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23 February 2024

Dear Mr Schroder

GrainCorp response to Consultation Paper: ARTC's draft 2024 Interstate Rail Network Access Undertaking

GrainCorp appreciates the opportunity to provide the submissions to the Australian Competition and Consumer Commission's (**ACCC**) in response to the ACCC's consultation paper dated 20 December 2023 regarding Australian Rail Track Corporation's (**ARTC**) proposed 2024 interstate rail network access undertaking (**IAU**).

GrainCorp has been working with ARTC in respect of the IAU as part of ARTC's pre-lodgement stakeholder consultation process. While GrainCorp appreciated the opportunity to be consulted on the IAU, there continue to be a number of active and ongoing concerns that have not been adequately addressed by ARTC during consultation and/or covered in the IAU. Specifically, concerns that relate to GrainCorp's ongoing experience as an access seeker and more broadly in respect of the bulk grain industry's access requirements.

GrainCorp respectfully submits that there are a number of material concerns that need to be addressed and are not currently addressed under the IAU. It is of vital importance that access to this critical piece of infrastructure, the Interstate Rail Network, is not hindered due to ARTC's monopoly power over the provision of rail and ancillary services and infrastructure in the North-South corridor and that the operation of the Network and its regulation under the IAU serves to provide and facilitate a transparent, consistent, and efficient means for access seekers to access the Network.

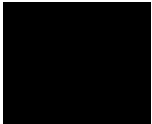
Specifically, the IAU does not recognise and sufficiently address:

- (i) that not all access seekers will be seeking direct access to the ARTC Interstate Network as an Accredited Operator under the Rail Safety National Law;
- (ii) GrainCorp's requirements when seeking access from ARTC to the ARTC Interstate Network;
- (iii) the clear and significant need to provide transparency around terms and conditions for these key customers and stakeholders such as GrainCorp in the downstream market who seek access to the ARTC Interstate Network;
- (iv) the requirements of different industries, such as the bulk grain market, which should be separately addressed in the IAU.

Further, the IAU fails to appropriately identify and address the impacts of unduly onerous non-price terms on access seekers such as GrainCorp through ARTC's operational decisions and does not address the need for greater consistency in network standards and operating requirements across rail networks.

More broadly, GrainCorp disputes the proposition that road freight can be used as an alternative option available to rail access seekers. There are many reasons why this proposition should not be supported including, but not limited to, the significant investment that has been made in the Network.

Your Sincerely,



Nigel Lotz
General Manager - Operations

GrainCorp response to Consultation Paper

ARTC's 2024 draft Interstate Rail Network Access Undertaking

Introduction

Part IIIA of the *Competition and Consumer Act 2010* (Cth) (**the Act**) governs the facilitation of third-party access to services by a facility owner who has natural monopoly characteristics, which in this case is ARTC in relation to the ARTC Interstate Network.

ARTC has a natural monopoly over the below rail operation of the ARTC Interstate Network which the ACCC has acknowledged noting that regulation is required to govern the terms and conditions of access to this corridor¹.

In the ACCC guidance paper released in 2022, the ACCC sought to provide guidance to ARTC as the infrastructure owner and to users of this infrastructure of the ACCC's current views of what it expects should be addressed in the IAU. Some of the issues highlighted include the current and future competitive environment of the ARTC Interstate Network and the appropriate regulatory approach for any such regulation of this network.

The ACCC has previously acknowledged that:

IAU is an access undertaking that sets out the principles and processes under which ARTC is obliged to provide access to businesses wishing to run trains on the Interstate network².

The ACCC has also acknowledged that the main users of the ARTC Interstate Network include bulk grains on two key corridors of the ARTC Interstate Network. This is in addition to users of the network who transport intermodal freight and non-bulk freight.

Leading up to the submission of the IAU, the ACCC has previously advised ARTC that there are a number of items ARTC can update and improve in its undertaking.

GrainCorp notes the objects of Part IIIA of the Act which are set out in section 44AA of the Act. In particular, the two objects are to:

- i) *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 market; and*
- ii) *Provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry*

The interests of persons who want to access the service and the public interest, including the public interest in having competition in the markets, are also key considerations for the ACCC to consider in determining whether to accept an access undertaking application under section 44ZZA(3) of the Act.

