



Paul Stone
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

Our Ref: L-RG-RR-00002-15-HS0

11 April 2012

Dear Paul,

Reform of Access Contractual Arrangements – HS1 Limited (“HS1 Ltd”) Response: Part 2

HS1 Ltd would like to thank you for the opportunity to respond to Part 2 of the consultation document entitled Reform of Access Contractual Arrangements (dated January 2012) (the “Consultation”).

At the outset, it is worth stating that HS1 Ltd is not party to Network Rail’s access contracts and is therefore not seeking to influence Network Rail’s contractual access arrangements. However HS1 Ltd does have an interest, as a neighbouring infrastructure manager, in ensuring that changes to Network Rail’s access arrangements do not have an adverse effect on those of HS1 Ltd. As such, the comments contained in this letter are in no way intended to be construed as commenting upon, or proposing amendments to, HS1 Ltd’s current contractual access arrangements.

1. General

HS1 Ltd recognises that, in commencing the Consultation, the intention of the Office of Rail Regulation (“**ORR**”) is to, amongst other things: i) improve the processes involved in allocating capacity to all train operating companies (“**TOCs**”) (including passenger and freight train operators) through creating a more robust and less complex access framework; ii) give the industry greater responsibility for its contracts; iii) reduce timescales; and iv) simplify the process by removing or reducing unnecessary requirements. As a general response to the Consultation, HS1 Ltd fully supports all discussions and forums between all parties (the TOCs, infrastructure managers and ORR) that will lead to more efficient industry practices. In light of the aims and objectives of this work, we do agree that the key themes/areas have been covered in the consultation.

Our response to all other questions in the Consultation (questions 6 to 31) is detailed below.

2. HS1 Response

RT3973

HS1 Ltd fully appreciate that RT3973 is a contractual matter between the freight operator and Network Rail. As a general response, we do support proposals that avoid uncertainty within any operational railway standards process. As such the ORR’s proposal, in principle, appear to be reasonable.

Track Access Agreement & Timetabling Process

The Consultation details the concerns of the industry which includes, in particular, the misalignment of the timetabling development process and the track access application process. HS1 Ltd notes that the ORR's proposed solution is to introduce SPOTS (the 'short-term permission to operate timetabled services'). HS1 Ltd strongly believes that it is important that access proposals should (ideally) be supported by access rights (especially at the time of publication of a working timetable); this is reflected in Part D of HS1 Ltd's Network Code. As such, we fully support the ORR's statement in paragraph 12 of Annex A of the Consultation that, despite the absolute deadline for obtaining access rights being D-0, it is 'bad practice for an application for access rights to be made around or after D-12'. Allowing a train operator to be included in the timetable published at D-12 with the approval of its application for access rights still pending is bad practice because:

- i. there is the possibility that the application will not be approved. If this happens, the services will be removed from the timetable and passengers who bought tickets for those services, or who planned to use them, will be inconvenienced; or
- ii. it could lead to the train operator waiting until it has secured access rights before publishing the timetable and selling tickets. This is inconvenient for passengers as they have less time to plan ahead, and the train operator could be in breach of its licence condition and franchise agreement with regard to the publication of timetables. Indeed, some applications are not approved until immediately before the timetable commencement date.

Beyond the reasons detailed above, HS1 Ltd believes it is important that all parties involved in the process are incentivised to drive the right industry behaviours. Infrastructure managers are committed to ensuring that the railway is operated in an efficient, economical and robust manner and as such, aim to ensure that the level of unused infrastructure capacity is kept to a minimum. It is our view that having an access right to utilise infrastructure capacity should be a prerequisite to being included in the working timetable and therefore will assist in preventing unused capacity on the network.

In the context of HS1 Ltd, the possibility of a misalignment between the timetabling and the access application process is significantly less. With respect to High Speed 1 ("HS1"), there will be a robust programme of key activities (one of which is entering into an access contract) which a new international train operator would have to complete prior to being introduced onto HS1. Therefore, from a practical perspective, an access contract should be in place (in sufficient time) before the timetable development process commences or, at the latest, by the time the working timetable is finalised in any event.

For HS1 Ltd, access contracts are of fundamental commercial and operational importance as they form the contractual basis on which trains operate on the HS1 network. This contractual basis, amongst other things:

- (a) incorporates a regulatory framework to which both HS1 Ltd and train operators are subject to (including the HS1 Network Code, the Passenger Access Terms and the HS1 Operational Codes). Failure to have such a framework in place exposes HS1 Ltd to significant commercial and operational risks; and
- (b) provides HS1 Ltd with a mechanism to levy track access charges (predominantly in accordance with Section 7 of the HS1 Passenger Access Terms).

The ability to levy track access charges is critical to HS1 Ltd being a viable commercial business; without an access contract in place there is no explicit contractual basis on which this can be done.

Moreover the level of such charges received by HS1 Ltd is, in essence, dependent on the number of trains operating on the HS1 network. Consequently, if HS1 Ltd allocates infrastructure capacity to an applicant who does not have an access contract and such applicant fails to use that capacity as a result of such an agreement not being in place:

- i. there is a potential loss of commercial opportunity for HS1 Ltd (in that such capacity could have been allocated to or utilised by another applicant); and
- ii. HS1 Ltd would have no explicit contractual basis on which to levy a compensatory charge for such failed use.

Track Access Application – Process

HS1 Ltd acknowledges that the volume of access applications is significantly higher for Network Rail in comparison to HS1 Ltd. As a general response, HS1 Ltd welcomes any proposal that will reduce the timescales associated with the application process as long it does not impose any additional costs on the parties involved. On this basis, HS1 Ltd welcomes proposals on:

- i. pre-consultation meetings with the ORR;
- ii. clearer and firmer timescales; and
- iii. a monitoring system for all track access applications.

