

## Rail Delivery Group

Response to:

### **ORR's Working Papers 2 & 3: System Operation and System Operator Regulation**

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# Rail Delivery Group Response to ORR's Working Papers 2 & 3: System Operation and System Operator Regulation

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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.

## **1.1 Overview**

This paper addresses the questions set out by Working Paper 2 (WP2) on the ORR's initial views of potential issues, opportunities and benefits with how system operation in rail is currently delivered. It then comments on the initial views set by the ORR in Working Paper 3 (WP3) on the framework for regulating Network Rail's system operator functions.

The RDG has already provided a full response to the initial PR18 consultation and many of the points made in that – especially around customer focus and regulatory frameworks are relevant to the separate response on Working Paper 1 on Route Regulation, and to this combined response for Working Papers 2 and 3.

There has also been, and will continue to be, extensive industry engagement and discussion with the ORR through the industry working groups that the RDG has set up for PR18. To date there have been a total of 5 RDG 'Better SO Regulation Working Group' meetings – each of which has been attended by the ORR. The RDG values this engagement and we believe the ORR has also found it helpful.

The industry recognises that the detail of many areas explored in WP2 and WP3 (and the other working papers) will be developed in further stages of the PR18 process. We envisage that the working groups will continue to operate throughout the rest of the PR18 process as we believe they provide useful forums to work through the detailed issues. We welcome the tone and purpose of the ORR working papers which are intended to facilitate a more dynamic process of industry engagement to support an iterative approach to developing policy.

We believe our working groups link well with this more collaborative approach and are pleased with the constructive engagement they have provided. Our discussions, shaped by the presentations and questions posed by the ORR have naturally informed the content of this response alongside the questions contained within in the working papers. This response therefore provides a high-level industry view on the early thinking outlined by the ORR and provides specific comments on more detailed options and issues explored during the working group discussions of system operation – including the potential regulatory developments in respect of the System Operator activity. The response includes views on where there is industry agreement, or not, on the proposals in the paper.

In general we do not repeat the points already made in the RDG response to the initial consultation.

We confirm that we are content for this response to be published on the ORR website.

## **1.2 Terminology**

Given the change in the range of themes between the two working papers - from the overarching concept of System Operation, through to the more specific consideration of the Regulation in CP6 of the System Operator activities carried out by Network Rail at a Network level – we would like to be clear on terminology.

This response uses the terms System Operation (SO) to refer to the activities being carried out across industry including by DfT, ORR, Network Rail, other Infrastructure Managers (IM), RSSB and even train operators - as explored in WP2 and the ORR's previous (2015) consultation on SO.

We recognise that SO activities may be undertaken in a number of places within Network Rail, including in the Routes and the Technical Authority. In discussing the regulation of the delivery of Network Rail's System Operator (NRSO) activities we have assumed that the majority of these will be carried out by a single function within Network Rail. We believe this to be that part of the organisation (identified in Network Rail's organisational matrix) that undertakes the lion's share of system operation activities including Long-Term and Capacity Planning. We note that the function primarily responsible for these activities is itself embarking on a programme to ensure that the NRSO activities are fit for the future as part of Network Rail's transformation plan.

## **Working Paper 2: System Operation**

***ORR question A: To what extent do you agree that the issues and opportunities we have identified with the way system operation is currently undertaken are the most material ones?***

### **2.1 General comment**

We welcome the mapping out by the ORR of the wider aspects of SO across industry. The accountability of all parties engaged in SO needs to be clearer and the consultation attempts to clarify the roles and responsibilities of the key parties that influence or decide upon each stage in the capacity planning and allocation process.

Parties undertaking SO activity should engage with other industry parties including the Routes and the Operators in their planning of the network. For example, in its long-term planning, the NRSO should coordinate these opportunities to develop capacity through a range of options for interventions. Emphasis should be on the engagement with funders, NR routes and train operators in the preparation of Route business plans, flexibly managing processes, identifying physical and operational options for increasing capacity, improving production of timetables and developing joint industry working and ownership.

