Rail Delivery Group

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Response to:

**ORR's Initial Consultation on the
2018 Periodic Review (PR18)**

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Introduction: The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy. We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust.

1. Introduction

1.1 Industry Engagement

The RDG set up four working groups in order to get good industry discussion on the issues posed in the initial ORR consultation document and then to continue that engagement throughout the rest of the periodic review process. The members of the working groups comprise representatives from passenger train operators, freight operators, Network Rail, funders and the ORR. This response represents the views from the industry rather than other members of the working groups.

1.2 Structure and status of our response

Our comments in this response follow the same headings, including the questions posed, as set out in the ORR consultation document. We confirm that we are happy for the response to be published on the ORR website.

The initial PR18 consultation document is supported by five working papers that ORR published at various dates in June, July and August. This response does NOT cover the industry views on the working papers, however, we will be responding to each paper in due course.

2. Context for the review

ORR question: This chapter sets out the main issues we consider set the context for the next periodic review. We invite stakeholders to comment on whether they agree or whether they consider there are additional significant points (and if so, to explain how these might affect the review).

We agree with the context for the review described in the initial consultation, including growing demand, reclassification of Network Rail, political and operational devolution and the recommendations in the Shaw report. In addition to these, there is also the franchise reform process that may impact on this periodic review and in this regard it is important that there is alignment between franchising, competition policy and the regulation of Network Rail. This might require reform of franchising to give flexibility to deal with changes in circumstances, e.g. if funding for enhancements were to become more of an ongoing process.

2.1 Overview of what the industry would like to see from the periodic review

To help put the review into context, there are a number of high level outcomes that the industry would like to see from PR18. These are:

- a regulatory framework that supports the work on route devolution that the industry is already doing and one that supports constructive engagement between Network Rail and its customers. The regulatory framework should not determine this engagement, but should support it, because the incentive should be for Network Rail to focus on train operators rather than the ORR;
- a periodic review settlement that is deliverable, not just at a network-wide level but also for each Route. The settlement should also be flexible so that it is able to deal with changing circumstances;

- a framework that recognises the network is a system, with a single Network Rail, with some activities being managed at a route level and others being more efficiently delivered for the benefit of the whole network;
- a framework that is compatible with the new enhancement funding and specification processes being developed by the government for industry planning, and
- a periodic review that is focused on specific areas rather than trying to cover everything, and one that builds on the work done at the 2013 review. It should also build on, and not re-open, the structure of charges work done by the RDG last year. Route regulation is a big change compared with the current regulatory approach. It will, therefore, require considerable industry engagement and analysis to get it right. We suggest that the ORR prioritises its work programme and focuses its efforts only on the most important issues. In addition, we urge the ORR to present its various PR18 initiatives and projects as a coherent work programme.

3. The relative priorities for the review

ORR question: We welcome views on the proposed relative priorities for the review, as well as any other areas that should be prioritised (in which case, we would particularly value views on what should not be prioritised as a consequence).

The consultation document referred to six high level outcomes for what Network Rail delivers and hence things that should be supported by the review. The six outcomes noted by the ORR are for a network that is: (1) more efficient, (2) better used, (3) expanded effectively, (4) safer, (5) available and (6) reliable. In general we agree with the outcomes but consider that one is missing, namely:
- supporting the sustainable development of the railway.

Having said that, we agree with the five priority areas identified by the ORR in Figure 3.2 of its consultation document and have structured our working groups to address each area. The five areas are:

1. Focus on regulating at a route-level.
2. Improve the regulation of system operator.
3. Support new ways to treat enhancements.
4. Increase transparency around costs and improve incentives.
5. Refine the framework for outputs.