GrainCorp, in its capacity as an access seeker, welcomes the opportunity to participate in the ACCC's stakeholder engagement relating to the IAU so that the IAU meets the requirements of access seekers such as GrainCorp, as well as promoting a broader public benefit of, and economic competitiveness for, the grain industry both in Australia and worldwide.

To that end, GrainCorp has responded not only to the questions the ACCC posed to stakeholders on certain matters, but has raised additional areas that GrainCorp is seeking consideration of and determination as part of the ACCC's IAU decision-making process.

¹ <https://www.accc.gov.au/by-industry/rail-shipping-and-ports/interstate-rail-network-access-undertaking/the-regulatory-framework-for-artcs-interstate-network/guidance-paper> - 22 July 2022

² p6 [Microsoft Word - Final ARTC 2023 IAU Guidance Paper - July 2022\(14068848.4\).docx \(accc.gov.au\)](#)

Pricing and services (Part 4)

Question 1 – Do stakeholders have views on the inclusion of 8 service categories, collectively ‘Reference Services’, which are subject to the Standing Offer? Should there be any additional services included in the ‘Reference Services’?

Further clarification is required to confirm the clear applications of each service definition, as it is unclear when particular services should fall into one category and not the other, eg Heavy Freight could readily apply to the heavy rail used to transport grain freight along the ARTC Interstate Network.

In relation to grain, the IAU would benefit from further detailing the commodity-based service categories, where grain has its own rates based on its own unique commodity category and then split out into further sub-categories of Mandatory Grain and Ad Hoc Grain to provide greater clarity on what these terms mean. This will then flow into more targeted and appropriate pricing based on those unique and further defined commodity categories.

Question 2 – Do stakeholders have views on the proposed access charges and pricing in the Proposed Undertaking, including the change to a stand-alone price cap mechanism?

Any consideration of a stand-alone price cap mechanism that is absent a floor limit may not achieve the economically competitive market that the ACCC seeks to regulate in the IAU, as charges rarely reach the ceiling limit.

Regardless of whether the a ceiling or floor limit is maintained or varied, GrainCorp submits that the bulk grain industry in particular can be heavily impacted by volatile or sudden changes in access charges and the cost and pricing mechanism. This is mainly due to the seasonal and dynamic nature of bulk grain freight movements as compared to other industries which tend to have greater consistency such as the coal industry.

Pricing reliability and relative predictability will promote long term investment and improve efficiencies, which in turn can be recovered through increase charges so as the real benefit can be quantified. GrainCorp submits that it is critical to ensure that the mechanism for how this benefit is quantified is set out in the IAU as it should not be the monopoly holder that holds the discretion to determine the benefit, particularly in relation to Inland Rail where an assumption may be made of the benefit that may or may not be fully realised and may not reflect the end users and access seekers’ experience.

Question 3 – Is CPI the best rate to use to adjust the price cap?

GrainCorp by and large agrees that CPI is the best rate to use to adjust the price cap on the basis that cost of labour and materials tend to track with CPI and would provide better certainty and forecasting predictability for access seekers.

Question 4 – How can ARTC de-identify a negotiated service and publish sufficient non-pricing information on a negotiated outcome?

ARTC may be able publish the pricing information in an industry wide basis or publish the pricing information with a summary of the negotiated outcome and the price without providing identifying information.

Dispute Resolution for negotiations (Part 3)

Question 5 – Do stakeholders have any comments on the change in the executive mediation step in the dispute resolution process, or any other aspects of the pre-arbitration dispute resolution arrangements?

GrainCorp supports executive negotiation and mediation as part of any dispute resolution process. It is important that executive negotiation occur prior to any escalation under the dispute resolution arrangements, specifically, prior to the dispute reaching mediation or arbitration.

Mediation can be an effective tool for smaller, dedicated rail users to resolve disputes particularly in circumstances where such users may lack the resources to negotiate effectively with ARTC. GrainCorp submits that the ACCC’s oversight and/or monitoring of the executive mediation step and dispute resolution process will serve to provide

reassurance that the dispute resolution process is being administered effectively and can be relied upon by access users who have a genuine need to engage in that process.

GrainCorp submits that the jurisdiction for mediation should be the jurisdiction for which access is sought. GrainCorp does not see the benefit for access users of extending the period for which any dispute should then be referred to mediation following unsuccessful negotiation discussions. That is, it should be retained at 10 Business Days. Access to the rail network is often time critical and can have great consequences for access users monetarily and practically if a dispute is not dealt with swiftly. Given the nature of what is in dispute, 20 Business Days notice to refer to mediation (or to arbitration with the ACCC) is too long a period to wait for the next step in the dispute resolution process to be triggered.

