Rail Delivery Group

Response to

The ORR consultation on the Draft Determination

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Organisation: Rail Delivery Group

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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

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Introduction

1. This document outlines the key points from our members in response to the ORR's consultation on its Draft Determination for the 2018 Periodic Review. We are making separate responses to the consultation on enhancements in CP6 and the consultation on changes to the network licence.

2. ORR's consultation consists of numerous documents and a very wide range of topics related to the forthcoming control period. We have focused our response on what we consider to be the most significant issues.

3. RDG is content for this response to be published on the ORR website.

General

4. RDG supports a draft determination and associated proposed licence changes, supported by sufficient monitoring arrangements by ORR, that will support Network Rail in embedding truly devolved and empowered route businesses, enabling a clear line of sight from the customer through train operators to route businesses, and supported by the services provided by the System Operator, Infrastrucutre Projects and other central functions.

Investment in Research and Development (R&D)

5. The RDG welcomes the ORR's support for the principles of R&D but is disappointed that it has set an initial funding allocation of only £100m in CP6, significantly less than that sought by Network Rail in its strategic business plan and around half the level that Network Rail spent in CP5.

6. We note and agree with the statement in the Draft Determination that "*In the event that Network Rail manages risks effectively, this would allow central risk funding to be used to increase spending on R&D over CP6.*" and encourage the ORR to confirm this in its Final Determination.

7. The ORR's unease over effective governance of R&D has led Network Rail to conclude that it will govern and deliver the entire CP6 R&D programme. If this was the intent of the determination the RDG will work to support Network Rail. However, the proposed Network Rail programme will primarily be focused on improving infrastructure asset sustainability, performance, safety & security of the railway, and will deliver less than half of the whole-system, cross-industry, collaborative R&D required to fully realise the benefits of the current long-term Railway Technical Strategy Capability Delivery Plan. The supply chain shares this concern. The supply chain's willingness to co-fund R&D is demonstrated by the £29m co-funding in the CP5 programme and the £64m committed to the UK Rail Research and Innovation Network (UKRRIN). There is now a risk that this funding will be drawn to co-funding the Network Rail programme and thus make it more difficult for other parts of the industry to secure co-funding of R&D activity. There is, therefore, a gap and imbalance in funding and capability to deliver the R&D required by industry in CP6. This will reduce future benefits.

8. RDG urges the ORR to consider a significant increase in the allocation of funds to R&D in CP6 to allow delivery of a broader programme with the resulting future benefits to the

railway and the communities, businesses and people it serves. The industry would like to be involved in the governance arrangements for the programme.

9. RDG welcomes the establishment of a performance innovation fund but notes that at this stage only an initial funding of £10m is allocated. The industry, through the National Task Force, is keen to be involved in shaping the purpose of the fund and in developing appropriate governance arrangements for it.

Efficiency

10. The RDG is aware that Network Rail and some of its other members have included comments on ORR's efficiency assumptions in their responses to the Draft Determination. We make a general observation on ORR's role in assessing renewal efficiency. We consider it important that the way efficiency is assessed does not prevent Network Rail from doing the right thing in terms of small scale enhancements on the back of renewals. We described our views on this more fully in paragraphs 14-16 of our response to the consultation on renewals efficiency last year.

Asset Sustainability

11. We note the ORR proposal that Network Rail should allocate an additional £1bn to renewals to improve asset sustainability. However, we do not believe ORR should be specific on how Network Rail achieves improved asset sustainability by requiring additional renewals spend rather than, say, leaving Network Rail flexibility to increase maintenance and monitoring as well as more renewals. It should be for Network Rail to determine how it can best deliver improved asset sustainability. We also note that part of the proposed £1bn additional renewals spend is being funded by the proposed reduction in R&D expenditure. There is a clear trade-off between R&D and asset sustainability, which needs to be considered carefully for CP6, as any reduction in R&D could negatively impact on future asset sustainability.

