

6th December 2012

Mr Martin Jones
General Manager Operations and Logistics
Australian Rail Track Corporation
33 Newton Street
Broadmeadow NSW 2292

Dear Martin,

Re Submission to Capacity Loss Review (under the ARTC HVAU)

In response to your request for submissions to the above review, Xstrata offers the following for your consideration. Rather than address every question posed by the ARTC document, we offer some general guidelines for consideration.

Xstrata supports this review and urges ARTC to establish a new system of loss allocation that more accurately detects the root cause for delays and sheets home the accountability for losses to their true source. In saying this, Xstrata concedes the solution is far from straightforward.

- Train cancellations will not always be the cause of a capacity loss and as per ARTC's notes a cancellation in many situations is an end result of a prior event. A cancellation in some cases may not actually result in a "capacity loss".
- The Operator is operating a commercial enterprise and must have ultimate say over the utilisation of its fleet and is in the best position to determine the optimum outcome for its operations.
- An independent expert body is the most appropriate 'umpire' to quantify any capacity losses. The continuation of the HVCCC/LRSG role seems logical. Any party assigned a loss should have the right to 'appeal' the decision.
The utilisation of an independent body for some tasks however cannot be used by ARTC to abandon its obligations to 'police' the network and penalize offenders to ensure its efficient operation.
- Any penalty imposed upon an Access Holder/Shipper under the Terminal and track access agreements must make its impact in a future time period sufficiently in the future that the Access Holder/Shipper can complete coal movements that he is already contractually committed to.
- The capping of any penalty is desirable. A single event should not damage any organization to such an extent that the organization could suffer life threatening financial damage.
- The current Terminal and track access agreements are not aligned with capacity usage being measured at different points in time and the installed capacity of each system being considerably different at this point in time (and for some time into the immediate future). This is a fundamental flaw in the rollout of the long term framework for the Hunter Valley coal chain. Assuming this misalignment will continue then any penalty imposed by either the ARTC or the Terminal Operator will not align and will result in a shipper having to trade capacity in both track and port capacity (and will need to have flexible arrangements with a rail provider). This is far from an ideal situation.
- The Access Holder has a direct relationship with the rail provider and in theory should be in a position to exert commercial leverage on the provider to correct any inappropriate behavior which is generating capacity losses. In reality this may not be effective for some Access Holders to do and the Hunter Valley coal chain has still some way to go before the rail haulage market is truly competitive. Commercial

leverage has not been a timely driver of behavioral change in the past. The introduction of a more direct and immediate penalty regime on Operators should be examined (through amendments to OSA's?). Whilst we concede this may be difficult to implement, we see this regime as a more effective means of removing poor work practices by Operators from the network. A system of monetary fines on offending Operators for preventable incidents of lost capacity should be introduced. This system should supplement any capacity penalty on the offending Operator's Access Holder.

- Capacity losses at the inbound bottleneck should be the subject of any capacity loss penalty regime. The 'neck' of the Hunter Valley coal chain 'bottle' is the terminal dump stations. Any penalty regime should concentrate on lost dump slots. Lost planned dump slots are a direct loss of coal chain capacity and where a slot has been lost through the actions or lack of action by a 'party' in the coal chain, this loss should be recorded. Where the responsible party is a rail provider, then the capacity loss should be attributed to the Operator's Access Holder (subject to a reasonable cap). In a scenario that cannot be attributed to any particular train service or Access Holder, the loss should be 'shared' or distributed to all of the relevant Operator's Access Holders (subject to the cap on each individual Access Holder).
- In identifying capacity losses, a clear differentiation should be made between capacity losses and capacity imbalances. Any capacity lost at a dump station that is attributable to a lack of track capacity (within an allowance for reasonable losses) should be attributed to ARTC and not the track users.
- A capacity loss regime that attempts to examine all time lost on each section of a train's journey would prove to be resource prohibitive. In our opinion there would be little appetite in the industry for additional resources to be employed to merely more accurately track capacity losses in the system. Any process must be pragmatic and with no added cost impost.
- Access paths confiscated from an offending Access Holder should not be made available as compensation to 'victims'. Any such compensation process will only serve to make the loss attribution process more commercially sensitive and tend to require significant resources to resolve disputation.

Xstrata is available and keen to discuss the potential framework at your convenience.



Don McLachlan
Operations Manager