The appropriateness of the proposed changes to the dispute resolution process of applicants seeking to negotiate access to the ARTC Interstate Network will be addressed in Questions 7 – 9.

Question 6 – Do stakeholders have any comments on the proposed use of a commercial arbitrator?

GrainCorp understands that there may be a cost imperative involved for the parties to a dispute in circumstances where a commercial arbitrator and commercial arbitration process were to replace the ACCC as arbitrator. The removal of ACCC intervention in a dispute between the access seeker and ARTC is a concern (as outlined in response to Question 5 above). The proposed changes to the dispute resolution process now require a number of steps for an access seeker to move through in order to obtain resolution of a dispute it may have with ARTC.

The ability to seek a final resolution directly from arbitration should be retained. Whilst executive negotiations should always be entertained and welcome, the context of the dispute resolution requirements for a breakdown in access negotiations in this part of the IAU means there should be options available for the access seeker applicant to arrive at a final resolution. To that end, if the executive negotiations fail to resolve the dispute, the access seeker should be able to seek mediation or arbitration as the next step in the process to speedily conclude the matter.

In the event this option leads the access seeker applicant to choosing arbitration to finally resolve the access issue in dispute, GrainCorp submits that the expertise and specialist lens of the ACCC performing the arbitration should be retained. Alternatively, appropriate guard rails should be included in the arbitration framework to ensure that an arbitrator provides due weight to the imbalance of power between ARTC and the access seeker and that, depending on the nature of the dispute, 1 to 3 arbitrators be appointed with a comprehensive understanding of the competitive landscape in which access users are operating in and to ensure that the principles and objectives of the IAU are being met and employed in any access dispute and resolution of such a dispute takes such factors into consideration.

Question 7 – Do stakeholders have any concerns with the arbitration procedures specified in clause 3.12.5? Please provide details or why or why not.

ARTC have specifically excluded key items that GrainCorp would require to be considered as part of the arbitration that forms part of a dispute resolution mechanism for regulated access. It is not clear why ARTC has sought to exclude from the arbitrator's consideration in making an award the objectives and principles set out in the Act and the consideration of the benefit to the public in having competitive markets. If the ACCC is minded to agree to the underlying principle of a commercial arbitration, then some of the procedurally transparent matters that have been excluded should be reinstated as a minimum.

The accepted position is that the arbitration will be conducted in accordance with the ACICA Rules, however ARTC has sought to have a number of them amended in the IAU in a manner which prioritises ARTC in the SA jurisdiction and fails to retain the competition law lens that any arbitration should have. The jurisdiction for any dispute should be the jurisdiction in which the relevant services are based and provided. Any references to the jurisdiction of SA should therefore be removed and broader jurisdiction applied.

Whilst it may be usual to have an agreed and executed Arbitration Agreement in normal commercial arbitrations, progressing the execution of such a document where if the terms of the agreement cannot be finalised, ARTC can unilaterally cease negotiations and not be obliged to comply with the IAU in relation to a request for access is a concern.

If ARTC is required to extend the Network including interconnections under an award made by the commercial arbitrator, then ARTC should also bear some or all of the cost in so being required, including bearing some or all of the

costs of maintaining the extensions of the Network. This should not be excluded automatically from consideration in any award an arbitrator makes.

Question 8 – Is the list of matters the Arbitrator must take into account in making an award in clause 3.12.5(a)(xii) appropriate?

Our response to question 7 is equally applicable here and should be considered its answer to this question.

Question 9 – Is this list of things the Arbitrator may or must not do in clause 3.12.5(a)(xiii) appropriate? Do any items need any further clarification?

Our response to question 7 is equally applicable here and should be considered its answer to this question.

Question 10 – Do stakeholders consider any changes are required to the dispute resolution process in the Indicative Track Access Agreement?

GrainCorp does not have any specific submission to make in relation to this question.

Annual reporting and performance indicators (Part 8, Schedule G, Schedule I)

Question 11 – Do proposed financial information publication requirements provide clear and appropriate transparency

The proposed financial information publication requirements are appropriate when reported by network Segment. Note commentary in Q13 below about appropriate Segment structure.

Question 12 – Any other financial information stakeholders need ARTC to publish?

