Rail Delivery Group

Response to ORR's Consultation on development of the regulatory settlement for the Network Rail national system operator in CP6

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Organisation: Rail Delivery Group

Address: 200 Aldersgate Street, London EC1A 4HD

Business representative organisation

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

For enquiries regarding this consultation response, please contact: Garry.White@networkrail.co.uk

Elizabeth de Jong

Director of Policy, Rail Delivery Group

1.1 Overview

This paper sets out industry responses, collated by the RDG, to the questions posed in the Office of Rail and Road's (ORR) consultation on the development of the regulatory settlement for the Network Rail national system operator in Control Period 6 (CP6).

Previously, in our response of August 25, 2016 to the ORR's Working Papers 2 & 3, the RDG provided its broad views on both System Operation as a whole and on the System Operator activity within Network Rail. On November 17 the ORR set out its conclusions around the key issues, opportunities and future challenges from that process and indicated where it intend to focus the development of the regulatory framework for the national system operator (NSO) business unit within Network Rail.

Industry engagement and discussion with the ORR on the subject of System Operator Regulation has continued through the industry working group that the RDG established as part of its coordinated input into PR18.

To date there have been a total of seven RDG 'Better SO Regulation Working Group' meetings – each of which has been attended by the ORR. As we have previously stated, the RDG values this engagement, believing it to have been of value in the development of the ORR's approach to the subject matter under discussion.

This response provides a high-level industry view on the questions raised, but also comments on broader issues explored by the working group, and includes views both where there is industry agreement and, in places, where there is no settled view on the consultation's questions.

In parallel to this response, reference should also be made to relevant commentary related to System Operator elements of the RDG's Periodic Review 2018 (PR18) work streams on output reporting and route based regulation.

Finally, while we recognise the progression reflected in the ORR's consultation on System Operation towards focusing the PR18 discussion on the NSO function in Network Rail, a number of members wish to draw attention to similarities in respect of NSO and Technical Authority (TA) activities performed at a national level. TA activities may be undertaken either independently or in support of NSO work including long-term planning activity and developing technical limits on capacity and capability of the network. Where activities have a bearing on the outputs that the system can deliver - as well as the costs incurred in delivering those outputs – arguments can be made for both a similar approach to the NSO regulation in CP6 - or ensuring a clear line of sight through Route and NSO regulation to these activities.

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

1.2   Chapter 1 Comments

1.2.1   "The current approach to regulating and monitoring the NSO"

As we previously indicated in our consultation responses on System Operation and the SO activity undertaken by Network Rail, the RDG recognises the changing environment and associated changes in approach needed to NSO regulation in this area. We have welcomed the mapping out of the various aspects of NSO activity regulation and monitoring and agree that the accountability of NSO activity within Network Rail (along with SO activity undertaken elsewhere) needs to be clearer.

The relatively low industry expenditure on NSO highlighted in this section is a reminder that any final approach should be proportionate in terms of cost and regulatory burden on industry and funders. It should therefore focus on 'how' the NSO carries out its work without imposing significant regulatory reporting activity. To achieve this, the alignment of key regulatory measures with the NSO's Scorecard would be sensible way forward.   The regulatory framework might otherwise result in the NSO placing more importance on regulatory reporting over effective and efficient engagement with routes and customers (operators).

1.2.2   "Our decision to have a separate NSO settlement"

The NSO has a clear responsibility to ensure that the network is planned and capacity managed as a single inter-related system that is fairly optimised and sustained for the benefit of all. The RDG welcomes the decision confirmed in this section that the ORR intends to set a separate settlement for the NSO which will sit alongside the settlement for the routes as part of Network Rail's wider determination; historically elements of System Operation have been relatively hidden within the industry and a separate settlement will place these in a more prominent perspective and help drive improvements.

While the settlement for the NSO should closely mirror that of the routes, we recognise that the NSO is not an "additional route" so will have different measures and indicators of success to routes (e.g. no measures of national performance).

As Network Rail's transformation programme continues to drive forward devolution we agree that the role of the NSO has and will become increasingly distinct - and necessary to support routes, train operators and the network as a whole.

Consistent treatment with the routes as a starting point – including customer engagement in the development of Scorecards - is a welcome principle as are the goals of improving transparency, sharpening incentives and supporting longer term investment.

