



Alcoa World Alumina Australia

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Dr K Michael
Acting Rail Access Regulator
Office of the Rail Regulator
Level 27, 197 St Georges Tce
PERTH WA 6000

PUBLIC SUBMISSION ON WESTNET SEGREGATION ARRANGEMENTS

Dear Dr. Michael,

1. Introduction

This submission by Alcoa World Alumina Australia (Alcoa) is with regard to the Segregation Arrangements as prepared by WestNet Rail (WestNet) for the Rail Access Regulator (Regulator) under Part 5 Section 42 of the Railways (Access Code) 2000 (the Code) public comment provisions.

Whilst Alcoa are of the view that the WestNet Segregation Arrangements broadly cover the requirements of the Code, we are also of the view that there are certain matters that should be taken into consideration by the Regulator in relation to:

- the Australian Railroad Group Limited (ARG) and its subsidiary Companies Australia Western Railroad (AWR) and WestNet;
- segregation or ring-fencing arrangement considerations in other jurisdictions and;
- the operation of the Segregation Arrangements as proposed by WestNet.

In particular, our concerns are that:

- compliance reports be provided to the Regulator;
- there be an independent Audit Report on such matters as specified by the Regulator;
- costs that belong to the Associate businesses (AWR) are not allocated to WestNet creating a cross subsidy and revenues that belongs to WestNet is not retained by AWR;
- there be adequate protocols with regard to the sharing of information with Associate businesses in order to minimise any potential advantages that the regulated business can provide to any Associated businesses;
- information should be treated in a confidential manner and where there is a legitimate need to disclose information it is made publicly available and therefore accessible on the same basis to all;
- WestNet does not provide access to an Associate on terms more favourable than those it provided to a competitor;
- there are adequate security measures to control the flow of information between the incumbent and the Associate and the ARG Board of Directors.

2. Views in other Jurisdictions

The Independent Pricing and Review Tribunal (IPART) in its June 1999 Report on Pricing for Electricity Networks and Retail Supply and the Office of the Regulator General (ORG) in its June 1999 Electricity Industry Guideline No.3: Regulatory Information Requirements noted several key points they would like to see with regard to ring-fencing arrangements. The following is a summary of these in the current context:

- the setting of clear cost allocation rules (to ensure there is no cross subsidy and costs are efficient);
- ensuring that the distributor's dealings with the host retailer are consistent with other retailers;
- there are protocols relating to the disclosure of confidential information;
- there are broad processes for the provision of these arrangements;
- there is strong focus on regulatory accounting statements and their content including information on issues such as operating and maintenance costs, overhead apportionment, capital costs, depreciation and asset valuation;
- there are also requirements for procurement of an audit opinion (preferably an independent audit the cost of which being part of the access cost).

More recently, the Queensland Competition Authority (QCA) in its Final Determination, Electricity Distribution, Ring-Fencing Guidelines, September 2000 provided some additional guidelines relevant in this context that the network incumbent must:

- require the accounts to contain sufficient information and to be presented in such a manner as would enable verification by the Regulator of the calculation of the various costs (which in this context would include maintenance cycle costs, major periodic maintenance, routine and preventative maintenance, renewals and augmentation costs);
- the access provider notify the QCA (5 business days prior) if any employees (including contractors, consultants or agents) past (within 6 months) or present are, or will be employees (contractors, consultants or agents) of an Associate that takes part in a related business (or, alternatively, similar provision in circumstances of transfer of an employee of an Associate to itself);

Other notable elements of the QCA Final Determination include the following:

- sharing of an employee or releasing of confidential or commercially sensitive information to its, or an Associates, employee is consistent with protocols ("Chinese Wall Protocols") prepared by the incumbent and approved by the QCA;
- the access provider, at reasonable intervals determined by the QCA, describe the measures taken to ensure compliance with its obligations;
- the QCA may, upon reasonable notice require the access provider to appoint an independent auditor approved by the QCA to report on such matters as are specified by the QCA and provide a copy of the auditor's report to the QCA.
- If the QCA nominates auditing standards, the auditor must report with regard to those auditing standards.
- The QCA may waive any of the minimum obligations of ring-fencing detailed in Section 6, subsection 1, of the Final Determination, provided that the QCA is satisfied that the incumbent can demonstrate that the administrative cost to the incumbent or its associates of complying with the obligation outweighs the benefit, or likely benefit, to the public.

Alcoa are of the view that the above points should be taken into consideration by the regulator when reviewing the proposed Segregation Arrangements.

3. Specific Concerns

In addition to the above comment, Alcoa are also of the view that there are some specific issues which are detailed below and which, are neither adequately covered under the Segregation Arrangements or, by the precedents or comments from other jurisdictions.

3.1 Conflicts of Interest and Duty of Fairness

The presumption from the organisational structure of ARG, AWR and WestNet is that in addition to a Director from WestNet being on the Board of ARG, there would similarly be an AWR Director on the ARG Board. If this is the case, there could be potential for substantial conflicts of interest in relation to the access and operational entities. In which case protocols for information sharing, duty of fairness and rectification of conflicts of interest would need to be considered to ensure the fiduciary responsibilities of Directors are not compromised. Similar comments would also apply to shared executive staff.

3.2 Allocation of Overhead Costs

Alcoa are concerned regarding the efficiency of the overhead cost and have detailed our concerns in a more detailed submission with regard to the Costing Principles.

3.3 WestNet Contracts Outside the Code

Alcoa are concerned that by “grand fathering” all existing agreements prior to proclamation of the Code that this may affect access rates charged by others. A more detailed submission with regard to this aspect has been given in comment to the Costing Principles.

3.4 Adequate Protocols

These relate to the conflict of interest, duty of care and information issues at ARG Board level and our view is that the Regulator would need to be satisfied that adequate documented protocols were in place.

3.5 Compliance Reports

These refer to both the protocols referred to above and reports in relation to other reporting matters required. Our view is the Regulator would need to be satisfied that the reports covered all the issues identified and determine a time frame for disclosure.

3.6 Information Disclosure

The proposition being that the Regulator review the compliance reports to ensure released information is available to all.

3.7 Associate Terms

WestNet does not provide access to AWR on terms more favourable than those it provided and AWR competitor.

3.8 Joint Staff and Directors Security Measures

The aspects raised in the QCA Final Determination quoted be considered by the Regulator.

3.9 Compliance with the Code

Alcoa are of a view similar to the QCA (who have specified for both electricity distribution and rail access ring-fencing) that compliance audits be undertaken by an independent auditor approved by the Regulator with the Regulator having the power to nominate auditing standards.

In view of these comments, we would request that the Regulator review and amend as necessary the Segregation Arrangements as submitted by WestNet prior to approval under the Code.

Yours faithfully

Jock Irvine
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Alcoa World Alumina Australia