12. Network Rail agrees that more should be spent on asset sustainability but considers that the shortfall is about half of the £1bn proposed by ORR. Network Rail describes the rationale for this view in its response.

Train Performance

13. We believe it is important that the ORR and franchise authorities fully recognise the implications from Network Rail's funding settlement being fixed. There is limited scope for Network Rail to increase spending to ensure outputs are delivered and this is inconsistent with fixed performance targets in franchise agreements. We therefore consider that there would need to be sufficient flexibility in franchise contracts to respond to changes in Network Rail outputs.

14. We would welcome clarity from the ORR on how it intends to regulate performance targets at a route level during the control period.

15. In the draft determination, the ORR indicated that Network Rail and train operators should work together to consider whether agreement could be reached on performance trajectories in CP6. The ORR said that Network Rail should provide it with an updated set

of performance trajectories by 13 July 2018. Some passenger operators continue to have concerns about the process that has been followed and the quality of discussion and analysis before and since the draft determination. A specific concern of some train operators is a lack of clarity around how the Consistent Route Performance Measure – Passenger (CRM-P) trajectories proposed by Network Rail have been calculated. Though it may be clear which influencing factors have been considered by Network Rail in determining trajectories (such as the effects of timetable change and improvements to infrastructure), a number of operators have said that there is less clarity about how these factors are translated into performance impact. Some train operators believe that this has limited the extent to which they have been able to challenge the trajectories put forward by Network Rail, which has in turn limited the convergence between operators and Network Rail in expectations around performance. The RDG will continue to facilitate discussion between Network Rail and operators to drive performance improvements through the National Task Force and other forums.

16. Network Rail considers that there should be ongoing work to develop performance plans, using the scorecards as a vehicle for discussing, and ideally agreeing, forecasts. Network Rail also believes it is important that the CRM-P forecasts are realistic (particularly in the early years) so that Schedule 8 benchmarks and the CRM-P targets are set appropriately.

17. We agree it is important that there are ongoing discussions on performance measures in scorecards between Network Rail routes and train operators. We also consider that ongoing discussions are needed with franchise authorities where there is misalignment between the train performance that can be realistically delivered (underpinned by robust joint performance strategies), and train performance in franchise agreements.

18. The RDG supports the principle of a re-opener for Schedule 8 where ORR considers there has been a material change such as for changes resulting from new Crossrail services. The industry has been discussing this reopener with ORR at the Schedule 8 working group.

System Operator (SO)

19. The industry considers that ensuring the capability and capacity of the SO is a high priority for CP6 and is strongly supportive of a well-resourced and funded SO. We welcome the increased funding in the draft SO settlement but, in light of the recent timetable planning problems, some train operators consider it is worth reviewing whether there should be more IT investment related to timetabling activities. The performance of the System Operator should be monitored to ensure it is providing sufficient support services to routes and train operators.

Access Charges

20. Open Access Operators (OAOs) are concerned about the high level (£4/train mile) that the ORR is proposing for the new infrastructure cost charge to be levied on new services in CP6, particularly as this is in addition to the increase in variable usage charges. We have previously commented that the introduction of a new infrastructure cost charge for OAOs should be considered in conjunction with a new access policy. ORR acknowledges that the access policy will have to be revised, and we would welcome discussion and clarity on this, including confirmation that the new access policy will be implemented at the same time as the new charges, if confirmed in the final determination. Additionally, there is a lack of clarity on how inter-urban services are to be defined and on precisely which

services will be classed as new open access services, given that some proposed services will already have been discussed.

21. The ORR is proposing to change the structure of fixed track access charges (FTAC) for CP6, where the money Network Rail would receive would change depending on how many trains it accommodates in the timetable. It is important that Network Rail is not exposed to an unreasonable amount of financial risk in CP6. Network Rail's fixed costs, which the FTACs are designed to recover, will not vary with traffic levels in the short term. Therefore, if Network Rail receives less money through FTACs in CP6 because of this change to the charging framework, Network Rail is likely to need to reduce its expenditure in other areas (e.g. maintenance or renewals).

