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Andrew Eyles
Office of Rail Regulation
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3rd September 2012

Dear Mr Eyles,

ORR – Consultation on the formalisation of the Rail Delivery Group

Set out below are the TSSA's views on the above consultation that closes shortly. Before proceeding to respond to the specific questions raised, we object strongly to the highly unusual manner in which this consultation is being carried out. Respondents are required to copy their responses to the Secretary of the Rail Delivery Group (RDG). Our understanding is that RDG is not a statutory or public body and has no legal basis to such privileged treatment to advanced information in this or any other consultative process. Its inclusion as joint recipient of responses raises serious concerns and suspicions about the ORR's relationship with RDG that in this instance appears to be inappropriate. As the industry's economic regulator we feel ORR should not have allowed RDG to have been joint recipients of responses to this consultation. RDG is made up of organisations (and individuals) who will directly benefit financially from the activities of the RDG in driving forward changes recommended by Sir Roy McNulty in his Rail Value for Money Study and the Government's Command Paper. We have not, therefore, copied our response to the Secretary of RDG.

Question 1: Please comment on whether you consider that the purpose of RDG will drive the changes and improvements envisaged by the McNulty study.

Response: We disagree fundamentally with McNulty's analysis and solutions for the industry. In our view the main beneficiaries from the work of the RDG will be the commercial organisations who operate passenger rail franchises.

Question 2: Are you content with the proposed structure of the RDG, particularly in the terms of scope of representation and criteria for membership?

Response: This confirms that the most powerful organisations will probably have the biggest say and gives them a government approved forum to push forward the commercial interests of the organisations who appoint them. Indeed we can see no reason (other than financial) for organisations like First Group and Stagecoach allowing their very highly paid senior executives to be involved in RDG. There would

appear to be a very serious democratic deficit – for example, there are no provisions for any direct input from passenger interest or community groups. However, in spite of it not gaining any special powers, authority or having a statutory role, nonetheless, we consider its activities need to be subject to approval by the UK and Scottish Parliaments and the Welsh Assembly. Amongst other things, RDG should specifically be brought under the provisions of freedom of information regulations. Regarding its finances, ultimately RDG will be paid for by fare payers or taxpayers who provide almost all of the industry's revenue in one form or another. Indeed it could be argued that it just adds another layer of complexity and cost to the industry.

We note from the RDG website that ATOC chief executive Michael Roberts attends RDG meetings. This involvement needs to be explained.

Question 3: Please comment on how you consider RDG could best engage with licensed and associate members.

Response: This reinforces RDG's top down approach to the wider industry. We are extremely sceptical about how effectively the involvement of 'associate members' will work in practice. We note that there is no specific mention of passenger groups, though these may be covered by 'representative organisation'. This again suggests the low priority given to the interests of passengers in the work of RDG. We are also concerned that LUL is being specifically excluded from being able to nominate a leadership member. We believe that as a public sector provider of services on one of the world's largest public transport networks, it probably has a lot to offer in terms of leadership and expertise. LUL may derive only a small percentage of its annual turnover from activities on the Network Rail network, but the services it operates interact with central London mainline stations and other interchange stations in Greater London. It is not unreasonable to conclude that LUL has been excluded from the higher tier of involvement because it is a public sector organisation **not** a private sector company. The last thing the RDG would want is to increase the risk of anyone challenging their commercial interests and focusing on delivering a better rail system that is run in the public's best interest.

We note that trade unions are to be included as associate members. In general terms we would support a top level industry-wide forum at which the trade unions and organisations that employ our members have the opportunity to raise, discuss and resolve issues of mutual interest. However, our impression of the way in which RDG operates is that it makes the big decisions and tells other parties what's going to happen or indeed what has happened. We see no useful purpose in this approach. Genuine engagement with industry stakeholders involves more than an occasional power point presentation to update interested parties on what a good job RDG is doing. In the aftermath of McNulty and the Government's Command Paper there are a multitude of issues of concern to the industry's workforce, but no high-level forum

to raise and resolve them – the most obvious being the threat to many thousands of jobs including those in ticket offices.

Question 4: (for licensed train operators and Network Rail) – in view of these proposals would you be content to agree to the introduction of the new condition at Annex B into your licence? If not, what changes would you wish to see which would allow you to provide that agreement?

Response: Question not applicable to us.

Question 5: Will the proposed voting and quorum arrangements provide you with assurance that decisions taken by RDG will have sufficient cross-industry support to justify implementation?

Response: Question not applicable to us.

Question 6: Are there any specific commercial protections that you consider will need to be included within the competition compliance document?

Response: We have no specific points to make on this particular question. However, we would like to make the more general point that the very existence of RDG probably increases significantly the risk of breaches of confidentiality and competition law. Indeed the recent successful bid by First Group for the West Coast franchise was reported in the press well in advance of the Department for Transport's announcement on 15th August 2012. We do not know who leaked this information to the media, or why they did so, but clearly the party that did so may have considered there was some commercial or other corporate advantage.

Question 7: Please comment on whether you consider these funding arrangements to be appropriate.

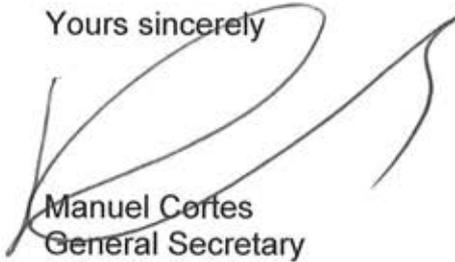
Response: In terms of the overall industry revenue RDG funding will be very small as a proportion, but it does create additional cost and tier of complexity to the industry that is attributable to its structure. Given that, so far as the passenger side of the industry is concerned, the vast majority of industry revenue is derived from taxpayers and fare payers. It is these parties who are paying for the RDG yet have no say over what it does. On other matters covered in this part of the consultation document we would comment as follows:

- We do not think it appropriate for RDG to write its own code of conduct.
- We fear that reference to the need for confidentiality will be (ab)used by RDG in order to pick and choose what information is made public. We consider that it is in the public interest for RDG and its activities to be brought within the scope of freedom of information regulations.

- The RDG articles should require it to publish annual accounts on its website. This should include full details of its income from named companies funding it.

In conclusion, I would like to make it clear that TSSA rejected the findings of Sir Roy McNulty's Rail Value for Money Study and the Government's subsequent Command Paper. We consider that RDG has no democratic accountability and its 'top down' approach will, in effect, work mainly in the commercial interests of the train operating companies. This inward looking approach acts against the public interest and will further entrench the power of train operating companies that make up the industry. To the industry's workforce and rail users RDG has nothing to offer as its main focus is simply to drive down industry costs based on McNulty's deeply flawed analysis of the industry. Furthermore, the composition of RDG is staggeringly unrepresentative of passengers and society as a whole. For example, apart from one alternate member (Lindsay Durham from Freightliner) all are men. On the whole they probably represent no interest other than those of the companies that appoint them. In terms of providing things like better rail services and lower fares, formalisation of RDG is pretty meaningless and would be totally unnecessary if the industry was publicly owned, accountable to the public and run in the public interest.

Yours sincerely



Manuel Cortes
General Secretary