



Western Australian rail access regime

Submission by Worsley Alumina in response to WestNet's proposed
Train Management Guidelines

January, 2002

Contents

<u>1</u>	<u>Introduction</u>	4
<u>2</u>	<u>Definitions</u>	6
<u>3</u>	<u>Infrastructure issues</u>	6
	<u>3.1</u> <u>Use of the network in accordance with Scheduled Train Paths</u>	7
	<u>3.2</u> <u>Network blockage</u>	8
	<u>3.3</u> <u>Operator and track access consultation protocols</u>	8
<u>4</u>	<u>Operations conflict resolution procedures and protocol</u>	10
	<u>4.1</u> <u>General principles for train management</u>	10
	<u>4.2</u> <u>Maintenance provisions</u>	10
	<u>4.3</u> <u>Management of emergencies</u>	10
	<u>4.4</u> <u>Management of daily issues related to train operations</u>	10
<u>5</u>	<u>Disputes and performance monitoring</u>	11
<u>6</u>	<u>Control and management of access to network</u>	11
<u>7</u>	<u>Environmental and Dangerous Goods</u>	13

1 Introduction

The purpose of this submission is for Worsley Alumina (“Worsley”) to respond to the draft Train Management Guidelines (the Guidelines) prepared by WestNet Rail Pty Ltd (“WestNet”).

Worsley considers itself to be a potential operator on the rail network and as such the term “operator” is used to include both operators and proponents in this submission.

As Worsley indicated in its submission on WestNet’s Train Path Policy, examination of international and Australian experience relating to rail access regimes suggests that documents such as the Guidelines and the Train Path Policy are of critical importance to access seekers and third party operators.

They essentially define the rights of access seekers in a commercial sense prior to, during, and after the negotiation process for access to a track owner’s infrastructure. The documents are therefore critical for providing confidence to the market for the provision of above-rail services.

In turn, this requires that there be a high level of certainty, transparency and accountability in the documents outlining the manner in which rights of access are affected by the track owner’s policies regarding allocation of train paths and the real time management of services.

To the extent that there is ambiguity in the text of these documents, it must be expected that, in practice, a provider of track services with close affiliations (for example, through common ownership with an above-rail provider by a parent company) will be perceived as being able to exploit that ambiguity for the benefit of its above-rail associates.

For example, in the absence of clarity in the policies, operators will have no rights without recourse to arbitration, an expensive and time consuming process that can sufficiently delay negotiations so as to become a barrier to entry (as customers can be left with no commercial alternative but to continue to use AWR). Accordingly, the efficacy of the documents will turn on a track owner establishing detailed, consistent and enforceable rules that are clear to all parties.

As Worsley has also noted in its submission on WestNet’s Segregation Arrangements, while WestNet does not perform functions other than the provision of access to the rail infrastructure network in Western Australia, it belongs to a corporate group, the Australian Railroad Group (“ARG”), which does contain entities involved in the provision of above-rail services. In particular, Australian Western Railroad Holdings WA Pty Ltd (“AWR

Holdings”), WestNet’s parent company, also owns Australian Western Railroad Pty Ltd (“AWR”), a company involved in freight operations in Western Australia. AWR Holdings is wholly owned by the Australian Railroad Group Pty Ltd (“ARG”). Furthermore, while there are no directors of WestNet who are also directors of AWR, one of WestNet’s directors is also a director of ARG. These management and ownership links create the potential for competition in the above-rail market to be compromised, either by anti-competitive conduct by firms in the ARG group, or because the market perceives that there is a risk of anti-competitive conduct in the ARG group. The effectiveness of WestNet’s proposed Guidelines needs to be assessed with a view to minimising these risks.

Worsley’s submission is structured as follows:

- section 2 comments on two of the definitions provided in clause 2 of the Guidelines;
- section 3 comments on the “Infrastructure issues” set out in the Guidelines;
- section 4 sets out Worsley’s comments on matters pertaining to operations conflict resolution procedures and protocol in WestNet’s Guidelines;
- section 5 sets out Worsley’s comments on the Guidelines’ approach to disputes and performance monitoring;
- section 6 sets out Worsley’s response to the clauses of the Guidelines that deal with control and management of access to WestNet’s network; and
- section 7 provides Worsley’s comments on the proposed arrangements under the Guidelines for WestNet’s approach to environmental and dangerous goods.