22. The ORR consultation on changes to track access contracts includes (paragraphs 3.2 to 3.5) a proposal for a contingency provision to deal with the scenario that the review is unable to be implemented on 1 April 2019 because Network Rail has objected to the Final Determination. We support the proposal to include the contingency arrangement as a standard clause in the new model versions of the track access contracts for CP6 and beyond.

Freight

23. Freight operators are very concerned about the proposal to increase freight charges from year 3 of CP6. They consider the ORR proposal represents a steep real-terms increase of more than 30% from the 3rd year of CP6 to the end of CP7. If confirmed, this would have significant costs implications for freight operators, making the sector less competitive and resulting in modal shift from rail to road.

24. Freight operators consider a more gradual move to full cost recovery over a longer period than that proposed by the ORR would be compliant with relevant legislation, provided this happens within a reasonable time frame. Freight operators propose that charges are capped at CPI+1% until full cost recovery is achieved.

25. Network Rail supports a broadly stable infrastructure charging position for freight in CP6 and recognises this helps support existing traffic and growth which is important to freight and core to the CP6 Strategic Business Plans. Ultimately it is not just about the level of charges, but the overall financial/funding proposition for freight. Network Rail also supports the principle of cost reflective charges, though recognise that capping/phasing may be appropriate. However, any changes to ORR's proposed caps/phasing would mean reductions in other Network Rail activities and programmes for CP6 recognised in the ORR's draft determination, given the fixed funding in the Statements of Funds Available. Overall, Network Rail considers that ORR's proposals are reasonable.

26. We have several comments on the impact assessment for the ORR freight charging proposal, namely:

    a. the reasoning behind the ORR's proposal lacks transparency. In particular, we are unclear as to how the ORR has reached its conclusion that the capping/phasing period should be concluded by the end of CP7 and why this could not happen over a longer period.

    b. the MDS Transmodal analysis quoted was undertaken in 2015, when coal traffic represented a much larger proportion of overall freight volumes. Given the decline in the traditional coal market, this analysis does not accurately reflect the current composition of freight traffic. We therefore recommend that the ORR revises its assessment based on the current freight traffic mix. Freight operators have commissioned MDS Transmodal to carry out an update of its analysis, however the results from this work will not be available until after the 31 August response deadline.

c. Freight operators do not agree that increased charges will incentivise the procurement of track-friendly vehicles. It is the differential between track-friendly and less track-friendly vehicles that partly drives decisions on which wagons to buy. Even if the differential in charges increases in absolute terms, this will be so marginal that it will have no impact on incentives. Furthermore, the freight sector already has a very strong track record of purchasing low track force bogies when it does buy new wagons.

27. We consider that the incentive to grow freight traffic should be strengthened and the industry would be happy to work with the ORR to consider how best this is achieved.

Stakeholder Engagement

28. Effective stakeholder engagement is vital for an effective and efficient railway. ORR is not proposing to be prescriptive about stakeholder engagement but expects that Network Rail, its routes and SO will be required to engage in a manner which is effective, inclusive, well governed and transparent. We support this principle. However, it is worth noting that there is ongoing work to fully establish and embed Network Rail's governance arrangements for CP6 (including the SO advisory board and Route supervisory boards) and so this remains an area where there will be continuing engagement between train operators and Network Rail.

Health and Safety

29. The industry supports the ORR proposal that £80m more safety related investment is made for improvements to level crossings and access walkways.

Budget Flexibility

30. We appreciate that Network Rail's move to becoming a public sector organisation has imposed constraints on the company's ability to move money freely between different years of the control period and between operating and capital expenditure. There are implications from these constraints. For example, as mentioned earlier the fixed funding limits the flexibility to meet fixed outputs, such as train performance to achieve franchise targets. Budget constraints also affect renewal or maintenance plans that impact on access planning, the supply chain and efficiency. The full implications of these constraints may not yet be evident and we suggest there is further discussion to help mitigate the impact.