ORR protects the interests of rail and road users, improving the safety, value and performance of railways and roads today and in the future

OFFICE OF RAIL AND ROAD

Freight customer event

Welcome

21 November 2018

Setting the Context

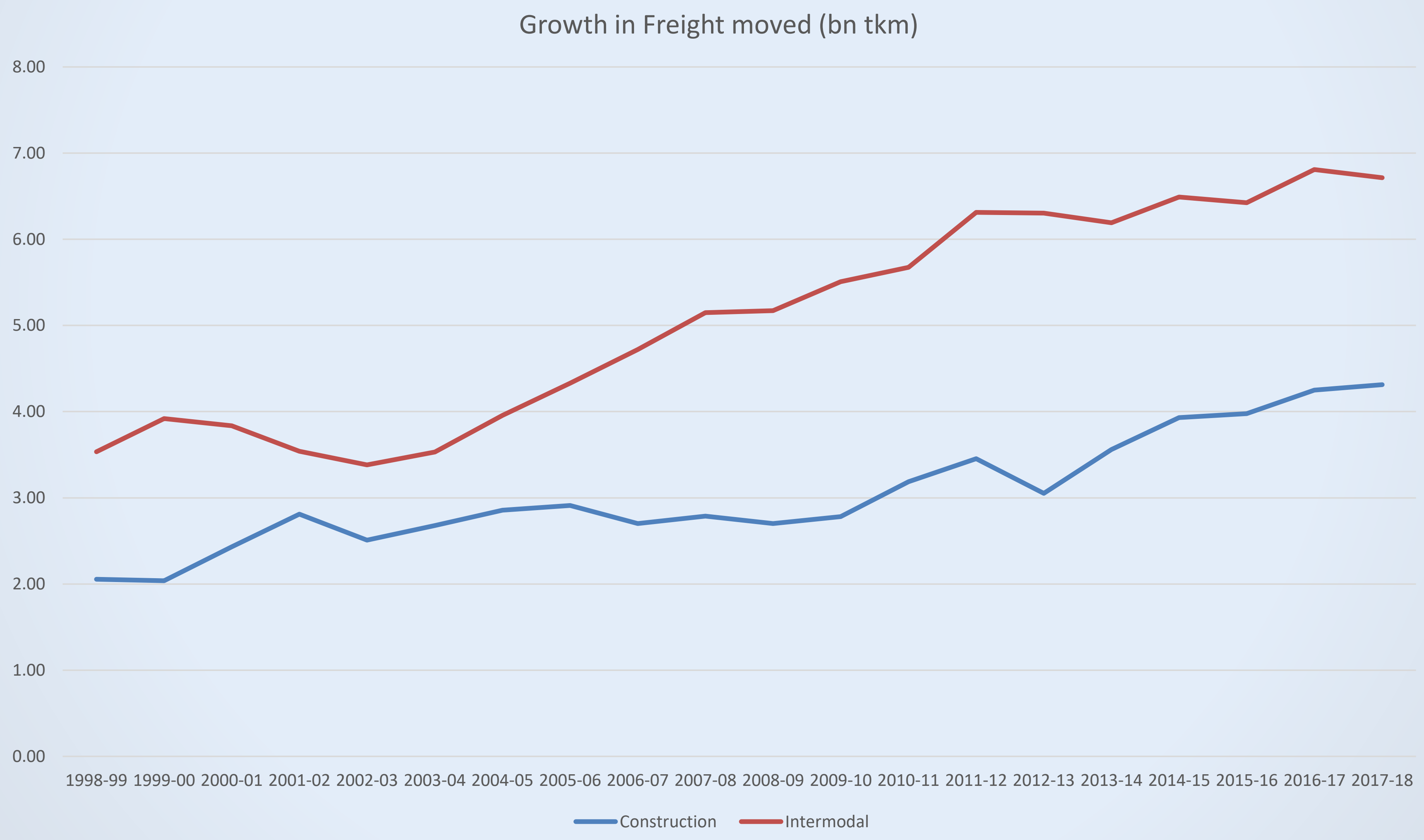
ORR Freight Customer Event

Maggie Simpson

Director General – RFG

21 November 2018

Growth – the long view



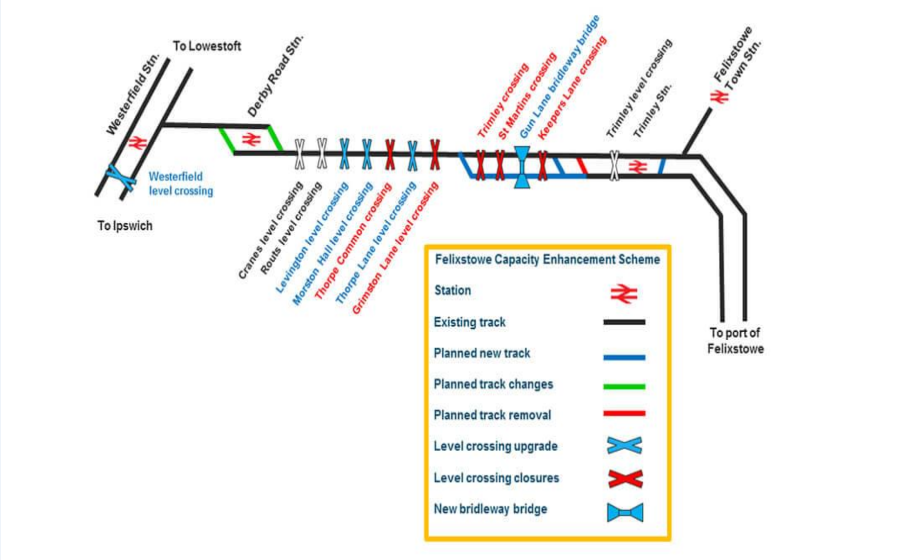
RFG Rail Freight Group

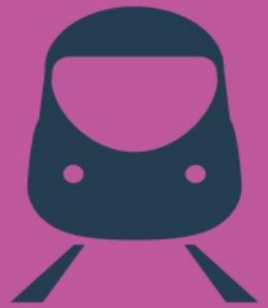
Renewing the environmental case

- Working to update environmental measurements and comparisons.
- Research to inform future traction options including potential to replace / supplement diesel.
- Continued pressure for longer trains, moving more with each locomotive.
- Consideration of options to improve air quality emissions in terminals.

RFG
Rail Freight Group

Investment needs for next control period





4320 lorries

shifted from road to rail each day under Midlands Rail Hub plans

RFG
Rail Freight Group

Positioning for successful Brexit

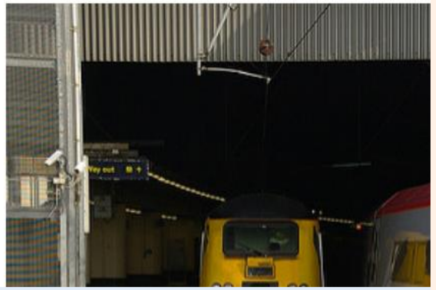
Brexit BOOST for Network Rail as expensive EU regulations set to be DROPPED

CA
cut

Most read in UK

‘Don’t forget rail’ in Brexit talks, urge UK industry leaders

By Benjamin Fox and Ian Hall | EURACTIV.c



Rail industry seeks post-Brexit customs depots around UK

Inland freight terminals would ease congestion at Channel tunnel, says group

RFG
Rail Freight Group

Rail Review raises questions for freight.

	Private Sector	Public Sector
Vertically Integrated	**Direction of Conservative Party Policy** 	**Direction of Labour Party Policy**
Vertically Separated		

UK railways 2018

RFG
Rail Freight Group

Summary

- Strong prospects for rail freight growth
- Rail freight sector is working to reconfirm its environmental position for the future.
- Brexit remains a risk, but work is developing on key areas including Channel Tunnel.
- Potential structural reform needs careful thought to be a positive for freight sector.