2 Definitions

In the clause dealing with definitions used in the Guidelines, WestNet needs to clarify the following:

- in the definition of “Instructions”, the following comments are made:
 - the test as to whether or not the direction is exercised with reasonable care and are consistent with the Guidelines is a matter for WestNet and WestNet alone. Worsley submits that this should be able to be challenged by an Operator.
 - the protections offered in paragraphs (d), (e) and (f) become meaningless when considered in light of the exceptions listed in paragraphs (g), (h), (i), (j) and (k)
- it is not clear whether a determination that a matter falls within the ambit of “safety” is something that an operator can require be independently verified in the event of a dispute (for example, on application to the Regulator or an independent expert), or whether WestNet has ultimate discretion in determining whether something is a “safety” matter. Worsley considers that the former is far preferable to the latter, because of the danger that WestNet will use “safety” considerations as a guise for disadvantaging operators other than AWR;
- in the definition of “Network” the reference to “Areas” should be to “Access”; and
- the definition of “Operator” appears to be incomplete – see reference to – “see definition”.

3 Infrastructure issues

To the extent that any term of an access agreement has a material effect on the Guidelines, those terms should be reflected in the Guidelines to provide all interested parties an opportunity to comment on them. The regulatory processes under the Code provide no other opportunity for stakeholder input into such matters.

For example, there is a reference in the Guidelines that requires an Operator to have “fulfilled all the conditions in that [access] Agreement”. This raises questions as to the nature of those obligations which are not defined in the Guidelines. For example, the level of insurance WestNet seeks should be identified in the Guidelines.

3.1 Use of the network in accordance with Scheduled Train Paths

Clause 3.1 of WestNet's proposed Guidelines specifies the general rules for on-time entry and exit of trains on WestNet's network. Worsley makes the following comments about clause 3.1:

- WestNet has indicated that WestNet will ensure that there is on-time exit from the network for a train that enters the network on time, subject to safety considerations, matters outside the reasonable control of WestNet and emergencies. It is not clearly indicated, however, what is meant by these exceptions, and how, precisely, they can impact upon on-time exit. Moreover, there is no requirement for WestNet to compensate operators for any failure on the part of WestNet to deliver on this commitment where there is no justification for its failure to do so. Such compensation should be based on the cost to the end user from such failure;
- it would appear that a delay could occur to a train within the network caused by WestNet rather than the operator. The second paragraph of clause 3.1 makes no distinction between a train that is healthy or unhealthy. Moreover, without the provision of detailed information on timetables and the real time operation of trains, operators have no way of knowing whether or not WestNet has adhered to this provision. Therefore, greater transparency in train control decisions and allocation arrangements is necessary in order to make such judgements;
- WestNet reserves extensive powers to instruct operators, but does not indicate the circumstances under which they would be made:
 - WestNet appears to be reserving itself the right, through train control instructions, to instigate temporary changes to paths with no compensation or consultation. Moreover, due to operators having no specific rights in such circumstances, the temporary changes could persist for sufficiently long for them to become permanent in practice and an operator would have no redress in such circumstances;
 - there should be some basis for compensation where WestNet is unable to indicate a valid reason for the issuing of an instruction that disrupts an operator's passage through the network;
- WestNet absolves itself from lawful or negligent acts or omissions in this clause. It is submitted that WestNet should be responsible for such acts or omissions; and
- operators need to have sufficient information about network operations to be able to assess the legitimacy of train control instructions. The clause should be amended to provide a commitment by WestNet to provide such information. Accordingly,

Worsley submits that it is necessary for there to be complete transparency in relation to:

- the allocation of train paths on the Master Control Diagrams;
 - the allocation of train paths on the daily train plan;
 - real time information on the movements on the network; and
 - whether or not trains were run, and if so were they unhealthy.
- the requirement that an operator comply with Instructions so as to minimise disruption to other Operators' use of the network is unworkable – Operators should only be required to comply with Instructions;
 - a written copy of an Instruction should be provided whenever it is requested by an operator who is affected by it.

3.2 Network blockage

Clause 3.2 of WestNet's Guidelines sets out the arrangements that will apply in the instance of a network blockage. Whilst it is accepted that WestNet must have the capacity to direct operators to clear blockages, compensation arrangements for that operator should be established in WestNet's Guidelines.

The most practical arrangement in this regard is likely to be a situation in which the network provider acts as an agent for the clearing operator and for the network provider to charge the operator whose train breaks down and for the funds to be passed on to WestNet.

The reference to "operator" in the final paragraph of clause 3.2 should be clarified (that is, it should be clarified as to which operator is being referred to).

3.3 Operator and track access consultation protocols

Clause 3.4 of WestNet's Guidelines details the protocols for operator and track access consultation. Worsley considers that the reference to "the timing of this advice will be as agreed . . ." in the second paragraph is not clear. Worsley's opinion is that this advice should be immediate in all cases.

Again, WestNet should be responsible for any delays it causes to operators through network failure. This is highlighted by the fact that operators will be required to "pay" for a new track through the GRV valuation process – the level of service and quality of track should be consistent with that expected from new track.