The consultation document suggests there is potential for significant change for the first four areas. We agree that that is the case for the top three but consider the area related to costs and incentives is only likely to be an incremental change. This is because the extensive review of the structure of charges that the industry conducted last year concluded that an incremental approach for PR18 was preferred. In terms of route regulation, we believe that the emphasis should be to improve the focus of Network Rail on its train operator customers so that the industry can become more responsive to the needs of end users. We also believe that proposals for route regulation and the system operator could be far reaching and note that there is a lot of work required to understand the full impact on the rail industry.

4. Proposed approach and framework for the review

ORR question: We would like to know if you agree with the overall approach that we have set out for the review. We would also welcome additional suggestions and proposals for how we might adapt our regulation to the current context. It would be helpful if you could arrange

your comments around the following: route-level regulation; system operation; outputs & monitoring; charges & incentives; approaches for enhancements; and ERTMS and related technology.

We welcome views on how our high-level approach could be implemented and on the potential framework set out in chapter 5. As part of this, we invite thoughts on what it is practicable to achieve in PR18 and in CP6, and what might be more realistic to achieve in the subsequent periodic review. We would also welcome any further suggestions and ideas on how we might improve how we regulate Network Rail. You may wish to read and comment separately on the working papers that we will publish following this consultation document.

4.1 Introduction and overall comment on impact of PR18

The bulk of our response provides comments on the proposed approach and framework for PR18. For ease of reading, our comments are listed under separate headings for each topic.

This periodic review is likely to be very different from previous reviews and is an important event for the industry. This is primarily because the industry is facing a period of significant change, such as the move towards greater local decision-making by Network Rail Routes, political devolution and the creation of a system operator and technical authority for network-wide functions. Success will require a significant input from train operators and Network Rail Routes (both during the review and once the new control period is in operation) and will need to rely on effective engagement across the industry. Scarcity of resources could be an issue and this is therefore another reason why we think the review should be tightly focussed as noted in our comments earlier in section 2.1.

4.2 Route regulation

1. The ORR's support for route devolution is welcome.
2. However, the industry is keen to avoid an unduly complex regulatory framework for Route regulation that risks being bureaucratic, creates artificial barriers between Routes or for operators, or places an over emphasis on regulating the process. These might mean a Route places an over importance on the ORR rather than train operators, restrict the ability for the network to manage shocks, or stifle future reforms.
3. The emphasis should be on encouraging effective engagement between Network Rail Routes and train operators – especially in the preparation of the Route Strategic Business Plans (SBPs) including asset management plans. This will help develop joint industry working and ownership with less need for a regulator driven process.
4. It is important to remember that Network Rail will continue to be a single company. Therefore, it would be wrong for any route regulatory framework to duplicate or overlap with the clear responsibility for Network Rail to manage its resources in the best interests of the whole network and hence for funders and tax payers.
5. There are likely to be several areas of Network Rail and customer engagement needed during the periodic review process and throughout CP6. One of these will be for enhancements, where there are existing forums, for example the Route Investment Review Group meetings. For other discussions, it may be necessary to set up new forums. The form of engagement will be likely to vary from Route to Route, however, the principle remains that effective engagement is critical to the success of PR18 and the next control period.
6. A lot of the discussion on Shaw and PR18 has stressed the importance of devolution and the line of sight from passengers and freight end users through passenger train

operating companies (TOCs) and freight operating companies (FOCs) to the Network Rail Route. Therefore, we think it is important that PR18 puts greater emphasis on this line of sight.

7. Network Rail should have flexibility to move activities and resources from one Route to another so as to maximise system wide efficiency and make best use of scarce resources.

8. Network Rail should also have flexibility to move resources between a Route and the System Operator if that is the most effective and efficient way to manage the network. The regulatory framework should facilitate this. Related to this it is important to note that there are interdependencies between the role of a System Operator and that of the Routes; for example the Route and TOC/FOC roles in capacity allocation.

9. Route based regulation should support Network Rail's devolution, as opposed to creating conflicting demands on the company.

10. Routes should only have regulatory targets for what they are actually accountable for. These need to be able to be adjusted with relevant change control.