ARTC should be required to publish the revenue generated through other types of access to the ARTC Interstate Network, specifically revenue ARTC generates through Third-Party Works Licence applications, infrastructure connection agreements, infrastructure licensing and other types of access to the ARTC Interstate Network to allow transparent monitoring and reporting, including the extent to which it is reinvested into the maintenance, repair and upgrades of the ARTC Interstate Network.

Question 13 – Should ARTC report on different performance indicators?

GrainCorp is of the view that current performance reporting can be improved, both in the geographic detail and in the performance indicators reported on.

The historic reporting provided under the IAU is far too geographically broad and as a result is of little meaningful utility to grain users of the ARTC Interstate Network. Rather, GrainCorp submits that the IAU should be further revised to include more regional section, or even industry specific performance data, with the objective of providing more meaningful performance information relevant to GrainCorp and the wider grain industry's use and experiences on the Interstate Network.

GrainCorp is supportive of the introduction of the concept of Network "Segments" as per Schedule H of the IAU being used for both financial and performance reporting but asserts many of these Segments are too broad and need further subdivision to better reflect the operation and use of the Interstate Network.

Some of the proposed Segments are appropriate, such as Segments: 7. Cootamundra – Parkes, 10. Moss Vale – Unanderra, and 11. SSFL incl. Sefton Park Junction – Flemington South.

Other Segments are still far too large and would be improved by further subdivision to reflect those junctions:

- Segment 3 Dry Creek – Spencer St (Melbourne) should be divided into:
 - Dry Creek – Dimboola,
 - Dimboola – Ararat, and
 - Ararat – Spencer St (Melbourne)

to reflect the critical junctions into the Vline regional networks

- Segment 4 Melbourne (Tottenham) – Macarthur should be divided at the critical congestion junctions Moss Vale, Cootamundra, and Junee. We assert that this Segment should become:

- Moss Vale – Cootamundra,
- Cootamundra – Junee, and
- Junee – Melbourne (Tottenham).
- Segment 11 SSFL – Flemington South should be increased in scope to encompass Moss Vale – Macarthur too, thus becoming Macarthur – Flemington South.
- Segment 6 Crystal Brook – Parkes could be divided into:
 - Crystalbrook – Broken Hill,
 - Broken Hill – Parkes

The performance reporting needs to be consistent across all Segments, with the same metrics and measurements being reported on. The reporting should be expanded to include a measures of:

- Network capacity availability, in paths per day.
- Available paths outside the mandatory timetables paths (i.e. what is the spare capacity for ad-hoc trains)
- mandatory path utilisation, and
- healthy trains held/delayed to recover unhealthy trains.

Changes to other Parts of the IAU

Question 14 – Any comments on the proposed Interstate Network Development Strategy (INDS)

This is a positive initiative of ARTC, given its projected objectives that ARTC has set out the INDS will address projections of interstate rail task as it relates to industries such as grain, network resilience and performance.

The INDS process should not be limited to train operators (in the Rolling Stock Operator sense) but should be broadened to include network users with significant infrastructure and rail network use. Generally speaking, the significant private investment decisions being made into rail infrastructure that connects to or uses the Interstate Network is being made by non-Rollingstock Operator entities.

For example, GrainCorp has made significant investment into rail infrastructure like sidings, above rail loading infrastructure, below rail unloading infrastructure, and aside rail container terminal infrastructure, but also additional grain storage and handling investment in rail specific loading sites. GrainCorp, like other large rail user entities, should be included in the development strategy.

Question 15 – Do stakeholders have any comments on the Commencement Date or the length of the Proposed Undertaking?

GrainCorp is content with both the Commencement Date and the length of the IAU given the fluidity of key factors that will have a significant impact on factors that need to be considered in the IAU, including Inland Rail.

Question 16 – Do stakeholders have any comments on the proposed new ability for the ACCC to request information from ARTC during the term of the undertaking?

GrainCorp is of the view that the ability of the ACCC to obtain additional information from ARTC during the term of the undertaking may assist to provide greater transparency in respect of ARTCs application of the IAU uin day to day operations and provision of access more generally.

Question 17 – Do stakeholders have any comments on the Proposed Indicative Track Access Agreement (ITAA)?

GrainCorp notes ARTC seeks to update the ITAA to reflect the various agreed positions into the one document and a number of these proposed changes appear to be administrative in nature.

The only revisions that GrainCorp specifically makes comment on are the third-party liability provisions in clause 15.6 of the ITAA and the deletion of the reinvestment of insurance policy savings in clause 16.2 of the ITAA.