On the question of supporting longer term investment, we agree that the NSO has a key role in identifying investment options, but question whether it should be held solely to account if infrastructure capacity is not subsequently used as intended or if industry demand at the point of allocation does not allow the full realisation of intended use. This recognises that decisions will be influenced by other bodies, or factors outside the control of the NSO.

It is assumed that the NSO settlement(s) will cover both the England and Wales, and Scotland.

1.2.3 "The System operator activities for inclusion in the NSO settlement"

We generally agree with the long, medium and short-near term NSO activities which do themselves relate to Network Rail's Network Strategy and Capacity Planning function. We note that Network Rail's 'SO: Fit for the Future' programme is proceeding with the company's review of the way that its business is structured and resourced for the delivery of system operation activities and to set out its vision for the NSO going forward.

Network Rail has presented an overview of this programme to the RDG SO working group and intends to continue to engage with us during 2017 as it develops the NSO's Scorecard and completes its work on the development of a strategic plan. The RDG group welcomes this engagement and members have highlighted the importance of being involved in the development of the NSO performance measures. Members recognise that the regulatory framework may need to evolve to incorporate the changes that emerge from this work.

Additional clarity in this area should also be used to clearly demarcate the NSO's responsibilities and authority vis-a-vis the routes and the extent to which choice and discretion in areas of NSO responsibility are delegated to, or held by routes.

The NSO itself should seek to evolve recommended projects for change to the network and driving forward the evolution and cooperation in related areas of capacity development (including through influencing other system operational decision making bodies). It is welcome that this process of developing recommendations should be industry led via the NSO's planning activities (including planning for route asset management and access planning) the involvement of which provides operators, and stakeholders with a clear line of engagement in capacity studies and network development, irrespective of whether that engagement is route-led or not.

Therefore, the regulatory framework, while moving towards a distinct settlement for the NSO activities is welcome, its organisation and funding need to be future proof and flexible - and the regulatory settlement accommodating of this.

1.3   Chapter 2 Comments and question responses

Q1 What are your views regarding our proposals on i) using, amongst other things, capability-based measures of the NSO's operational performance; and ii) the extent to which NSO operational performance measures should be disaggregated (e.g. to each route or operator)?

RDG members believe that measures being developed should as far as possible align with the network / system level responsibilities of the NSO and focus on reporting outcomes at this level. Where it is appropriate to disaggregate information the frequency, level, and form of disaggregation should be on a case-by-case basis and judiciously used.

We welcome the ORR's support of the role of the scorecard in providing the SO (and Network Rail generally) "with a single, coherent business tool which will also support regulatory reporting and monitoring." In so far as possible we believe that effort should be made to avoid generating separate measures relating to NSO's operational performance (including possible regulated outputs) and separate reporting on costs and revenue.

While the NSO should be able to seek additional revenue from the provision of commercial services, we would anticipate the overall shape of the core costs of the NSO activities to be relatively inelastic – reducing the potential for revenue based incentives as we discuss later.

At this stage in the evolution of the NSO, outcomes and outputs may still in a number of areas be immature or under development. It would therefore seem prudent to use capability measures in a number of areas.

In some areas it may be possible to provide an indication of the benefits realised as programmes are delivered which could assist in provision of information to judge the performance of the NSO.

We note that some system outcomes are already reported in Network Rail's Annual Return and while unsuitable for NSO measurement, the System Operator Dashboard includes measures of multi-party System Operation with market splits that may be suitable for more detailed commentary.

Some Members were disappointed that the previous Dashboard did not consider the measures that were important to their businesses and also expressed concern that some of the measures proposed appeared to be outside of the control of the NSO. Members suggested that this highlighted the need for on-going engagement with stakeholders to develop suitable operational measures of NSO performance.

Similarly, the TRL work that has been discussed, while understood to not be suitable for specific NSO regulation, may provide some potential ideas for indicators of a pan-system nature that could be used in non-regulatory reporting – particularly when looking at defined sections (e.g. key sections of lines).

In the development of measures it is important that a range of activities are covered from long-term activities through to measures that have a relationship with the day-to-day railway – albeit at system level. The nature of these activities will drive their reporting patterns.