RFG Rail Freight Group

Thank You

maggie@rfg.org.uk
www.rfg.org.uk

CP6 freight access charge decisions

Freight customer event
21 November 2018

Pedro Abrantes

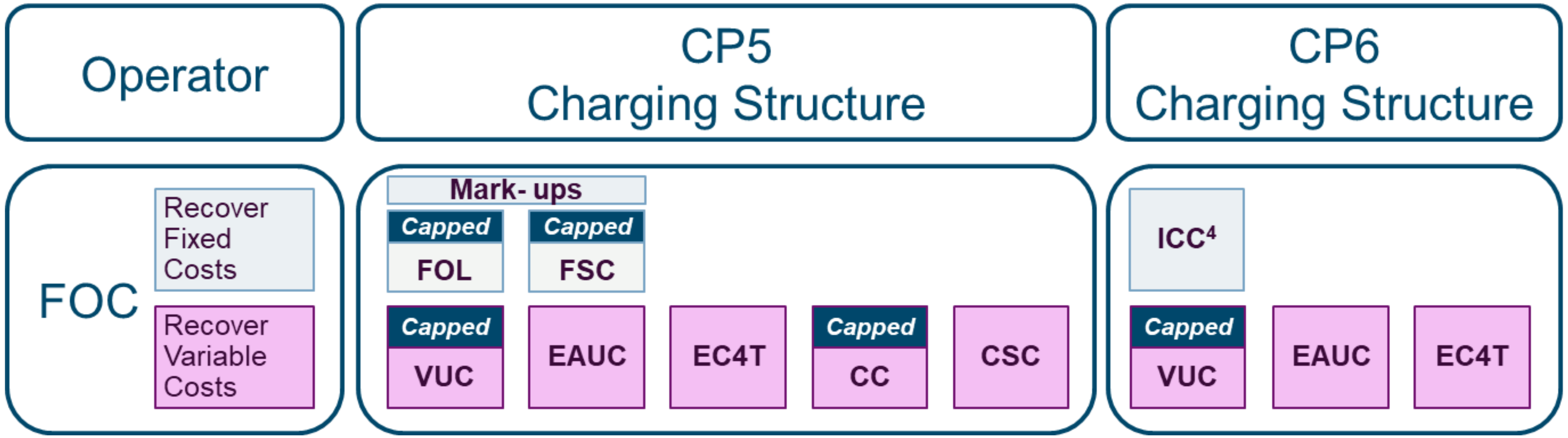
Headlines

Charging framework:

- Stability
- Simplification

Quantum:

- 2019 – 2021: Variable costs going up by CPI inflation
- 2021 – 2028: Variable costs going up by CPI + ~3.2% p.a.
- Infra costs going up by CPI for ESI coal, iron ore and spent nuclear fuel
- Biomass to pay Infra Cost Charge from 2021



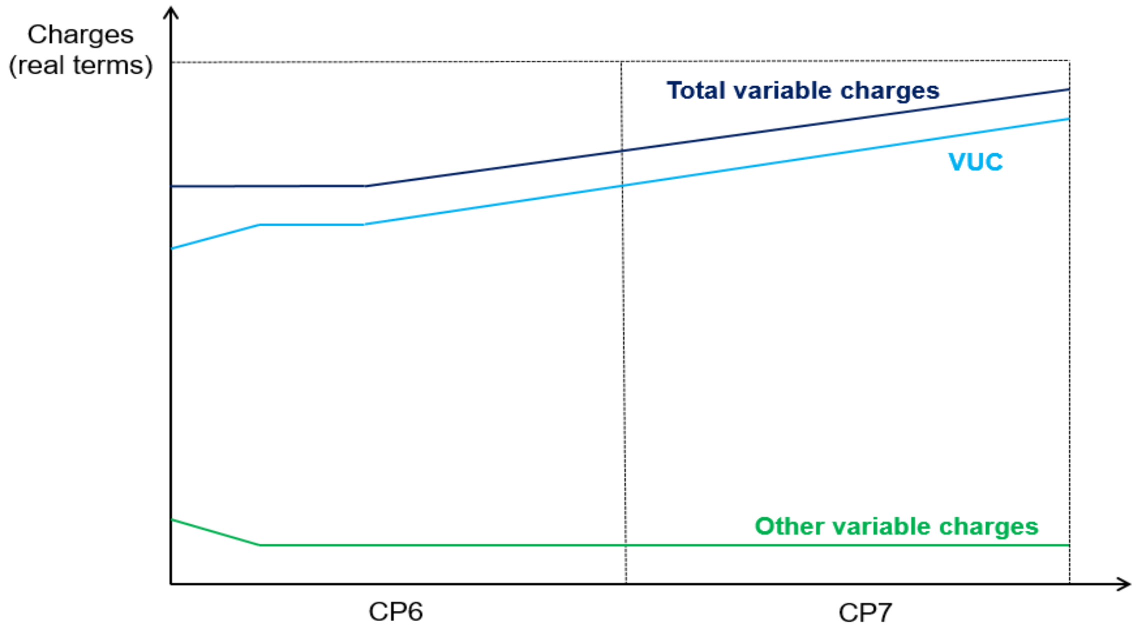
Variable charges - headlines

- Legal framework:
  - Infra costs directly incurred must be recovered from operators
  - Changes can be capped and phased-in over a finite period of time
- Capacity charge and coal spillage charge will be scrapped **= saving**
- But:
  - CP5 capping catching-up with us
  - NR variables costs have continued to increase
- Without capping/phasing-in, total variable charges would have gone up by 26% + inflation over CP6
- Capping/phasing-in mean that:
  - **2019-2021: variable charges will increase with CPI inflation**
  - **Overall CP6 increase = CPI inflation + 10%**
  - **Change from RPI to CPI further expected to save 5% by end of CP6.**

Variable Usage Charge capping/phasing-in detail

- Decision took account of ORR's statutory duties, in particular:
  - Better use of the network
  - Supporting rail sector growth and stability
  - Impact on funding

Illustrative transition profile for capped freight operators



- **Total variable charges will increase by CPI inflation between March 2019 and March 2021**
- **Then transitioning to uncapped levels via a steady straight-line 'glide path' to end of CP7 (March 2024) ~ CPI + 3.2% p.a.**
- The increase in total variable charges over CP6 will be CPI+10%

Infrastructure cost charges (1)

- Freight-only line (FOL) and freight specific charge (FSC) being replaced with overall infrastructure cost charge (ICC)
- ESI coal, iron ore and spent nuclear fuel will continue to be charged ICCs
- Charges will increase with CPI inflation

- Freight services carrying biomass for the electricity supply industry (ESI biomass) deemed to be able to bear a mark-up charge in CP6
  - This will be introduced in April 2021 and increase gradually to the end of CP6
  - Our decision took into account the fact that there could be some reduction in biomass traffic as a result of this charge.

Infrastructure cost charges (2)

Similar to the way ICCs were introduced for ESI coal, iron ore and spent nuclear fuel in CP5, the charge will be phased in for biomass services over CP6.

2017-18 prices	2019-20	2020-21	2021-22	2022-23	2023-24
ESI coal	1.6	1.6	1.6	1.6	1.6
Iron ore	1.6	1.6	1.6	1.6	1.6
Spent nuclear fuel	34.2	34.2	34.2	34.2	34.2
ESI biomass	0.0	0.0	0.3	0.9	1.4

Note: charge in £ per thousand gross tonne mile (kgtm). Biomass takes into account phase-in profile.

NetworkRail

ORR Freight Customer Event
Network Rail update

Paul McMahon

Managing Director, Freight & National Passenger Operators

21st November 2018

Safety moment

Freight & National Passenger Operators

- Established as “ninth operational route” or “virtual route”
- Formation of FNPO, built on National Freight team, established following McNulty
- Strongly supported by customers and stakeholders with high levels of FNPO people engagement
- Do not physically operate infrastructure but are accountable for outputs
- Principal point of contact with customers who operate over multiple routes
- Work closely with rail freight end users, who include ports, aggregates companies, third party logistics providers

Our national customers and our priorities

NetworkRail

Our Purpose

Deliver growth and provide excellent service for our customers and stakeholders, through improving safety and performance, and enhancing capacity and capability, at an efficient cost

FNPO Priorities

NetworkRail

Deliver safe, reliable and efficient performance

Customer focused and collaborative

Develop the FNPO team, in line with wider transformation

Identify and provide network capacity and capability

Business development to generate growth

FNPO Route Scorecard at Period 8

NetworkRail

FNPO

Route | Period 8

NetworkRail

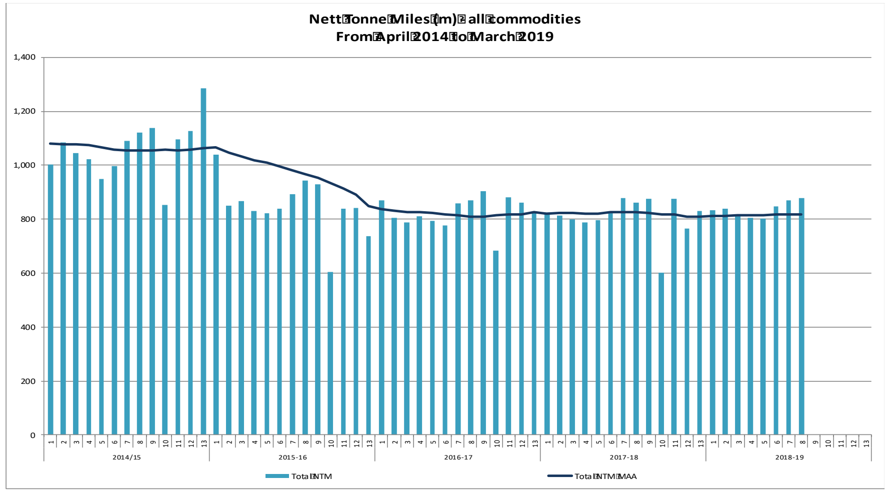
NATIONAL OVERVIEW | ROUTE BUSINESSES | SUPPORT FUNCTIONS | STRATEGIC PAPERS | GUEST PAPERS