### **2.2 Direct influence**

We note the wider considerations made in WP2 and concur that activities that can influence, and potentially fall within the scope of, system operation are currently undertaken by a range of organisations. For example, Competent Authorities establishing long-term transport policy and enabling delivery (including output specification, determining funding, project sponsorship, public service obligation (PSO) tendering), through to the ORR itself directing parties to enter into sales. It is for this reason that we believe special care needs to be taken when considering appropriate measures against which the NRSO might be judged or targeted as it is likely any chosen metric could be the product of the actions of more than one entity engaged in system operation.

### **2.3 Industry Mapping**

We raised questions during the working group discussions about ORR's SO mapping (Figure 2.2 of Working Paper 3); e.g. setting basic design and capability elements of the system are not simply inputs to system operation.

In its descriptions, the ORR should be clearer that funders do not allocate capacity. Equally, it is noted that there are various bodies responsible for rules changes that govern how the system is used and that incentives do not necessarily flow through from the regulatory regime.

Working Paper 2's scope is significantly wider than PR18. A number of SO issues or opportunities can be identified here that are likely to require more significant change to industry, government or regulatory responsibilities and processes (e.g. developing the coordination of SO activities between ORR and DfT in relation to franchises). While the working paper acts as a useful marker for future areas of discussion, we anticipate these would not be taken forward as part of the PR18 determination and have limited our comments accordingly.

***ORR question B: Are there other issues that you consider material that we haven't mentioned?***

## **2.4 Proportionality**

The industry is keen to avoid a complex and prescriptive regulatory framework for NRSO regulation that risks being bureaucratic or creating artificial / immovable barriers between: Network Rail's Routes; between routes and national activities; and between Network Rail activities and national/cross-route operators.

Processes should be simple and transparent and the RDG would therefore be concerned to see a regulatory framework established for SO that places a disproportionate cost on the industry and funders due to an over emphasis on regulating the process involved.

Given the relative proportion of OM&R (operations, maintenance and renewal) expenditure to overall SO costs, a proportionate regulatory burden on the NRSO activity would allow a view of 'how' the NRSO carries out its work but would not be one that imposes significant regulatory reporting activity. The regulatory framework might otherwise result in the NRSO placing more importance on the ORR than on the Routes and their customers, restricting the ability for the network to manage shocks, or stifling future reforms.

## **2.5 Services to other infrastructures**

We believe NRSO should, to retain the benefits of an integrated network, be able to offer services for all parts of the GB rail network that can be purchased by other IMs including HS1, HS2, Heathrow spur, or any future concessions. In any event, managing the information flow across boundaries both internal and external to Network Rail will be an important part of the NRSO activities.

## **2.6 Relationship with Technical Authority**

Within the wider understanding of SO, the setting of technical rules (standards, criteria and specifications for areas such as operations, interfaces, asset maintenance and renewals) and Asset Management Policies are key Technical Authority (and in some areas RSSB and European Rail Agency) activities which all have a bearing on the outputs that the system can deliver - as well as the costs incurred in delivering those outputs.

Experience shows that significant improvements in the capability of the system can be delivered quickly and cost effectively by focused and proactive development of arrangements in this area. For example, "Sprinter" speeds which allow light, high performance trains to operate faster than heavier trains on the same infrastructure enable the delivery of faster journey times and higher capacity at very low cost. In addition, optimising inspection, maintenance and renewal regimes can deliver higher asset reliability, longer functional life and reduced asset cost.

Through its long-term planning activity the NRSO has the potential to identify physical capabilities of the system that could be developed to deliver capacity or operational benefits. Its working relationship with the bodies (internal and external) responsible for developing and updating the requirements and standards that would need to be updated will be important and needs to be taken account of in the process for regulating the NRSO.

***ORR question C: Does your experience, particularly of the system operation functions that Network Rail is currently responsible for, reflect our emerging views around issues / opportunities.***

## **2.7 Opportunities**

As well as providing the glue that holds the routes together in an increasingly devolved arrangement, NRSO has the crucial task of delivering efficient train paths on across the UK network now, and in future years. The clarification of the role and outcomes expected of the NRSO is a welcome opportunity to support this area of Network Rail's transformation.

Opportunities should be sought to change the culture of how the industry plan and use the railway so that it is more customer focused and innovative. It is also important to address the increasing challenge of congestion on a growing network, whilst providing a focus on continuous improvement of processes and investment in systems and personnel.

