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Acting Rail Access Regulator
Office of the Rail Access Regulator
Level 27, 197 St Georges Terrace
PERTH WA 6000

Public Submission on WestNet Rail Proposed Costing Principles, Segregation Arrangements, Train Path Policy and Train Management Guidelines

Dear Dr. Michael

The Chamber of Commerce and Industry of WA (CCI) is pleased to submit its comments on the proposed Costing Principles, Segregation Arrangements, Train Path Policy and Train Management Guidelines submitted to the Rail Access Regulator by the track owner, WestNet Rail.

This submission reflects the views of members who are existing users or potential access seekers of the rail network.

Background

CCI has reviewed the documents submitted by WestNet Rail against the background of the sale of Westrail Freight to Australian Railroad Group and the requirement to provide third party access to the rail network in Western Australia. Prior to the decision to proceed with the sale, interested parties expressed divergent views on the sale of Westrail and the associated lease of the railway track. The main benefits of the sale and lease were attributed to the increase in competition by opening up the railway to third party operators and the ability of a private owner to introduce alternative funding sources and additional flexibility.

CCI maintains that increasing competition encourages efficient operations in most markets, providing benefits to existing users and increasing the potential for new customers to utilise spare capacity or to justify new rail infrastructure projects around the State.

As the only lessee of the railway track (excluding the Urban Rail System in Perth), WestNet Rail is a monopoly provider and is therefore subject to regulation by an independent Regulator. The Railways (Access) Code 2000 (the Code) was

established to give effect to the Competition Principles Agreement (which was one of three intergovernmental agreements signed by all the State, Territory and Commonwealth Governments to implement National Competition Policy) by defining and legislating the terms of provision of access. The proposed documents that are being commented upon, comprise the “Part 5 instruments” of the Code and are therefore binding on the track access provider, WestNet Rail. It is the CCI's view that the Code and, specifically, these supporting WestNet Rail documents should:

- Encourage competition between above rail operators by permitting third party access to the track
- Provide competitive access rates to all operators
- Ensure different operators in the same markets are treated equitably
- Prevent monopoly behaviour by the track owner
- Allow public consultation on all key matters
- Provide oversight and review through an independent regulator.

If these objectives are to be achieved then it is our view that WestNet Rail needs to provide more detail on its approach to the provision of access than has been included in the documents submitted to the Rail Access Regulator. In support of this view, we provide the following comments in relation to each of the documents submitted by WestNet Rail.

Train Management Guidelines

The Train Management Guidelines should be more detailed in the explanation of handling day-to-day conflicts on track. Our members have expressed the view that delays to scheduled train running impact on their daily operations and costs. Often these delays are caused by track condition or other users. Establishing a set of guidelines which would be followed by all operators and the track owner and measuring the performance of each of these parties with respect to the guidelines would provide confidence to all interested parties.

A series of Key Performance Indicators (KPI) to measure WestNet's performance in meeting the needs of users in relation to timetabling and track and signalling condition should also be part of these guidelines. For example, KPIs on the number and severity of temporary speed restrictions, blockages and time delays resulting from a blockage, track condition reports, signalling failures etc. would provide an overall summary of WestNet's performance across the network. More specific KPIs may be relevant to certain routes where traffic density has more effect on performance and accurate timetabling and scheduling are vital to maintaining on-time running.

Good communication rules are also required to avoid additional inventory, logistics and shipping costs to industry. In our view, the guidelines require expansion to ensure the network is optimised. More detailed definitions of healthy and unhealthy

trains, train priority statements and train control objectives are required. The conflict matrix which has provided in the guidelines appears to be incomplete and is difficult to follow in its current form.

Members have also expressed the view that, once agreed, the guidelines need to be consistently applied on a daily basis. Any departure from the guidelines should be recorded and published to ensure that each user is assured of an equitable resolution of daily train conflicts.

Train Path Policy

We do not believe that the Train Path Policy (TPP) proposed fully addresses the requirements of the Code. The primary aim of the TPP should be to:

- provide a policy framework on the allocation of train paths
- ensure there is no discrimination between operators
- maximise the utilisation of the network to the benefit of all users

The issues of how train paths are allocated, the precedence between conflicting paths, an adequate consultation process for allocation of train paths involving existing users and new access seekers and the approach where capacity constraints exist, need to be addressed in more detail in this policy document.

It is unclear how the statement (in Section 3.2 Paragraph 1) that train paths can be obtained "*... by negotiation with WestNet outside the provisions of the Code.*" would operate. This would suggest that there are two sets of rules - one for third party operators seeking access under the Code and one for those operating outside the Code. We would request clarification from the Regulator or WestNet as to the intent of this statement and an assurance that all applications for train paths will follow this policy document once approved by the Regulator.

