

Our ref: #16,434,546



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17 May 2024

Simon Ormsby
Group Executive Interstate
Australian Rail Track Corporation
PO Box 10343
ADELAIDE, SA 5000

By email: [REDACTED]
[REDACTED]

Dear Mr Ormsby

Section 44ZZBCA request for information no.2 – Interstate undertaking – 17 May 2024

On 12 December 2023 the Australian Rail Track Corporation (ARTC) submitted the 2024 Interstate Network Access Undertaking application (Proposed Undertaking) to the Australian Competition and Consumer Commission (ACCC) to replace the 2008 undertaking due to expire on 30 June 2024.

This letter requests further information from ARTC in relation to the Proposed Undertaking and ARTC's supplementary documents such as the Explanatory Guide, to assist the ACCC in making its decision on whether to accept the Proposed Undertaking. The detail of the information request is set out in Schedule 1 to this letter.

Please provide the information specified in this notice in electronic format by emailing it to transport@acc.gov.au no later than 7 June 2024.

This letter, including Schedule 1, is a notice under section 44ZZBCA of the *Competition and Consumer Act 2010* (the Act). A copy of this notice will be published on the ACCC's website shortly. Information provided in response to this notice will also be published subsequently on the ACCC's website. Any information that is confidential should be clearly identified, and reasons should also be provided in support of that claim. The identified information must be genuinely of a confidential nature and not otherwise publicly available. The general policy of the ACCC on the collection, use and disclosure of information is set out in the ACCC & AER *information policy: collection and disclosure of information*.

If you have any questions about this request, please contact [REDACTED] by email at [REDACTED].

Yours sincerely

[REDACTED]

Matthew Schroder
General Manager
Infrastructure & Transport - Access & Pricing Branch

Schedule 1

NOTICE REQUESTING INFORMATION UNDER SUBSECTION 44ZZBCA(1) OF THE COMPETITION AND CONSUMER ACT 2010

Interstate Network Access Undertaking – 17 May 2024

– Information Request No.2

The ACCC gives this notice, requesting ARTC to provide the information specified below, pursuant to subsection 44ZZBCA(1) of the Act. The period from 17 May 2024 to 7 June 2024 is the specified period for a response to this notice pursuant to subsection 44ZZBCA(1) of the Act.

To assist the ACCC in making its decision on whether to accept the 2024 Interstate Network Access Undertaking application (Proposed Undertaking), further information is requested on the matters listed in the “Contents” section below:

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1. Access negotiation for non-Operators

Clause 3.4(b) of the IAU states:

ARTC will negotiate Access with an Applicant which is not an Accredited Operator where the Applicant will procure the services of an Accredited Operator to operate the proposed Services provided that all of the terms and conditions of the Access Agreement are met by the Applicant or the Operator.

The ACCC understands that, in practice, ARTC does not allow a party to negotiate access for train paths without procuring the services of an Accredited Operator at the time of negotiation.

Question 1.1:

What are the reasons why an access seeker cannot buy a path from ARTC without specifying an Accredited Operator at the time of negotiating the paths?

Question 1.2:

To support competition in the provision of Operator services, could a process be established that enables an end user to have control of a path and later contract this out to an Accredited Operator for delivery (subject to appropriate forward notice to ARTC)?

2. Scope of the access undertaking (non-Operators)

Some stakeholders are concerned that entities that are not train operators still require access to the network for activities such as loading goods or accessing sidings in relation to a service and that these activities are treated differently or and some stakeholders argue unfairly in terms of fees and conditions. They seek the protection afforded to train operators by the IAU, including transparency of prices and terms, as well as a framework for negotiation and dispute resolution.

Question 2.1:

What are ARTC's views on including provisions in the IAU for non-Operator access to the monopoly infrastructure, including with separate indicative access agreements appropriate to their type of access?

Question 2.2

Can any parts of coverage of non-Operator access be implemented in the Proposed Undertaking or, if not, in what timeframe could they be implemented?

3. Differential pricing for premium paths

In its response to question 5.5 of the ACCC's February 2024 request for information (RFI #1), ARTC noted the difficulties of time of day of pricing, with the variability of the peak times and value of that time but noted that it is always willing to engage on the commercial requests of its customers.

Question 3:

If ARTC wished to introduce set different prices for sub-categories of existing Reference Services (such as time of day or duration), does it consider the Proposed Undertaking (in

particular, the definition of Reference Services and the associated price caps) would allow this?

4. Interstate Network Development Strategy

Clause 6.1 of the Proposed Undertaking refers to the Interstate Network Development Strategy (INDS) being based on rolling annual capacity forecasts and forecast volumes and requirements.

Stakeholders recommended that the INDS should:

- include projects from all funding sources and state the source and type of funding, and
- include post-implementation assessment of costs and benefits of major projects.

Question 4.1:

Noting the INDS is a strategy document, what time horizon are these forecasts likely to be over?

