

Schedule 4 Performance Regime

Colas Rail supports the underlying purpose and principals of Schedule 4 and the current structure of it. We support the liquidated sums regime as it provides a level of security and certainty to all parties when agreeing engineering access. Current and future predicted growth trends for both freight and passenger volumes mean that increasingly, the need to maintain the Network has a resultant increased impact on operators. With that in mind however growth in freight and passenger traffic can only be sustained by a reliable and enhanced Network which naturally requires possessions in order to make this a viable reality. We feel that the ultimate challenge for the Schedule 4 regime is to strike an acceptable balance between the aspiration to grow freight and passenger traffic and providing a Network capable of consistently accommodating it. To this end, we strongly support the development and funding of suitable diversionary routes via enhancements or otherwise which, once completed, will benefit the industry and reduce the disruption experienced during possessions.

Although we support the principals of the Schedule 4 regime, it is worth noting that there are a number of areas which we would like to comment further aligned with gaps already highlighted by the Rail Delivery Group;

7.1 – Schedule 4 may not always compensate operators for the costs they incur when Network Rail takes a possession.

We agree that the Schedule 4 regime does not fully compensate operators for the costs they incur when Network Rail takes a possession. These costs could manifest themselves in a number of ways ranging from contractual compensation paid to the end-customer through to additional resource, both personnel and rolling stock, which might arise due to a possession. As an example, a possession may result in additional operational requirements such as wagon and locomotive moves associated with certain flows in order that further disruption to the end-customer is not experienced. Under the current Schedule 4 regime such requirements and associated costs are not always fully realised if at all.

7.7 – The regime does not place sufficient incentives on Network Rail to consider the costs of other industry parties.

Because the Schedule 4 regime does not fully compensate operators and end-user customers for costs and disruption caused by possessions it cannot naturally be incentivised to consider such costs. Whilst our experience is that certain departments of Network Rail do endeavour to understand the impact and costs of possessions to operators and customers this is not always reflected by the project and route teams associated with the possessions.

7.6 Network Rail can be disincentivised from making changes to its possessions plans once it has notified operators.

We agree that Network Rail can be disincentivised from making changes to possession plans once operators have been notified. Typically any changes to possession plans following formal notification, particularly on busier routes, could incur further disruption and costs. In some respects this is not necessarily a negative outcome as operators need to provide their customers with certainty about service levels which changing possession plans could jeopardize. With that in mind however there have been previous occasions where discussions have been held after possession plans have been notified which could have resulted in a change to the plans (such as moving

possession boundaries or start/end times) which if actioned could have resulted in reduced disruption to operators and ultimately reduced costs to Network Rail.

7.8 'The regime does not have sufficient flexibility to allow Network Rail to move possessions, at short notice, without undue penalties.'

We agree with this statement however would argue that absence of such flexibility is not entirely a negative consequence of the regime. As stated before, the need to provide end-customers with certainty about service levels is paramount, not least as they also need to plan around the disruption. As such, any short term changes to possessions would likely incur further cost and disruption to end-customers.

7.5 'There are examples of circumstances where the current regime incentivises Network Rail to utilise shorter possessions. However, in some cases, a blockade may be a more efficient possessions strategy.'

We agree with this statement. There are various pros and cons associated with shorter possessions versus longer blockades which are often dictated by the nature and extent of the disruption caused. Inevitably in some instances, there are clear benefits for utilising longer blockades which may significantly reduce the cost of the project to Network Rail. This gain however would inevitably be off-set by increased Schedule 4 costs and, of greater importance, increased disruption to operators and their end-customers. Clearly, Network Rail should engage with operators at the earliest opportunity within a project to discuss and understand the merits of each strategy with a view to agreeing the best solution for the wider industry.

7.4 The regime considers only the impact of possessions on specific train services and not the end-user experience.'

We agree with this statement. Whilst the core purpose of the Schedule 4 regime aims to compensate operators for the disruption to their and their end-user customers businesses it does not accurately reflect the end-user experience. Whilst end-users do typically understand the need to maintain and enhance the Network they do not typically feel that the disruption caused to them and their wider customers are understood. For many end-customers, rail plays an integral role in their supply chain and as such any disruption to it is keenly felt. This is further amplified in scenarios where the product cannot be transported by road or any other transport means. Conversely, for rail freight commodities that can be transported by road, the competition provided ensures enhanced risk that the commodities may move to road if consistent disruption is experienced.

Schedule 8 Performance Regime

Colas Rail supports the underlying purpose and principals of Schedule 8 regime. We believe that the change in the performance regime has had a positive industry wide impact on performance with operators and Network Rail showing greater focus on performance related issues and ultimately, their solutions.

The below represents a summary of our thoughts on the specific sections detailed;

2. Network Rail payment rates; 3. Network Rail benchmarks; 5. Operator payment rates and the star model; 6. Operator benchmarks.

The significant swing in benchmark and payment rates made by Freight Operating Companies (FOCs) between CP4 and CP5 have had both a positive and negative impact. From a positive perspective, the increase in payment rates has resulted in an increased focus on performance by all FOCs. This in turn has led to greater awareness amongst rail freight end customers as to the financial impact of poor performance and the consequences of this. This has resulted in greater collaboration in identifying performance improvement solutions. From a negative perspective however, the increase in rates has resulted in an increase to the value of payments by the FOC community. This increase in costs has resulted in making rail less competitive against alternative transport modes not subjected to performance regimes. Colas Rail would urge caution against any further increase in payment rates and benchmarks as the impact of such an increase could be far reaching and ultimately detrimental to the viability of rail freight.

Regarding the 'star model' we feel that this is currently the only viable model available and as such serves its purpose. With that in mind however, we would note that its successful application relies heavily on accurate administration, including delay attribution, which we believe requires improvement. We believe the industry needs to work together, aligned with the ORR to identify alternative methods for the star models administration including the potential for it to be an independent process.

7. Treatment of cancellations

We note that under the terms of the cancellation element of 'Service Variation & Cancellation' (SV&C) costs are not covered. This often does not reflect the reality of the operational railway. As an example, for a service cancelled on the day, the cost of resource, be it personnel or rolling stock, are not recoverable. As such, if resource has been allocated, moved and so forth, there are a number of un-recoverable costs that the operator has no choice in paying but cannot recover under the regime. As a side, the regime does not consider the issue of potential lost revenue from the ability to use resource on other services. As such, in some instances the operator experiences a considerable financial impact in addition to the wider impacts of cancellation on end-customers.

8. Liability caps

As an active user of caps we support their existence and their purpose. As a growing operator we believe the caps provide essential protection and believe they are adequately funded via the track access supplement we pay. As the Network gets busier, any future absence of caps may inadvertently restrict freight from certain routes, such as the various routes in, around and through London which would inevitably have a negative impact on rail freight growth. Similarly, the absence of caps could impact FOC pricing which again would only serve to make rail freight less competitive.

Finally, it is worth noting that the absence of future caps would likely restrict existing smaller and potential future entrants to the rail freight market as without the protection of caps, the potential financial liability could be un-viable.