11. The industry does not support the ORR seeking access to drafts of route business plans before the plans are first developed by the industry because this would imply an emphasis on the ORR rather than customers.

12. There is agreement that Network Rail's borrowing facility should be specified in the Statement of Funds Available.

13. Route regulation should reflect the overall balance of users' priorities.

4.3 Charges and Incentives

1. The rail industry believes that there should be no geographical disaggregation of variable charges to give separate route-based variable usage charges in CP6. This is because the introduction of route-based variable usage charges would result in a significant increase in the complexity of charges and because they are likely to lead to perverse incentives on network utilisation.

2. Similarly Schedule 8 should continue to be based on service groups, i.e how trains run, as opposed to a more route-based categorisation.

3. There is a strong industry request that ORR removes any consideration of Route disaggregation of charges from the PR18 agenda. The reason for this is that it would make the charging arrangements extremely complex and operators would face potentially different charges for trains that cross several Network Rail Routes. This is particularly the case for freight operators where charges are already in marked contrast to those faced by competitors who carry goods by road (where there is a single road tax and fuel levy). The option for disaggregated charges by route would lead to a perverse situation where lightly used rural routes could be more expensive than congested main lines.

4. There is also industry concern that ORR is considering a fundamental review of the total level of variable usage charge even though the industry's structure of charges review last year concluded that this should not be a priority. There is no new evidence to suggest that variable charges are too low and the 2013 periodic review concluded that this would not be revisited, so we are surprised that it is now being considered for PR18. Stability is important in a charging regime, particularly to encourage long term investment in the industry, and the far-reaching changes being considered are not compatible with this objective.

5. Paragraph 4.29 of the consultation document states that the ORR is not proposing to take forward options that directly link charges to the relative value of capacity in different parts of the network. We agree with this, but note that the ORR goes on to state that it will "….need to ensure that the overall charging structure sends sensible signals to make best use of scarce parts of the network…..". We do not understand what is meant by signals or scarce parts of the network and would urge the ORR to

engage further with the industry and the DfT on this.

6. There is agreement that the use of fines by the ORR on Network Rail is not effective or appropriate.

7. The PR18 work should build on the RDG Review of Charges and should focus scarce resources on the priority areas identified by the RDG review. The high level conclusion from the RDG review was to focus on the capacity charge and on the performance and possession regimes.

8. The review of the capacity charge should include the option suggested by RDG last year in its review of the structure of charges, namely to: update Network Rail's Schedule 8 performance benchmarks annually to take account of changes in traffic. This option has some industry support and could remove the need for a capacity charge.

9. The key principles highlighted in the RDG response to the consultation on Schedules 4 & 8 (dated January 2016) and in the supporting paper by LEK (dated May 2015) are still valid and should be built upon by ORR. These key principles setting out agreement on what each regime should be are noted below. Although we don't propose radical change we believe it is important that PR18 helps to reduce the misunderstanding and misrepresentation of the current regime particularly the difference in purpose of the performance regime and passenger compensation.

   Schedule 4 Possessions regime should:
   a. compensate operators for the financial impacts of a planned possession;
   b. be a liquidated sums regime, except for long possessions;
   c. be financially neutral if possession activity is carried out efficiently;
   d. incentivise the industry to minimise the impact of possessions on end-users;
   e. facilitate the efficient use of possessions by all parties;
   f. incentivise operators to provide Network Rail with the access it requires to deliver engineering works;
   g. take account of the financial impact on all industry parties in taking possessions;
   h. be sufficiently flexible to respond to unexpected end-user demand.

   Schedule 8 Performance regime should:
   a. be a liquidated sums compensation regime;
   b. be the sole remedy;
   c. be coherent and aligned at every stage from end-users to funders;
   d. reflect end-user needs;
   e. encourage joint industry working to optimise whole-industry performance;
   f. facilitate trade-offs between performance, traffic volumes, and cost;
   g. facilitate accurate and efficient attribution of the root causes of delays and cancellations;
   h. take account of the increased likelihood of delay of running an additional train on the network;
   i. be effective at all levels of performance.

