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28 July 2023

Mr David Hatfield
Australian Consumer & Competition Commission
23 Marcus Clarke Street
Canberra ACT 2601
Email: exemptions@accc.gov.au

Dear David,

Application for revocation of authorisation AA1000425 and substitution for a new authorisation AA1000644 for related, but expanded conduct

Please accept this as the Australian Rail Track Corporation's (ARTC) submission to the Australian Competition & Consumer Commission (ACCC) regarding the application it has received for the re-authorisation of One Rail Australia (now owned by Aurizon), Manildra Group, Pacific National, QUBE, Southern Shorthaul Railroad, Sydney Rail Services, Linx Rail Pty Ltd and Aurizon, to collectively bargain with a broadened group of Rail Network Operators (RNO), including ARTC, in respect to

- the non-price terms and conditions on which they will acquire track access
- the broad pricing principles that will apply for access to, and use of, their respective networks, but not the actual prices that will apply as between RNOs and individual Applicants
- to enter into and give effect to bilateral contracts, arrangements or understandings between the Applicants and Rail Network Operators which contain common terms and conditions relating to the track access arrangements.

ARTC operates Australia's largest standard-gauge rail network that spans 8,500 kilometres across five states, facilitating the safe and efficient operation of hundreds of rail freight and passenger services each day. The applicants to this new authorisation represent most, but not all, of ARTC's valuable customers that operate these services. ARTC also works closely with other RNOs including ARC infrastructure, Aurizon, QR and TAHE to facilitate rail movements across our respective networks.

ARTC regularly engages with its customers in a confidential and non-discriminatory manner. ARTC is currently in the process of renewing its voluntary Interstate Access Undertaking (IAU) with the ACCC. This process has been ongoing since March 2018 and involves extensive customer and regulatory engagement. In parallel, the Track Access Agreements (TAA) between ARTC and each Operator, which defines the terms and conditions of access for each operator and includes the above items that the applicants are seeking to negotiate, will also be renewed.

In addition to the IAU, ARTC also has a voluntary access undertaking covering access to its Hunter Valley Coal Network (HVAU). The HVAU reflects a substantially different framework to the IAU, in particular with Coal Customers contracting for network capacity rather than rail operators. The submission and approval process for the HVAU has involved engagement with a group of Coal producers, the Hunter Rail Access Task Force (HRATF), to help facilitate engagement. HRATF is not a counterparty to any contract and only facilitates industry positions on matters related to the HVAU.

This experience of engaging with an industry body has highlighted the efficiencies of the process, but also highlights the potential risks of parties negotiating outside the joint framework to seek to improve their individual commercial outcome.

An important conclusion from this experience is that the efficiency of the process is maximized when there is alignment amongst the joint parties on issues. Where there is not alignment, the process creates inefficiencies by requiring multiple interactions with individual companies as well as the joint engagement.

The efficiency of the joint engagement is therefore circumstance specific based on a combination of the relevant instrument, its network coverage and the terms being addressed (and importantly not addressed). Given the bespoke nature of network access and operational decisions, the weight of particular clauses in the risk allocation between RNOs and Users will vary by customer, impacting on determinations of whether a clause is non-price or not given those potential changes in risk profile.

This range of individual issues ensures that it is not possible to define every specific circumstance where the negotiation process will benefit from joint engagement and those where it will not. Therefore, the voluntary nature of the proposed conduct is critical because this provides ARTC with the ability to determine if the collective bargaining process will assist or hinder the engagement process based on the merits of the proposal at that time. Given that the process can deliver efficiencies in the engagement process, but ARTC maintains the right to engage in joint or separate negotiations at its sole discretion, ARTC does not have any concerns with the authorization.

If you have any questions, concerns or would like to discuss anything in this submission please feel free to contact me on [REDACTED] (ph) or [REDACTED] (email).

Yours sincerely

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Jonathan Teubner
Head of Economic and Regulatory Development