

15 October 2018

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Dear Mr Schroder

## **Pacific National Submission to the ARTC Variation Application to ACCC to Vary the 2011 HVAU**

### **Background**

Pacific National welcomes the opportunity to respond to the Australian Rail Track Corporation (ARTC) September 2018 application to the Australian Competition and Consumer Commission (ACCC) to vary the 2011 Hunter Valley Access Undertaking (HVAU).

Pacific National recognises that this September 2018 application to vary the 2011 HVAU is a revised version of the ARTC December 2017 application to vary the 2011 HVAU.

In February 2018 Pacific National made a submission on the ARTC December 2017 application to vary the 2011 HVAU. In this February 2018 submission Pacific National strongly supported the ARTC's proposed changes to rail access pricing structures but raised concerns relating to:

- Restrictions on train operations due to the physical limitations of adjoining networks, where these restrictions may impact the access pricing applying to trains using these adjoining networks;
- The potential for the service envelope to act as a disincentive for improved rollingstock and train configurations;

- The removal of clause 11.5 d) of the Indicative Access Holder Agreement (AHA) which previously protected access holders from take or pay impacts if they shifted to a service which used rail capacity more efficiently.

### **Changes in the ARTC September 2018 Application to Vary the 2011 HVAU**

On Pacific National's reading of the September 2018 application to vary the HVAU there are four areas where there have been changes of substance from the December 2017 application to vary the HVAU. The four areas of change are:

- Changes to clause 2.3 b) which changes the dates that the variation will be effective, and the provisions will commence operation;
- The introduction of a clause at 2.3 d) which requires ARTC to review the appropriate economic ceiling price for future versions of the HVAU. In addition, this clause states that the currently proposed dual ceiling model and pricing approaches in Pricing Zone 3 will not necessarily be included in the HVAU beyond 2021;
- The introduction of clauses at 9.8 and 9.9 to address the governance and approval processes for ARTC capital expenditure, including processes for RCG endorsement and ACCC dispute resolution. These changes are required as ARTC capital expenditure now needs to be classified as sustaining or expansion capital and then approved via the processes set out in these clauses; and
- The reinstatement of clause 11.5 d) of the IAHA which protects access holders from take or pay impacts if they shifted to a service which use rail capacity more efficiently.

### **Pacific National Position on the ARTC September 2018 Application to Vary the 2011 HVAU**

As outlined above, in February 2018 Pacific National made a submission to the ACCC on many of the matters now contained in the September 2018 application to vary the HVAU. To the extent that the December 2017 application to vary the HVAU is consistent with the September 2018 application to vary the HVAU then the Pacific National position put forward in February 2018 should be considered when considering the September 2018 application to vary the HVAU.

Pacific National's positions on the four areas where there has been a substantial change between the December 2017 and September 2018 applications to vary the HVAU are outlined below.

- Changes to clause 2.3 b): On the basis that the regulatory decision on the September 2018 application to vary the HVAU will be concluded in a timely manner then Pacific National has no concerns with changes to the dates when variation will be effective, and the provisions will commence operation.
- The introduction of clause at 2.3 d): This clause requires ARTC to review the appropriate economic ceiling price for future versions of the HVAU and, in particular it requires ARTC will review the pricing approach once Pricing Zone 3 loss capitalisation has concluded.

Pacific National note that the ACCC Consultation Paper explicitly seeks comment on the drafting of 2.3 d). Pacific National understands that this clause has been developed in conjunction with current 2011 HVAU access holders. Pacific National has no major concerns with the drafting of this clause but seeks that the future ARTC review contemplated by this clause explicitly allows for consultation with third parties including access holders, access seekers and operators.

- The introduction of clauses at 9.8 and 9.9: Pacific National has no major concerns with either the clauses 9.8 and 9.9 or the changes that have been made to other sections (for example new definitions in clause 14) to support this drafting.

Pacific National note that the ACCC Consultation Paper explicitly seeks comment on whether the distinction between Expansion Capital and Sustaining Capital is clear and whether there are concerns with the proposed process for endorsing capital expenditure at the RCG.

Pacific National believes that the distinction between Expansion Capital and Sustaining Capital is sufficiently clear.

In relation to the RCG endorsement process Pacific National has previously expressed concerns<sup>1</sup> that train operators, whose operations are directly impacted by ARTC capital expenditure and capacity enhancements, are not voting members of the RCG. Pacific National remains concerned with the role of operators within the RCG, however within the context of the current ARTC application to vary the

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<sup>1</sup> See for example the Asciano Submission to the ACCC on the 2016 ARTC Hunter Valley Coal Network Access Undertaking March 2016 page 17

2011 HVAU the drafting of clauses 9.8 and 9.9 appear to be consistent with the operation of the RCG as it is currently set out in the 2011 HVAU.

- The reinstatement of clause 11.5 d) of the IAHA: Pacific National very strongly supports the reinstatement of this clause which protects access holders from take or pay impacts if they shifted to a service which use rail capacity more efficiently. This clause will allow access holders to utilise more efficient train configurations without being impacted by take or pay charges which may result from using fewer, more efficient train services.

### **Conclusion**

Overall Pacific National supports the ARTC September 2018 application to the ACCC to vary the 2011 HVAU, and in particular Pacific National supports the reinstatement of clause 11.5 d) of the IAHA.

Pacific National believes that the ACCC, in assessing the ARTC drafting which has been revised since the December 2017, should consider including requirements for stakeholder consultation in the ARTC review to be conducted under clause 2.3 d).

If you wish to discuss this submission, please contact me on 02 8484 8056.

Yours sincerely

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