Opportunities include both instances of good system operation where changes could realise further benefits, and 'environmental' opportunities – including features of the evolving rail industry environment which could facilitate better outcomes in the future. This could potentially include:

- operational research into new ways of working to unlock potential capacity including timetabling interventions;
- supporting government with planning and investment of enhancements with progressive reviews of options ahead of enhancement investment;
- supporting technological change;
- enabling further devolution within Network Rail;
- getting to a higher level of understanding of available capacity and greater optimisation of that capacity (Traffic Management will assist here);
- improving / monitoring post-project close out to check if project aims have been met and timetable planning rules have been updated; and
- better publication of information including a potential single point of information for all information relevant to network access (Register of Infrastructure, Network Statement, Capacity Statement, Vehicle Register)

As part of its work to enable the best use of the network the NRSO could seek to use the contractual flexibility, timetabling information and planning skills at its disposal to develop and protect (with relevant Network Code Changes) pre-arranged paths (as per the arrangements used in international rail freight corridors) that can accommodate additional traffic. Through dialogue with customers the NRSO could manage and provide insight into white space and allow train operators to establish commercial opportunities with greater confidence.

## **2.8 Issues**

Areas in which the PR18 offers opportunities to improve good system operation outcomes include encouraging more holistic thinking of outcomes. This would address the increasing risk that, driven by customer and route local perspectives, locally optimal solutions could

result in overall sub-optimal use of the network as a whole. Quality of outcomes could be given a higher profile. This could include reductions in inefficient paths being rolled over, and addressing codes and contractual requirements (to accommodate flexible/agreed timeframes for responses) that enable solutions to path or timetable requests to be developed and proposed rather than be driven by short-term time frames that may not permit the necessary analysis and validation of options.

## **2.9 Existing benefits**

There are elements of SO activity which are performing relatively well and, at least for the time being, should not be disrupted by 'change for change's sake'.

The ORR has already noted that where good system operation is happening, it should continue and be facilitated by changes to the regulatory framework and incentives that are put in place for PR18. As proposals are developed we would therefore suggest that the ORR also captures and makes equally clear the benefits of the current arrangement that it is seeking to maintain and protect while promoting regulatory reform in this area.

***ORR question D: Are there any examples you could provide of how Network Rail undertakes these activities that would either support or contradict our emerging views?***

## **2.10 Introduction**

The national position of the NRSO means it should be able to develop the capability to support consistent expectations of customers in application of policy and process across routes. It also enables, importantly, a single track access contract per operator for Network Rail's infrastructure rather than the complexity of one for each Route.

The industry notes that in July Network Rail published its transformation plan setting out how it intends to deliver for its customers. This includes Network Rail's System Operator: Fit for the Future programme which seeks to put into place a function that has the organisation, skills, processes and tools in place to be effective in its role. As this programme progresses Network Rail needs to work with industry (e.g. through the Planning Oversight Group - POG) and the ORR to clearly identify the necessary activities to be performed nationally, their funding requirement, and accountability for delivery. Similarly, it is essential that clear governance arrangements are established for how the NRSO engages with train operators and Routes. Additional clarity as to which SO activities the ORR propose to come under its initial NRSO split for the purposes of the PR18 determination could be provided as part of the next consultation.

The approach to route-level regulation should support Network Rail's devolution plans to become closer, and more accountable, to its customers and hence to passengers and freight users. Establishing appropriate industry governance arrangements and processes is important to help make the Route/customer engagement work effectively in practice. This is discussed further in our response to Working Paper 1. The governance arrangements and processes should clearly include the engagement between customers and the NRSO; this would help achieve a consistent approach as well as appropriate consideration for network-wide matters.

