

Rail Delivery Group

Response to

ORR's consultation on possible measures of the System Operator's performance

Date: 21 September 2017

Rail Delivery Group response

ORR's consultation on possible measures of the System Operator's performance

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:

Tom Wood or Bill Davidson

thomas.wood@raildeliverygroup.com

bill.davidson@raildeliverygroup.com

Rail Delivery Group

2nd Floor, 200 Aldersgate Street

London EC1A 4HD

Introduction

1. This submission provides a high-level industry response to the consultation on possible measures of the System Operator's (SO) performance. It is intended to "*inform the SO's ongoing discussions with its stakeholders about its CP6 priorities and, in turn, what it should report on.*" We welcome the opportunity this provides to further shape the regulatory regime for the SO within Network Rail, its priorities for CP6 and in turn what and how it should report on its performance.
2. We recognise that the regulatory framework for the SO should continue to develop during this periodic review - and may need to further mature in CP6. SO performance measures should therefore be an area in which the ORR expects the SO to look for opportunities to improve reporting, and is willing to give due consideration to any changes in metrics and target outcomes proposed (aside from the additional need to actively balance the outputs of the system as the SO makes trade-offs).
3. We are content for this response to be published on the ORR website.

Industry support

4. As we have indicated in previous responses to the ORR consultations on system operation and the role of the SO, we believe that the creation of a distinct, network-wide, SO capability within Network Rail is a moment of opportunity. We agree with ORR's expectation that: "*industry will increasingly rely on a SO that is proactive, transparent, evidenced-based and independent and impartial of any particular interests to help them deliver for passengers and freight customers*".
5. Our working group on SO regulation has proved a useful forum to explore the challenges of developing measures that reflect the SO's own contribution to the planning of the network (both long-term and immediate). While welcoming the increased potential to engage, challenge and agree priorities with the SO, we do not believe that stakeholders should be relied upon to replace the regulator's role. Nor should customers be required to undertake any duties on the ORR's behalf.
6. Notwithstanding this, we welcome any efforts to develop a more focused regulatory approach in which industry is encouraged to resolve issues internally before formal intervention is required.
7. We look forward to Network Rail setting out in greater detail, through its Strategic Business Plan, further development of SO measures and means by which stakeholders can continue to play a substantive role in the SO's governance. As part of this, we believe that it may be appropriate, in some areas, for 'compartmentalised' discussions that enable greater transparency and more detailed information exchange with different groups of like stakeholders.

SO vs System measures

8. This response focuses on the consultation's relatively narrow area of SO-specific measures and reporting. We recognise that it will not be possible to distil every aspect of the SO's work into quantitative measures. The SO may need to provide qualitative information and descriptions to complete gaps in any data-based approach to reporting. This would also allow an explanation of decisions and trade-offs made by the SO that require the regulator to adjust its expectations.

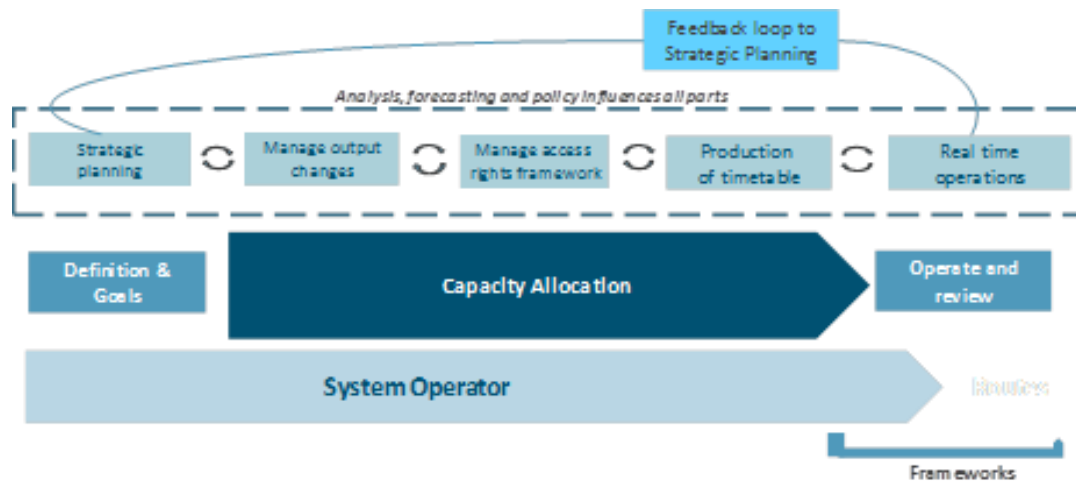
9. We look to Network Rail to progress the development of scorecard measures and an appropriate suite of reporting documents in advance of CP6; and that it will continuously improve these as part of its day-to-day activities.
10. Many of the SO measures discussed in the consultation are close to those of overall system activity (including the consequence of ORR, DfT and Transport Scotland decisions). Indeed, we see a clear role for the SO in bringing together the overall picture of system performance and presenting this information for all interested parties. However, the collation and reporting of these activities should not result in measures against which the SO is itself measured or regulated.
11. While the SO's scorecard should include measures that are important to both ORR and customers, we recognise its primary purpose is as a management tool. There are likely to be a range of other channels of communication that could be used to report to stakeholders - such as annual reports, capacity statements, planning consultations, system dashboard, etc.
12. Together, these documents could be wider in scope, more detailed, and allow transparent reporting to be given to both SO performance and wider system performance - including the contribution that different parties (e.g. ORR, DfT, Transport Scotland) make to this.

