



AUSTRALIAN RAIL TRACK CORPORATION LTD

Ref No:

8 June 2006

Mr. Lyndon Rowe
Chairman
Economic Regulation Authority
GPO Box 8469
Perth Business Centre
Perth WA 6849

Dear Mr. Rowe,

DRAFT DETERMINATION ON WESTNET RAIL'S PART 5 INSTRUMENTS - ARTC SUBMISSION

Please find following a submission prepared by the Australian Rail Track Corporation in response to ERA's Draft Determination on WestNet Rail's proposed Part 5 Instruments.

The submission contains no information that ARTC would consider commercial-in-confidence.

Background

The Western Australian Economic Regulation Authority ("Authority") has sought submissions from interested parties with respect to the Draft Determinations resulting from the review of the Part 5 Instruments as required by the then Independent Rail Access Regulator when the Part 5 Instruments were first approved in 2002 and 2003. The Part 5 Instruments under review consist of the Costing Principles; Over-payment Rules; Train Management Guidelines (TMG) and Train Path Policy (TPP).

ARTC notes that Draft Determinations of the Authority are to not approve WestNet Rail's four proposed Part 5 Instruments. The Authority has identified a total of twenty-five amendments that need to be made before the Authority will approve these Part 5 Instruments. Nine amendments are required to the TPP, seven amendments to the TMG, five amendments to the Over-payment Rules and four amendments to the Costing Principles.

The WA Regime: ARTC's Previous Submissions

In its previous submission to the Authority, and its previous involvement in the consultation processes conducted by the Authority (or its predecessor) and the NCC in relation to the WA Rail Access Regime, ARTC's positions and comments have largely been based around two broad themes, being:

- ❖ The need for a consistent approach to access to the interstate network, including



that part of the interstate network in WA. ARTC has consistently indicated that it considered it important that access regimes within each jurisdiction in Australia are consistent to the maximum extent possible, whilst recognising structural differences between providers in each jurisdiction.

- ❖ The need for the WA Access Regime and regulatory supervision to ensure that adequate measures are put in place to provide the market with confidence that access to the WA network can be gained in a timely, fair and equitable way when the access provider is vertically integrated. One outcome of this is that ARTC has consistently argued that access regimes for vertically integrated operators need to be much more prescriptive in nature than regimes considered appropriate in a vertically separated environment.

The situation in relation to the vertically integrated environment in WA has changed significantly since ARTC's last submission. In mid-February 2006 there was an announcement regarding the acquisition of certain rail assets, primarily in Western Australia, from the Australian Railroad Group by Queensland Rail (QR) and Babcock & Brown. Under the proposal:

- QR will own and operate the above rail business and associated infrastructure in Western Australia. The sale will also cover two contracted services, one in New South Wales and one from Melbourne to Adelaide; and
- Babcock & Brown will own and operate ARG's below rail business, Westnet Rail, in Western Australia. This infrastructure is leased from the Western Australian government, and the existing lease has 43 years to run.

In relation to this proposal and the impact on the ongoing operation of the Part 5 Instruments, the Authority will need to be satisfied that there is sufficient contractual and practical separations in place such that Babcock & Brown and QR are not able to act collectively in WA to effectively extract "vertically integrated" value from the above and below rail assets. Whether or not structured separation is achieved, QR being the dominant user of the network will be in a position to exert significant influence on Babcock & Brown's decision making.

ARTC acknowledges that the Authority has highlighted many required amendments to WNR Part 5 Instruments, many of which were proposed in ARTC's previous submission. ARTC welcomes these required amendments and acknowledges that many of these required amendments help bring greater consistency to access regimes across jurisdiction in Australia. ARTC however has a couple of residual concerns and these are discussed below.

Train Management Guidelines

ARTC raised issues in relation to WNR's vertical integration ownership structure and how a vertically integrated provider could manage third party trains with respect to its own above rail provider. The Authority has noted that the new ownership structure, with Babcock & Brown owning below rail, that vertical integration concerns are no longer likely to be an issue. ARTC refers to the discussion above in relation to the effect of the revised ownership structure and the need for the Authority to be satisfied with the contractual and practical separation that will occur under the new ownership structure, as well as the constraint of any influence that QR may have over Babcock & Brown.

