

Submission to the ARTC

**ARTC Hunter Valley Access
Undertaking**

**Response to the Capacity Loss
Review Discussion Paper**

December 2012

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1 EXECUTIVE SUMMARY

Asciano welcomes the opportunity to respond to the Australian Rail Track Corporation (ARTC) Discussion Paper on the 2011 Hunter Valley Access Undertaking (HVAU) capacity loss review.

Asciano strongly supports any efforts made to increase the capacity of the Hunter Valley coal supply chain and reduce congestion in the Hunter Valley rail network.

The ARTC is required by the HVAU to conduct a review of the mechanism to reduce capacity losses contained in the Hunter Valley Access Holder Agreements. The mechanism being reviewed uses an access holder's record of train cancellations to remove train paths from the access holder, but it is acknowledged that there are a number of problems with this mechanism.

Asciano recognises that there are issues with the current capacity loss incentive mechanism and broadly supports the concept of a capacity loss incentive mechanism based on a measure related to the failure to use a planned dump slot. However, before the implementation of any such mechanism there are numerous issues of detail which need to be resolved including definitional issues, issues relating to the operation of the mechanism and issues relating to the identity and the powers of the body which administers the process. In addition in any capacity loss mechanism the accuracy and acceptability of planning assumptions need to be confirmed with Hunter Valley coal supply chain participants.

This submission is public.

2 BACKGROUND

Section 5.8 of the HVAU requires ARTC to conduct a review of the incentive mechanism designed to reduce capacity losses which is contained within Access Holder Agreements. The incentive mechanism being reviewed uses an access holder's record of train cancellations to remove train paths from the access holder. The mechanism is described in section 11.6 of the Indicative Access Holder Agreement (IAHA).

The ARTC Discussion Paper (for example, pages vi and vii) identifies a number of problems with the current mechanism which limit the mechanism's effectiveness in reducing capacity losses. These problems include:

- the mechanism only attributes cancellations to access holders when they are directly responsible for cancellations. Based on current reporting this means that the majority of cancellations cannot be attributed to an access holder;
- the mechanism does not recognise that cancellations can be a positive action intended to restore the Hunter Valley coal chain to plan;
- the mechanism does not recognise that cancellations can be a consequence of capacity loss rather than a cause of capacity loss; and
- determination of the party responsible for a train cancellation may be problematic, and the association of any sanction with a train cancellation is likely to result in fewer cancellations even when such cancellations may actually be beneficial.

Given these problems the ARTC Discussion Paper proposes several alternative measures for the incentive mechanism to reduce capacity losses including measures based on the coal terminal dump slots lost or time lost by trains in transit compared to their planned transit time.

3 OVERVIEW OF THE ASCIANO POSITION ON THE ARTC CAPACITY LOSS DISCUSSION PAPER

Asciano broadly agrees with the ARTC regarding the problems identified with the current capacity loss incentive mechanism based on train cancellations. In particular Asciano believes that train cancellations are often due to a capacity loss in the Hunter Valley coal supply chain and that train cancellations are a symptom of capacity loss rather than a cause of capacity loss. Consequently Asciano supports a move away from this capacity loss incentive mechanism based on train cancellations.

Asciano believes that the over-arching aim of any new capacity incentive mechanism should be to improve the availability and utilisation of capacity in the Hunter Valley coal chain rather than to assign fault for any loss of capacity. Asciano believes that any mechanism that is solely focussed on the allocation of fault for capacity loss will be problematic as many capacity losses result from the interrelated actions of multiple parties (for example these parties may include the track owner, the train

operators, the coal ports or the coal producers), and given these interrelated actions assigning fault to any one party may be inequitable, particularly as the party (if any) which may be the root cause of the issue may not bear any sanction arising from the assignment of fault. While Asciano accepts that assigning fault will be part of a process to improve the availability and utilisation of capacity the focus of the mechanism should be on improving the capacity available rather than assigning blame.

Asciano strongly believes that any capacity loss mechanism is only as good as the plan and planning assumptions against which the actual performance is being measured. In particular the plan and its assumptions need to be accurate as divergence from an inaccurate plan may not actually indicate any actual loss of capacity. For example if planning assumptions about speed and track quality are incorrect then planned outcomes for train performance will not be met, however in such circumstances it is the plan rather than the operating performance which is at fault.

Asciano broadly supports the concept raised in the ARTC Discussion Paper (pages 31 to 33) that a capacity loss incentive mechanism could be based on a measure related to the failure to use a planned dump slot. This would still require an attribution of the loss, but planning linkages to the mine, train service, track provider and port should facilitate such an attribution. Asciano believes that a measure related to the failure to use a planned dump slot should be refined to allow for the transposition of trains so that an early train could take advantage of a slot made vacant by a late train.