## **2.11 Building customer relationships**

The relationship operators have with the NRSO includes some of the most important interfaces that these companies - especially freight and other cross-route operators - have

with Network Rail. While the relationship between the Routes and their customers needs to be developed to improve the efficient operational performance of the whole industry, that between the NRSO and operators will also be crucial for successful network planning, development and planned use. RDG members would want both the NRSO-route and the NRSO-customer relationships reflected in the NRSO's monitoring and reporting. Therefore the regulatory framework should focus on outcomes over both inputs and outputs and consider the quality of the service provided to operators as well as to the routes. There are a wide range of potential relationships between the NRSO and operators:

1. the regular direct contact through the capacity planning & especially timetabling process;
2. given the relatively small proportion of operators that do not cross a route boundary, the NRSO supports the cross-network nature of most customers. Some customers will see the NRSO as a guarantor of their access needs and ability to serve their markets (cross-route passenger and freight) - even though there is a specific route in Network Rail providing a direct service for the freight and cross-route customers;
3. points of direct interaction include stakeholder engagement in the Long-Term Planning Process;
4. through agreeing access rights approaches to the ORR and supporting routes and customers in the contracting of access;
5. through Routes being customer focused and collaborative, TOCs and FOCs will exercise a role in pushing for change in network capability and influence the routes' demands on the NRSO; and
6. finally, there may be some commercial opportunities for the NRSO to develop its service offering for customers and potential applicants.

NRSO regulation should therefore focus on the right behaviours and effective incentives to drive quality customer relationships and help customers manage their business needs – but without directing operational decision making.

## 2.12 Consistency

Maintaining a consistent approach to route based activities is a key area of consideration. It is important therefore that measurements and incentives that consider the identification and allocation of capacity need to be consistent despite activity being performed by different parts of the IM. Where capacity allocation is delivered by the NRSO centrally within A for C timescales the approach taken and likely outcomes should be consistent with decision making at route level where the routes deliver the VSTP (Very Short Term Planning) process. Similarly, approaches to VSTP requests and the timetable outputs need to be delivered consistently across routes as well as between routes and the centre when short-term planning moves into VSTP.

## Working Paper 3: System Operator Regulation

This following part of the response addresses the subject of 'Better System Operation in Network Rail' and therefore focuses on Working Paper 3.

***ORR question A: To what extent do you agree with our understanding of how Network Rail fulfils its system operator responsibilities at the national level (by the system operator) and the routes?***

### 3.1 National roles

There are a wider range of interactions that the NRSO should have, or develop, given its unique capabilities to actively advise and engage with other industry parties:



- competent authorities (and the National Infrastructure Commission) in the development of transport strategies and potential franchise or concession requirements;
- project developers and funders on the business cases with relevant asset costs; and
- the regulator in assessing the effective allocation of capacity.

The focus across this range of long-term and capacity allocation activity should enable innovative behaviour and a systematic review of perceived wisdom of network capabilities. It would be useful to clearly identify UK Network responsibilities held by Network Rail that go beyond its own routes, e.g. some services cover other IMs (e.g. timetabling) and potentially connected facilities (e.g. Network Statement).

### **3.2 Network Capacity**

The NRSO's expertise in planning future capacity requirements and managing capacity allocation should allow it to provide the ORR with the necessary analysis to decide on issues of capacity allocation without the need to undertake extensive research of its own, and perform the required work associated with declarations of congested infrastructure.

An improved understanding of capacity and the value of access for various purposes should allow the production of comparable and contrasting options for uses that can be assessed with equivalency, using models and able to be verified by ORR using real commercial data. ORR has a clear role in capacity allocation and passenger regulation, but the NRSO should be able to provide much of the necessary information for decision making.

### **3.3 Route support**

The ORR's support for route devolution supported by clearly defined System Operator activity is welcome and evolving arrangements should be supported by a clearer role, purpose, and resourcing for the NRSO that reinforce the importance of the activities that it conducts and seek their quality delivery over CP6.

Activities delivered by the NRSO should provide a matrix within which the Routes and other IMs can conduct business with customers, while the NRSO promotes and protects the system benefits and cross-network processes.

The NRSO provides a coordinating function for routes, maintains a number of cross-network responsibilities, and provides a single entity for contracting purposes. However, it does not direct routes in how to deliver their operational responsibilities.

In its work on developing a NRSO fit for the future, Network Rail will be able to be clearer about the point at which it stops working in a range of areas. As routes should be responsible for the totality of actions delivered at Route level, any System Operation activities identified as being delivered at Route level (e.g. on the day planning) should be reported by the Route rather than the NRSO.

