

TRAIN MANAGEMENT GUIDELINES TO APPLY TO WESTNET RAIL ARTC SUBMISSION

The Acting WA Independent Rail Access Regulator (“Regulator”) has requested submissions from interested parties with regard to the draft determination made in relation to WestNet’s (“WNR”) Train Management Guidelines (“TMG”) required under the Railways (Access) Code 2000 (“Code”).

A key issue for ARTC with respect to the WestNet’s TMG is that they cover activities occurring on the WA rail network and associated infrastructure currently leased from the WA Government by WNR, which includes part of the interstate rail network between West Kalgoorlie and Perth. Management of access in WA, for interstate operators, of services between the eastern states and WA will be undertaken following the TMG, as well as under ARTC’s Access Undertaking (accepted by the Australian Competition and Consumer Council (ACCC) in May 2002) for any movement east of Kalgoorlie. A copy of ARTC’s Access Undertaking can be located at the ACCC’s website www.accc.gov.au.

In accordance with an Inter-Governmental Agreement made in 1997 which brought about the incorporation of ARTC as the track manager of the interstate rail network, ARTC developed and executed with the Western Australian Government Railways Commission (Westrail) which was the owner of that part of the interstate rail network in WA, a wholesale agreement providing ARTC with the exclusive right to sell access for interstate train operations to that network. The agreement was developed in accordance with the principles for access now incorporated in ARTC’s Access Undertaking. The agreement provides for the purchaser of the Westrail rail freight network (Australian Railroad Group) to assume Westrail’s role following the sale.

ARTC has previously made a submission¹ to the Regulator in relation to the TMG in which it stated that its main concern is to ensure reasonable consistency between the relevant aspects of the TMG and the terms and conditions of the wholesale agreement and, therefore, the principles endorsed by the ACCC in ARTC’s Access Undertaking. Once again, ARTC seeks the Regulator’s consideration of the issue of consistency of conditions of access to the interstate rail network for interstate users in its deliberations.

¹ Westnet Submissions to the Acting Rail Access Regulator, ARTC Submission, 24 Jan 2002

ARTC has previously stated that, by and large, WestNet's approach with respect to the use of the network in accordance with scheduled train paths, dealing with network blockage and recovery, consultation between itself and operators and prioritization of train paths in the event of out-of-course running is largely consistent with ARTC's approach. ARTC approach is detail in the provisions of ARTC's Indicative Access Agreement (IAA), forming part of ARTC's Access Undertaking, as well as the Undertaking itself.

ARTC notes from the Draft Determination that the Regulator now requires a number of amendments to be made to the TMG. These amendments have arisen based on the Regulators assessment of submissions made by interested parties. Rather than re-state its previous views on these aspects, ARTC will focus its comments on the required amendments and how this may impact on the consistency between the TMG and ARTC's own management principles.

The submission will follow the order of issues covered in the Draft Determination.

Application of the TMG to operators outside the regime

The Regulator requires that the TMG incorporate confirmation that it is the intent that the TMG apply to all users regardless of whether application are made inside or out of the Code.

ARTC notes that the TMG as originally proposed referred to 'all network users'. As such, ARTC does not believe that a separate confirmation is necessary, but does not strongly object to its inclusion.

Terms and definitions used and relationship of the WNR Network Rules.

The Regulator requires a number of revisions to the definitions in the TMG, largely to provide greater clarity and consistency. By and large, ARTC supports the revisions.

ARTC does not agree with the requirement to delete the words 'Westnet considers upon the exercise of reasonable care' from the definition of 'Instruction'. Essentially, this means that all (relevant) directions must be consistent with the TMG and, as the TMG incorporates the 'General Principles for Train Management matrix, all train control directions must be consistent with the matrix.

ARTC's IAA provides for directions 'which ARTC honestly believes upon the exercise of reasonable care are consistent with the Network Management Principles' (matrix).

Whilst ARTC believes that a vertically integrated access provider should have its performance against these management principles closely monitored, the principles in the matrix should be treated as a guideline only. The train controller must be left with some discretion to operate outside of the matrix (where duly justified) to ensure safe and efficient operations. Expecting rigid adherence to the matrix is unrealistic, but any deviation should be reasonably justified.

Cost recovery to operators where actions by WestNet materially affect operator performance and have a cost impact on the operator.

This issue is assumed to relate only to provisions in the TMG covering the clearance of a network blockage. WestNet have indicated that its strategy will be to minimize the time the network would be blocked, and could call on the assistance of crews and locomotives from either the nearest depot, or trains that are being delayed by the blockage.

In response to submissions, the Regulator now requires the TMG (and access agreement) to address details of:

- How network blockages will be cleared
- Which parties are responsible for which aspects of the recovery process
- The principles by which costs are to be quantified and recovered, where appropriate
- What indemnities are required and provided
- Operators obligations

The TMG should incorporate priorities for resources to be used (operator blocking the network, other trains in the vicinity, nearest locomotive depot).

ARTC has a similar, less prescriptive, approach to identifying and directing resources to assist with network clearance should a blockage occur. Like WestNet, ARTC's primary objective is to minimize the time of the blockage (and its impact on all users.) ARTC believes it is appropriate for this to be the principle objective. ARTC would be concerned that the introduction of the commercial interests of individual parties, such as recovery of costs, may lead to sub-optimal outcomes for the service provided by the network as a whole. Nevertheless, ARTC would informally consider such issues in its decision

making process. Quite often, the choice of party to assist with network clearance is obvious.