Specifically, GrainCorp notes that the commercial position in the ITAA, for example no claim for consequential loss in cl 15.4 and recovery of contribution by the Operator against ARTC for third party liability in cl 15.6(b) provides a more

balanced commercial proposition than what GrainCorp has experienced when seeking access to above rail infrastructure at grain sidings.

It is not clear why ARTC are seeking to delete the requirement in cl 16.2 of the ITAA to reinvest its money saved in insurance premiums to repairs, maintenance or upgrades to the Interstate Network that would benefit users of the ARTC Interstate Network. ARTC should seek each and every opportunity to prioritise such an investment.

Question 18 – Do stakeholders have any comments about any of these differences in the Proposed Undertaking?

GrainCorp does not have any specific comment as these appear to be purely administrative in nature and are not material.

General questions about the Proposed Undertaking

Question 19 – Do stakeholders have any views on whether ACCC should accept the draft IAU?

GrainCorp submits that the ACCC should not accept the draft IAU without addressing the concerns and improvement opportunities raised by the rail operators and rail users, including GrainCorp. The current proposed IAU doesn't adequately protect users from ARTC using its monopoly powers, seeks to move away from a competition focused arbitration dispute resolution mechanism and otherwise misses the opportunity for better performance and transparency reporting.

Question 20 – Do stakeholders consider ARTC needs to make any amendments to the Proposed Undertaking not otherwise covered in this Consultation Paper? If so, please provide reasons

There are a number of matters that GrainCorp believes should be actively considered and determined on by the ACCC when making its decision in relation to accepting or otherwise the IAU. GrainCorp has set out these additional matters below.

Recognition of non-Accredited Operators seeking direct access to ARTC Interstate Corridor

One of the constraints of the current and IAU is that while the network is broadly described as "the track and related infrastructure" but the IAU clearly focuses on the track and its use by Accredited Operators. With this focus the IAU doesn't adequately recognise the interests of other significant access seekers with rail & rail related infrastructure, such as GrainCorp. ARTC is in a position to exercise its monopoly powers in determining the terms and condition.

Evolution in safety legislation and safety practises about the rail corridor are driving positive improvements in the safety of the rail network, but this evolution has delivered unexpected consequences and has resulted in ARTC having the ability to use Safety Legislation to impose costly and commercial contracts onto those third parties.

GrainCorp has a unique and significant interaction with the ARTC Interstate Network across 3 states of Australia. As detailed above, GrainCorp's access to the ARTC Interstate Network is essentially on the basis of its facilities and significant swathes of land being immediately adjacent to or within 5 and up to 50 metres of the ARTC Interstate Network.

GrainCorp seeks access to the ARTC Interstate Network not just through commercial arrangements with Accredited Operators, but through:

- i. its own grandfathered historical access licences for below and above rail infrastructure that ARTC were bound by when it entered into the Head Lease with TfNSW dated 4 September 2004;
- ii. major construction works and activities;
- iii. private siding and/or connection agreements;
- iv. temporary access for maintenance activities;
- v. access for utilities;
- vi. ARTC/Inland Rail project delivery

The IAU does not adequately capture the nature of and interactions of access seekers like GrainCorp. It is instead oriented toward rollingstock operators running on the network.

Part 6.1 of the IAU talks extensively about Operators and Access Holders in the Interstate Network Development Strategy, but it is often the terminal operators or silo operators (like GrainCorp) that are investing in the rail and rail loading infrastructure to drive efficiency and growth, as is evident in key sites such as Milvale, Red Bend, Quandialla, Condobolin, Cunningar and Bellata. Access seekers like GrainCorp are also the recipient of Accredited Operators track access as 100% of the costs are passed through.

GrainCorp requests that the IAU specifically address and protect GrainCorp and similar key downstream customers unique access to ARTC's Interstate Network.

Industry Specific Access Needs

Different industries, such as bulk handling grain operations, access the ARTC Interstate Network both through Accredited Operators and through other means, and come with their own intricacies. The IAU does not account for this different kind of access and access seekers (either currently or in its proposed form). For grain in particular, there is no recognition or protection of the seasonality of production and downstream market demand, and the price sensitivity of the grain market in Australia. Grain is often treated as the lowest priority user of the network and sees significant disruption and inefficiency as a result.