At a sub-national/ non-regulatory level it may be possible that key data could be available that would enable customers to interrogate the NSO's performance – but we would be concerned if overly localised attempts to report outcomes were to become inconsistent with the overall NSO's purpose. The degree to which any measures can, or should, be disaggregated depends on the data in question, its use, and the extent to which any disaggregation takes a focus away from the NSO's primary objective of taking decisions on a whole-network basis. The NSO needs be not just able, but supported in managing competing priorities and exercising judgement calls to balance the competing needs on the network.

It is important that interactions with different customer groups can be understood and the effect of trade-offs made by the NSO during the course of its work are transparent.

Reporting may provide an opportunity to monitor the relationship between Customers, DfT, Transport Scotland, other funders and the routes – including some areas of System Operation between system bodies – such as the NSO's contribution to the franchising process and the flexibility provided for SO in capacity allocation.

While there are aspirations for developing measures of capacity use by the NSO, we welcome the recognition in the consultation of the underdeveloped nature of such metrics – and the noting that: "A metric of Capacity in Use and Notional Capacity, whereby changes in the ratio between the two metrics over time could highlight improvements in timetabling. This is discussed in the corresponding TRL report; a significant amount of work would be needed to 'scale' this metric into measures that work at a network-wide level."

That being said some members were supportive of further investigation of the train metres per hour metric that TRL suggested in their report. Continued investigation could send positive signals in areas such as train lengthening and suggest appropriate balance to compensate for freight train's different speeds and characteristics.

If the TRL work were to be pursued we believe it would be in best undertaken as explicit decision support tools in support of the NSO's ability to investigate and challenge current usage of capacity, but that it should not be used to report in a systematic way as measures of outcome.

Q2: What role should the NSO's stakeholders play in informing the development of NSO operational measures performance and in holding the NSO to account over CP6?

Emphasis should be on the NSO's engagement with funders, NR routes and train operators in the preparation of Route Strategic Business Plans and Scorecards, flexibly managing processes, identifying physical and operational options for increasing capacity, improving production of timetables and developing joint industry working and ownership.

Operators have noted in our discussions that they would seek to look after commercial interests primarily in their bilateral relationships with the NSO. There are also a range of multi-lateral relationships in place between stakeholders and the NSO through processes and activities that take place as part of the planning and capacity allocation processes.

The list below shows a number of these relationships, and many of them are important to enable the NSO to have appropriate means to engage with stakeholders in a manner that reinforces the NSO need to discharge its licence and determination obligations impartially.

Existing arrangements include:
- Long Term Planning Process activities which include opportunities for a wide spectrum of stakeholders and transport bodies including;
  - Route Studies
  - Market Studies
  - Network Strategies
- Consultations on capacity policies and timetable development
- The Capacity allocation process
- Railway Operational Code and emergency management planning and consultations
- RDG forums which represent all franchise owning groups including;
  - Planning Oversight Group (POG)
  - Contractual and Regulatory Reform Working Group
- Industry Forums which will encompass all affected timetable participants including:
  - Industry Steering Groups,
  - Event Steering Groups.
  - Route Investment Review Groups
- Industry bodies dealing with capacity issues including
  - Class Representatives Committee
  - Access Disputes Committee
- Established industry forums for Passenger and Freight Operators, and
- Route boards where customer interests will be more clearly represented in future.

Members are concerned that any additional meeting architecture should be complementary to both bilateral relationships and existing industry forums, and avoid adding unwarranted levels of bureaucracy and risk diffusing management controls.

Members have commented on the importance of having high-level strategic discussions of NSO performance and opportunities to improve outcomes. They have noted that despite the existence of current forums none, other the working group itself, currently discuss the outputs of the NSO.

The SO working group has recognised that there may be a role for an existing RDG group to include periodic discussion of matters pertaining to the NSO and seek the benefits of customers coordinating their interactions with the NSO (e.g. for Scorecard discussions) where the NSO will have one scorecard (not one for each customer).

Existing RDG groups (such as POG) or a new RDG group if established in a way that avoids cutting across the 1:1 relationships that the NSO has with its customers may be able to support regular strategic NSO discussions or review performance at an industry level. There may be opportunities to address any omissions in industry dialogue through the current POG review of aspects of its own structure and consider how best to enable regular strategic NSO discussions or review performance.

