



Alcoa World Alumina Australia

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Dr K Michael
Acting Rail Access Regulator
Office of the Rail Access Regulator
Level 27, 197 St Georges Tce
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PUBLIC SUBMISSION ON DRAFT DETERMINATION ON SEGREGATION ARRANGEMENTS TO APPLY TO WESTNET RAIL

Dear Dr. Michael,

This submission by Alcoa World Alumina Australia (Alcoa) is in response to the Draft of the Determination on the Segregation Arrangements to apply to WestNet Rail (WestNet) dated 24 April 2002.

We acknowledge that both WestNet and the Regulator have made extensive progress in resolving many of the issues raised in the public submissions made by Alcoa and by the other respondents in December last year. It has been heartening to see that many issues have been addressed and that WestNet is responding to requests to improve the detail and to extend the scope of the Segregation Arrangements.

In reviewing the Draft Determination, we have noted only five issues which we would request are given further consideration by the Regulator prior to issuing a Final Determination on this matter. These issues are listed below and referenced by page number *[Page XX]* to the relevant section of the Draft Determination.

Issue 1 - Part 4 Avoidance of conflict of interest (Section 32 of the Act) - Responsibility of the CEO and the Board Members

It has been our experience to date that negotiations on issues relating to pricing and access agreements will require detailed submissions by WestNet management to the CEO of ARG, the WestNet Board and the ARG Board during negotiations. It is therefore difficult to see how WestNet will obtain the necessary internal approvals without revealing some degree of "Deal Level" information and the identity of the access seeker to the CEO and the WestNet Board. This in turn would mean that the requirements *"...to implement a protection mechanism..." [bottom of Page 14]* could not be satisfied. Further, since there is only one CEO for both WestNet and AWR, it would seem unlikely that any protocols proposed by WestNet in relation to the CEO will be effective. We believe that the Regulator's stated objectives will only be met by structural separation given the degree of detail that will be required by the CEO of ARG in his role as the senior executive manager of WestNet Rail.

Issue 2 - Part 5 Duty of Fairness (Section 33 of the Act) - Agreements outside the Code

The clarification that WestNet is able to negotiate new access agreements outside of the terms of the Code [*Page 18 Bullet 2*] raises several key questions in relation to duty of fairness between operators inside and outside the Code.

It will be critical to the success of the Access Regime that certain key aspects of Access Agreements made outside the Code are still subject to the scrutiny of the Regulator. In particular, the Regulator should:

- ensure that the "Instruments of the Code" and particularly the Train Path Policy and Train Management Guidelines apply equally to all operators, whether inside or outside the Code;
- clarify his powers to investigate and understand the access charges granted to associated companies of WestNet and other access seekers outside the Code;
- reassure access seekers under the Code that there is no greater potential for "cost-shifting" to occur between related companies in Access Agreements or other access arrangements provided outside the Code.

Issue 3 - Part 5 Duty of Fairness (Section 33 of the Act) - Train Scheduling

Alcoa has reviewed the current arrangements between WestNet and AWR with regard to train scheduling on the South West mainline. Firstly, it is clear that the only function which is currently "sub-contracted" to AWR is the daily variation of train paths to suit the operational needs of AWR's customers. The control of the Master Train Control Diagram and the alteration of any third party's train paths are the sole responsibility of WestNet and these functions have not been sub-contracted.

Given the concerns expressed to the Regulator, we agree that any decision to vary train paths currently undertaken by AWR should be transferred back to WestNet in the interests of fairness to any third party operators.

It is however equally important to understand that the function being performed by AWR on behalf of Alcoa is a critical part of our rail task. We still need our above rail operator to react to daily changes to the Train Plan in response to Alcoa's operational demands. These requirements could be in response to changes to ship movements at our two port facilities, changes in demand for raw materials at the refineries or as a result of stockpile management. The decision to permit or reject these changes will and should always rest with WestNet but the ability to develop solutions by altering train paths in response to the customers requirements is best met by our above rail operator, AWR. It is the operator who is close to the action and who therefore understands the criticality of the requests.

We believe that AWR, as our operator, is in the best position to develop the optimum solution - but this must always be in the context of a solution which does not adversely impact on other users.

We therefore agree with the Regulator's view that this task must be controlled by WestNet to protect the interests of all operators but we would suggest that, operationally, the bulk of this process will still be undertaken by individual operators. Their requests for changes would then be submitted to WestNet for approval and subsequent implementation within the Daily Train Plan by WestNet Train Control.

Issue 4 - Part 7 Compliance with Segregation Arrangements

We concur with the Regulator's view that compliance audits should be conducted by an external auditor. However we would suggest that the Regulator should go further and also approve both the selection of the auditor and the scope of the audit.

The Regulator is in an ideal position to direct the auditor to concentrate on particular areas of interest and may even decide to vary the scope of the audit from year to year. This would contain costs by restricting the scope to relevant areas and also extract better value for money from the audit process.

Targeted audits of particular areas of the business would also address WestNet's concerns that the process may just become a "continual review" if a full compliance audit is conducted every year. Given that most Access Agreements are likely to have a 5 to 10 year duration, it would appear that the effort required to audit compliance will not be constant year on year and therefore varying the scope of the audit to address identified areas of concern would be beneficial to all parties.

Issue 5 - Part 3 Confidential Information

Finally, as a minor issue, in *Part 3 Confidential Information (iv) Regulator's views and comments* the request that *"Examples of what constitutes confidential information should be listed by WNR" [Page 10, Bullet 1]* is not repeated in the corresponding table in Section 5 of the Draft Determination as a required change to the Segregation Arrangements and may therefore be missed in the redraft.

We would request that the Regulator consider these further suggestions prior to releasing a final determination on the Segregation Arrangements with a view to further amending the Segregation Arrangements as submitted by WestNet prior to approval under the Code.

Yours faithfully

John Oliver
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