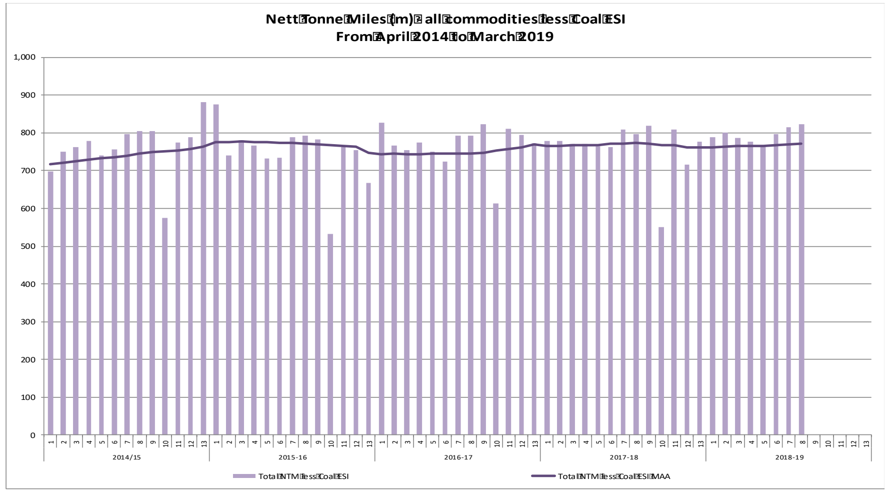
Route Scorecard - FNPO | **Period Business Review**

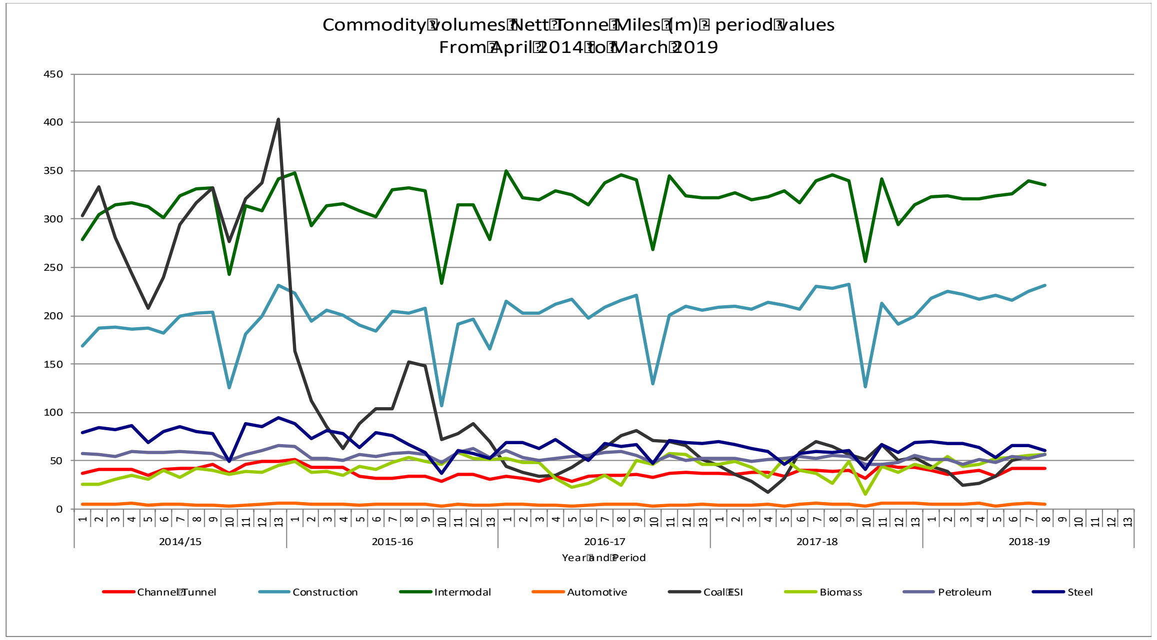
Report Owner - Paul McMahon

		Period		YTD		FYF					
Safety - (PRP 20%)	**PRP Weighting**	**Actual**	**Target**	**Actual**	**Target**	**FYF**	**Worse than Target**	**Target**	**Better than Target**	**FYF Achievement**	**FYF Weighted Achievement**
Work related absence	5.0%	0	1	0	13	10	40	20	0	75%	3.75%
Derailments	4.0%	0	1	8	6	13	13	10	7	0%	0.00%
SPADs	4.0%	4	3	33	24	50	48	40	32	0%	0.00%
Close Calls Raised	2.0%	19	13	162	111	229	131	175	219	100%	2.00%
Close calls closed within 90 days	2.0%	100%	90%	100%	90%	100%	80%	90%	100%	100%	2.00%
Operator lost time incidents on NR infrastructure	3.0%	0	1	2	7	6	16	12	8	100%	3.00%
Train Performance Measures - (PRP 20%)	**PRP Weighting**	**Actual**	**Target**	**Actual**	**Target**	**FYF**	**Worse than Target**	**Target**	**Better than Target**	**FYF Achievement**	**FYF Weighted Achievement**
Freight Delivery Metric (FDM-R)	6.0%	94.0%	92.8%	93.1%	93.7%	93.4%	92.5%	94.0%	94.5%	30%	1.80%
Right time Departures - Freight	3.0%	76.9%	79.0%	78.4%	79.7%	79.2%	78.0%	81.0%	84.0%	20%	0.60%
FOC on TOC (DM/100 train km)	2.0%	1.72	1.37	1.39	1.23	1.18	1.25	1.18	1.16	50%	1.00%
Delay per Incident - Freight	0.0%	35.5	30.0	27.5	26.6	26.8	26.3	27.1	28.0	31%	0.00%
Cross Country - PPM	3.0%	82.5%	87.1%	83.5%	87.9%	82.3%	89.2%	90.0%	90.8%	0%	0.00%
Cross Country - CaSL	3.0%	5.7%	4.7%	6.6%	5.1%	6.8%	4.0%	3.9%	3.8%	0%	0.00%
Cross Country - Time to 3 minutes	0.0%	63.6%	64.9%	67.2%	72.7%	65.4%	72.5%	73.5%	74.5%	0%	0.00%
Cross Country - Cancellations	0.0%	2.49%	2.86%	3.27%	3.13%	3.20%	2.95%	2.85%	2.75%	0%	0.00%
Caledonian Sleeper-Right Time	3.0%	77%	70%	76%	77%	80%	75%	80%	85%	50%	1.50%
Charter Trains - performance measure	0.0%	89%	91%	90%	91%	88%	86%	88%	90%	50%	0.00%
Investment & Asset Management - (PRP 10%)	**PRP Weighting**	**Actual**	**Target**	**Actual**	**Target**	**FYF**	**Worse than Target**	**Target**	**Better than Target**	**FYF Achievement**	**FYF Weighted Achievement**
CP5 SFN schemes - current year GRIP 6 completion vs baseline	10.0%	90%	90%	90%	90%	90%	80%	90%	100%	50%	5.00%
Customer - (PRP 30%)	**PRP Weighting**	**Actual**	**Target**	**Actual**	**Target**	**FYF**	**Worse than Target**	**Target**	**Better than Target**	**FYF Achievement**	**FYF Weighted Achievement**
Net tonne miles moved - Freight (Great Britain) - (billions)	4.0%	1.0	0.9	7.1	6.5	11.4	9.4	10.4	11.4	98%	3.92%
Freight service plan reviews - delivery against agreed milestones	3.0%	100%	90%	94%	90%	90%	80%	90%	100%	50%	1.50%
Strategic capacity - Freight	3.0%	21%	10%	21%	10%	10%	5%	10%	15%	50%	1.50%
Cross Country - Average minutes lateness	4.0%	6.05	5.29	6.14	4.96	6.16	4.40	4.35	4.30	0%	0.00%
Cross Country - Access planning agreed milestones met	4.0%	81%	80%	78%	80%	78%	75%	80%	85%	30%	1.20%
Caledonian Sleeper - Roll up of customr scorecard	3.0%	60%	50%	56%	50%	50%	0%	50%	100%	50%	1.50%
Charter planning compliance	3.0%	50%	50%	56%	50%	75%	0%	50%	100%	75%	2.25%
Freight End Use (FEU) satisfaction	6.0%	61%	73%	61%	73%	73%	68%	73%	78%	50%	3.00%
Financial Performance - (PRP 15%)	**PRP Weighting**	**Actual**	**Target**	**Actual**	**Target**	**FYF**	**Worse than Target**	**Target**	**Better than Target**	**FYF Achievement**	**FYF Weighted Achievement**
Financial Performance Measure (FPM)	15.0%	-6%	0%	-1%	0%	-1%	-10%	0%	10%	47%	7.04%
People - (PRP 05%)	**PRP Weighting**	**Actual**	**Target**	**Actual**	**Target**	**FYF**	**Worse than Target**	**Target**	**Better than Target**	**FYF Achievement**	**FYF Weighted Achievement**
Your Voice Action Plans - delivery against agreed milestones	5.0%	100%	80%	100%	80%	95%	70%	80%	90%	100%	5.00%
	100%	60%									47.56%

