



Australian  
Competition &  
Consumer  
Commission

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23 May 2016

Dear Stakeholder

**Re: Consultation on proposed extension and variation to the Australian Rail Track Corporation Limited 2011 Hunter Valley Coal Network Access Undertaking**

The ACCC is seeking submissions on the Australian Rail Track Corporation Limited's (ARTC) application to extend and vary its 2011 Hunter Valley Coal Network Access Undertaking (the 2011 HVAU) (the Application). The Application was submitted on 20 May 2016.

The Application, together with supporting materials from ARTC, is available on the ACCC's website at:

<http://www.accc.gov.au/regulated-infrastructure/rail/extension-of-the-2011-hunter-valley-access-undertaking>

Alternatively, you may go to the ACCC's homepage, [www.accc.gov.au](http://www.accc.gov.au), and follow the links to 'Regulated Infrastructure' and 'Rail' and 'Extension of the 2011 Hunter Valley Access Undertaking'.

**Background**

The ACCC accepted the 2011 HVAU in June 2011. The 2011 HVAU sets out the terms and conditions of access for parties seeking to run trains on ARTC's Hunter Valley Rail Network in New South Wales. The undertaking also sets out the details of the financial model governing ARTC's revenues. The 2011 HVAU is due to expire on 30 June 2016.

On 23 December 2015, ARTC submitted the proposed 2016 Hunter Valley Coal Network Access Undertaking (the 2016 HVAU) to the ACCC for assessment under Part IIIA of the *Competition and Consumer Act 2010 (Cth)* (the Act). This undertaking is intended to replace the 2011 HVAU.

The ACCC published the proposed 2016 HVAU on 24 December 2015 and released a consultation paper on 8 January 2016. Documents relating to the proposed 2016 HVAU are also available on the ACCC's website.

The Application submitted by ARTC is seeking to extend the 2011 HVAU while the assessment process for the proposed 2016 HVAU is finalised.

**Proposed effect of the extension and variation**

The Application proposes to vary the 2011 HVAU to:

- extend the term of the 2011 HVAU by six months to 31 December 2016;

- reduce the rate of return for the extended period consistent with that submitted by ARTC for the proposed 2016 HVAU (to a real pre-tax rate of return of 6.74% and a nominal pre-tax rate of return of 8.50%);
- conduct a reconciliation as part of the 2016 annual compliance process that has the effect of backdating any difference between the rate of return that is ultimately accepted for the proposed 2016 HVAU and the rate of return that applies during the extended period; and
- make other amendments relating to transitional arrangements for the true up test, compliance assessment and pricing for the extended period.

## Submissions

The ACCC encourages parties seeking to make a submission on the Application to do so as soon as possible and at the latest by **5:00pm on Monday 6 June 2016**. It is in your interest that the submission be lodged by this date, as section 44ZZBD of the Act allows the ACCC to disregard any submission made after this date.

Further, the ACCC notes that there is limited time until ARTC's current access undertaking expires. It is therefore in parties' interests to make submissions within this timeframe to allow sufficient time for the ACCC to make a decision prior to 1 July 2016.

In deciding whether to consent to a variation of an access undertaking under subsection 44ZZA(7) of the Act, the ACCC considers the matters set out in subsection 44ZZA(3) of the Act. Essentially, the ACCC may accept the Application if it thinks it appropriate to do so, having regard to the various matters set out in the Act.

In making a submission, parties are encouraged to address the matters listed in subsection 44ZZA(3) of the Act.

Submissions should be addressed to:

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 General Manager  
 Infrastructure & Transport – Access & Pricing Branch  
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The ACCC prefers to receive electronic copies of submissions, either in PDF or Microsoft Word format, which allows for the submission text to be searched.

If you have any questions about this consultation letter, please contact Sarah Sheppard on (03) 9290 1992 or at [sarah.sheppard@acc.gov.au](mailto:sarah.sheppard@acc.gov.au), or Grant Kari on (03) 9290 1807 or at [grant.kari@acc.gov.au](mailto:grant.kari@acc.gov.au)

Yours sincerely



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