Network Rail has committed to discussing the development of the NSO Scorecard with industry members. It is expected that the development of the NSO Scorecard will be in line with the approach adopted within Routes with a strong customer engagement in setting Scorecards.

In any event, the NSO however should not formally report to such a group. In terms of the governance of the NSO itself, in our discussions a number of RDG members were clear that this has to be Network Rail's own governance.

It has been noted that the SO does need to have in place channels of communication at System level to discuss with other system operation and key stakeholders how they can better support the NSO in achieving its goals. Here, again, bilateral or other regular forums for discussion may be suffceint..

Given the above, not all RDG members are convinced of the need for new bodies to act as forums for the NSO's stakeholders to specifically engage in any form of governance or reporting, while others recognise a need for stakeholder discussion to be supported either by existing or new forums.

The scorecard is expected to include measures of customer satisfaction in respect of its work; this needs to be an overall assessment since it recognised that the decisions the NSO takes will not always result in universal approval.

Q3: *What are your views on our initial ideas regarding the possible NSO measures, as set out in Table 2.1?*

Members have discussed initial reactions to the possible measures set out in table 2.1 and the responses expressed in discussion with the ORR and each other can be seen in the summarising notes of that discussion (as published on ORR's website). Reviewing this discussion therefore provides insight into the views of the participating RDG members and largely addresses the areas covered. The RDG SO Group is willing to address any specific areas that may require more developed feedback, as appropriate.

Members have noted that there is relatively little suggested in table 2.1 on optimisation or specific improvements to the quality of process or outputs. A number of suggested measures such as 'Lead the long term planning process (LTPP)' are process-driven activities where the success of outputs in themselves are difficult to measure but products could have clearly defined objectives milestones against which delivery could be assessed. The evolution of industry planning processes in the future would need to be able to be accommodated by the regulation of the NSO as arrangements evolve towards a pipeline-based approach to industry planning. The outcome-based approach does not necessarily support quantitative measurement.

Members would look to see a higher profile given to overall quality of outcome in the suggested measures. Emphasis should be made in considering the suite of proposed measures that good system operation outcomes require holistic thinking of the outcomes measured rather than a line-by-line assessment. Overly focussing on any one specific measure may drive sub-optimal use of the network as a whole.

We believe this means it is important to focus on the quality of the NRSO's output (e.g. through a performance measurement that considers planning delays which will pick up any deficiencies in the Timetable Planning Rules (TPR)) – meaning a regulatory target specifically on data or TPRs is not needed). The measures developed should be based around Network Rail's NSO's business scorecard which would also be the basis for reporting the NSO's performance.

Overall, members welcome the emphasis given to the use of customer satisfaction in the assessment of NSO activity – as they do with the development of route Scorecards. Though will need to be given to the fact that in balancing competing needs, some customers are likely to be dissatisfied with capacity allocation decisions at different times. Therefore, while important that this be built into Network Rail's final NSO scorecard caution should be exercised in the extent to which it is attempted to disaggregate these assessments into satisfaction with a variety of different processes.

Capability measures and process improvements such as Timetable Planning Rules could be best captured through relative developments than absolute measures. This should be achieved through reporting of milestones on the delivery of programmes established in the NSO business plan to support processes of continuous improvement and project delivery – rather than inventing new, subjective or theoretical metrics around capacity and capability.

Given that the NSO has a key role coordinating with all parties undertaking SO activity (particularly funders, franchising authorities and the ORR) members consider that there would be merit in exploring the development of measures that indicate both the outward engagement and incoming response (for information) across these key interfaces.

In respect of the NSO's role in allocating capacity on the network members have highlighted the importance of providing a balancing measure in this area that incentivises Network Rail to better trade-off performance and cost with capacity. The lack of a balancing indicator has consistently been recognised as being an issue and the regulation of the NSO represents an opportunity to construct a more appropriately balanced scorecard to address this.

This should encourage communications in support of planning of the network – e.g. long-term planning provides opportunities to develop capacity through a range of options for various public and private funders' interventions, and the alignment of franchise requirements with route plans.

Members are keen that scorecard measures the areas important for their businesses. In this context members have suggested considering the efficiency of train paths by tracking average speed, as well as the role that the NSO has in supporting operators to develop new business.