Freight traffic trends







Capacity & Capability – *Total SFN Contributions £419.7m*

Scheme	SFN funding (£m)	Complete (freight part)	Output
Ipswich Chord	50.5	Mar-14	Increased capacity, faster journey times
Ipswich Yard	32.7	Dec-14	Increased capacity, longer trains, better operations
North Lincolnshire resignalling and re-control	4	Jan-16	Improved operations
Southampton – WCML diversionary gauge	29.2	Jul-16	Clearance for diversionary capability
Southampton Freight Train Lengthening	90.5	Mar-19	775m capability
Banbury area remodelling / Oxford corridor	20.2	Mar-19	Line speed improvement, reduced headways
Northern Ports Freight Capacity	8	Mar-19	Improved capacity to Port of Liverpool
Great Western Main Line gauge clearance	15.2	Mar-19	Clearance for 9'6" high maritime containers on standard deck wagons between London and Bristol/Cardiff
Thames Haven Level Crossing improvements	0.5	Mar-19	
Peak Forest Freight Train lengthening	48.9	Mar-19	Longer, heavier trains, upto 3000t
Gauge clearance schemes connecting W Midlands / S East with N East / Scotland	67.3	Mar-19	Clearance for 9'6 high maritime containers and domestic/European swapbodies on standard deck wagons
Ripple Lane Nodal Yard (GRIP 3)	0.3	Jul-19	Enables European traffic to access terminals in Barking/Dagenham area
Felixstowe Branch Line Capacity	52.4	Aug-19	Upto 47tpd each way

Freight End User survey (July 2018)

Question	Score (out of 5)
1 – During the last 6 months, how satisfied are you with Network Rail overall?	3.47
2 – During the last 6 months how satisfied are you with the Network Rail Freight?	3.13
3 – In the last 6 months are you satisfied Network Rail has put safety first in its dealings with your company?	3.93
4 – During the last 6 months how satisfied are you with Network Rail infrastructure reliability and performance?	3.13
5 – During the last 6 months how satisfied are you with the progress of any current / relevant Network Rail delivered projects (eg Strategic Freight Network / other Enhancements / improvements)?	2.80
6 – Thinking about the last 6 months how satisfied are you that Network Rail is helping to deliver your wider business objectives?	3.47

Overall score 61% against a target of 73%

Proposed Freight End User Scorecard

Freight End User Scorecard		Satisfaction	Traffic		Performance			Safety
		FEU Satisfaction	Total Net Tonne Miles Moved	Freight Network Utilisation (TBC)	Right Time Departures at Origin Top 10 locations	FDM	A2F	Derailments
All Commodities	Target	TBC	TBC	TBC	TBC	TBC	TBC	TBC
	Actual	TBC	TBC	TBC	TBC	TBC	TBC	TBC
Intermodal	Target	TBC	TBC	TBC	TBC	TBC	TBC	
	Actual	TBC	TBC	TBC	TBC	TBC	TBC	
Construction	Target	TBC	TBC	TBC	TBC	TBC	TBC	
	Actual	TBC	TBC	TBC	TBC	TBC	TBC	
Metals	Target	TBC	TBC	TBC	TBC	TBC	TBC	
	Actual	TBC	TBC	TBC	TBC	TBC	TBC	
Energy	Target	TBC	TBC	TBC	TBC	TBC	TBC	
	Actual	TBC	TBC	TBC	TBC	TBC	TBC	
Automotive	Target	TBC	TBC	TBC	TBC	TBC	TBC	
	Actual	TBC	TBC	TBC	TBC	TBC	TBC	
Royal Mail	Target	TBC	TBC	TBC	TBC	TBC	TBC	
	Actual	TBC	TBC	TBC	TBC	TBC	TBC	
Other	Target	TBC	TBC	TBC	TBC	TBC	TBC	
	Actual	TBC	TBC	TBC	TBC	TBC	TBC	

CP6 ORR FNPO Determination – key points for freight

FNPO Route
- Noted that FNPO route is different
- Role is to provide “advocacy” for customers across all NR

Stakeholder engagement and satisfaction
- Continue customer/FEU satisfaction surveys
- Set up Supervisory Board

CP6 Scorecards
- Content with Route scorecard targets
- FDM 94.0%; FDM on Route scorecards
- All ‘TBC’ to be agreed by March 19
- Supportive of customer scorecards
- FEU scorecard to be developed

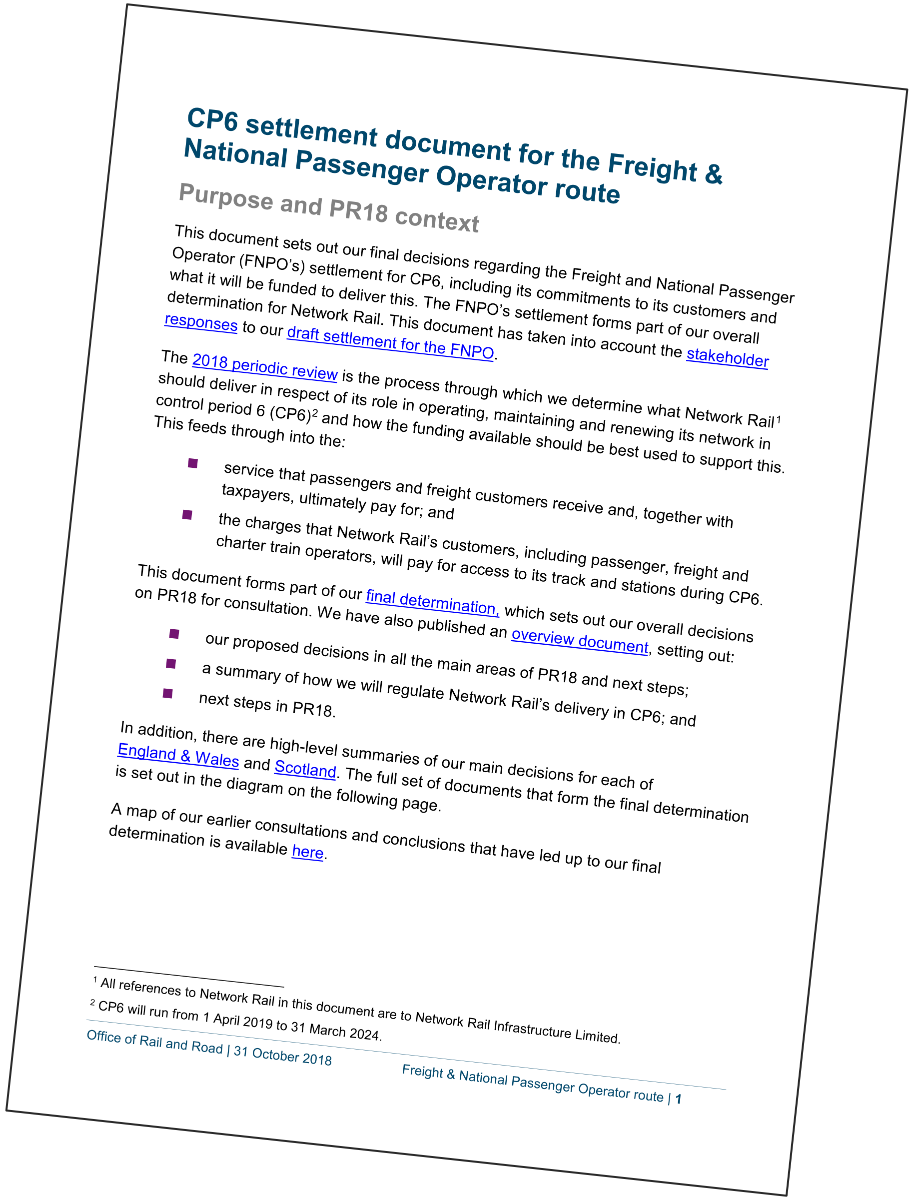
Access charges
- Freight access charge increases – capped and phased

Safety
- Allocated £22m to address and mitigate safety risk

Scotland
- Specific measures for growth, gauge and journey time

Capacity & capability
- Maintain published and operational capability
- 15.6% growth in freight moved assumed

Financials
- £28m for Opex



CP6 settlement document for the Freight & National Passenger Operator route

Purpose and PR18 context

This document sets out our final decisions regarding the Freight and National Passenger Operator (FNPO’s) settlement for CP6, including its commitments to its customers and what it will be funded to deliver this. The FNPO’s settlement forms part of our overall determination for Network Rail. This document has taken into account the stakeholder responses to our draft settlement for the FNPO.

The 2018 periodic review is the process through which we determine what Network Rail[1] should deliver in respect of its role in operating, maintaining and renewing its network in control period 6 (CP6)[2] and how the funding available should be best used to support this. This feeds through into the:

- service that passengers and freight customers receive and, together with taxpayers, ultimately pay for; and
- the charges that Network Rail’s customers, including passenger, freight and charter train operators, will pay for access to its track and stations during CP6.

This document forms part of our final determination, which sets out our overall decisions on PR18 for consultation. We have also published an overview document, setting out:

- our proposed decisions in all the main areas of PR18 and next steps;
- a summary of how we will regulate Network Rail’s delivery in CP6; and
- next steps in PR18.