General Approval

HS1 Ltd notes that the ORR are considering the extent to which they increase the scope of the General Approval taking into account the recommendation from the RVfM Study that Network Rail and the train operator companies ("TOCs") should take greater responsibility for their own contractual arrangements. HS1 Ltd agrees with this recommendation. It is worth noting that HS1 Ltd does not have any issues with its own current General Approvals framework for access contracts.

Station & Depot

HS1 Ltd notes the industry feedback on station access agreements, in particular following a franchise change, where there appears to be a burdensome process associated with producing new station access agreements. While HS1 Ltd understands the need to prevent additional processes (that will create further administration for the parties involved) we also appreciate that the ORR would need to verify whether the terms contained in those access agreements remain unchanged. Mindful of the difficulty in providing an appropriate balance we encourage further discussions in this area.

Network Code

HS1 notes the ORR is inviting comments from the industry on certain parts of the Network Rail Network Code. As a general response, HS1 Ltd welcomes any review of the existing processes that would lead to more efficient practices without adversely impacting (commercially or operationally) any party governed by the Network Rail Network Code.

Our specific comments on the particular areas of the Network Code are detailed below:

Part C – Part C outlines the process for making changes to the Network Code. HS1 Ltd supports any proposal that aims to simplify the process whilst improving the overall accessibility.

Part F – Part F provides a procedure through which the introduction of new railway vehicles, changes to existing vehicles or the introduction of existing railway vehicles can be assessed for material effect and implemented. We note the feedback from the industry which queried the need to have Part F taking into account that the existence of the ROGs regulation, Network Rail Acceptance Panel and the Technical Standards of Interoperability. HS1 Ltd does however see merit in having Part F as it addresses the commercial elements involved in the vehicle change process which are not captured explicitly through any of the other existing processes detailed above.

Part G – Part G sets out the process which access parties must go through when certain types of change to the network occur or are proposed. HS1 Ltd notes the concerns of the industry on how Part G is applied in practice and notes the ORR's suggestion to rewrite of this part. HS1 Ltd supports any proposal that simplifies the existing process and welcomes the establishment of a working group to address the industry's concerns. As a general comment HS1 Ltd does believe that, in respect of the Part G process, it is important that all comments from the network change proposal are fully considered and taken into account (following industry consultation) before the proposal is implemented. This point is crucial in improving the effectiveness of the Part G process.

Part H – Part H sets out the requirement for Network Rail, through consultation, to establish a Railway Operational Code with the objective of sustaining and restoring the operation of train services in the working timetable. HS1 Ltd does not have any comments on whether a review on this part of the Network Code is required however we would support any proposal that improves the existing processes.

Part K – Part K in Network Rail's Network Code provides a two way flow of key information between access parties on a regular and ad-hoc basis. Although this part is not in the current version of the HS1 Network Code, as a general response HS1 Ltd believes that there is a significant benefit in sharing information between parties provided the process is managed effectively (single point of contact for each party) and as long as each party can determine, upon request, whether they would want to disclose certain commercial information to the other party. As the JPIP (Joint Performance Improvement Plan) is an essential document to assist with maintaining good performance on the HS1 network, HS1 Ltd believes that a firmer commitment to establish the JPIP on an annual basis is required.

Part L/LA – Part L provides for JPIPs that are implemented by the infrastructure manager and the relevant TOC who agree and review the performance targets as well as the improvement plans during the year. In the context of HS1, JPIPs are established on an annual basis and monitored monthly. Although generally there is a good working relationship between all parties whilst working on JPIPs, there are no contractual obligations on those parties to develop JPIPs in the HS1 Network Code.

Network Availability - Network availability relates to the impact of disruptive possessions being where a part of the network is taken out of service to allow maintenance, renewals or enhancement works to take place. The concept of network availability is not contained in the Network Rail or HS1 Ltd Network Code. HS1 Ltd believes that it should not be introduced in to either Network Code on the basis that items such as seven day railways and JNAPs (Joint Network Availability Plans) are

concepts which are still evolving in the railway industry and therefore should fit outside of the Network Code.

Criteria & Procedures

The ORR's Criteria & Procedures for the Approval of Framework Agreements ("ORR's C & Ps") is an important guidance document that sets out the criteria and procedures the ORR expect to be followed in processing access applications in accordance with the Railways Infrastructure (Access and Management) Regulations 2005. HS1 Ltd has no issues with the format and structure of the document but does however consider that the ORR's C & Ps for HS1 Ltd needs to be reviewed. HS1 Ltd does welcome discussions with the ORR on how to make ORR C & Ps for HS1 more suitable taking into account the differing operational nature between Network Rail & HS1 Ltd.

ORR Website

HS1 Ltd does not have any concerns in relation to the ORR's website. We would like to point out that the latest website is a significant improvement as a result of it being more user-friendly and easier to navigate.

3. Summary

HS1 Ltd is supportive of any proposal that simplifies the existing processes and achieves allocation of capacity in a fair and efficient manner. It is however important that the proposed changes (if implemented) maintain an appropriate commercial balance as between the TOCs and infrastructure managers.

As a side point, although HS1 Ltd understands and is supportive of the need to improve processes and industry practices, HS1 Ltd is concerned by the volume of consultations the industry are receiving from the ORR. As a small organisation (and an even smaller access team), we would like the ORR to consider this in respect of future consultations and the resulting strain that such consultations impose on our existing workload.

If you would like to discuss further any of our comments above, please do not hesitate to contact me by email (chinua.labor@highspeed1.co.uk) or by phone (+44 (0) 20 7014 2758).

Yours sincerely,

A handwritten signature in black ink, appearing to read "Chinua Labor", with a horizontal line above it.

CHINUA LABOR
Regulatory Contracts Manager

cc Doc Con