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Mr Matthew Schroder
General Manager
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26 September 2012

Dear Mr Schroder

Coal & Allied Submission in response to ARTC's revised proposed variation to Hunter Valley Rail Network Access Undertaking as submitted on 7 September 2012.

Rio Tinto Coal Australia, as manager of Coal & Allied Industries Limited, provides the attached submission in response to the ACCC's invitation for consultation on ARTC's proposed variation to the Hunter Valley Access Undertaking dealing with the designation of Indicative Services and related matters.

RTCA wishes to convey its appreciation of the efforts of the ACCC team in pursuing an appropriate variation and in addressing the issues raised previously by RTCA.

RTCA and Coal & Allied also provide their consent for the attached submission to be made available for publication by the ACCC in the normal manner.

If you require any further information please contact me on 07 3625 5533.

Yours sincerely,

T. Renwick

Timothy Renwick
General Manager Infrastructure
Rio Tinto Coal Australia

Coal & Allied Industries Limited

Submission in response to the Australian Competition and Consumer Commission's Consultation Paper

In relation to Australian Rail Track Corporation's revised Hunter Valley Rail Network Access Undertaking variation

26 September, 2012

Introduction and Summary Perspectives

Coal & Allied (**C&A**) welcomes the opportunity to comment on the Australian Rail Track Corporation Limited's (**ARTC**) revised proposed variation to the Hunter Valley Rail Network Access Undertaking (**HVAU**).

C&A is appreciative of the ACCC's efforts to address the issues raised in C&A's previous submissions on the proposed variation to the HVAU and welcomes the subsequent modifications now proposed by ARTC. While many important issues from the original proposed variation have been addressed in some way, few have been resolved to C&A's satisfaction. In particular, C&A still has significant concerns regarding three key issues:

1. The levels of price differentiation proposed by ARTC, although improved, still do not, in C&A's view, provide the appropriate economic signals to the industry regarding efficient use of and investment in coal supply infrastructure. The relative Coal Chain Capacity efficiency between Services is still not reflected appropriately.

2. C&A is highly supportive of ARTC's decision to remove the originally proposed distortionary price adjustments for Pricing Zone 3 producers. C&A is concerned, however, that ARTC appears only to make a firm commitment to remove these adjustments in the initial pricing to be implemented in the variation, and not necessarily in formulating future Charges.

3. Although appreciative of the additional information provided by ARTC to date, C&A is still of the view that there is a lack of transparency around the pricing methodology, which hinders efficient use of and investment in Coal Chain infrastructure. For example, ARTC provides no indication as to the method it will use to price the 'grandfathered' 74 and 91 wagon Services.

In addition, C&A is still of the view that the application of the 'two-thirds' rule in the dispute resolution provision relating to the Initial and Interim Indicative Access Charges sets too high a hurdle to dispute Charges. As C&A has previously submitted, the provision should be amended such that the 'two-thirds' rule applies to Holders of each type of Service within a Pricing Zone not all Holders of Interim or Indicative Services.

Overall, C&A considers the revised proposed variation to be insufficient. Given the length of time taken to reach this proposed variation and its intended purpose as a temporary measure until a more comprehensive approach to Service definition is undertaken, however, C&A considers it essential that ARTC implement a variation as soon as possible.

Concerns regarding the levels of price differentiation

Given the current industry context of severe Coal Chain Capacity constraints, C&A considers sending appropriate pricing signals regarding the efficient use of Coal Chain Capacity to be of critical importance. Although ARTC has increased the level of pricing differentiation between the Initial Indicative Services in the revised proposed variation, relative to the original proposed variation, the magnitude remains substantially lower than the appropriate level in C&A's view.

Table 1: Summary of differences between ARTC's and C&A's proposed pricing differential for the Total Access Charge for the two Initial Indicative services*

ARTC's original proposed variation	ARTC's revised proposed variation	C&A's view
10%	14%	27%

* Charge for an 82 wagon configuration in comparison to a 96 wagon configuration

C&A remains of the view that in the absence of ARTC's ability to explicitly model the impact on Coal Chain Capacity, Network Capacity represents the most appropriate proxy to use at this time. C&A does not agree with ARTC's approach of simply shifting the relative weightings between Network and Coal Chain Capacity from 33%/67% to 50%/50%, but retaining a zero impact on Coal Chain Capacity between the two Initial Indicative Services, as this does not achieve an appropriate level of differentiation.

