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Dear David

2014 High Speed 1 Periodic Review (PR14): Draft ORR determination

Thank you for the opportunity to respond to this consultation. We welcome the transparent and constructive manner in which the ORR, HS1 and NR(HS) have engaged with stakeholders throughout PR14 and consider that this has contributed to a successful first periodic review process.

We have reviewed the draft determination and, overall, we agree with the ORR's provisional decision to approve HS1's 5YAMS for CP2.

In reaching this conclusion, we have taken into account that we are still at an early stage in the asset's life and that more detailed work has been committed to by, and is required from, HS1 and its partners throughout CP2 and beyond, for example to further develop and refine asset knowledge and improving asset degradation models, and the ORR's role in monitoring this throughout CP2.

We expect that one result of this continued focus will mean that this information will be available to HS1 so that it may continue to consider and where appropriate address the points that we have raised as important to us in this periodic review, such as the underlying assumptions driving its models, unit costs, cost/performance trade offs, and efficiencies. We also note that this information will be of use to the ORR during the next periodic review so that it may further inform an independent, bottom up review of inputs, costs, assumptions and cost allocations at that time.

Our specific comments on elements of the draft determination follow.

We are pleased that the ORR has provisionally confirmed that it is satisfied with the proposals in the areas of agreement between HS1 and Eurostar as set out in our 29 November 2013 response to the HS1 5YAMS consultation.

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HS1 has again demonstrated the excellent relationship that it has with stakeholders by responding constructively with commitment on a number of areas that have been explored with them, such as:

- Profiling the level of OMRC charges for CP2;
- Work to deal with reductions in transmission losses;
- Regular review of pass through costs;
- Reduction in the interest rate to be applied to negative escrow balances; and
- Confirmation on liability where the 4% increase in traffic volume reopener be triggered during CP2. We thank HS1 for its confirmation at our meeting on 17th March that, where any increase in volume reopener would result in an increase in the level of overall OMRC payable from that determined in this periodic review, that HS1 and not the operators are on risk for meeting this additional amount.

Similarly, we welcome NR(HS)'s engagement and decision to revisit its risk and management fees. We consider that, as asset knowledge and experience develops, it is appropriate that these fees are kept under review.

We were pleased to see that the draft determination confirms that the ORR intends to continue its proactive approach to monitoring and reporting on a range of topics throughout the forthcoming control period. We also welcome:

- Review of, and agreement with, HS1's safety plans;
- Support for the new line-of-sight process;
- Agreement with HS1's proactive approach to profiling of charges for CP2. This seems appropriate to us not least due to the level of asset-related information to be captured in greater detail now and in the forthcoming control period;
- Confirmation that the existing performance and possessions regime will continue as they currently do. We agree that future control periods are the appropriate place to consider whether a more thorough review is required. In respect of possessions, we remain of the view that an approach that does not interrupt high speed passenger services and examines proposed possessions on a case by case basis in line with the engineering access statement is the correct one;
- Agreement with the proposed outperformance sharing in CP2;
- ORR's conclusions in respect of benchmarking, and expectation to see further work and updates on this programme during CP2; and
- The review and challenge of HS1 and NR(HS) proposals that ORR has conducted during this process, including consideration of those areas highlighted by us as important but that we could not review as we did not have access to underlying information.

We are content that the charges proposed to be levied either relate to costs directly incurred or fall comfortably within the envelope of the long term costs of the project. However, within this we have a number of comments and observations on how those costs are allocated and structure within the charging framework. We do not think that these should delay this determination, and are happy to engage with HS1 and the ORR on this over the course of the next control period.

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Some important areas remain to be considered between HS1 and stakeholders. We are of the view that as long as there is clear commitment to address these in the near future, they need not delay the determination process. With continued positive engagement from all, we are confident that we will be in a position to make significant steps forward on these key areas early in CP2. These include:

- Allocation of risk in respect of the escrow account. We agree with the ORR's proposed approach to address this important topic. We need to discuss more generally who bears risks on the escrow payments;
- Recovery from major incidents. We welcome HS1's decision to place this on the line-of-sight agenda, as this will provide a regular focus for review. However, due to the importance of this for our customers and our business, we remain of the view that we would like to see some firmer commitments on this topic. We will work with HS1 to address this and we welcome the ORR's confirmation in 3.22 of the draft determination that it will monitor recovery and be willing to engage with stakeholders;
- ERTMS. We have begun our conversations with stakeholders, including the ORR, on this. Key issues in respect of project funding remain to be resolved;
- Freight wear and tear and the announced study to look at the possibility of heavier freight trains on HS1. In respect of the former, in light of the development of further freight services on HS1 it becomes increasingly important to monitor the asset and degradation rates, in order to correctly apportion wear and tear among operators. In respect of the study, as a current operator on the asset that could potentially be impacted by this we expect HS1 to keep us informed about this study and to be included at an early stage in any discussions on any proposals to increase the permissible weight for freight on HS1;

In respect of other areas touched upon during this periodic review:

- Given the importance of the development of the asset information and knowledge to future periodic reviews, we would welcome updates during CP2 from HS1 and the ORR on how this process is developing.
- In respect of the performance regime, we remain of the view that new operator entry on HS1 should not be to the detriment of EIL or other existing operators services. HS1 will undoubtedly benefit from such entry and it is appropriate that this should not be to the financial detriment of existing operators.
- Our concerns about the performance regime future proofing exercise that HS1 initially sought to undertake as part of this process remain. Should HS1 wish to continue this workstream at a later date, we would expect to be involved from an early stage. As we commented during the run up to production of the 5YAMS, we do not think that this process should form part of a periodic review.

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Annex C: EIL's Framework Track Access Agreement

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Annex E: Passenger Access Terms

GSMR reopener. We have two comments here:

- We have unresolved questions on this project at present. The proposed PAT drafting assumes that the formal NCN, which we await, will be approved. This is not certain, and is unlikely to be at the time of the ORR's final determination, so we suggest addition of a 'Following approval of a formal network change notice' text at the beginning of the reopener in order to make it clear that this provision in the PAT will only come into effect after this step is completed.
- On the assumption that the NCN is approved, and the maintenance and licensing costs included in this periodic review become chargeable, we note that the PAT will allow HS1 to recover actual costs, whatever these may be. In justifying this pass through, as with other costs of this nature, we would expect HS1 to clearly demonstrate that it had sought to reduce the proposed costs (including the licence fee).

We thank the ORR and all parties to this periodic review for their engagement throughout this process. We consider that this has contributed to a successful start to the HS1 periodic review process and look forward to working with all stakeholders to implement the results of this review and to develop the process in future. Looking forward, we think it is key that the next periodic review continues the good work achieved in this first review and builds upon the increased level of information that HS1 has committed to develop in partnership with its advisers. We have indicated that we would like to see a bottom up review by the ORR in the run up to CP3, and will be pleased to work with you on this.

As always, we are happy to discuss if you have any comments or questions.

Yours sincerely

Samantha Spence
Head of Regulatory Affairs

cc Geoff Jones, HS1
Gareth Williams, Eurostar
Steve Carter, Eurostar