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Office of Rail Regulation  
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Dear Gordon

**ORR/DfT CONSULTATION: A GREATER ROLE FOR ORR REGULATING PASSENGER FRANCHISES IN ENGLAND AND WALES**

I am writing to you in response to the joint consultation issued by the Office of Rail Regulation and Department for Transport, entitled "A greater role for ORR regulating passenger franchises in England and Wales. This is the formal response of Freightliner Group - representing Freightliner Limited and Freightliner Heavy Haul Limited. Freightliner welcomes the opportunity to respond and is content for this response to be published in full on the ORR website.

As the consultation document mentions, the McNulty Rail Value for Money Study identified the need for the rail industry to make changes to become more efficient in its operations going forward in the future delivering rail services more cost effectively. Freightliner supports this approach and acknowledges the reasons as to why the ORR and DfT are considering changes to the way in which passenger franchises are regulated as a result of this objective. However, it is vital that the overriding role of the ORR as an independent and impartial regulator remains uncompromised by any changes that are decided upon.

Non-franchised operators on the network must not be discriminated against and any changes to the powers held by the ORR must not affect its impartiality in its core role of the regulation of track access allocation on the network. It is this impartiality that provides freight customers with the assurance to be able to commit to contracts with freight operators and long term investments in fixed assets required to support freight operations on rail.

The following provides responses to the specific questions raised in the consultation document:

**Question 2: Please comment on the general principles against which changes in responsibility for regulation of passenger franchises should be assessed:**

Freightliner is concerned, as a non-franchised operator that changes to the remit and responsibilities of the regulator could compromise its ability to remain impartial. Any changes in governance that are agreed must be careful to consider this risk.

**Question 3: Do you see any potential benefits or drawbacks in moving towards giving ORR an enhanced role in respect of franchise change?**

Freightliner understands and appreciates the benefits of greater ORR involvement in terms of potentially driving industry efficiency and cost reductions. However, Freightliner would

like to see more detail provided of exactly how the existing roles of the DfT and ORR will change before forming a view. As outlined in the response to Question 2 the main concern is held is of the ability for the ORR to remain impartial especially if it has a greater interest in the financial performance of franchised operators. In particular this could inadvertently lead to decision making being swayed against non-franchised operators where the same interests will not be held.

**Question 4: Are there any representations you would like to make concerning ORR's role in holding Network Rail to account?**

At this stage Freightliner will make more detailed comment once further details have been published in the forthcoming Command Paper, regarding the proposed changes to the mechanisms available to the ORR for holding Network Rail to account. We note the comment made in 2.25 that a big driver of the proposals will be to aim to reduce Network Rail's costs. Freightliner believes that crucial to the achievement of this objective will be to obtain greater transparency of the financial performance of Network Rail's operations, to assist the ORR in effectively regulating its performance.

**Question 5: Should ORR consider any revisions to its enforcement and penalties if it takes on a wider role? In particular, should ORR consider how and whether it could accept commitments to make improvements to passengers as an alternative to levying a penalty?**

Leaving aside the already stated concerns concerning impartiality, Freightliner is not convinced that penalties are always the most effective way of achieving improvements in performance. Before more stringent sanctions are imposed, we believe that the industry should be working together in a collaborative approach to improve performance. Should it be decided to pursue the option to make passenger improvements as an alternative to financial penalties, the ORR must be fully engaged in this process and as regulator must ensure that the agreed deliverables and timescales for achieving these must be clearly defined to ensure such commitments are met, with penalties still available in the event of a further failure to deliver.

**Question 6: Are there any specific points on which DfT and ORR should set out their proposed approach during the transition period?**

Freightliner has no specific concerns providing that it is not adversely affected (as a nationwide operator rather than one confined to a specific franchise area) by the proposed 'staggered' changes that will be made as individual franchises are re-let.

**Question 7: Should ORR review its funding arrangements in the light of the changes proposed in this consultation?**

Freightliner has no comment to make.

**Question 8: Do you have any comments on the proposals for regulating complaints handling procedures?**

Freightliner has no comment to make.

**Question 9: Do you have any comments on any of the proposals for regulating DPPPs?**

Freightliner has no comment to make.

**Question 10: Do you agree that the regulation of punctuality and reliability performance should be brought together in one place? Could this proposal work and what refinements could be made? Are there any alternative ways of doing this?**

Freightliner can see the logic of this proposal it helps to make the regulation of operator performance more effective. However, the concern remains as previously outlined that the ORR will not be able to continue to regulate with the same degree of impartiality between franchised and non-franchised operators especially in areas where there are links to the awarding of access rights.

**Question 11: What are the key areas that should be covered by service quality measures and commitments? How should Government decide what to include in each franchise? Is there merit in having a core set of requirements that apply to all?**

Freightliner has no comment to make.

**Question 12: Please comment on the specific benefits and disbenefits of the requirements on service quality measurements and commitments being enforced by licence rather than by contract.**

Freightliner has no comment to make.

**Question 13: Do you believe that the proposed licence condition would provide effective and proportionate accountability for delivery of service quality standards? Would a transparency obligation, relying on reputational incentives, be adequate? Or should it be supplemented by a compliance obligation? Should the compliance obligation be subject to doing what is reasonably practicable to deliver it, for instance through a purposive approach similar to that being considered for performance?**

Freightliner has no comment to make.

**Question 14: What would need to be set out in guidelines to ensure credibility and consistency of reporting against service quality measures and transparency for passengers? How do we ensure that we give sufficient clarity and flexibility for franchisees in guidelines?**

Freightliner has no comment to make.

**Question 15: Do you agree with the approach set out on monitoring of compliance with the service quality commitments? In particular do you think that an adapted safety management maturity model could be applied in this context?**

Freightliner has no comment to make.

**Question 16: Do you agree with ORR's proposed approach for service quality commitments of requiring improvement plans as a prelude to formal enforcement action?**

Freightliner has no comment to make.

If you require any further input from Freightliner or require any clarification relating to the points raised please let me know.

Yours sincerely

Tim Jackson  
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Freightliner Group Limited