**ORR question B: What are your views on having a more focused approach to the system operator, possibly in the form of a discrete settlement that is part of an overall determination?**

### 3.4 NRSO Regulatory framework

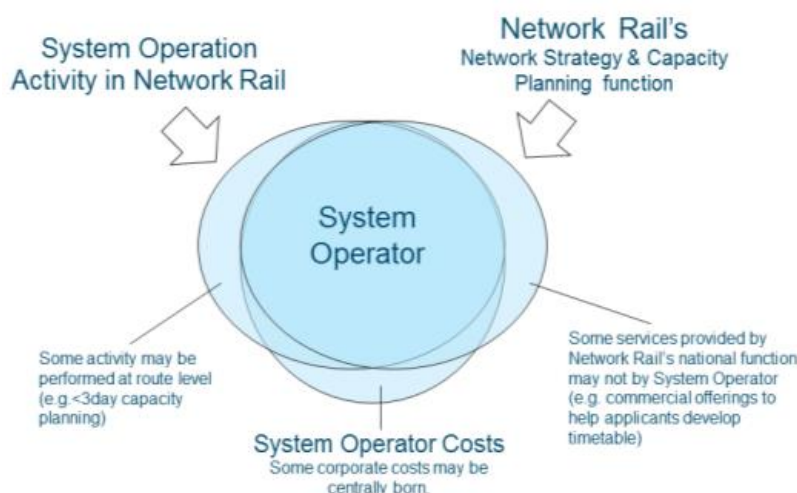
While an increased focus on the regulation of System Operation activities is welcome, its organisation and funding need to be future proof and flexible. Along with separate outcomes for the NRSO, there should be transparency of NRSO costs in NR's budget for PR18.

The regulatory settlement should not set out a prescribed organisational view, or specify the management activities performed by Network Rail; it is for Network Rail to determine, through its own business planning, the detailed shape and role of the functional and departmental activities undertaken centrally (and/or nationally) for the national network either on behalf of routes or as national operations. This includes the Long Term Planning Process (overseen by POG on behalf of the industry) including developing options, clienting of schemes and early scheme development, management of capacity, producing the timetable, and allocating timetabling centrally. Even where these are done on behalf of the whole network (and any NRSO developments should be consulted with wider industry as part of the business planning process), it is noted that these do not always need to be undertaken in one place 'centrally'.

In terms of charging mechanisms, the NRSO should have transparent funding within the wider Network Rail settlement and not be complicated by charging mechanisms. There is no need for a new, separate, charge to operators or the creation of any billing mechanism for Routes to pay for NRSO services. This would be an added complexity, increase the amount of work needed in PR18, and add little value – especially as Network rail could report actual costs against the determination to provide the necessary transparency.

The NRSO should have a set of regulated outputs based on a balanced scorecard reflecting outcomes for customers (including both routes and operators) and the quality of its work. There is no requirement for a system operator RAB as recovery should be through allocation to routes who then include costs in their revenue requirement.

We also recognise that there may not be an absolute overlap between the totality of System Operation activities in Network Rail and NRSO activity and costs (see diagram).



NRSO regulation should allow for activities to be moved into or out-of the national function in Network Rail and budget should be able to be moved accordingly – both of which requires

flexibility in the regulatory settlement and transparent reporting of outputs and costs by Network Rail. This needs to be balanced by financial and output control processes within Network Rail that are sufficiently robust to prevent NRSO work streams being readily stopped and resources moved as a reaction to pressures elsewhere in the organisation – this could be demonstrated by a high level breakdown of costs and reporting these alongside any anticipated impact on outcomes.

The NRSO's activities will involve providing services direct to train operators as well as indirectly via the Routes. In particular, the train planning process tends to be a direct interaction between train operators and the NRSO.

Network Rail is not currently funded for R&D to deliver 'undirected research' into capacity – a potential wider industry need. However the potential reward for relatively small investments in capability in this area should be considered in the development of the NRSO's business plan and budget. In addition, where there is a direct need and with agreed funding, it is important that bodies can approach the NRSO to request the identification and examination of options for the network's development, with both local and network-wide views explored and provided.