Question 4.2:

Is there any reason the INDS cannot state the source and type of funding for each project/option being considered, as well as final funding details in the proposed 'close-out reports'? For example, indicating whether funding originates from company internal funds, government grants or equity—including whether it is general funding or for specific projects?

Question 4.3:

Will the INDS include periodic reviews of major projects that have been conducted in the past?

Question 4.4:

How will the INDS forecasting deal with Inland Rail (including upgrades on existing IAU segments and new sections), for example, whether the long-term forecasts of volume demand will be updated versions of those required for Inland Rail on relevant routes, and whether the forecasts of capacity will include the additional capacity to be provided by Inland Rail?

5. Sharing costs of additional capacity

One stakeholder submission claimed that the proposed model for rail operator investment outlined in the Proposed Undertaking is unlikely to attract significant operator-led investment as new network capacity is available to all users. Clause 6.3 of the IAU provides that an applicant for additional capacity must agree to meet the cost, and ARTC would own any such capacity.

Question 5:

Has ARTC considered including provision in the Proposed Undertaking for ARTC and beneficiaries to agree to share the costs and benefits of proposed additional capacity? What are ARTC's views on this?

6. Reporting in Schedules G and I

We wish to understand specifically how reporting under Schedules G and I will look and the extent to which they relate to each other. Some stakeholders have also requested Performance Indicators be reported on a more detailed segment level.

ARTC currently publishes performance indicators on its website at a broad level (e.g., Track condition for East–West, Melbourne–Sydney, Sydney–Brisbane and Melbourne–Brisbane) but we note that some indicators such as Track Quality Index are compiled at a much more detailed level.

Question 6.1:

Provide an example of the data that would be reported regularly in Schedules G and I, using 2022-23 for illustration. Provide in a form that is suitable for publication, showing the performance indicators and cost items that ARTC currently proposes to provide in both Schedules G and I.

Question 6.2:

Explain how each cost item in table 2 of Schedule G relates to the cost categories in Schedule I and the items provided in ARTC's floor analysis data.

Question 6.3:

Does ARTC consider it would be feasible to make these data publicly available as raw data at IAU segment level or even finer detail, so that stakeholders have a better understanding of where pressure points and track quality are, relevant to the sections they use?

7. Data availability

Some stakeholders have requested improved data, including real-time data, on train movements on the interstate network that is in a form that is easy to use for analytical purposes to support their operations.

Question 7.1:

What mechanisms are in place for, and to what extent can, individual operators request data from ARTC to meet their analytical requirements?

Question 7.2:

How can data release be enhanced or improved, including real time data, and could the beneficial data arrangements and systems available for the Hunter Valley network (or parts thereof) be implemented for the Interstate network?

8. Inland Rail – capital expenditure and inclusion in IAU

ARTC's response to question 5.7 of RFI #1 sets out data on capital expenditure for 2018-19 to 2022-23 for each existing segment of the interstate network.

ARTC's response to question 4.1 of RFI #1 also included the following:

Inland Rail will be considered as existing segments once commissioned and will be reported as such under the relevant provisions of the 2024 IAU.

Question 8.1:

Does the data referred to in ARTC's response to question 5.7 of RFI #1 include any expenditure for Inland Rail on upgrades of those existing segments? If not, where are those Inland Rail expenditures reported?

Question 8.2:

In relation to sections of Inland Rail, provide details on:

- a) which have been officially commissioned and what date it occurred
- b) which will have data such as further expenditures included in the IAU annual reporting from that date of commission
- c) which are expected to be dealt with under other jurisdictions' regulatory frameworks (now or in future)?

9. Other revenue

To assist with understanding the total costs and revenue generated by the monopoly rail infrastructure that comprises ARTC's Interstate network, a stakeholder proposed that ARTC should publish revenue not just from access charges but also revenue generated through other types of access, possession over, or use of the network.

Question 9.1:

Provide data split by category for 2022-23 on any revenue items related to access to the Interstate network, including under third-Party Works Licence applications, infrastructure connection agreements, infrastructure licensing, access to sidings, access to recover rollingstock, or other types of revenue, not covered in previously reported revenue (such as in floor analysis data).

Question 9.2:

Does ARTC consider it would be feasible to provide such revenue data in annual reporting under Revenue in Schedule I of the Proposed Undertaking?

Question 9.3:

Are the costs associated with generating this revenue already included in the expenditure data that has been provided to the ACCC? If not, provide this cost data.

10. Segments - Maroona to Portland line

We note that a submission stated that the Maroona to Portland line is not being maintained at the standard required in the Victorian lease, and this is distorting competition between the ports of Portland and Geelong. It also stated that the ARTC's lease shows that the parties intended that the line would be subject to an access undertaking or access code approved by the ACCC. We note the Australian Government's announcement in the 2024-25 Budget of \$150 million in funding to upgrade the line.

Question 10:

Why is the Maroona to Portland line not included as a segment in the IAU, given the original intention and noting that the Port Augusta to Whyalla line is included and appears to have similar characteristics as a branch line to a port?