Question 1 (Chapter 2): Are there any substantive areas of the SO's activities that you consider are not outlined, and where its performance should be measured?

13. The detailed list of potential metrics in the consultation's annex highlights a number of challenges. While there may be value in reporting on a wide range of activities, there is also a need to achieve a balance between:
 - a distribution of measures from across the operating model,
 - relevance to the SO itself and not the whole system,
 - different levels of detail for useful reporting, and
 - sufficient detail to be informative balanced against the burdens of large volumes of reporting.

Guided by the operating model

14. We agree with the approach taken of mapping measures across the different activities covered in the SO's operating model (as shown below). This should be supported by process maps and a governance framework that the SO reviews with its stakeholders in advance of CP6.
15. Each stage of the model lends itself to a different degree to the use of process and output oriented measures. This may make it easier to suggest more detailed measures for some sections. It is important to avoid adopting too many measures simply because they are readily available, otherwise there is a risk of over-weighting one particular stage and a resulting imbalance in both management and regulation of the SO.



The SO's operating model

16. The only area of significant activity that we have identified as missing in this section of the consultation lies within 'managing output changes'. The proposed measures focus on managing the enhancement portfolio and informing franchise decisions. There is a lack of reference to the SO's role in managing Industry Planning Groups / Event Steering Groups (ESG) to coordinate the network's adaptation to, and incorporation of, significant changes.
17. There could be a number of measures around the production of materials (e.g. timetables for 'calendar of event' topics) which enable the ESGs and other industry forums to have substantive and informed discussion that allow issues to be moved forward in industry discussions.

Measuring capability

18. Overall, we believe that the SO metrics need, when taken together, to be able to measure the execution of the SO's business plan and the quality of the outputs within its direct control. In this regard the measures should be driven by the SO's plan and enable stakeholders and the ORR to ask of the SO:
 - What did the SO's plan set out to do?
 - Did it follow through on the plan, or change control appropriately?
 - Were appropriate tools and processes used?
 - What is the assessment of the success of the actions undertaken?

Qualitative and quantitative measures / reporting tools

19. In many instances it may not be easy or appropriate to use quantitative metrics. Compared to Route scorecards we believe that an accompanying narrative is likely to be a more important component of scorecard reporting.
20. The requirement for an accompanying narrative highlights the need for the SO to work with stakeholders to develop appropriate communication channels to consider SO performance and future stakeholder priorities in order to improve industry outcomes.
21. The activities falling within the upper-right quadrant of Table 2.1 in the consultation are therefore of particular significance. They will often be more appropriate tools for the transparency being sought than adding additional information to a business focused scorecard.