Several members have also expressed the view that they require more certainty of future availability of train paths for long term expansion of their businesses where rail capacity may become an issue as production and output increases.

The document as submitted only allows for the allocation of train paths up to six months prior to the commencement of the service. This does not seem to take into account the requirements of, for example, a major mining expansion where commitments to minesite infrastructure could be up to two years prior to the commencement of rail demand. Projects of this nature require certainty of rail capacity to be part of the approval process. The requirement to reserve capacity, or even in the extreme case, to provide additional capacity should be addressed in this policy document.

Segregation Arrangements

In order to deliver a competitive railway environment following the sale, ring-fencing of the operator, Australia Western Railroad (AWR) and the track access provider, WestNet Rail was necessary. It is important that the incumbent operator, AWR, does not get preferential treatment from its associate companies as this could disadvantage potential third party operators and create an additional barrier to entry thus eliminating or reducing competition. The segregation arrangements provided should be supported by an auditable system that demonstrates that adequate ring-fencing procedures are in place and being followed.

Whilst the Segregation Arrangements submitted by WestNet broadly cover the requirements of the Code, we have concerns regarding the absence of procedures, reports and audits. In particular, our concerns are that there be:

- Compliance reports
- Independent auditors
- Consideration of the possibility of cross subsidies between AWR and WestNet Rail (eg higher overhead allocations to WestNet or lower access charges to AWR)
- Procedures for the protection of confidential information between the businesses and the parent company
- Availability to all of disclosed information
- No provision of access to AWR on terms more favourable than those provided to an AWR competitor.

Costing Principles

The Code states that an access seeker's access pricing is determined through negotiations with the access provider, WestNet Rail. This final access price is only limited by the boundaries of a ceiling price and a floor price. Since these are the only limits (apart from any overpayment rules), it is important that they are well defined and verifiable through an audit and review process.

The intention of the pricing principles should be to:

- Limit WestNet's ability to benefit from monopoly profits.
- Encourage growth of existing industry and development of new projects that will benefit from existing and new rail infrastructure in WA.
- Increase the volume of rail traffic to create more efficient operations featuring lower access prices to all users
- Provide adequate revenue to WestNet Rail to ensure business viability
- Provide adequate revenue to WestNet Rail to operate safely and efficiently

- Provide adequate revenue and incentives to allow railway maintenance to a suitable level of standard for current and planned future operations
- Create an environment where an adequate level of investment in railway infrastructure occurs.

To achieve these objectives, the costing principles should clearly demonstrate full traceability of costs and compliance with the Code. The Code contains statements on how the ceiling pricing and floor pricing are to be calculated. WestNet has reflected its views on the interpretation of these statements in its Costing Principles. These views and assumptions need to be verified. It is not clear from reading the Code and the Costing Principles that the original intent of the Code has been met by the Costing Principles as submitted. There appear to be several areas of the Code which require interpretation by the Regulator to establish if the approach taken by WestNet Rail is correct.

CCI would request that an opportunity for further public submissions should be provided once the Regulator has agreed on the Costing Principles and issued price determinations on the major routes. Any pricing determination should be on the basis of efficient rail operations within Australia and not simply the cost structure inherited by WestNet Rail. There should be an incentive for WestNet Rail to operate more efficiently and provide users with an efficient service at competitive market rates whilst still achieving an acceptable return on investment as set by the WACC rate.

Several members expressed concerns about the approach to determining pricing based on a Gross Replacement Value (GRV) for the assets. They felt that this approach would lead to an inflated capital valuation and therefore higher access charges.

CCI has formed the view that this theoretical model, based on GRV, could still provide similar outcomes to the more practical model based on depreciated valuations and actual operating costs provided that the maintenance and operating costs used reflect the much lower costs which would be associated with a new asset. The existing asset may require significant on-going maintenance to maintain its condition and to replace life-expired equipment but this high maintenance cost is offset by the lower capital valuation of a depreciating asset.

In using the GRV approach to costing, it becomes more important that the Costing Principles are fully explained as verification through audit of current costs is not helpful. Operators and users need to understand the principles of applying this theoretical cost model to pricing and that the outcomes are similar to using the more common combination of Depreciated Optimised Replacement Cost (DORC) and actual maintenance costs employed in other jurisdictions. This is particularly important in the case of WestNet Rail as there is the further complication of the assets being leased rather than owned and therefore the investment is in the form of an up-front lease payment rather than an asset purchase.

It is therefore important that both WestNet Rail and the Regulator explain to the operators and users that this approach provides competitive access rates without excessive returns to the track owner.

We trust that the Regulator will consider these comments from CCI and also the individual submissions of our members before approving the documents submitted by WestNet Rail.

Yours faithfully

Lyndon G Rowe

Chief Executive