1.4 Chapter 3 comments and question responses

Q4: Do we need additional mechanisms regarding the NSO's capital budget, to ensure the NSO is properly incentivised to undertake capital expenditure?

In respect of the three approaches (RAB, change control, memorandum account) put forward by ORR, there is not a clear consensus from members around which (if any) of these approaches is preferable, however we feel it is more important that the ORR takes into account the following comments.

Investing in NSO people and systems (whether opex or capex) is important and RDG members recognise the need to provide an environment that does not penalise this investment, recognising that there may be wider, cash-constrained circumstances.

The NSO should not be beholden to the routes and resources need to be in place to provide for those systems that need to be kept and developed centrally. The fact that there will be transparency on the NSO capex, both in its Strategic Business Plan (SBP) and in its reporting of actual spend, will provide far more incentive for SO spend than exists currently, and the fact that stakeholders will be involved in the development of the SBP for the NSO and ongoing planning activity, will similarly help hold the NSO to account in making necessary investments in systems etc. Elsewhere, some members have expressed the view that since the SO has few assets so no capex is required.

Generally, members believe that it would be better to let the NSO become fully established initially, including how it engages with Routes and stakeholders, before any more complex regulatory arrangements are put in place, to avoid distracting management focus.

Related to this, in response to the ORR's summer consultations, the industry commented that the NSO should be well funded to allow for expected increases in workload and permit pro-active work such as timetable re-casts. Support for this was based on an expectation of the potential returns from broader research rather than just considering very costly engineering schemes. The regulatory settlement for the NSO should reflect this.

Additional governance should not be necessary and risks creating additional bureaucracy. The settlement should also provide Network Rail with the flexibility to evolve the SO's responsibilities and resources during CP6 and allow for continuous review and rebalancing of resources as the organisation develops, with industry consultation.

Q5: Should the NSO be subject to financial incentives so that its revenue varies to reflect the success of its performance?

We welcome the confirmation that the ORR does not intend to set direct charges on operators for NSO services. Having already taken a decision not to apply a charging framework, RDG members would also suggest that the ORR need not develop incentives aimed at varying the NSO's revenue.

Equally, we do not believe that incentive based variances are suitable given the level of fixed costs.

In our discussions with the ORR it was also commonly agreed that given the nature of the NSO activities, it may be difficult to have outcome-based measures in all areas that capture the effectiveness of the NSO's operational performance. Indeed, we recognise that many of the suggested incentives are only in part influenced by the NSO and are subject to other operational activities.

Some members highlighted that given the inelasticity of the business, it would not be advisable to expose the NSO to financial risks, however there could be merit in exploring an up-side only financial incentive scheme. There may be some commercial opportunities for the NSO to develop its service offering for customers and potential applicants which could provide opportunities to grow income. However, we would stress that "core" services should not be charged for and should be "free at the point of use", otherwise there is a slight risk that a lack of clarity as to what is already funded could lead to requests for payment for "core" services.

There will be a range of services that the NSO could, and in some cases such as the national timetable should, provide to other infrastructures in order to retain the benefits of an integrated network – some of which could similarly be addressed in the settlement, and others would be for direct charging.

Incentives

Given the relative immaturity of the NSO, RDG members see limited opportunity for the use of incentives in regulation of the NSO in CP6 – and would not wish to see NSO revenue linked to metrics (many of which are still under development). Pursuing this approach could put investment at risk - and the benefits of an upside only scheme are unclear.

In contrast, members see the advent of a separate settlement as providing opportunities for efficiencies, with savings reinvested into improving NSO activities.

Many of the potential mechanisms identified in discussion (such as metrics linked with Schedules 4 and 8) rely on delivery at operational level such as Route performance and therefore fall outside the sole control of the NSO. The appropriateness of such mechanisms is therefore questionable, except to provide illustrations of trends, and could lead to the adoption of adverse behaviours.

On balance, members considered that certainty on budget at this stage in the development of the NSO should be the principal consideration - above the potential for revenue based incentives.

We trust that the above provides a useful contribution to the ongoing development of the NSO regulatory framework and we look forward to discussing further with you in the ongoing RDG – ORR discussions in the PR18 SO Working Group.