It may be useful for this clause to include reference to interface planning, specifying the relevant individuals to contact in each organisation for particular requirements, and for these contacts details to form a schedule to the contract.

4 Operations conflict resolution procedures and protocol

4.1 General principles for train management

Clause 4.3 of WestNet's Guidelines sets out the general principles for train management for WestNet and operators on its network. However, this matrix appears to be incomplete – it is suggested that the remaining cells be completed in accordance with ARTC's train management principles. ARTC's train management principles form an Attachment A to this submission.

4.2 Maintenance provisions

Clause 4.4 of WestNet's Guidelines sets out the rights WestNet has to perform repairs, maintenance or upgrading of the network, etc. Worsley considers that there should be a requirement for compensation for disruptions caused by maintenance, given that operators already effectively “pay” for these through higher access prices (that is, a new network forms the basis of the GRV valuation used for access pricing).

4.3 Management of emergencies

Clause 4.5 of WestNet's Guidelines sets out the procedures that will apply in the event of an emergency that requires WestNet to close all or part of the network. Worsley considers that operators adversely affected by WestNet actions/instructions subsequently found to be unwarranted should be compensated.

4.4 Management of daily issues related to train operations

Clause 4.6 of WestNet's Guidelines sets out the rules that will apply to management of daily issues related to train operations. Worsley considers that “the WestNet Rules” should be clarified in an appendix to the Guidelines, because it is a term that is not presently defined in the Guidelines.

Similarly, Worsley considers that any significant provisions contained in the access agreement should also form part of this policy. Without this requirement, operators will be forced to undertake arbitrations in order to clarify their rights.

5 Disputes and performance monitoring

Clause 5 of WestNet's Guidelines sets out WestNet's policy on disputes and performance monitoring of its compliance with the principles set out in the Guidelines. Worsley submits that:

- the key performance indicators should be agreed as part of the original agreement;
- default standards and recourse to dispute resolution should be established as entitlements under the policy. This is because without such standards being recognised up front, operators will have no rights without recourse to arbitration, an expensive and time consuming process that can sufficiently delay negotiations so as to become a barrier to entry (as customers can be left with no commercial alternative but to continue to use AWR). In other words, they are much more effectively resolved through the regulatory process;
- reliance on agreement for rewards and penalties will simply not work without explicit provision for default arrangements in the Guidelines – especially with a provider of access belonging to an integrated group of companies that includes an above-rail provider. Penalties for WestNet's failure to fulfil contractual obligations should be based upon the loss the end user suffers from the failure; and
- whilst WestNet may have an internal system for monitoring compliance with its Guidelines, such monitoring should be conducted transparently and externally.

6 Control and management of access to network

Clause 7.1 of WestNet's Guidelines sets out the arrangements that will apply to control and management of access to WestNet's network. Worsley makes the following comments:

- in relation to clause 7.1.2 – without a copy of the Government lease, it is impossible to comment on this clause, other than to say that any right to provide access being disrupted by the lease agreement should be a matter for WestNet and the Government, not a matter for WestNet and operators. WestNet's obligation to provide access should not be affected by the lease and, to the extent that it is, operators should be compensated, with WestNet gaining a back-to-back right from the Government;
- in relation to clause 7.1.3(f) – the term "incidents" is not defined. Furthermore, it is not sufficient that WestNet should use its "reasonable endeavours" to provide operators with details of operating incidents "as soon as reasonably practicable".

There should be a stricter requirement than this so that the period is consistent with the path. Accordingly incidents should be reported to operators within 30 minutes where they affect or potentially affect that operator's path. All other operating incidents should be notified to all operators also within that defined time (30 minutes);

- in relation to clause 7.1.4(a) and (b) – the provisions are superfluous in light of clause 7.1.4(c) and should be deleted. Moreover, in clause 7.1.4(b), WestNet has not explained what is meant by a “sufficient standard of safety” and a “sufficient level of operational efficiency”. Worsley considers, however, that a sufficient level of operational efficiency is something for an operator to determine rather than WestNet;
- in relation to clause 7.1.5, Worsley queries the reference to “WestNet’s Network Rules” – these are neither defined nor provided. The Guidelines should incorporate an objective, Regulator-endorsed, set of Network Rules that form a schedule to the Guidelines;
- also in relation to clause 7.1.5, Worsley submits that, in practice, an operator’s warranty in relation to crew should be only to comply with all relevant accreditation conditions;
- in relation to clause 7.1.6(e), Worsley considers that the obligation that an operator is to ensure that its use of the network is carried out in such a way so as to minimise obstruction to others is completely unacceptable. This is because an operator will have no idea as to how its conduct affects others without much more information that it can possibly possess. The operator’s obligations should be objective and should relate only to section running times on-time running and compliance with train control instructions;
- in relation to clause 7.1.6(i), Worsley considers that there is some ambiguity with what information is “reasonably required” and information that is “commercial information”. This should be clarified. It is not clear what additional information would be required by WestNet beyond the train manifest.

