

## **Reform of Access Contractual Arrangements**

### **Response from Rail Freight Group**

**February 2012**

1. Rail Freight Group (RFG) is pleased to respond to the ORR's consultation on the reform of access contractual arrangements. This response can be placed on the ORR's website in full.
2. As RFG is not a train operator, it is not party to the contractual framework discussed in this consultation. As such, our response covers mainly issues of principle rather than the details of contracts and Network Code. Although we note the staged response deadlines, this response covers all parts of the consultation and we will not be submitting further comments.

### ***General Comments***

#### *Role of Access in Freight*

3. The process of gaining access to the network is arguably one of the most important aspect of any freight operators business. Having access rights for existing business on a secure basis, and understanding that access can be secured for future growth, is fundamental to meeting the requirements of customers, and to building business confidence which underpins investment.
4. The quality of access is also critical. Although freight operators do not have such demanding requirements as passenger operators for calling patterns, routing, or even end to end journey times, the timetable nonetheless has a fundamental role in driving the costs of the business. Resource utilisation, driver costs, costs at customer terminals and fuel are major factors in driving the efficiency of rail freight. All of these can be positively or negatively affected by timetabling and access decisions.
5. Whilst we therefore have some sympathy with concerns over the costs of administering the current access regime, it is likely that these would be dwarfed by the potential costs which could be incurred if any new approach failed to deliver the commercial requirements of freight operators – and indeed passenger operators. As well as the impact on day to day costs, the risk of losing future investment through a less certain access regime must also be considered.
6. We therefore consider that any proposals to make access rights less prescriptive should not be undertaken if there is likely to be a negative commercial impact on operators, for existing, or for future business. Although we do not have specific comments on the detail of Schedule 5, it would appear that firm rights will continue to be necessary for some traffic. The current restriction on awarding long term Level 1 rights should be reconsidered as soon as possible.

### *Capacity Constraints*

7. The experience on the West Coast which has in part led to this review demonstrates that there are significant issues with future capacity on some parts of the network. We support the principle of seeking to unlock additional capacity through different approaches. Of course, on specific cases such as this, there may be a case for considering whether changes to the Schedule 5 requirements could release capacity whilst still protecting key commercial outcomes.
8. More generally however, we consider that there would be merit in understanding how capacity could be increased through access and timetabling, which might include;
  - a. More rapid progress on identification of Strategic Capacity, which will help freight operators confidence in pursuing growth and will also encourage them in releasing presently unused paths under Part J and other mechanisms;
  - b. Consideration of technical factors such as sectional running times, timing points, speed restrictions, looping strategies etc. which constrain freight efficiency and are likely to be net consumers of capacity;
  - c. Specific targeted action at capacity hot spots to determine whether particular features of access rights are causing constraints and can be re-negotiated.
9. Such a programme may not be wholly within ORR's remit, but it may wish to consider whether it should seek to encourage such an approach within the industry.

### *ORR's role in access*

10. The ORR's role has a key role in ensuring that access is awarded on a fair and non discriminatory basis, and that the allocation of capacity is considered against a balance of its Section 4 duties. The requirements of funders are of course a key factor in such a balance, but other wider social and economic factors are also important.
11. Proposals where ORR seek to step back from the access process are therefore of concern if they could result in access decisions which do not support a long term balanced use of the network. ORR may also need to consider how it can ensure it complies with its duties, if it is less involved in such decisions. Although applications are consulted on, consultees cannot be guaranteed to collectively deliver the best outcomes, as they are all focussed on their own commercial interests.
12. The perennial issue for freight users is ensuring there is capacity for the future, balanced against a desire to ensure that network capacity is not unnecessarily sterilised. Freight operators will only run services when there is sufficient business to fill it, whilst passenger operators often need to build business by operating trains partly empty at first. The McNulty conclusions on train utilisation

may reflect this fact to some extent. The project to identify strategic capacity is a step towards balancing these demands.

13. We are therefore concerned to ensure that any reform of access does not make it more difficult for freight operators - and indeed passenger operators with future growth requirements – to grow their business and have sufficient confidence to proceed with development plans and investment.
14. Proposals for SPOTS, where services are permitted to operate without access rights would appear to cut against this, as there would be no assessment of whether additional services were in line with the balanced future use of capacity on the route. Although the proposals are time limited, it is of course unlikely that service would actually be terminated once established for a timetable period. There is also an increased likelihood of SPOTS trains being used to block the aspirations of others.
15. There may be some case for a shorter time limited approach for SPOTS which enabled incremental trains to run without access for (say) a school holiday period, although given the simplicity of general approvals it is unclear whether the actual cost saving would be significant.