Although factors other than Network Capacity could affect the relative use of Coal Chain Capacity of the two proposed Initial Indicative Services, C&A contends, that in the near term, Network Capacity represents – by far – the largest constraint on Coal Chain Capacity. This is clearly illustrated by ARTC's near-term contracted capacity gap, as identified by the HVCCC in August/September 2012.

The impact of train length on Coal Chain Capacity is highlighted by the inclusion of two significant initiatives to increase the length of common Hunter Valley train configurations amongst a range of measures proposed by the HVCCC in September 2012 and currently the subject of industry discussion (including, C&A understands, having been shared with the ACCC) to mitigate the impact on Coal Chain Capacity of ARTC's contracted capacity gap.

Given these initiatives, which ARTC does not appear to object to, it is difficult to understand how ARTC can maintain a position that there should be no reflection of the negative impact on Coal Chain Capacity by utilizing the 82-wagon Initial Indicative Service rather than the 96-wagon Initial Indicative Service within the proposed pricing arrangements.

Concerns around price adjustments for Pricing Zone 3 producers

C&A is strongly supportive of ARTC's decision in the revised variation not to incorporate the distortionary price adjustments to Pricing Zone 3 producers included in the original proposed variation. C&A is concerned, however, regarding ARTC's statement in its current Application to vary the HVAU, p.6:

"While ARTC no longer considers an adjustment required in relation to this application, ARTC retains its discretion under the HVAU to take into account competing factors outside of cost and efficiency considerations when differentiating pricing for Coal Access Rights in the future. ARTC seeks the views of the ACCC, in the decision, in relation to this discretion to take into account competing factors in future pricing decisions"

This statement appears to imply that ARTC has only made the commitment to remove the distortionary price adjustments in the initial pricing to be implemented in the variation. C&A contends that this commitment should extend to the formulation of all future Charges, and be transparent to the ACCC.

Concerns around transparency

C&A is appreciative of the additional information provided by ARTC to date. C&A is still of the view however, that the pricing methodology, for 2012 and for subsequent years, lacks sufficient transparency, further hindering efficient use of and investment in Coal Chain infrastructure. Pricing signals will only lead to efficient decision-making across the Coal Chain if the methodology used to price various Services is transparent and consistent.

If ARTC has concerns regarding specific perceived confidentiality issues that might be created by providing the additional information required to allow stakeholders to determine the appropriateness of Access Charges (such as the proportion of GTKs for each Service by Pricing Zone) this should be raised with the ACCC and stakeholders and appropriate mechanisms put in place to address the relevant confidentiality concerns, e.g. aggregation where necessary, rather than a blunt refusal to make such information available.

C&A still has concerns regarding the transparency of the pricing methodology ARTC will use in revising Access Charges for the Interim Indicative Services. ARTC has provided only an indication as to the methodology it will use with no clear statement that the methodology will be the same as that for Initial Indicative Services.

ARTC has also not provided any specific details as to the treatment of differentials to the 'grandfathered' 74 and 91 wagon Services. As C&A has previously submitted, to provide appropriate pricing signals, the 'grandfathered' Services should be priced relative to other Services based on the weighted average efficiency of the 74 and 91 wagon Services. In a previous submission, however, ARTC seems to indicate that it will apply the 91 wagon efficiency, rather than a weighted average[1]. This methodology is inappropriate as it further exacerbates the issue of 'muted' pricing signals at a time when the Coal Chain is facing severe capacity constraints, which are primarily driven by the Network.

Conclusion

As outlined in this submission, C&A considers that the revised proposed variation to the HVAU is still deficient in a number of important areas.

While essentially dissatisfied with this outcome, given the need to implement some mechanism to promote efficient use of rail and coal chain infrastructure and the limitations of the ACCC's accept/reject alternatives at this point, C&A would not pursue any avenues of appeal against an ACCC acceptance of the revised proposed variation. C&A believes, however, that it would be appropriate for the ACCC in any acceptance of the proposed variation to make clear to ARTC its expectations for implementation of the revised proposal in both the initial pricing period and in subsequent periods.

C&A also considers that ACCC should use any determination to provide guidance to ARTC on the characteristics they will seek within the full Indicative Service determination variation and to re-iterate the need to ensure that this is introduced in a timely manner, allowing sufficient time for industry consultation, feedback and resulting modifications.

[1] C&A's interpretation of comments by ARTC in its February 2012 response to ACCC Information Request, p.15.