC by 15 June 2011 (preferably emailed to adjudication@accc.gov.au).

Alternatively, if you would like to provide comments orally, please contact the ACCC to organise a suitable time.

I recognise that this is a tight timeframe for responding. If you have concerns about the notified conduct or consider you require more time to be able to make a submission, please contact myself or David Hatfield as soon as possible (contact details below).

Timing

The ACCC will progress its assessment of the notification in a timely manner. The ACCC will provide ARTC with an opportunity to comment on any issues raised in submissions. In the absence of any substantial concerns being raised in submissions, the ACCC is aiming to finalise its assessment of this notification by 30 June 2011.
Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the notification.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the notification.

This letter has been placed on the ACCC’s public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact David Hatfield on (02) 6243 1266 or by email to david.hatfield@accc.gov.au.

Yours sincerely

Richard Chadwick
General Manager
Adjudication Branch