No party raised the issue of cost recoveries and indemnities during the ACCC's consultative process for ARTC's Access Undertaking. ARTC is quite surprised that operators have seen fit to raise these issues with regard the proposed TMG. ARTC assumes that third party operators may see the potential for inequitable treatment where the vertically integrated access provider has a choice between the third party and a related party.

To address this, ARTC agrees with the Regulator that the TMG (and possibly access agreements) should contain greater detail about the decision making process. This would enable the selection process to be more transparent for all parties, and WestNet could clearly demonstrate that it has not discriminated against third parties. On the other hand, ARTC is not convinced that cost recovery should, by necessity, form part of that process for the reason described above.

Broad powers of WestNet in the management of trains due to the inclusion of 'the exercise of reasonable care'.

WestNet's proposal with regard to its ability to take possession of the network for repairs is largely consistent with that provided for in ARTC's IAA. The Regulator is of the view that the approach is not unreasonable. ARTC supports this position. It is also ARTC's normal practice that any possession of the network for maintenance (outside of an emergency) would not take priority over revenue earning usage of the network.

The TMG provides for the network to be maintained to the highest of:

- The standard existing at the commencement date of the infrastructure lease
- If WestNet is required to be accredited, the minimum standard required to maintain accreditation
- Any other standards agreed between the parties.

These provisions are similar to those incorporated in ARTC's IAA as originally submitted to the ACCC. Following the consultation and approval process, the provision now requires ARTC to maintain the network in a condition which is fit for the operator's purpose to use the network to provide rail transport services having regard to the terms of the access agreement.

The regulator has indicated that its primary interest in this regard is to ensure the network is maintained to a standard which is safe and fit for purpose ... The Regulator goes on to say that WestNet's approach does not appear to be unreasonable by comparison with other owner's policies (such as ARTC). ARTC suggests that, in the interests of consistency with ARTC's endorsed approach, the TMG could be amended to reflect the same maintenance commitment now incorporated in ARTC's IAA (which appears to closely reflect the Regulator's stated interest).

Lack of a completed train decision matrix within the TMG

ARTC notes that WestNet submitted an amended train decision matrix in February 2002, which includes some omissions from the original TMG. The amended train decision matrix is now consistent with the Network Management Principles incorporated in ARTC's Access Undertaking (excepting that it does not recognize different train priorities, which ARTC has previously may be a redundant aspect in any event).

Need for a long range possession management process

WestNet's existing commitment in the TMG is to, prior to commencing any works (maintenance, repairs, upgrades), take all reasonable steps to minimize disruption, notify operators of the works as soon as is practical, and use best endeavours to provide an alternative path. ARTC makes a similar commitment in its IAA, and it is also ARTC's practice that commercial services take priority over maintenance activity wherever possible.

In response to submissions, the Regulator requires WestNet to also clearly outline its long range possession management process, and the method for communication/consultation on the detail with operators, in the TMG. Where specific train paths are expected to be affected, details should be made available to the operator at the earliest practical time.

ARTC understands the concerns of operators where, in the case of an access provider that is vertically integrated, a maintenance program could be strategically developed so as to give some advantage to the associated operator over the third party operator. Such activity could be inconspicuous in any one instance, but may significantly impact performance if repeated regularly. As such, ARTC supports the Regulator's position that any long range maintenance planning practices need to be clearly specified and outcomes communicated to all parties wherever possible.

Key Performance Indicators and frequency at which the TMG will be reviewed

In addition to KPI's which may be developed within the framework of individual access agreements, ARTC has previously stated that WestNet, being a vertically integrated access provider, should regularly publish KPI's which will, as a minimum, measure WestNet's performance in providing equitable management of related operators services and those of third parties.

The ACCC has endorsed ARTC's approach to publicly report, on a quarterly basis, both its own and operators' performance with respect to a range of measures covering reliability, transit time, track condition and unit costs. Such reporting is at an aggregated level, whilst reporting within agreements would be at an operator level. ARTC has also undertaken to submit its reporting process to independent audit, and publish the findings. Given WestNet's vertically integrated structure, ARTC considers that regular public reporting of a similar nature would be appropriate where performance of third party services and performance of related party services would be separately identified.

As such ARTC supports the Regulator's position that it will be developing a KPI reporting system in consultation with WestNet. ARTC would further suggest that the process should be public, and that reporting along the lines suggested above would be appropriate.

The Regulator also requires a statement confirming inclusion of operator specific KPI's within individual access agreements, to be included in the TMG. In the absence of an approved indicative agreement in the WA regime, ARTC supports the Regulator's position in this regard.

ARTC would also suggest that access agreements provide WestNet and the operator with a reasonable period of time before having to 'lock in' to any financial arrangement. Measurement of performance, along the lines proposed, is still in a relatively immature state in the industry. Financial arrangements should only apply when all parties are completely satisfied as to the meaningfulness and accuracy of the measure and any processes behind it.

With respect to review of the TMG, the Regulator has indicated an intention to review the TMG as part of a formal public review of the Code required on 1 September 2004, and may review earlier if considered necessary. This would effectively mean operation of the approved TMG for around 2 years prior to review. ARTC supports this approach, given that the TMG represents one of the regime's key mechanisms for ensuring equitable treatment where the access provider is vertically integrated.

Operators Obligations

ARTC notes that the Regulator has not sought any amendment to the respective obligations of parties incorporated in the TMG. ARTC has previously indicated that WestNet's provisions are largely consistent with those in ARTC's IAA, but again points out that there appears to be no obligation requiring operator compliance with the Code of Practice. It is not clear to ARTC why WestNet has omitted this provision.

