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Access Executive
Office of Rail Regulation
One Kemble Street
LONDON
WC2B 4AN

2nd May 2012

Dear Paul,

Reform of access contractual arrangements - Seeking your views January 2012 Second response

I attach Alliance Rail Holding's (Alliance) comments in relation to the consultation for all questions other than 2, 3, 4 and 5 which were answered on the 8th March 2012. This response also encompasses the response of Grand Central.

The ORR will also be receiving a response from Group in respect of this consultation. If you have any queries please don't hesitate to contact me.

Yours sincerely



Ian Yeowart

Question 1

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?

In response to paragraph 2.12 we have the following comments:

We welcome the review especially in relation to “stopping the use of blocking rights”. It is helpful that ORR has acknowledged that operators do use rights to block others and this was something that was confirmed by some operators at the ORR workshop. The use of “blocking” rights is a serious competition issue. Given the serious nature of such an offence we would expect a formal investigation to be under way by ORR in its role as competition regulator. Please advise what if anything has been done.

In addition, we note the comment “and allow greater flexibility for Network Rail”. It is a fact that Network Rail has a considerable amount of flexibility in many of its contracts. It chooses not to use this flexibility and asks operators to bid into “white space”. We do not see any compelling arguments to give more flexibility to Network Rail when it does not use its existing flex to full effect.

Question 6

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

The proposed approach is sensible.

Question 7

Q7. Do consultees agree that the 'SPOTS' forms a basis for resolving the misalignment between the timetabling and access approval process? In responding, it would be helpful if consultees could explain:

- → if they are not supportive, why and whether they have any alternative proposals; or
- → if they are supportive, whether they have any specific concerns or see potential issues not already identified in Annex A. Are there any solutions to these issues?
- → If there are concerns with the proposal, could this be mitigated by limiting the scope of the SPOTS provision to a train operator's existing routes and stations?

Alliance Rail is supportive of the principles behind the SPOTs proposals. However, we do have concerns that the process is not robust in terms of revenue abstraction. It is also open to possible abusive behaviour by operators seeking to weaken competition. ORR has already acknowledged that operators use rights to block competition – it seems that SPOTs could be used to block capacity.

Question 8

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.

Generally the process is fine. Alliance Rail has found it difficult to assess current access rights of other operators because of the ORR website not being updated with consolidations. In addition, on the new applications forms we would like to see a statement as to whether the application is a section 17, 18, 22 or 22a.

Question 9

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

Alliance Rail is not supportive of “lighter touch” regulation. The collapse of the banking sector is an indicator of poor “lighter touch” regulation. Alliance Rail would rather see more involvement and review by the Office of Rail Regulation.

Question 10

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?

Question 11

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

Alliance Rail is aware that Network Rail and Operators make mistakes in their contracts. There have been examples in the past when one operator deleted their schedule 5 by using a General Approval. Lighter touch regulation and expansion of the use of General Approvals could have a negative impact in capacity management of the network.

Question 12

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.

Question 13

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.

Question 14

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?

No comment.

Question 15

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.

The proposed revision of asset boundaries at stations will potentially remove the need for APAs as work would be undertaken by the SFO themselves. At stations and depots where assets are redefined there is the potential to do away with the need for APA's altogether. This is to be welcomed.

Alliance Rail has developed a number of station investment schemes and is keen to invest should our applications be successful. Alliance Rail would like to ensure that investment to enhance facilities would not become more difficult in the future.

Alliance Rail is keen to ensure SFOs do not become an abusive monopoly supplier and that their charges are transparent. Alliance Rail also believes that there should be a regulatory process to ensure fairness by SFOs to other operators.

Question 16

Q16. Consultees are invited to comment on the necessity of a review of Part C, and on who should take responsibility for any further work on Part C.

No Comment.

Question 17

Q17. Do consultees agree that there is a case for reviewing the need for Part F? If so, consultees are invited to set out what elements of Part F need to be retained, if any (either in a reduced Part F or as part of Part G). If any consultee disagrees, it would be helpful if they could say why and what change, if any, they would like to see. Consultees should also comment on whether it would be appropriate for any review of Part F to be taken forward by the Part G IWG.

Alliance Rail would like to see a part F incorporated into part G and is fully supportive of a review by the part G IWG.

Question 18

Q18. Consultees are invited to comment on the issues they have experienced during the network change process which would need to be addressed as part of a review.

No Comment.

Question 19

Q19. Do consultees have any comments on the use of Part H? Would Part H benefit from a general update and refresh to take account of current circumstances?

No Comment.

Question 20

Q20. Do consultees believe that Part K adds value to the contractual regime? If not, should it be reviewed or removed altogether from the network code?

No Comment.

Question 21

Q21. Do consultees feel that Part L would benefit from a general update and refresh to take account of current circumstances, including the addition of FIPs, and the opportunity taken to move TOCs using LOCs to JPIPs?

No Comment

Question 22

Q22. Do consultees agree that issues such as network availability and JNAPs should be incorporated into the network code?

No Comment

Question 23

Q23. Do consultees believe that there are other parts or individual conditions of the network code that would benefit from review? If so, please say which, how and why. Are there any aspects of the current access contractual regime which should be incorporated into the network code?

No Comment

Question 24

Q24. Do consultees have any comment on the format, structure and content of our new application forms, and do you have any other suggestions for improving them further?

Alliance Rail would like to see the type of application clearly identified (e.g. 17, 18, 22 or 22a). In addition all applications should have the date that they were consulted on and submitted.

Question 25

Q25. Do consultees consider that the changes we have made to the access and network code webpages have made them more user friendly and accessible? Are there any further improvements consultees would like to see to our website (not necessarily confined to the access and network code pages)?

The changes made to the website are much more user friendly. Improvements can be made to make certain the content is up to date in relation to applications and consolidated track access contracts.

Question 26

Q26. Do consultees have any views on further changes which could be made to the model contracts to ensure that they remain accessible, clear, useful and fit for purpose?

Alliance Rail believes that a model contract for Open Access operators be provided.

Question 27

Q27. Do consultees agree with our approach to allow the industry to continue to develop its own approach to the format of access contracts for access to facilities off Network Rail's network?

Alliance Rail agrees.

Question 28

Q28. Consultees are invited to provide specific examples of their experiences of Network Rail's sign-off process for applications, together with any suggestions as to how the situation can be improved.

Alliance Rail does not believe it appropriate to list out the details of private negotiations as part of a consultation. We would like to discuss the issues directly with ORR.

Question 29

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.

Network Rail appears to be reluctant to use the term congested infrastructure despite telling Alliance Rail that the West Coast Mainline is full. It is debatable at what point a route becomes "congested" and this allows Network Rail to avoid formal declarations. It would be helpful if ORR could define what congested is. Does it mean that there is no capacity left at all or a percentage of capacity?

Question 30

Q30. Do consultees have any comments on the impact assessment, particularly in terms of:

- → any additional evidence of the current costs of the existing contractual regime, e.g. overheads, resources, legal costs; and
- → what they consider to be the costs and benefits of the proposals?

No comment.

Question 31

Q31. Consultees are invited to submit comments on any issues they may have which are not considered by this document, including consultation and contractual matters, the network code, and ORR's own processes.

No comment.