7 Environmental and Dangerous Goods

Clause 7.2 of WestNet's Guidelines sets out the rules applying to dealings with environmental and dangerous goods. Worsley submits that:

- all notification obligations should operate both ways – that is, WestNet should undertake to notify Operators of any relevant environmental requirements;
- in clause 7.2.1, operators should only be required to comply with the Dangerous Goods Code and not WestNet's additional requirements. Accordingly, the phrase “and as is otherwise reasonably required by WestNet (on terms not inconsistent with the Dangerous Goods Code)” should be deleted; and
- the term “Environmental Condition” in clause 7.2.3 is not defined. This clause is far too wide – only subclause (b) should apply, and Worsley cannot see any need for subclause (a). In Worsley's view, if WestNet becomes aware of an environmental issue in relation to an operator, then it should secure appropriate direction from a competent authority for action rather than take action itself.

Attachment A

General Principles for Train Management											
All – To ensure operational safety is maintained through compliance with Safeworking Rules, Regulations and Procedures											
Track Authority – To ensure the integrity of the track and other infrastructure so that the train plan can be met											
Train Operators – To ensure operating integrity, including train crewing, locomotives, wagons and loading so that the train plan can be met											
Track Authority – To manage the Network on behalf of Train Operators based on agreed Entry/Exit times. Objectives of Track Authority are to manage trains according to their schedule for OT Exit, not to contribute to lost running, to make up time and to hold the gains.											
Train PLAN	Train A	AGREED NETWORK ENTRY/EXIT TIMES									
Train B	Train RUN	Actual Performance	OT running Premium	Running ahead Premium	Late running Premium	OT running High	Running ahead High	Late running High	OT running Standard	Running ahead Standard	Late running Standard
AGREED NETWORK ENTRY/EXIT TIMES	Actual Performance	TC OBJECTIVE	OT Exit	OT Exit	1 No more time lost 2 Make up time 3 Hold the gain	OT Exit	OT Exit	1 No more time lost 2 Make up time 3 Hold the gain	OT Exit	OT Exit	1 No more time lost 2 Make up time 3 Hold the gain
	OT running Premium	OT Exit	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	B or A Rule 2	B Rule 3	Scheduled Cross	B or A Rule 2	B Rule 3
	Running ahead Premium	OT Exit	A or B Rule 2	A or B Rule 2	B Rule 3	B or A Rule 2	B or A Rule 2	B Rule 3	B or A Rule 2	B or A Rule 2	B Rule 3
	Late running Premium	1 No more time lost 2 Make up time 3 Hold the gain	A Rule 1	A Rule 1	A or B Rule 4	A Rule 1	A Rule 1	B Rule 6	A Rule 1	A Rule 1	B Rule 6
	OT running High	OT Exit	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	B or A Rule 2	B Rule 3
	Running ahead High	OT Exit	A or B Rule 2	A or B Rule 2	B Rule 3	B or A Rule 2	A or B Rule 2	B Rule 3	B or A Rule 2	B or A Rule 2	B Rule 3
	Late running High	1 No more time lost 2 Make up time 3 Hold the gain	A Rule 1	A Rule 1	A Rule 5	A Rule 1	A Rule 1	A or B Rule 4	A Rule 1	A Rule 1	B Rule 6
	OT running Standard	OT Exit	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	A or B Rule 2	B Rule 3	Scheduled Cross	B or A Rule 2	B Rule 3
	Running ahead Standard	OT Exit	A or B Rule 2	A or B Rule 2	B Rule 3	A or B Rule 2	A or B Rule 2	B Rule 3	B or A Rule 2	B or A Rule 2	B Rule 3
	Late running Standard	1 No more time lost 2 Make up time 3 Hold the gain	A Rule 1	A Rule 1	A Rule 5	A Rule 1	A Rule 1	A Rule 5	A Rule 1	A Rule 1	A or B Rule 4
Rule 1 – Train B may be given preference on condition Train A will still meet OT exit objective											
Rule 2 – Both trains must meet OT exit objective											
Rule 3 – Train A may be given preference on condition Train B will still meet OT exit objective											
Rule 4 – Give priority to train where performance indicates it will lose least or no more time and even make up time and hold the gain											
Rule 5 – Train B may be given preference if Train A will continue to lose time and any gains made cannot be held											
Rule 6 – Train A may be given preference if Train B will continue to lose time and any gains made cannot be held											

- 04 -

Undertaking Version 2(tracked)

19/09/01