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WestNet Rail Pty Ltd ABN 42 094 721 301

Mr Russell Dumas
Director Rail Division
Economic Regulation Authority (ERA)
Level 6, Governor Stirling Tower
197 St Georges Terrace
Perth WA 6000

Dear Russell

Part 5 Instruments – Submission on Draft Determination of the Train Path Policy (TPP).

WestNet has reviewed the Draft Determination of the TPP and the bulk of the amendments as referenced in the Authority's Draft Determination have been comprehended by WestNet in the marked up copy of the TPP attached to this letter.

However WestNet does oppose several of the required amendments, for the reasons outlined below.

Required Amendment 3 – “Section 2.2.1, on page 4 of the proposed TPP (conditional train path process), should be amended to make provision for the introduction of traffic specific capacity for bulk commodities on mainlines where demand for capacity is high, in order to remove potential barriers to entry for new operators.”

WestNet comment - Traffic patterns on all of WestNet's mainlines are not dominated by any single product. Setting aside pathways for product specific traffics on routes that already have limited remaining capacity available will create barriers to entry to the network for any other product traffics, other than the specific product.

In the event that a remaining path is to be taken up by an operator and it is considered that this action precludes other entities from access to that infrastructure, Section 10 of the Code would be triggered requiring, WestNet to seek the approval of the ERA before continuing with the access application. WestNet, as the network manager should continue to have sole discretion in the efficient management of Train Path allocation on any route.

Remaining paths should be available to any operator or product willing to utilise a pathway on the “use it or lose it” premise that the TPP is based upon. Implementation of this amendment will result in a self-contradictory Train Path Policy.

Required Amendment 8 – “Section 4 of the proposed TPP, should be amended to allow operators to sell a train path to another operator subject to the approval of WestNet, which cannot unreasonably be withheld.

WestNet comment - WestNet assert that allowing existing operators to on sell their Train Paths to another operator is anti competitive as it constrains the flexibility available to WestNet as the network manager. If train paths become available they should revert back to WestNet in accordance with Section 2.5.1 of the TPP.

WestNet's reasons why on-selling should not be allowed are:

- It is not an Operators core business to on-sell Train Paths.
- It may create the potential for gaming between operators discourages entry into the market.
- The remaining capacity can be more efficiently managed by WestNet.
- It creates another unnecessary level of administration to deal with on-selling terms and conditions.
- Maximising utility of remaining pathways will be constrained by third party involvement.
- WestNet should have the right to negotiate with operators on price and usage for pathways that are in demand.

WestNet understands that one of the reasons that the ERA wishes to make this change is to align the regulation of rail with the regulation of electricity and gas, the other industries regulated by the ERA. WestNet does not believe that this reason on its own justifies such a change.

Required Amendment 6 – ***“Section 2.6 of the proposed TPP should be amended by separating this section into two parts. The first part should deal with the removal of train paths due to under-utilisation. The second part should deal with the removal of train paths due to the transfer of a contract between operators.”***

WestNet comment – The first point of the second part of this amendment regarding the loss of a single customer train contract has been implemented by WestNet in the updated version of the TPP submitted by WestNet.

WestNet contends that the second two points regarding the loss of freight (major or minor) by an operator from multi-customer trains should be dealt with under section 2.5.1 of the TPP as a train path utilisation issue. As multi-customer trains are pre-dominantly general freight the operator should be given the opportunity to replace freight or ultimately consolidate his services under the rules governing train path utilisation.

WestNet would welcome the opportunity to discuss these issues with the ERA at a convenient time.

Yours faithfully

P Larsen
Acting General Manager
WestNet Rail