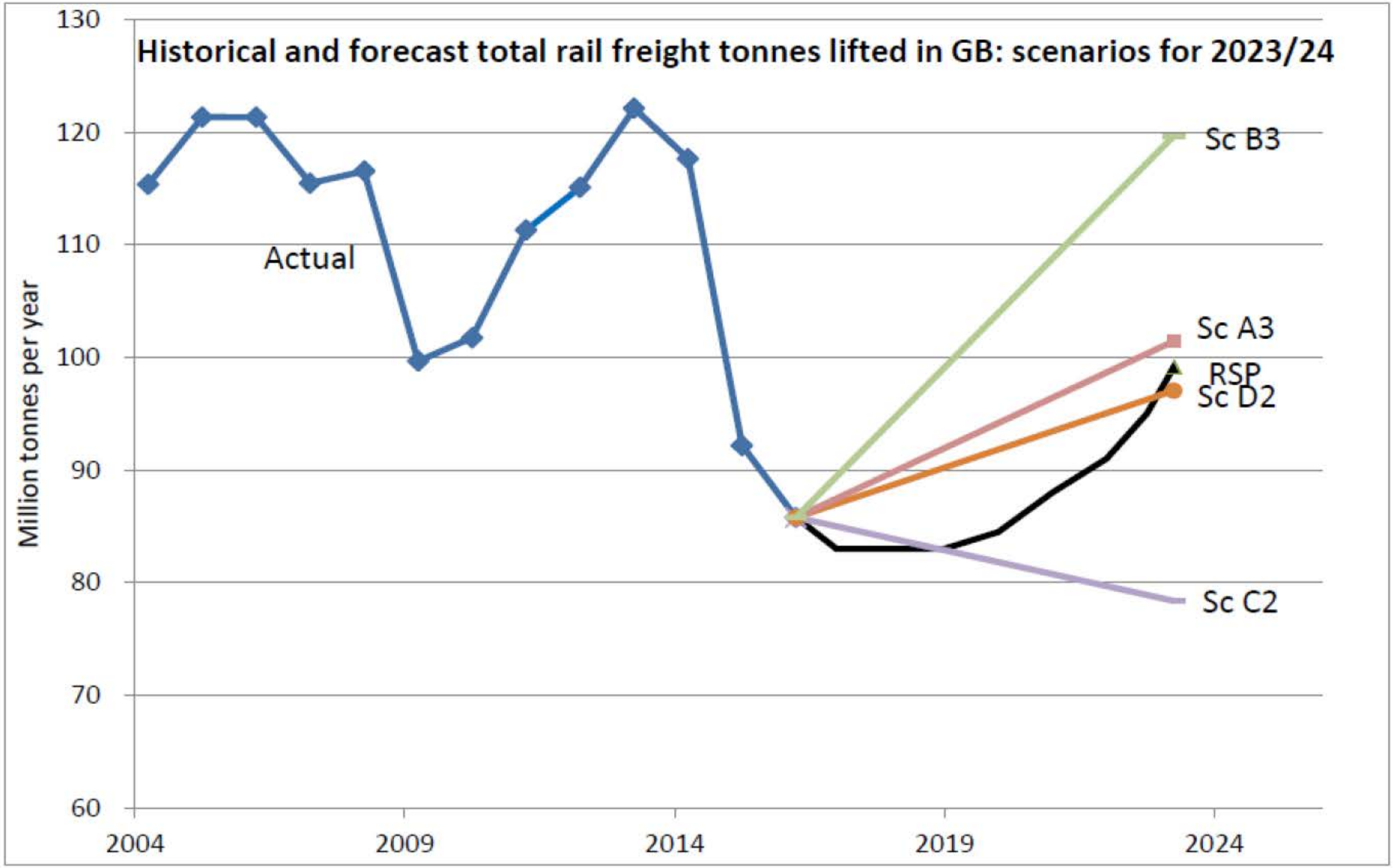
In addition, there are high-level summaries of our main decisions for each of England & Wales and Scotland. The full set of documents that form the final determination is set out in the diagram on the following page.

A map of our earlier consultations and conclusions that have led up to our final determination is available here.

[1] All references to Network Rail in this document are to Network Rail Infrastructure Limited.
[2] CP6 will run from 1 April 2019 to 31 March 2024.

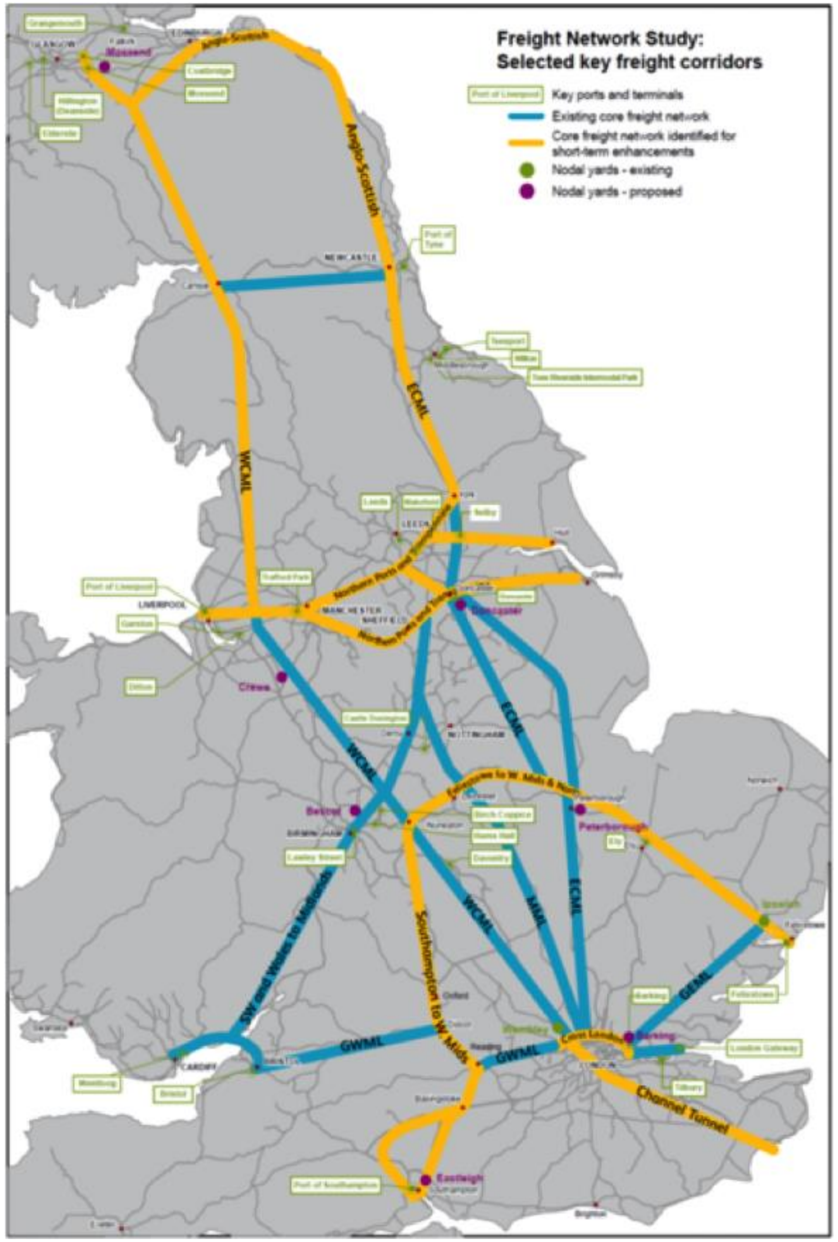
Office of Rail and Road | 31 October 2018 Freight & National Passenger Operator route | 1

CP6 Traffic Forecast



CP6 candidate enhancement schemes

Key Freight Corridor	CP6 Candidate Freight Schemes	Estimated cost range
Felixstowe to West Midlands & the North	– Doubling of Haugley Jn – Signalling Headways Bury – Ely area (level crossings / bridge speeds) – Ely to Soham doubling – Peterborough - Syston signalling/level crossings – Syston – Sheet Stores gauge (W10/W12) – Further refine layout at Ipswich Yard	£10m – £15m £50m – £70m £100m – £250m £120m – £150m £50m - £60m £5m - £10m £1m - £5m
Southampton to West Midlands & WCML	– Kenilworth doubling	£100m - £170m
Channel Tunnel classic route	– Gauge enhancement (up to W12)	£50m - £80m
Cross London, and Essex Thameside	– Ripple Lane Nodal Yard – Thameside Level Crossings (capacity)	£10m - £15m £30m – £40m
Northern Ports & Trans Pennine	– Trans Pennine gauge enhancement (up to W12) – New loop between Up Decoy and South Yorkshire Joint Line – Trans Pennine freight capacity	£100 - £200m £5m-£10m tbc
	Total	c.£0.6bn - £1bn



The future...


RAIL
REVIEW
Transforming the rail
industry to benefit
passengers and help
build a stronger economy
Department for Transport

Department for Transport

Rail Freight Strategy

Office of Rail and Road - Freight Customers

The case for Government support for the rail freight industry is articulated in its Rail Freight Strategy

- Government's Rail Freight Strategy was published in September 2016

- Government policy: support modal shift and rail freight growth to mitigate the negative external impacts of road haulage.

- Support for rail freight based on productivity gains, reduced road congestion and environmental benefits.

- Sets out vision for how rail freight can continue to grow, collaborate, and innovate to help relieve pressure on the road network.