4.4 Regulation of System Operator (SO)

1. The ORR's support for route devolution supported by an SO is welcome.
2. However, the industry is keen to avoid a complex and prescriptive regulatory framework for SO regulation that risks being bureaucratic, driving cost, creates artificial barriers between Routes and national/cross border services or places an over emphasis on regulating the process.
3. These might mean the SO places more importance on the ORR rather than on the Routes and their customers, restrict the ability for the network to manage shocks, or

stifle future reforms.

4. Instead, the emphasis should be on the engagement between the SO, Network Rail Routes and train operators in: the preparation of the Route business plans, flexibly managing processes, delivering increased capacity, improving production of timetables and developing joint industry working and ownership.

5. SO regulation should be future proof and flexible. Hence Network Rail should have flexibility to move resources from one Route to another. It should also have flexibility to move resources between a Route and the SO if that is more efficient and effective. The regulatory framework should facilitate this and not set out a prescribed organisational structure.

6. It is important that everyone understands the role of the SO compared with other Network Rail central functions (including the technical authority) and so we suggest that this is set out in a clear definition and SO outputs. Clarity is also needed on what regulatory framework would apply to Network Rail's other central functions.

7. Linked to this, we believe the SO should be able to provide services that cover all parts of the GB rail network including HS1, HS2, Heathrow spur, future concessions and all routes managed by Network Rail because it is important to retain the benefits of an integrated network.

8. The SO's principal relationship is with Routes and infrastructure managers, and through them to operators. There may also be the opportunity for delivering additional services to operators and new access applicants.

9. The SO should have ability to balance its objectives and hence outputs should be trade-able through a clear balanced scorecard. Any SO activities delivered at Route level should be reported by the Route.

10. The SO should have the network-wide view and capability to support a single track access contract per operator on Network Rail infrastructure, not one for each Route.

11. Along with separate outputs for the SO, the review should include assumptions about SO costs. However, we do not think there should be a separate determination and access charge to pay for the SO costs as this would be an added complexity, increase the amount of work needed for PR18 and have little or no benefit.

12. The SO will need to cope with, and be funded for, an increasing workload relating to ancillary parts of the network (i.e depots and sidings), new capacity reporting requirements and increased levels of congested operation.

13. The SO should promote the upskilling of train operator and Network Rail staff involved in the timetabling and capacity allocation process.

14. Capability and effective use of investment; this needs to rebalance away from PPM to capacity. A fixed set of target performance measures may not be appropriate. Quality measures will be important and incentives that encourage cost effective solutions to maximise the capability and efficient utilisation of the current network and plan the future network.

4.5 Refining the output framework

1. The industry supports the aim of increasing the involvement of train operators and other local stakeholders in setting Routes' outputs and for the process to include a focus on passenger and freight shipper requirements.

2. The industry also supports increased transparency in reporting outputs at a Route level.

3. The National Task Force (whose membership includes the ORR and the DfT) has been undertaking much cross-industry work in developing new performance metrics for CP6 and this should form the basis of the outputs framework that ORR is considering as part of PR18. The new performance metrics are, amongst other things, designed to be more reflective of passenger needs.

4. Development of Route scorecards by Network Rail (in consultation with operators),

as endorsed at the NTF and supported by the ORR, should be used as the basis for output measurement and monitoring rather than the ORR developing something different. Some initial progress has already been made on this in CP5 and this should be built on for the CP6 framework. Anything that encourages good communication between Network Rail Routes and train operators in developing Route scorecards and monitoring arrangements is welcomed as this will help develop joint working towards common goals. In turn, this can also facilitate representation in the process of end-user needs through each TOC and FOC.