22. The SO should be engaged in a wide range of reporting and its performance may be reported in-the-round through existing publications thereby reducing the overall regulatory reporting burden. It is important, though, that the performance measures and accompanying commentary are not 'buried' or overly dispersed across publications but are appropriately consolidated and readily accessible.
23. Equally, where data is available, route-level reporting of some SO related measures should be undertaken to avoid the reporting of overly-consolidated information into too-few and too-high a set of measures. Any disaggregation and reporting of SO measures at route-level, should not undermine the relationship that operators have directly with the SO as a whole. Since the relationship that operators have with the SO is one of the most important that they have with Network Rail, it is crucial that route-level SO scorecards do not result in the SO prioritising its relationship with the Routes.

Question 2 (Chapter 3): What are your views on the measures outlined with respect to strategic planning and managing output changes? Are there any additional measures that you think would measure and incentivise the SO's performance in this area?

Leading strategic planning

24. In this area, as in others, the quality and comprehensiveness of the advice provided by the SO will be a central consideration of the SO's performance. A number of the potential measures set out in the consultation (especially those indicated as not being within the SO's accountability) appear more appropriate to a system operation dashboard than they do to the SO's own measures.
25. There are risks of perverse behaviours being driven by inclusion of some of the proposed measures. Care should be taken not to presuppose particular approaches to developing proposals through the long-term planning process (LTPP) and any modular planning that takes place - for example, the suggested measures imply that all funding of investments is beneficial (A7), or that all options should be progressed (A8).
26. It is important that the SO measures reflect the activities for which the SO is accountable. Possible measure A5 considers the "*accuracy of forecasts contained within the LTPP*" and is identified as a metric for which the SO is accountable. However, it would not be appropriate to hold the SO to account should actual growth not ultimately align with forecasts given the many other factors that influence growth. Furthermore, many SO growth forecasts are 'unconstrained' making it very difficult to overlay constraints in order to understand their accuracy.
27. Measures need to be able to assess the quality of the work undertaken - rather than presuming milestones at the beginning of the control period (especially given the approach being taken to modular planning for CP6).
28. Measures of quality might include the perceptions of the funders receiving advice.
29. Engagement with stakeholders, including future customers and end users is important and the SO should make clear in its reporting how parties are incorporated into consultations and views measured.
30. It may be that the scorecard focus for the SO should be limited to milestones for national investment programmes only at this level of reporting.

Early stage development

31. In the initial list (B1-B3) of possible performance measures, advising franchise decisions in relation to early stage project proposals are absent. The SO should be engaged pre-ITT in advising, and post submission in assessment activities; separate measures should exist for each of these. Where options have already been previously developed with funders another measure may be appropriate.
32. Metrics in this area would therefore be more successful if based on activities explicitly set out as part of the joint working between the SO and a Franchising Authority (FA) in support of the franchising processes and milestones reported. This would also allow for activities in terms of wider advice to be recognised in the SO's support of the FA.

Managing output changes

33. Members would welcome more explicitly tracking by the SO of delivery against milestones for the early stage development of enhancement programmes. The SO also needs to be able to accommodate changes in funders' requirements, in funding, and in timescales – and be able to adjust milestones if these are being used as measures.
34. As in other scorecard areas, the ability to engage in change control of outputs is important for the SO to be able to fulfil its function of making best use of available capacity while taking into account external factors such as the investments being made in, and usage sought of, the network.
35. The SO therefore needs to actively manage the realisation of intended benefits by protecting capacity ahead of the introduction into service of a new scheme, and the monitoring of consequential changes to any decisions (e.g. as per Hendy Report) to postpone schemes – as assumptions may have been made elsewhere about future network capabilities.

Question 3 (Chapter 4): What are your views on the measures outlined with respect to managing the framework for access rights, producing the timetable and use of capacity? Are there any additional measures that you think would measure and incentivise the SO's performance in this area?

Managing the framework

36. There are significant opportunities for the SO, as the policy owner for Network Rail's sale of access rights, to develop approaches that support the Routes' work with operators on applications and inform potential regulatory directions for access agreements.
37. However, given that agreements are directed by the ORR, the decision criteria set out in the industry's network code, and capacity disputes are reviewed by the Access Disputes Committee - this is an area not entirely within the control of the SO. A few process based measures and, more importantly, narrative descriptions of whole system performance are likely to be the most relevant way for the SO to report on this topic.
38. Although the SO may manage frameworks for real time operations, such as for service disruptions through a Rail Operating Centre (ROC), the ORR should be clear that if measures for this are proposed, they are more likely to be related to wider system operation and not the SO specifically.
39. The SO should also be producing system reports such as the strategic capacity statement and the dashboard; these tools, supplemented by detailed commentary that reports on the effectiveness and success of these processes, may be better vehicles than the scorecard

for such reporting. While any dashboard will measure whether the SO has undertaken a process (e.g. has the Strategic Capacity Statement been published) members expect the success and value of the process to be considered (e.g. have new, useful strategic paths been added to the Strategic Capacity Statement). This will be difficult to capture via a scorecard or dashboard, so commentary within an annual review document may be necessary.