- Identifies intermodal, construction and automotive sectors as key growth areas

The strategy identifies four priority areas where action by Government & industry could help rail freight achieve its potential

Innovation and skills

- ✓ BEIS' Clean Growth Strategy to look at freight into cities with zero emission last mile delivery
- ✓ Innovate UK funded Accelerating Rail Innovation project into short freight 'track train'

Track access charging

- ✓ SofS issued guidance to ORR to consider affordability of charges, recognising benefits of rail freight
- ✓ ORR's Final Determination issued cap and phasing-in of VUC for rail freight

Network Capacity

- ✓ HLOS & SOFA include funding for strategic freight network
- ✓ NR's 'FNPO' established
- ✓ Investment in digital ETCS freight cab fitment
- ✓ Freight in franchising workstream

Telling the story of rail freight

- ✓ RDG published 'Rail Freight: Working for Britain' in summer 2018
- ✓ DfT Rail Freight video

Department for Transport

We meet regularly with our stakeholders to identify the strategic challenges facing the rail freight industry

Trade Associations

RFG Rail Freight Group

Rail Delivery Group

FREIGHT on RAIL

FTA

Infrastructure Manager

NetworkRail

HIGH SPEED 1

EURO TUNNEL

Customers

ABP ASSOCIATED BRITISH PORTS

drax

TESCO

Sainsbury's

CEMEX

TARMAC A CRH COMPANY

Freight Operating Companies

DB

Freightliner a Genesee & Wyoming Company

Direct Rail Services

GB Railfreight

COLAS RAIL

Government and Devolved Administrations

The Scottish Government Riaghaltas na h-Alba

Department for Transport

Llywodraeth Cymru Welsh Government

Economic and safety regulator

ORR OFFICE OF RAIL AND ROAD

Regional Transport Bodies

TRANSPORT FOR THE NORTH

MC Midlands Connect

TRANSPORT FOR LONDON

DfT is working on many live issues to support rail freight – many require collaboration with industry and across government

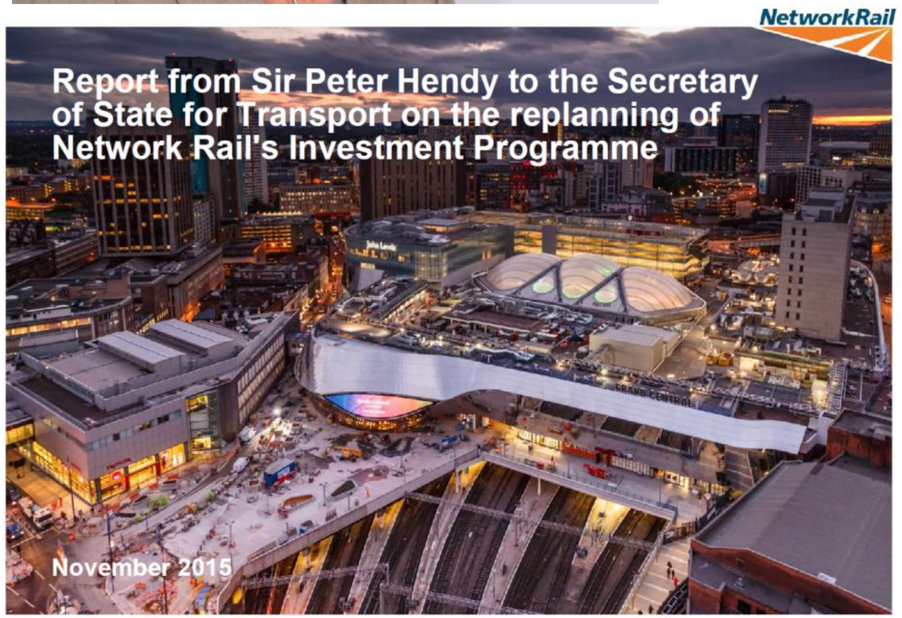
Freight enhancement schemes in CP6	Continuation of red diesel rebate	Continuation of MSRS	Development of Strategic Capacity	Better understanding of economic value of rail freight
HS2	Cross-modal approach to freight policy	Ensuring freight has appropriate protections in any new model	Clarifying what capacity is available for freight growth	Working with industry on decarbonisation and air quality
Stable and affordable track access charging regime	Ensuring freight is properly represented in the Rail Review	Highlighting the benefits of rail freight to OGDs	A good Brexit outcome for Channel Tunnel rail freight	Ensuring industry behaviours facilitate rail freight growth

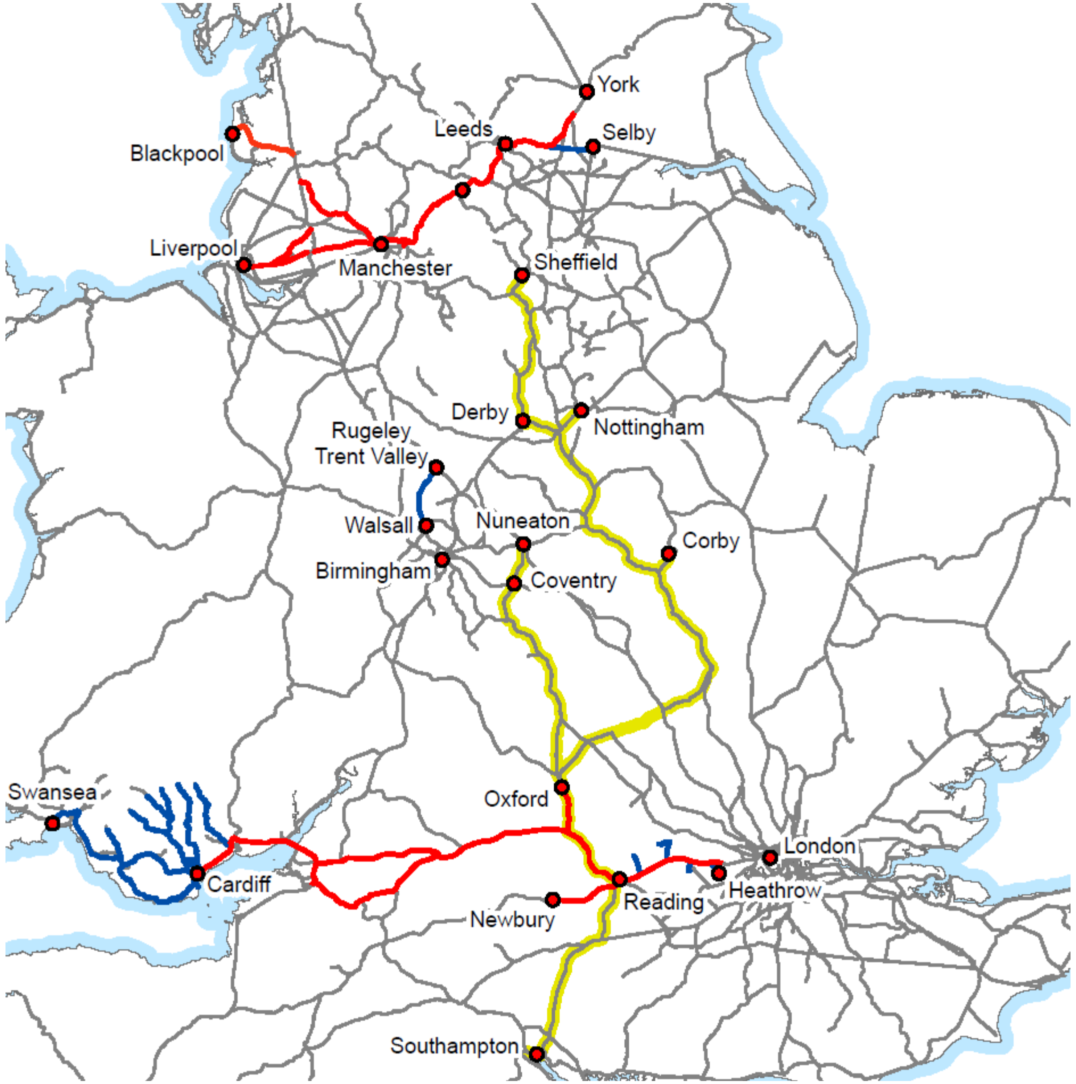
Department for Transport

New Approach to Enhancements
Rail Network Enhancements Pipeline

James Conway
Programme Director, London and South East

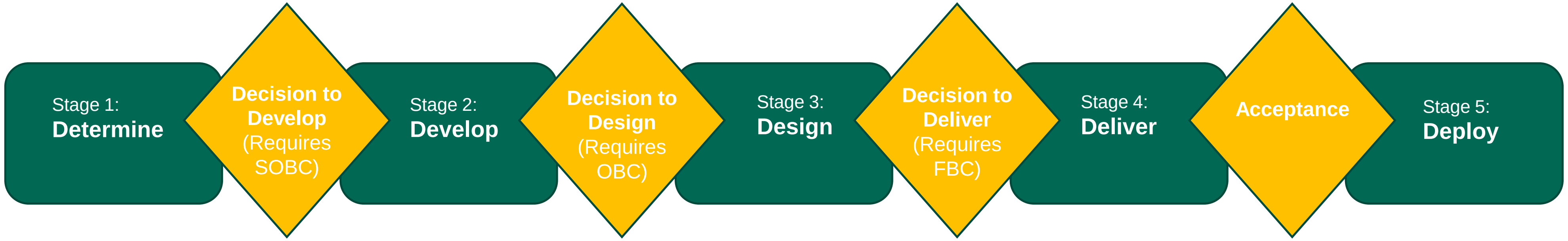
Rail Enhancements
Lessons from Control Period 5