5. The industry is in agreement that the output framework should be flexible in several regards, namely: (a) the framework should allow changes to Routes, for example in terms of roles and responsibilities, (b) the framework should allow for changes to outputs such as a change in customer requirements or a change in franchise requirements, (c) the framework should also allow for changes in circumstances and to recognise the uncertainty in forecasting some targets, and (d) the framework should incorporate different regulatory approaches in relation to each scorecard output. For example, some outputs may have formal targets, others may have minimum thresholds of required performance and others may have no formal targets or thresholds recognising that there are wider statutory duties (for example, in relation to safety).

6. An effective change control mechanism, including direct user endorsement, can provide a means of supporting the flexibility described in the previous point.

7. The use of fines by the ORR on Network Rail is not considered to be effective or appropriate.

4.6 Treatment of enhancements

1. There needs to be certainty of the funding and financing available for the enhancements that are committed to irrespective of the funding mechanism (PR18 or outside this process).

2. The framework should support the core principles set out in the MoU between Network Rail and the DfT, whereby there are joint decision points between the funder and Network Rail to make sure there is clarity of the commitments being made as schemes progress through the project lifecycle from early stage planning, to development, to design and ultimately to delivery. It is also worth noting that the MoU refers to train operator involvement through applicable Programme Boards. The framework should be applied to all enhancements, irrespective of the funder.

3. Applying this approach will require a more flexible framework that facilitates a "pipeline" process for the enhancements portfolio with the ability to change control programmes and projects in and out of the pipeline at the key stage gateways. These are stop/go points and it could be decided that projects do not proceed to the next stage of the lifecycle if they are not value for money, affordable or deliverable. It is envisaged that outputs, timescales and funding would be agreed stage by stage. The outputs framework would need to be designed to facilitate this approach.

4. There is strong industry support for ring-fenced funds as these are flexible and provide an efficient way for the industry to manage and deliver good value schemes through a suitable governance process.

4.7 Funding of the Digital Railway

The initial consultation comments that there may be insufficient clarity about the timing and funding of the Digital Railway (DR) for this to be included in the ORR determination for CP6. Whilst we can understand this view, we believe it is very important for early agreement to be reached on the funding arrangements, deliverability and affordability of this programme; this

is to provide certainty, allow DR schemes to form part of Route business plans and enable the first stages of the programme to commence in CP6 as planned. It is important to recognise that plans for operation, maintenance and renewals, particularly signalling, will be based on assumptions for the timing of the DR programme and so this link should be reflected in the funding and baseline assumption for PR18.

5. Proposed timescales and engagement

ORR question: We would be grateful for comments on the proposed phases of the review, including any views on the draft timetable (available on line) and our proposed approach to engagement. We also invite high-level views on the process for customer engagement by Network Rail's routes and the system operator to inform their business plans, in terms of what is achievable for this review. We would also welcome any views on how Network Rail and train operators would like to engage and be involved in the implementation process for PR18 and any thoughts on the process relating to Network Rail's right to object to our determination.

We think the overall process would benefit from a coherent plan to show how the various phases in the review link together and how the working papers feed through to policy development and decisions on the regulatory framework. To help achieve this we would like more clarity on the work programme between now and the publication of the draft determination in the summer of 2018 so that we can plan the industry engagement in the process. It is important that this timeline includes dates when key decisions are going to be taken. Given the volume of work required for PR18 we feel an early decision on key issues is essential. It is important to gradually reduce the scope of issues in play to allow practical progress to be made rather than leaving everything open to the end.

We believe the working groups that RDG has set up are an effective way for the industry and wider stakeholders to engage with ORR during the review and we welcome the support ORR has given to them. The groups meet regularly and we have found that there is an open and constructive dialogue. Key points from each meeting are circulated by RDG to group members soon after the meetings and a more formal note is recorded by ORR for publication on its website. We acknowledge that other interested parties have views on the rail industry and the outcome of PR18 and the RDG will seek direct engagement with them wherever possible.