The seasonality inherent to grain leaves the grain industry exposed to loss in network capacity over time, as ARTC preferences other industries that can be more consistent in operation. Historically there was sufficient "spare" capacity in the network to allow grain movements through the network. Over time this capacity that is critical to grain has been at risk of being eroded as it is sold to other users that can sustain higher rail costs, like coal. ARTC has recognised that these kind of access seekers are key customers in other NSW non-undertaking networks, but doesn't provide clear protection to the capacity needed by grain.

Pathing and programming priority rules are another example of how the interests of particular user groups are often not adequately taken into account. The well documented prioritisation of passenger rail for programming and pathing considerations as against the needs of freight rail often fails to take into account the impacts of this prioritisation on the capability and capacity of the network to maintain and/or grow freight capacity. Grain freight has a tendency to be of the lowest freight priority in the rail and freight rail pecking order and as such is exposed to the largest impact of these prioritisation decisions. GrainCorp is concerned that this will be further exacerbated with the future commissioning and operation of Inland Rail and with passenger rail growth, if adequate protections are not considered in the IAU.

Grain Is A Captive Customer

In leading up to the revision of the IAU, the ACCC has previously recognised the varying views of stakeholders it has consulted. In particular, different stakeholders have noted the extent of ARTC's market power and how ARTC uses these powers in relation to 'captive customers' regardless of their status under the Rail Safety National Law (RSNL) – ie non-Accredited Operators.

There are non-Accredited Operators (as defined under the RSNL) such as TfNSW that have submitted to the ACCC that they are essentially 'captive customers' of ARTC in seeking access to the ARTC railway corridor.

GrainCorp also considers itself a captive customer of ARTC as, for the better part of 100 years, GrainCorp has deliberately developed, grown and constructed its operations and associated facilities with the primary focus of accessing the adjacent ARTC Interstate Network, rather than focus on the road transport network alternative.

GrainCorp requests the ACCC recognise and address the unique issues non-Accredited Operators face in seeking direct access to the ARTC Interstate Network in the IAU.

Road transport not a viable alternative option to rail for GrainCorp and other similar access seekers

In its 2022 guidance paper, the ACCC stated that ARTC faces a degree of competition from road and sea freight, but still recognised that ARTC has a natural monopoly over the ARTC Interstate Network.

GrainCorp's view is that there is no meaningful competitive constraint on ARTC's provision of services to GrainCorp. The degree of competition ARTC faces from road and sea freight is extremely limited when considering the location and nature of transportation that bulk grain movements require for both export and domestic grain markets. As alluded to earlier, GrainCorp previously submitted to ARTC the impacts of relying on road transportation where rail transportation is the preferred method for bulk grain movements.

It is well known in the industry that grain producers are generally a low rate of return business and market cost takers, at the mercy of market dynamics. To that end, changes in cost within the supply chain flow directly to the farmgate value of grain. Due to the low margins, the grain market is unable to compete on price for track access (unlike other commodities where the market will bear increased costs in the extreme margins) and is inherently a less profitable for a network manager.

Other commodities can more easily "jump" to an alternative mode (like trucking) as is the case for intermodal traffic where first & last mile dynamics play a larger factor in levelling the playing field between road and rail and can present a cost-viable alternative options for intercity shipping container movements.

It is a matter of public interest and positive economic competition for the Australian domestic and international grain industry that the rail transport of grain remains cost effective and capacity is preserved. There is a significant societal impact of inefficient or costly grain transport that directly affects economic viability of farms and regional communities. It is vital that the need for a grain-industry-specific approach to rail network access and regulation is promoted and protected.

While GrainCorp does not consider road a realistic competitive alternative to rail, we are concerned that some volumes may be forced onto road if access to the rail network becomes constrained. In particular, GrainCorp is concerned that with the future commissioning of Inland Rail, GrainCorp's direct access to the ARTC Interstate Network including through the Accredited Operators, will be significantly constrained. If these constraints are not addressed, one result could be that GrainCorp may be forced to outload its commodities via road to port despite the significantly higher cost to GrainCorp. This may adversely impact the sustainability gains and broader socio-economic benefits that GrainCorp has sought to achieve for growers and regional communities over the immediate and longer term. This is separate to any safety and wellbeing consideration for the communities through which rail traffic can be shifted to road transport.

GrainCorp requests that ACCC determine to revise the IAU to address the above issues.