Identifying capacity

40. RDG members have long-held the view that the SO provides an opportunity to address the need for a more strategic and innovative use of capacity. A separate determination is a welcome means to identify resourcing for research and improved analysis of network usage policies and capacity assessments. Regulation of the SO offers an opportunity to provide a balancing indicator to allow Network Rail to make more informed trade-offs between capacity and performance. In order to make trade-offs, an indication of levels of capacity utilisation and identification is necessary.
41. Ultimately, the SO needs to have the ability to balance the competing needs of stakeholders and deliver capacity in the best overall way.
42. While we believe that the SO needs to demonstrate its capability to identify spare capacity (potentially as part of a rolling programme of regular reports) and articulate how it could be used, it should not be targeted on the sale of such paths. Rather, the SO need only provide insight into 'white space' then allow operators to work out what it commercially makes sense to fill it with.
43. In the view of some of our members, a simple numeric measure of the use of network capacity is not meaningful; a more qualitative approach to describing how the network is performing would be more appropriate.
44. Identifying measures that the SO is accountable for is difficult, however capacity utilisation and identification is an important activity of the SO and an area where it can add significant value for its customers. Measures of capacity are necessary to provide a balancing indicator to undertake a trade-off against performance measures. As such there may be merit in the SO exploring further and potentially trialling some of TRL's suggestions or measuring milestones pertaining to a root and branch programme of capacity optimisation.
45. It may be instructive to monitor the frequency of ORR directions that do not follow SO advice – especially where the divergence is based on an ORR assessment and challenge of the quality of the SO's analysis (as opposed to other considerations that the SO may not have had a duty to take into account such as abstraction).

Quality of advice

46. As stated in our response to question 2, quality of advice is a consistent factor across the areas of this consultation. It will be important to a number of parties in the industry including:
 - franchising authorities in the development of transport strategies and franchises,
 - project developers and funders on the business cases with relevant asset costs,
 - customers and Routes on the opportunities and impact of capacity decisions, and
 - the regulator in assessing the effective allocation of capacity.

47. Measures across this range of long-term and capacity allocation activities should enable innovative behaviour and support a systematic review of the perceived wisdom of the network's capabilities.
48. Where the SO is making decisions on capacity allocation, the extent to which it follows the codes and criteria set out in its own, and in industry frameworks (e.g. as measured by successful appeals to other bodies), may provide a measure of how robustly the SO's processes are delivered.
49. The SO should also propose changes to processes, decision criteria, network codes and industry / business rules to enable planning and access frameworks to evolve and support the needs of the wider industry.

Producing the timetable

50. There are many potential measures identified (see D1 to D17) and this highlights how straightforward it is to measure this SO activity. Many of the possible metrics include measuring 502a delay. While measuring performance is necessary it is important that it is not over-represented on any scorecard because it is easily quantifiable. This would risk over-incentivising performance and some members suggest that the role that the SO plays in allocating and identifying capacity is more important than its role in overall performance.

Question 4 (Chapter 5): What are your views on the SO management performance measures outlined, and are there any additional measures which you think would measure and incentivise the SO's performance in these areas? We would particularly welcome suggestions on the SO's role in contributing to system safety.

Financial Performance

51. Network Rail needs to manage the long term sustainability of the network to ensure delivery of safe, reliable, affordable infrastructure for future users of the railway. This should be recognised in the overall assessment of the SO's approach to both supporting the railway and managing its business in a sustainable railway.
52. We agree with ORR's planned approach of establishing a separate settlement for the SO's role within Network Rail's overall determination. This should be supported, as described above, by reporting based on a business scorecard approach that contains a range of customer informed measures. It could be reinforced by a Regulated Asset Base for the SO and distinct governance arrangements akin to those of the Routes that include an independent Supervisory Board.