Department
for Transport

Rail Network Enhancements Pipeline
Engaging with the pipeline



- Only commit to the next stage of the pipeline
- Each decision taken will be informed by a business case
- Entry into the pipeline does <u>not</u> guarantee it will be delivered

More information at:

https://www.gov.uk/government/publications/rail-network-enhancements-pipeline

Department for Transport

Delivering Enhancements in CP6

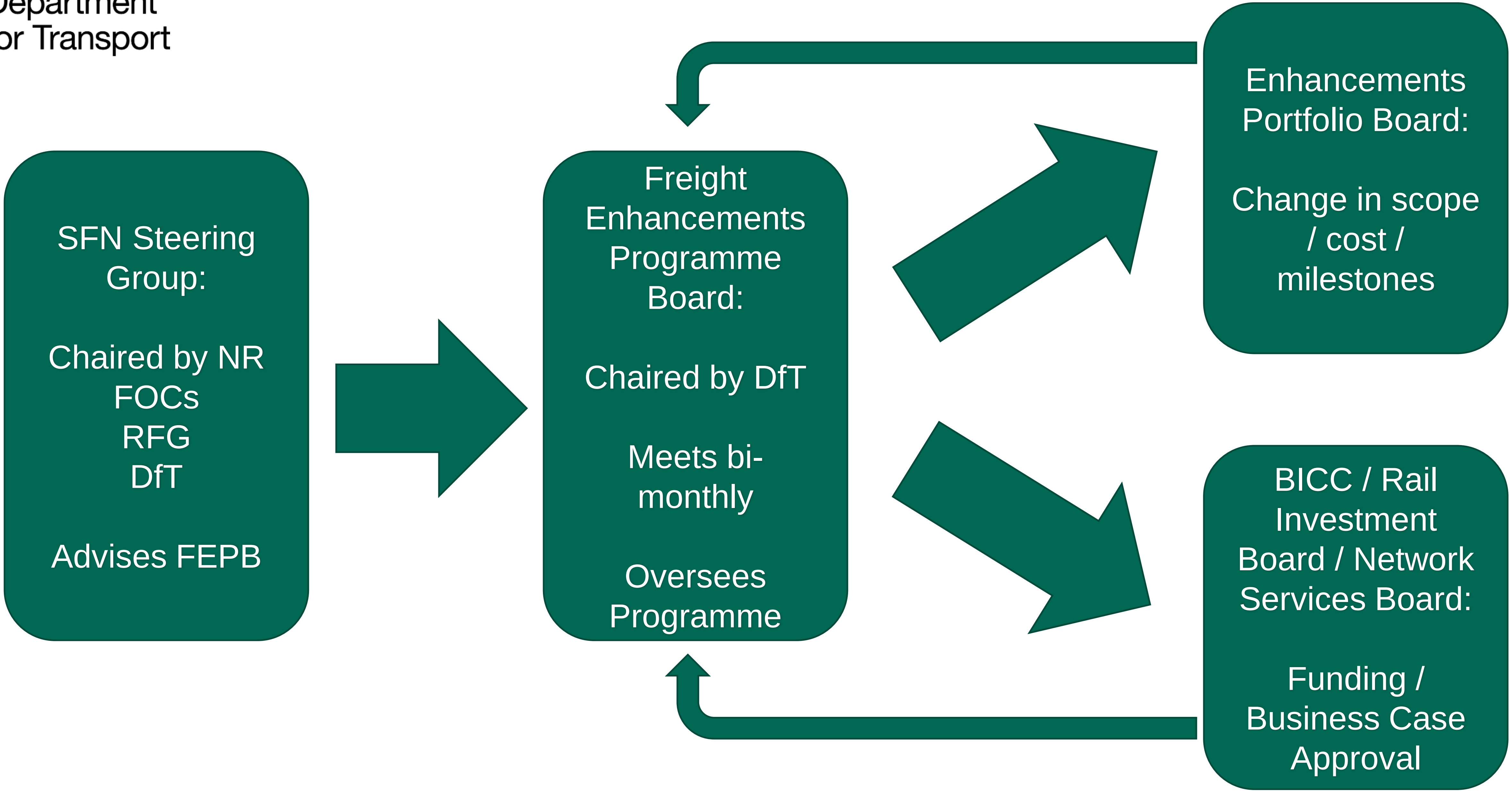
Dave Whyte
Planning & Investment Manager,
West Midlands, Chiltern and Freight

Department for Transport

Enhancements delivered or in delivery through the SFN Fund in CP5

- Felixstowe Branch Capacity Enhancement
- Southampton Freight Train Lengthening
- Buxton Peak Forest
- Ripple Lane Nodal Yard
- Gauge Clearance (Humber / Yorkshire to Midlands; ECML North)
- Enhanced capacity / gauge to ports (Liverpool / Thameshaven / Immingham)
- Business case development for potential CP6 enhancements

Approach for CP6



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Freight customer event

ORR regulation

21 November 2018

Gordon Herbert, Patrick Talbot, Lisa Thurston, Jeremy Bohl.

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ORR
Economic and safety regulation

ORR overview

- Our railway health, safety, economic and road functions overall are driven by UK and EU legislation and on the basis that we are also accountable to laws passed by the Scottish government.
- As a regulator we are accountable to Parliaments and the public to:
  - Protect the people who work on, use, or interact with the railway. This is both to ensure continuous improvement in health and safety and, on the economic side, to temper the monopoly power of Network Rail.
  - Ensure fair access to a rail network and other infrastructure which are becoming increasingly congested.
  - Ensure Highways England carries out its investment programme on England's strategic road network effectively. It is our job to report on Highways England's progress in delivering this investment, on budget and to time.
  - Protect the interests of future users by working with the industry and with funders as they develop the network of tomorrow.

Freight customers

- Freight customers are those with a direct interest in rail freight, including purchasers of services and their representative bodies, but not the operators of the trains.
- ORR wants to better understand the interests of rail freight customers, balancing them with the interests of other users and with funders of the rail network.
- Webpage, feedback and ideas
  - http://orr.gov.uk/about-orr/who-we-work-with/industry-organisations/freight-customers.
- Freight customer panel
  - "help to ensure that our policies and regulatory decisions take into account the commercial environment that freight customers work within".
  - ORR's panel is made up of freight customers who represent a wide area of expertise and interest from across the rail freight community.
- Specific initiatives
  - Freight customer track access contracts.

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Access

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Access: framework

- Railways Act, Access and Management Regulations
- Track access
  - NR contracts
  - New/other IMs
- Facility access
  - Contracts
  - Appeals
- Connection contracts
- ORR guidance and advice
- Open, transparent, efficient and competitive market.

Access: current issues

- Service facility transparency
  - AMRs and Implementing Regulation on Service Facilities
  - NR network statement and other IMs – NR templates
    - “The Common Template” is available on RailNetEurope’s website.
    - networkstatement@networkrail.co.uk
- Model clauses FACs
- New networks/other than NR
- Changing markets and access rights
  - Access rights framework, model clauses
  - Enhancements, Capacity, Investment

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ORR's approach to competition policy in the rail freight industry

Jeremy Bohl

Lisa Thurston

November 2018

Agenda

- ORR's competition role
- Competition CA98 investigation: Intermodal (deep sea container) case
- Access issue: Scope for potential application of the A&M Regs
- What you can do

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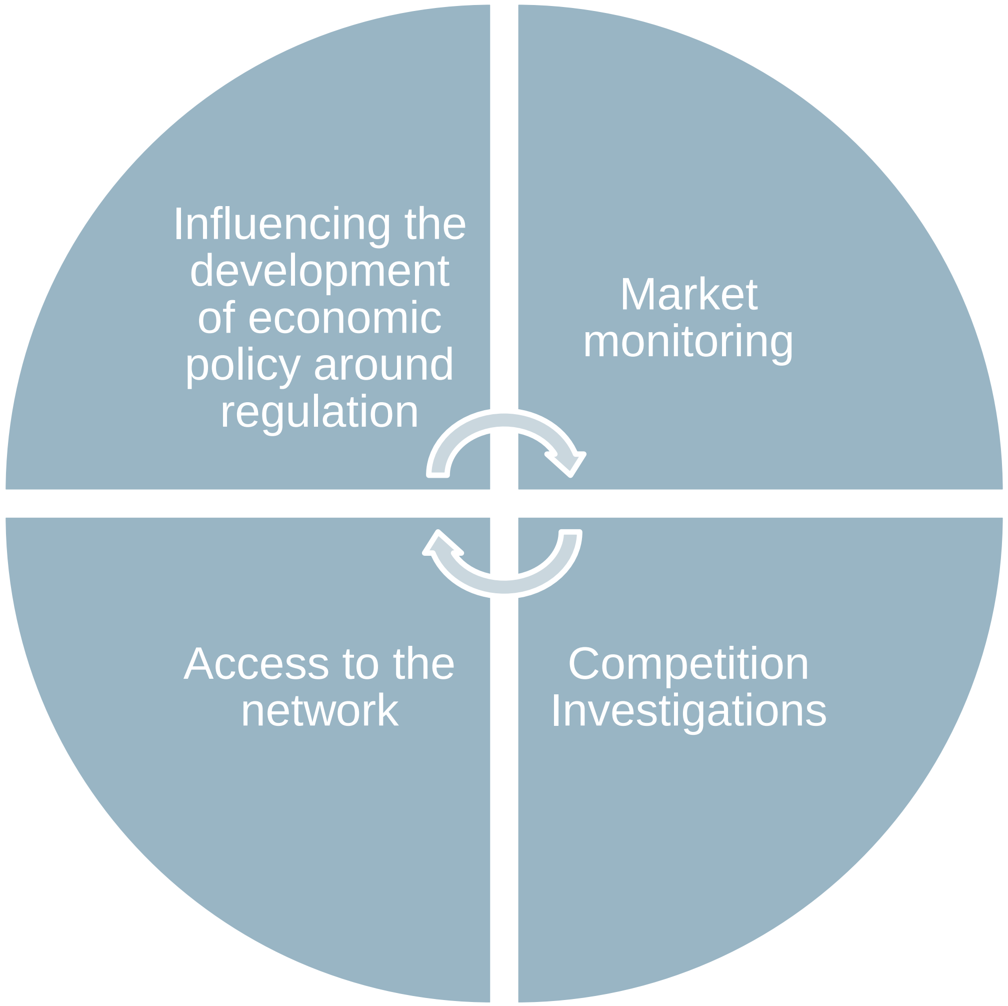
ORR’s competition role