ARTC proposed Quarterly public KPI reporting by WNR (currently the reporting is annual). The Authority noted WNR report quarterly on a broad range of KPI's to the



Authority in private and as such annual public reporting is satisfactory to the Authority. ARTC remains of the view that the market is likely to consider that receiving evidence of a deterioration in performance up to twelve months after it occurs as being too late in most cases and hence quarterly public reporting is preferable. Given the KPI information is already prepared quarterly by WNR and provided, in private, to the Authority then the extension of providing this information to the public does not appear overly onerous or resource intensive for WNR or the Authority.

ARTC recommended a range of extra KPI's (transit time, TQI, more detailed speed restrictions, unit cost) and the Authority has noted that a separate review of KPIs is appropriate. Further, the Authority advises that the revised Railways (Access) Code requirements, subject to Code review recommendations being endorsed and enacted by WA Government, require WNR to publish an "Information Pack" on its website. The Authority notes that many of ARTC's recommended KPIs will be in that Information Pack. ARTC welcomes the use of a publicly available Information Pack and recommends that the Authority analyses the proposed Code review recommendations, prior to WA Government enactment, to ensure that the KPIs required to be reported under the revised Code are consistent with those proposed by ARTC.

Train Path Policy

In relation to ARTC's recommendation to include more information on path plan and capacity in WNR's Master Train Plan and also to acknowledge WNR's significant capacity commitment to ARTC, the Authority noted that it has recommended some amendments to the Railways (Access) Code that include a "Information Pack" on WNR's website that will include the information suggested by ARTC. Subject to the Code review recommendations being endorsed and enacted by WA Government, the Authority advises that ARTC's concerns will be addressed. ARTC recommends that the Authority analyses the proposed Code review recommendations, prior to WA Government enactment, to ensure that the Train Path information to be included is consistent with the information proposed by ARTC.

In relation to "Competition for the same Train Path", ARTC suggested the use of a NPV calculation when assessing competition for the same train path and also the ability to allow access seekers to reserve capacity for a period of time following execution of an access agreement and subject to payment of an appropriate reservation fee. The Authority notes that a NPV approach requires a comprehensive evaluation process and this is not deemed necessary. ARTC's view remains unchanged in its view that a "first in first serve basis" does not adequately recognise the commercial interests of the railway owner. ARTC notes that the Authority is silent on its assessment of ARTC's suggestion in relation to "capacity reservation". ARTC's position is noted by the Authority (refer section 108 of the Authorities draft determination on Train Path Policy) however there does not appear to be any comment on "capacity reservation" from the Authority in its assessment (refer sections 110-115 of the draft determination).

In relation to "Removal of a Train Path:", ARTC noted that WNR's policy may have made it difficult to assess the level of utilisation where the criteria of six months monitoring of services coincides with a re-scheduling of paths as an outcome of a three-month period review against actual train performance. The Authority has deemed no change is required to WNR's policy. ARTC, in line with the need for consistency in approach across the interstate network, highlights this as an ongoing area of inconsistency between WNR and ARTC's respective policies.



Costing Principles

ARTC proposed an independent assessment of Gross Replacement Value. The Authority notes that WNR has in the past used independent consultants to provide cost estimates. The Authority also has, in the past, had the floor and ceiling assessment independently assessed. ARTC notes that whilst there may have been independent assessment in the past there is no future requirement for WNR nor the Authority to obtain independent assessments. Including a requirement for independent assessment in the Costing Principles instrument would formalise the requirement and ensure future compliance.

In relation to variation of floor and ceiling limits, ARTC suggested that annual floor and ceiling limits be reviewed in more detail by the authority (as with the case of ACCC review of ARTC's floor and ceiling limits). ARTC welcomes that the Authority in its draft determination has agreed with this and has recommend that WNR submit annual inflation adjusted floor and ceiling costs to Authority for review and approval.

Over-payment Rules

In relation to shared infrastructure, ARTC suggested that allocating revenue to branch lines first means un-commercial lines are kept open when perhaps funding of those branch lines & infrastructure should be more transparent. The Authority saw merit in keeping branch lines open and also advises that it has conducted audits on revenue allocation to ensure no gaming to receive revenue higher than legitimate costs. The Authority notes also that track users can negotiate fixed revenue allocation or route section basis. ARTC acknowledges the Authorities position however ARTC remains of the view that the objective of keeping un-economic branch lines should be dealt with in more transparent ways rather than through cross-subsidisation.

For further information regarding the preparation of this submission, could you please contact Mr. Jason Cameron, (08) 8217 4332, jcameron@artc.com.au or Mr. Glenn Edwards, (08) 8217 4292, gedwards@artc.com.au.

Wayne James
Acting Chief Executive Officer