SBP and scorecard

53. For the purposes of measuring SO performance, we look to Network Rail to propose a scorecard later this year that reports through both quantitative and qualitative measures. This will consist of:
 - a more direct assessment of the SO's own performance,
 - its delivery against business plan, and
 - the overall, balanced, contribution it has made to the system's outputs – including an understanding of the trade-offs it has managed.

54. There will also need to be a clear, transparent and flexible approach to change control of any regulated measures in order for the SO to balance industry and funder needs as demands on the network evolve.

Customer satisfaction

55. Quality customer service (along with innovation, problem solving, and whole network thinking) should be central to the behaviour of the SO. We welcome a focus on the nature and quality of the service provided for current and potential future Routes (or infrastructure managers), operators, funders and end users. This should inform the development of the SO's scorecard and wider reporting – and avoid the use of additional metrics unless there is a clear gap in reporting on activities (see question 5).

Safety

56. We believe that beyond safety measures relating to its own staff, the SO should report on its contribution to overall safety and risk. The SO should propose these in due course, but we would suggest that these might include outputs that lead to a day-to-day improvement in safety being built into its work. For example: overall performance improvements, identifying level crossing risks from changes in capacity use, or evidence of safety being designed into longer-term planning options

Question 5 (Chapter 6): What are your views on our proposed criteria for identifying possible ORR-determined SO measures?

57. We recognise that there may be gaps in the SO's finally proposed range of measures that could necessitate the ORR identifying possible additional measures. However, we would hope that the SO will engage collaboratively with stakeholders to establish its scorecard and wider reporting activities (i.e. annual reports, system dashboard, network capacity statements), and will establish a sufficiently wide range of publicly available data that the ORR need not add to these.
58. In the event that the SO scorecard only consider process related metrics it may then be important for the ORR to consider additional qualitative measures to assess the value that the SO is adding to the industry. For operators, the outcome of the processes is as important (or even more important) than the actual process itself and therefore it is hoped that the SO will look to capture the successful outcome of processes in its reporting. In the event that the SO scorecard focusses on capturing the mechanics of the process the regulator may wish to consider additional reporting requirements on outcomes.
59. We believe that this approach should enable the SO to avoid the risk of placing more importance on the ORR's additional measures than on the agreed priorities of operators and Routes, and the SO's other customers, which might otherwise restrict the ability for the network to manage shocks, or stifle future reforms.
60. Such a risk would of course be dependent on the wider governance framework that the SO establishes to review its SO scorecard and performance. This is a function of Network Rail which members would not want undertaken by another pan-industry body above Network Rail – especially if participation is limited among selected commercial entities.
61. This response is also being submitted to the SO and we anticipate further discussions on measures and governance in the near future.

Question 6 (Chapter 6): What are your initial views on what measures, if any, ORR should consider setting as ORR-determined measures?

62. Without prejudice to ORR's ultimate responsibilities, we believe that the regulator is less likely to need to set specific measures for the SO - since its assessments are less likely to be based on numeric measures.
63. The use of properly developed, customer focused scorecards at national and route-level should, lessen the need for additional ORR-determined measures, assuming that the SO measures, or reporting documentation, consider qualitative measures that assess the value that the SO is adding to the industry. Any further ORR-determined measures should be considered where these qualitative measures are not being captured by the SO. This will not be known until the SO has established its suite of scorecards and other reporting tools, for example annual reviews. Indeed, this should support an approach of the SO undertaking reporting on exceptions rather than its entire suite of metrics to reduce the overall level of regulatory reporting.

Additional points

64. As we have previously stated, RDG members are keen to see a proportional regulatory approach to the SO's regulation. We are keen to avoid a complex or prescriptive approach that risk: being bureaucratic, creating artificial barriers between different parts of the system or placing a disproportionate cost on the industry and funders due to an over emphasis on regulating the process involved.
65. We therefore welcome the proposed approach to monitoring and enforcement in CP6 as set out in the overarching consultation on the regulatory framework for Network Rail that: *"As a general principle, where there are strong mechanisms for customers and other stakeholders to work with Network Rail to agree and deliver appropriate action, we will give the space for these mechanisms to be used, supporting the relationship between Network Rail and its customers."*