There may be commercial opportunity for delivering additional services to competent authorities, operators and new access applicants, and also opportunities under what could be permitted business for services to be able to be provided to other IMs in the UK.

In determining the required financing for PR18, the ORR should have mind to the NRSO needing to cope with an increasing workload relating to;

- ancillary parts of the network (i.e. depots and sidings);
- new capacity reporting requirements;
- increased levels of congested operation; and
- higher levels of capacity innovation needed to make best use of the infrastructure.

Just as Network Rail should have flexibility to move resources from one Route to another – or other national activities - it should also have flexibility to move resources between a Route and NRSO where there is more efficient and effective way of working available.

By giving the NRSO the ability to balance its objectives and hence outcomes, it should be able to explicitly manage trade-able outcomes through a clear process. A fixed set of target performance measures may therefore not be appropriate.

We suggest that a scorecard approach is adopted for the NRSO to provide transparency. Any possible scorecard approach for output reporting could be separate to regulated outputs. A scorecard should be significantly informed by customers' feedback on experience and service of the NRSO.

The ability is needed to balance objectives – the NRSO's regulated outputs need to 'trade-able' while being clear of the change control process. The NRSO needs ability to move activity along with outputs or budget in a flexible and transparent way.

We do not believe it should be possible to 'trade-off' safety and technical standards but they should be part of the considerations of the NRSO in looking at the impacts of its decisions.

The NRSO should encourage medium to long-term focus throughout the industry and with funders. It needs to support the quality exchange of information between those involved in all areas of System Operation, so that the use of capacity is consistent with its planning and funding.

***ORR question C: What are your views regarding our initial ideas relating to the form of Network Rail's system operator settlement? Specifically, what are your views regarding our proposed approach to: i) the system operator's outputs framework; ii) the system operator's revenue requirement; iii) the system operator's incentives; and iv) the monitoring and enforcement framework?***

### **3.5 Outputs framework**

It is important that effective regulation and performance reporting is in place for System Operator activities. The PR18 process provides an opportunity to establishment properly monitored and clear whole-network outputs from the NRSO activities.

Care needs to be taken in the development of any regulatory targets at an NRSO level as these can be expected to have a likely wider impact on the industry as a whole. Target KPIs may not be appropriate where it is not clear what incentives can clearly operate exclusively at the NRSO level without the responses engendered impacting on routes and their customers. It is not clear that a group of measures that work together indicate an overall increase in options for the capacity being obtained from the existing network. It is also likely that decisions taken on capacity options will need to be a balanced in a wider range of measures and contractual arrangements including franchise specs. It is not clear that any regulated input measures are appropriate for the NRSO given the heavy reliance on other actors in the system – e.g. the NRSO doesn't have total control of engineering possession plans, selection of projects by funders, franchise driven service pattern requests – and it would be inequitable to penalise the NRSO where it is driven by such factors.

Quality customer (route and operator) service, innovation / problem solving, and long-term, whole network thinking should be central to the aims of the NRSO and reflected as such in its regulatory reporting. Measures should be able to indicate whether the NRSO is working in the right direction for customers on quality of service that the customers report receiving - and there should therefore be a significant customer (route and operator) input into the establishment of the outputs framework.

Seeking to measure outcomes most relevant to operators should drive a need for a balancing metric that considers how well capacity has been identified and allocated. We believe this means it is important to focus on the quality of the NRSO's output. For example, a performance measurement that considers planning delays will pick up any deficiencies in the Timetable Planning Rules (TPR) - a regulatory target specifically on data or TPRs is not needed.

Suggested measures may include:

- **CAPACITY GENERATION:** use of the network to generate capacity – both the capability of NRSO and effective use of investment to support a re-balancing from a punctuality focused industry to capacity;
- **QUALITY:** efficiency and effectiveness of delivery (how many errors / resource allocation / behaviours / engagement);
- **SPACE:** possession optimization, how does the NRSO contribute and compare to rest of OM&R;
- **VOLUME INCENTIVE:** the volume incentives needs to be geared appropriately;
- **SUPPORTING OPERATIONS:** suggest performance is not a measure unless serving as a proxy for baton change – e.g. focus on freight or cross-country; and
- **LONG-TERM THINKING:** a key area of SO activity in providing a centre for long-term industry thinking and problem solving.