ORR’s competition role



We use competition policy (and where necessary our powers) to optimise competitiveness and create conditions for innovation, efficiency and growth

Competition powers

Competition Act 1998 (CA98)

- Chapter 1/ Article 101 TFEU – **agreements** between undertakings (business) or decisions of associations of undertakings (e.g. trade associations), and concerted practices which have, as their object or effect, the prevention, restriction or distortion of competition within the United Kingdom (or any part of it) and which may affect trade in the United Kingdom
- Chapter 2/ Article 102 TFEU - conduct by one or more undertakings amounting to the **abuse of a dominant position** in a market which may affect trade within the United Kingdom. This is known as the Chapter II Prohibition

Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (A&M Regs)

- Regulation 34 provides ORR with the power to issue directions to correct discrimination against applicants for access to the rail network, market distortion; or undesirable developments in relation to the competitive situation in the rail services markets

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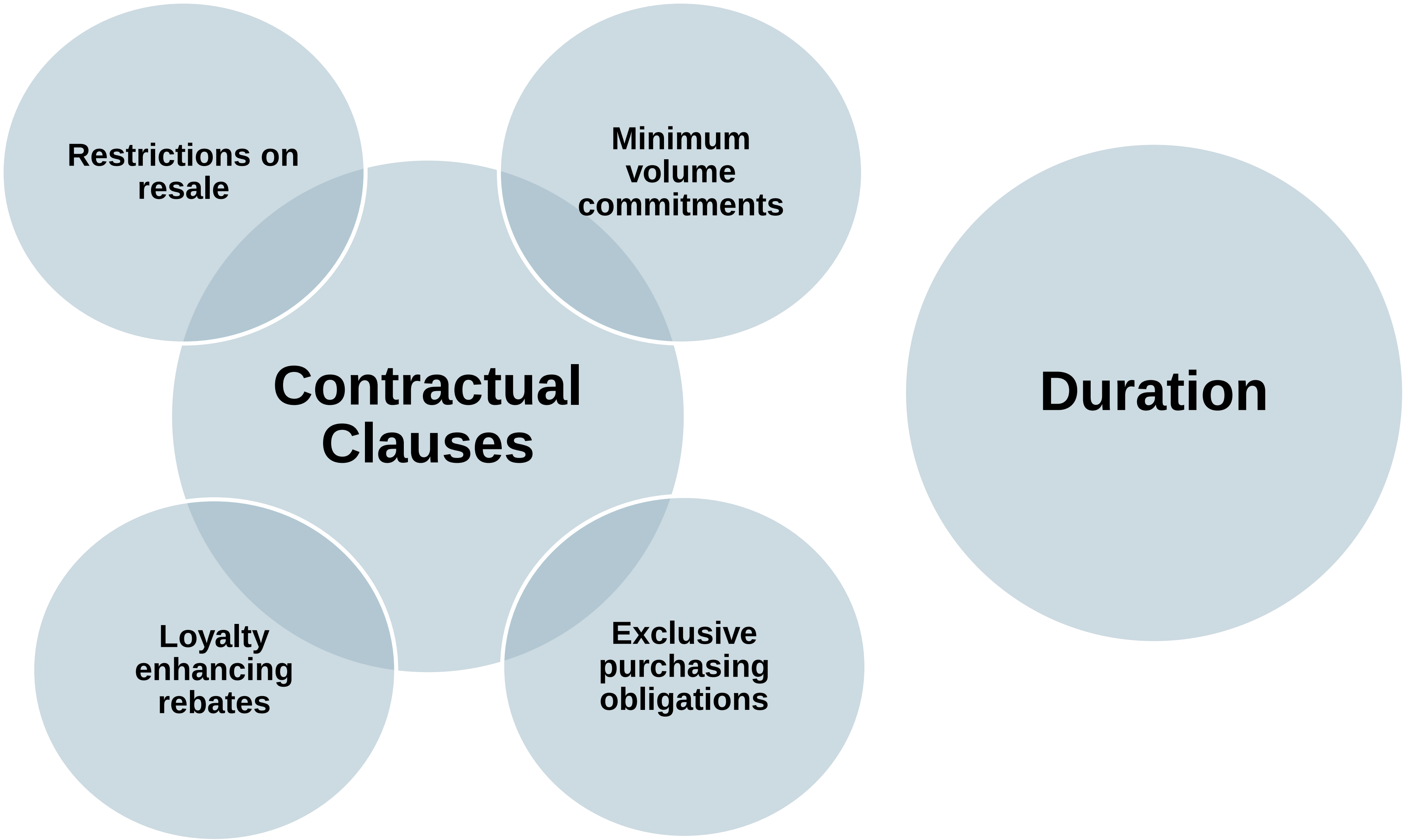
Competition CA98 investigation: Intermodal (deep sea container) case

Overview

- CA98 opened in August 2014
- Suspected **abuse of a dominant position** in the provision of deep sea container rail transport services between ports and key inland destinations in Great Britain.
- ORR accepted commitments in December 2015. These will remain in force until 31 March 2019

ORR’s competition concerns



Commitments – some examples

Outright/express exclusivity	• **Outright end to practice** • Not enter any contracts which require customers to purchase exclusively from a single FOC
Restrictions on resale	• **Outright end to practice** • Not enter into any contracts which place any restrictions or conditions on re-sale.
Retroactive rebates	• **Outright end to practice.** • Remove all retroactive rebates in place with customers on the routes specified in the commitments.
Minimum volume commitments	• **Mitigation** • Provide customers with rights to reduce their minimum volume commitments after a set period
Duration	• **Outright end to practice** • Remove evergreen clauses. Not enter any contracts with a duration of more than 5 years.

Impact

- Preliminary data suggests a positive impact on competition:
  - Ability for customers to choose shorter more flexible contacts
  - As contacts are open to competition on an annual basis, customers have more ability to choose the FOC with the most competitive offering
  - Indications of more rivalry between FOCs

- However, there are still issues with gaining access to the network

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Access issue: Potential application of the A&M Regs

Complaint regarding access to rail facilities

- Key concern was the potential that the operator of the facility was preventing a customer of a freight operator from operating at the facility and expanding its business
- ORR considered all options including issuing a direction under the A&M regs
- ORR's policy objective was to ensure fair competition and market conditions for growth
- Ultimately resolved issue without the use of regulatory or competition powers

What you can do

- **If you experience an issue which could be anti-competitive contact us:**

  http://orr.gov.uk/rail/promoting-competition/how-to-report-a-breach-of-competition-law

- Examples of anti-competitive conduct:
  - Issues with getting access to rail facilities
  - Price fixing between freight operators
  - Markets being split by geography or customer by freight operators (customer sharing)
  - Exclusivity requirements by freight operators

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Safety Matters

Patrick Talbot

Health and Safety Regulation

- Safety Regulator for Britain's Railways
  - Responsible for all railways (mainline, metros, heritage, trams)
  - Certification body (safety certificate/authorisation)
  - Enforcing authority for health and safety legislation
  - Prosecuting authority

What about off- network sites?

- Enforcing Authority is most likely either ORR or HSE
  - Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (as amended) (EARR)
  - Clarification in the MoUs between ORR, HSE and ONR
  - Enforcing Authority may vary depending on the nature of the activity carried out on site
  - Usually exempt from the requirements of R

iPort Rail

Freight Safety Issues

- Unauthorised access

- Freight derailment
  - Interconnected factors (infrastructure condition, vehicle maintenance and loading) lead to derailment
  - Industry Cross Industry Group (XIFDWG)
    - Collaborative approach to solving a system problem
    - Representatives from Network Rail, FOCs, Customers, Wagon owners, consultants

Off- Network Infrastructure

- Two questions…

- How can railway safety performance be improved and maintained?

- How can guidance, best practice and learning from incidents be shared?

- Questions/ queries/ more information:
- Patrick Talbot, HM Principal Inspector of Railways
  - patrick.talbot@orr.gov.uk