Transparent and reasonable terms and conditions for GrainCorp seeking direct access to ARTC Interstate Network

Over the years since ARTC entered into the head lease with TfNSW, GrainCorp has observed ARTC taking a more commercially one-sided approach to its contractual terms following GrainCorp requests for access to the ARTC Interstate Network.

GrainCorp has been experiencing a growing trend of ARTC negotiating with a "take it or leave it" for access that GrainCorp and its predecessors have enjoyed for almost 100 years. For example, ARTC is demanding uncapped liability for GrainCorp infrastructure that exists in the airspace over non-mainline rail include consequential and indirect loss, where market standard is for mutual exclusion of consequential and indirect loss. ARTC seeks GrainCorp to take on liability that is not consistent with the risk profile of the scenario at hand, particularly when compared to the contractual terms set out in the Indicative Access Agreement for the mainline of the ARTC Interstate Network. To this end, GrainCorp has more onerous terms and conditions to access the rail corridor than the Accredited Operators. The appropriate allocation of risk and responsibility between above and below rail is skewed significantly in favour of ARTC through, amongst others, commercially conservative indemnities.

the appropriate allocation of risk and responsibility (via indemnities) between above and below rail is essential.

These terms and conditions differ to the market standard for a similar risk profile. The licence fees ARTC are also seeking to introduce are significantly in addition to the commercial costs ARTC faces in the administrative burden of managing these licences. It is not readily apparent if there is a sound basis for this cost recovery.

ARTC is also using its significant market power as the head lessee of the ARTC Interstate Network to require GrainCorp forego its grandfathered access licences so it can be replaced with a number of access agreements and

infrastructure licences that significantly disadvantages GrainCorp for a risk profile that has not materially changed for decades.

GrainCorp requests ARTC reasonably negotiate template terms and conditions for access to the ARTC Interstate Network that is publicly available with the appropriate commercial redactions.

Non-pricing impacts of ARTC operational decisions on access seekers

GrainCorp has previously submitted to the ACCC that ARTC's exercise of its natural monopoly powers is demonstrated through non-pricing impacts of its operational decisions on access seekers. Examples of these include:

1. speed restrictions, maintenance, approval
2. fees to undertake particular works

The ARTC Interstate Network is important to GrainCorp as it relies on this route for grain transport between the regional rail network and the ports in NSW and Victoria. GrainCorp relies on an efficient grain train achieving a predictable and reliable cycle time from silo to port (or mill). Planning, management and operation of grain trains can be plagued or stopped as a result of congestion, lack of priority of pathing, clunky interfaces between rail networks and network managers, speed restrictions, inefficiencies in maintenance or lack of knowledge of the state of existing track infrastructure assets.

GrainCorp considers that the IAU needs to be substantially improved in how it addresses non-price terms of access, including service standards, network planning, and interface issues.

Significant inconsistency across ARTC and other rail networks

The current and draft IAU, particularly cl 6.4(b)(viii), does not propose to make any changes to address the significant risk of inconsistency in operating standards across the rail networks.

The multiple rail networks across Australia, including the ARTC Interstate Network, are operating independently and in an uncoordinated manner. This independence presents a multitude of problems for current and potential network users, as each network develops its own rail standards, processes, and operations. When a rail network has unique attributes a rail operator needs to maintain the sufficient knowledge and technology to be compatible with and allowed onto that network. As the more independent the network standards, the more challenging it is for an operator to maintain cross-network compatibility and capability.

This problem is not static, it is growing in severity over time as each network evolves in relative isolation. It is the monopoly nature of rail networks that allow them to implement changes which diverge from the other networks whilst imposing the burden of compliance onto the rail operators. These changes are a source of increasing inefficiency for network users and rail operators.

For example, the industry shift to in-cab signalling/safe working systems like ETCS is a looming risk for rail users, network managers and operators such as ARTC. This technology is designed to reduce the infrastructure needs of a network manager, whilst growing the network capacity through enabling smaller dynamic track sections. There is a very real risk Australia ends up with 4 or 5 entirely independent in-cab signalling systems, and the computer radio systems required would exceed the possible real estate within locomotives, causing cross-network incompatibility. Inland Rail is a clear and relevant example of this.

The proposed IAU does not evidence a commitment to and compliance with coordinated industry-wide standards, ensuring all parties are maintaining alignment and consistency in standards, operating practises, technology requirement and train management processes. Any future changes and improvements to this technology should be applied across the whole of the national rail network so as to ensure efficiency is maintained and/or improved and remains centralised.