#### *Summary*

16. In summary therefore, we are not convinced that there is a compelling case for all the proposals in this consultation, and consider that some of them could have adverse impacts on freight operators costs, and future business prospects. Nonetheless, ORR may wish to consider how it can encourage Network Rail and the industry to work on delivering capacity through the timetabling and access process.

### ***Specific Questions***

*Q1. Do consultees agree that the key themes/areas set out above are the right ones to focus on given the aims and objectives of this work? If so, do you consider that these are the areas which should be the industry's highest priorities?*

As commented on above, we are not convinced that there is a compelling case for all the proposals in this consultation, and consider that some of them could have adverse impacts on freight operators costs, and future business prospects.

*Q2. Consultees are invited to comment on the level of specification in Schedule 5 of TACs and the specific barriers which, in their view, might prevent a move towards a less prescriptive specification of rights.*

We have no comment on the details of Schedule 5 but are concerned to ensure that the commercial needs of the operators are not eroded by less prescriptive requirements.

*Q3. Consultees are invited to comment on where they believe responsibility for conducting the timetable process should lie and why. In doing so, consultees should provide specific examples of difficulties they have experienced during the timetable process and suggest ways in which these could be addressed.*

It is absolutely imperative that the timetable process remains the sole responsibility of Network Rail. Past experience has demonstrated that timetables developed by operators cannot be guaranteed to take the requirements of third party operators properly into account. (for example, the FCC work on the Midland Main Line).

*Q4. Do consultees agree with the suggestion of a 'commercial purpose' clause? If so, what do they think it should include?*

It is unclear from the consultation if this would apply to freight operators. However, the commercial requirements of freight customers will not be the same for all traffic, and therefore this is likely to be complex rather than a simplification.

*Q5. Do consultees agree that there is scope to simplify and reduce the amount of information currently provided in Schedule 5? If so, consultees are invited to comment on our specific proposals and to put forward any other suggestions they have to improve the structure and content of Schedule 5.*

No comment.

*Q6. Do consultees have any comments on our proposed approach to RT3973?*

We have no particular comment, but it is of course necessary to have processes which ensure that freight operators access contracts remain accurate and fit for purpose.

*Q7. Do consultees agree that the 'SPOTS' forms a basis for resolving the misalignment between the timetabling and access approval process?*

As outlined in general comments we have significant concerns with the SPOTS process and the ability to deliver a balanced use of network capacity. If introduced, we consider it must be time limited to be much shorter than a timetable period.

*Q8. Consultees are invited to let us have any further comments on the access application process, including evidence of where it has not worked, together with any further suggestions on how they would like to see it improved.*

No comments.

*Q9. Do consultees agree that we should revisit our proportionate approach criteria with a view to handing more responsibility to the industry?*

We do not see a need to revisit these, and particularly support regulatory scrutiny of applications which raise concerns of efficient allocation of capacity etc.

*Q10. Do consultees support the principle of extending the scope of track access General Approvals to include more new contracts under s18 and a greater number of s22 amendments? Are there any views on how far we should go with this or views on potential issues or risks?*

We are unclear how the scope of General Approvals could be significantly extended without compromising the proportionate approach criteria.

*Q11. Do consultees have any other suggestions for extending the scope of our General Approvals?*

No comment.

*Q12. Consultees are invited to raise any further issues relating to the reform of contractual arrangements and consultation processes for stations and depots.*  
No comment.

*Q13. Do consultees consider that the regulatory requirements prompted by a change in franchise, or another similar event, is greater than it could be? If so, how might the impact of such an event be reduced or mitigated?*  
No comment.

*Q14. Do consultees consider that it would be useful for Network Rail to undertake an assessment of depot capacity in order to identify long-term needs. Do consultees believe that it would be more appropriate to carry this out when requirements for new or additional rolling stock are being identified?*  
This is unlikely to be relevant for freight operators.

*Q15. Consultees are invited to comment on the functionality of APAs, and on specific amendments which could be considered to facilitate their ease of use.*  
No comment.

Q16- Q21  
No comment.

*Q22. Do consultees agree that issues such as network availability and JNAPs should be incorporated into the network code?*  
Whilst this may be appropriate in due course, the implementation of network availability and JNAPs (particularly post devolution) is still at an early stage and it may be premature to include them at this stage.

Q23. –Q28  
No comment

*Q29. Consultees are invited to comment on whether Network Rail should be making more extensive use of declarations of congested infrastructure, including removing the 'congested infrastructure' label if it is appropriate to do so.*  
It is unclear what the presence or absence of a declaration of congested infrastructure actually achieves, as it stops short of requiring action to increase capacity. The broader question of incentivising Network Rail to encourage growth (e.g. through volume incentive) is probably more relevant.

Q30- 31  
No comment