The regulatory framework should encourage and support the industry members to collectively deliver whole-industry outcomes through a clear framework that sets out the relationship between NRSO activity and both the Routes in operational delivery and the Technical Authority in supporting the technical standards and capability of the network.

System Operator regulation should be capable of allowing the NRSO to evolve in CP6 and be flexible in size and shape. The ORR needs to be mindful that it does not create artificial barriers in its regulation of the NRSO that discourage collaborative activities across the industry. Financial flexibility and the ability for Network Rail to adjust budgets is essential as we commented on above and in the response to the initial consultation.

In addition, as well as reporting system performance, the regulatory framework should facilitate evolution and innovation through a transparent Network Rail change control mechanism against which any justified changes in budget allocation (e.g. between routes and the NRSO) can be reported if Network Rail reorganises activities. Transparency will also cover the effect (if any) on outputs.

### **3.6 Incentives**

Incentives should be in place for NRSO to encourage cost effective solutions to maximise the capability of the current network and plan the future network. This requires the NRSO to identify the whole-system requirements and support a range of different ways of delivering the NRSO's challenges. Care should be taken to avoid incentives that promote undue avoidance of risk.

The NRSO should be incentivised to actively identify opportunities to increase network capacity and capability, subject to any affordability or deliverability constraints and with an understanding of any performance risks. The industry believes that the impact of extra trains on performance targets (and hence reputation) is a main driver when Network Rail makes decisions on providing access for new paths. Instead, capability and effective use of investment requires the NRSO to rebalance away from PPM to capacity and develop cost effective solutions to maximize the capability of the current network and plan the future network.

Volume measures don't significantly incentivise capacity at an operational level, however given that NRSO costs will not vary significantly in response to levels of traffic a share of the Volume Incentive could be explored as a potential income source for the NRSO in order to encourage efforts to support identifying additional capacity.

### **3.7 Charges**

We suggest that as a monopoly supplier any separation of charges are unlikely to influence behaviour or generate efficiencies and would become a cost pass-through. We note that rail freight's main competitor – road – does not bear an equivalent cost so could undermine the competitiveness of rail compared to other modes, impacting on modal shift and reducing the benefits delivered by rail freight to the UK economy. Parts of the passenger market are subject to similar demand elasticity considerations.

We ask ORR to confirm our understanding of its approach that where an issue has been addressed and closed as part of the PR18 preparatory work (e.g. charges and incentives) that it is not the ORR's intention to reopen these as part of its SO work.

Where issues and opportunities are intended to be addressed as part of the PR18 SO consultations (e.g. Volume Incentive) any intention to do so should be clarified as soon as

possible. This is especially the case if it is likely to reopen any issues related to charging and incentives where the industry has already sought to obtain agreement and confidence in CP6 arrangements.

### **3.8 Monitoring and enforcement**

The industry believes that the scorecard approach should form a key component in the monitoring of the System Operator's functional performance.

The work done on the NRSO Dashboard to date is a useful start but includes all System Operation rather than only the NRSO outputs and would be inappropriate for regulatory reporting.

In its annual regulatory reporting there may be a suitable way of presenting in one place the combined effect of all SO activity undertaken across Network Rail at Route and NRSO level.

Where services are chosen by routes, operators or other IMs, the level of regulation can be less onerous.

The NRSO is an important safety net for cross-route operators in the face of increased devolution to the routes. Therefore any movement of activities between routes and the NRSO needs to be cognisant of the need for the safety net.

### **3.9 High-level process and timeline**

The proposed high-level process and timeline in Figure 1.1 is useful. However, System Operator regulation is complex and much work still needs to be undertaken to develop any potential metrics. For example, we note the work being conducted by TRL (Transport Research Laboratory) to consider the potential for any metrics around the concept of capacity – a challenge in its own right. Progressing the overall NRSO regulation, especially in areas of such complexity, will therefore require considerable industry engagement and analysis to get it right and we are concerned that some timescales look very tight.

We suggest that ORR prioritises its work program and focuses its efforts only on the most important issues. In addition, we urge ORR to present its various PR18 initiatives and projects as a coherent work programme.