Asciano believes that any improvements in capacity availability arising from a capacity loss incentive mechanism based on dump slot utilisation will largely depend on the details of the new mechanism and its implementation. In particular issues which need to be resolved include:

- definitional issues relating to the definition of a missed dump slot¹;
- definitional issues related to whether dump slots are generic and interchangeable or whether some dump slots are more valuable to coal producers, train operators or port operators than other dump slots;

¹ This is identified as an issue by the ARTC Discussion Paper page 33

- the treatment of small delays which accumulate into a larger delay resulting in a missed dump slot²;
- the treatment of delays or missed dump slots which result from the actions of the track owner or port operator. This issue is of particular concern to Asciano as the track owner and port operators are often responsible for capacity issues and as such they should be made accountable in some way through this process³;
- the process by which a missed dump slot is assigned through planning linkages to a participant in the coal supply chain; and
- the identity and powers of the body who administers the capacity loss incentive mechanism. Asciano strongly believes that the ARTC should not play a decision making role in identifying parties responsible for capacity loss and consequently implementing sanctions. The ARTC should not have this role as:
 - the ARTC is an active participant in the Hunter Valley coal supply chain and may itself be the root cause of a capacity loss;
 - the ARTC has commercial relationships with other participants in the Hunter Valley coal supply chain and as such the ability of the ARTC to implement sanctions on individual participants raises concerns related to the potential for this power to be mis-used in certain circumstances; and
 - the ARTC does not have visibility of the entire supply chain (for example stockpiles at mines) and as such any ARTC attribution of capacity loss to a particular party may be limited by the lack of information on the entire supply chain.

Any decision making body which implements sanctions should be impartial and the decisions should be transparent and there should be a right of appeal or review for the decisions.

If issues of detail and implementation (such as those identified above) can be resolved through further industry consultation then Asciano would support a move towards a capacity loss incentive mechanism based on dump slot utilisation.

² This is identified as an issue by the ARTC Discussion Paper page 33

³ Asciano recognises that the track owner has accountability through the true up test but there should be some transparent mechanism which also attributes accountability through the capacity loss incentive mechanism even if there is no financial sanction to the track owner.

Section 5.8 c) iii) of the HVAU sets out criteria that needs to be met by any capacity loss incentive mechanism proposal. Asciano believes that these criteria are broadly met by the concept of a capacity loss incentive mechanism based on dump slot utilisation. Future development of this concept, including development of the details of the new mechanism should be undertaken in such a way as to meet the criteria in section 5.8 c) iii) of the HVAU.

Overall Asciano recognises that there are issues with the current capacity loss incentive mechanism and broadly supports the concept of a capacity loss incentive mechanism be based on a measure related to the failure to use a planned dump slot. However, before the implementation of any such mechanism there are numerous issues of detail which need to be resolved and, importantly, the accuracy and acceptability of planning assumptions need to be confirmed with Hunter Valley coal supply chain participants.

4 ASCIANO SPECIFIC COMMENTS ON ISSUES RAISED IN THE ARTC CAPACITY LOSS DISCUSSION PAPER

The ARTC capacity loss discussion paper raises several issues relating to train operations in the Hunter Valley. Asciano's comments on several of these issues are outlined below.

Cancellations

Asciano believes that only train operators should be able to chose which trains to cancel. As a matter of principle asset owners should be able to make decisions relating to assets they own and operate. The asset owners should then carry both the costs and benefits of these decisions.

Other parties, notably producers, should be able to request that the train operator cancel the train, but the final decision should sit with the train operator. Obviously in circumstances where a producer owns the path and has an operating agreement with the train operator then any request from this producer to cancel a train would be very seriously considered by the train operator.

Live Run Superintendent Group

The current membership of the Live Run Superintendent Group (LRSG) is appropriate but if there is a move away from a capacity loss incentive mechanism based on train cancellations then the ongoing role and membership of the LRSG

should be considered and potentially be modified to reflect a revised capacity loss incentive mechanism.

Contractual Issues

Asciano believes that the Access Holder Agreement is not necessarily the most appropriate contractual vehicle for dealing with a loss of coal chain capacity. This is particularly the case when of the two parties to the Access Holder Agreement only one of the parties can bear capacity loss sanctions under the capacity loss incentive mechanism. The contractual vehicle for dealing with the loss of coal chain capacity should involve all participants rather two participants.

It should be noted that Asciano is currently reviewing its contractual relationships to determine if the ARTC proposal to develop a capacity loss incentive mechanism based on dump slot utilisation results in any contractual issues between Asciano and its customers.

5 CONCLUSION

Overall Asciano recognises that there are issues with the current capacity loss incentive mechanism and broadly supports the concept of a capacity loss incentive mechanism based on a measure related to the failure to use a planned dump slot. However, before the implementation of any capacity loss incentive mechanism based on dump slot utilisation there are numerous issues of detail which need to be resolved including:

- definitional issues;
- issues relating to the operation of the mechanism; and
- issues relating to the identity and the powers of the body which administers the process. In particular Asciano does not believe that ARTC should play a decision making role in identifying parties responsible for capacity loss and consequently implementing sanctions

In addition, in any capacity loss mechanism the accuracy and acceptability of planning assumptions need to be confirmed with Hunter Valley coal supply chain participants.