



6 December 2012

Mr Martin Jones
General Manager Operations and Logistics
Australian Rail Track Corporation

By email Martin.Jones@artc.com.au

Dear Martin,

CAPACITY LOSS REVIEW DISCUSSION PAPER

Port Waratah Coal Services Limited (PWCS) welcomes the opportunity to comment on ARTC's Hunter Valley Access Undertaking (HVAU) Capacity Loss Review Discussion Paper dated October 2012.

As a terminal service provider and a signatory to the long term commercial framework for the Port of Newcastle, PWCS has an interest in ensuring that producers and service providers take accountability for their capacity losses. At the time the long term commercial framework was developed, the industry agreed to principles for contractual alignment in the coal chain. These principles specifically contemplate ARTC having an active role in managing its allocations of track capacity and the distribution of track capacity losses to individual producers. Likewise, the terminal service providers have a role in identifying and allocating losses of terminal capacity.

Whilst PWCS is not party to the contractual arrangements between ARTC and access holders, decisions by ARTC in managing track capacity impacts and contracts have flow on effects to PWCS. It is important to PWCS that track capacity losses are identified and assigned to access holders, and that ongoing access rights to the coal chain are not triggered in excess of the lesser of track and terminal system capacity as adjusted for losses. Otherwise this may result in vessel queuing in times of high demand.

This capacity loss mechanism for access holders therefore needs to be part of a broader system where:

- Track contracts are aligned to track system capacity;
- All losses of track system capacity, not just variances to plan, are identified and allocated contractually to the responsible party. This should either be ARTC or access holders (whose performance also includes the performance of their above rail service provider);



- Each access holder's usage under their track contract as adjusted for losses is proactively monitored for future access to capacity (not just retrospectively for true-up test purposes); and
- An effective process is in place to confirm each Producer has sufficient remaining paths under their track contract and track system capacity before vessel applications are accepted at PWCS or trains planned into NCIG.

PWCS provides the following comments in relation to key areas raised in the discussion paper below:

Is the current cancellation process working?

The current cancellation process pre-dates the commercial frameworks for the coal chain and was originally intended as a tool for operational improvements. Whilst the cancellation process can be a useful process for capturing deviations against a plan, it is not a complete measure of lost capacity. The cancellation process has a number of shortcomings when viewed for the purpose of measuring capacity losses including:

- It relates to only one element of capacity loss. Capacity losses on live run may also arise from other factors such as diversions, late running trains or changes in train size;
- The cancellation process does not capture capacity losses arising from planned rates being less than contracted capacity;
- Cancellations are often the manifestation of the accumulated impact of smaller capacity losses incurred earlier in the schedule, thus relying only on cancellations as an indication of loss could result in failure to identify all of the contributing impacts;
- Cancellations are arbitrarily determined by above rail service providers and there are currently no defined rules about when a late train becomes a cancellation;
- The process doesn't distinguish between healthy cancellations (made for the good of the system) and unhealthy cancellations; and
- Root cause assignment is arbitrary and relies on the 'at fault' party accepting responsibility. The process doesn't easily assign accountability to Producers.

What should / could be the metric if it were replaced?

Any alternative metric(s) needs to:

- Clearly articulate the basis for measurement of the capacity loss – eg losses compared to track system capacity or track contracted capacity;
- Encompass all capacity losses, not just variances to plan;
- Have clearly defined and objective rules for the assignment of losses, including ARTC caused losses;
- Not be reliant on the ‘at fault’ party accepting responsibility; and
- Be sufficiently robust to apply or evolve when constraints shift – eg currently track system capacity is less than terminal system capacity, but this may reverse in the future.

PWCS in principle supports a measure relating to losses of available unloading opportunities at the terminal dump stations (ie dump slots) that reflects the above points. PWCS is interested to understand further detail relating to this alternative metric and contribute where possible to its development.

Who should decide / recommend a loss be attributed?

Whilst HVCCC was envisaged to perform a key role in monitoring and recording system performance against the performance standards which form the basis of contracts and determining and apportioning capacity losses, it is ultimately ARTC’s responsibility to decide the attribution of losses of track capacity. As noted above it is ARTC’s role to manage its capacity and contracts.

ARTC must therefore monitor the use of their track assets and put systems in place to identify capacity impacts and contractually allocate those. ARTC may have regard to information from HVCCC, however it should be accountable to allocate capacity losses even in the absence of a HVCCC recommendation. Provided the rules for assigning accountability are objective and consistent with the contractual alignment principles (and do not rely on individual parties accepting responsibility for the loss), then the system should be defensible to challenge.

Complexity of the metric?

The complexity of the metric will be a consequence of the difficulty in measuring capacity losses and determining root cause. Contributing to this complexity is the ongoing misalignment of assumptions for the calculation of capacity elements and the fact that HVCCC does not plan to achieve the contracted capacities of the service providers.

ARTC could initially establish simple rules for assigning accountability with further refinement as the system develops.

Complexity or administration costs however should not be viewed as a reason to not implement a mechanism to identify and allocate losses of capacity. Given the constraints in the coal chain, the opportunity cost of lost capacity or the cost of building additional capacity to compensate for these losses would far exceed any administration costs.

Timing of quarantine / capacity loss?

A key contractual alignment principle is that what other producers do should not infringe on a producer's right to have its contracted services delivered. The sooner a capacity loss can be allocated to the producer who caused it, the less impact it will have on other producers. However this should be balanced with other factors including the immediate need to complete a cargo for a vessel to load.

PWCS has provided some flexibility in the allocation of terminal capacity losses to allow producers time to adjust their plans and commitments, with losses allocated in the first or second month after the event. PWCS supports a consistent approach by ARTC.

Should there be a cap?

The contractual alignment principles specified that producers would directly and individually incur the capacity increase or decrease as a result of their individual performance (including the performance of their above rail service provider). In PWCS' view, based on its experience with capping capacity losses, such a cap does not provide a fair outcome for all producers or provide the incentive for producers to improve their performance or influence their other service providers to improve performance.

To the extent that ARTC determines that losses should be capped, then the balance of the loss still needs to be allocated either to ARTC or socialised to other producers so that track contracts do not exceed the track system capacity.

What is the relationship with terminal loss allocation measures?

PWCS' capacity and performance management system should not be relied on by ARTC to deal with the allocation of losses of track system capacity. PWCS is not privy to rail contracts and does not necessarily have the information to determine root cause.

In PWCS' view, its capacity and performance management system would be complementary to ARTC's mechanism, with each party determining the extent to which an event has caused a loss of their respective capacity. The principles of contractual alignment do not require that a change in contracted capacity for one

element of the coal chain should be matched by changes to the contracted capacity in other elements. The contractual alignment principles require that access to the system should be restricted to the lesser of track and terminal system capacity (both in aggregate and at an individual producer contracted level). PWCS reiterates the need for an effective system to implement this requirement.

PWCS is happy to engage with ARTC as it develops the detail and supporting processes for its capacity loss mechanism and to facilitate alignment with PWCS' terminal capacity and performance management processes.

Yours sincerely,

A handwritten signature in black ink that reads "Geoff Crowe". The signature is written in a cursive, flowing style.

GEOFF CROWE
GENERAL MANAGER COMMERCIAL