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Attention of: Ian Williams
Office of Rail Regulation
One Kemble Street
London
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Our Ref: L-BU-RR-00011-04-HSO
Your Ref:

25 July 2011

Dear Sirs,

Consultation on the proposed changes to the Decision Criteria for Part D of the Network Rail Infrastructure Limited Network Code - HS1 Limited Response

HS1 Limited (“**HS1 Ltd**”) would like to thank you for the opportunity to respond to the consultation document on the Network Rail Infrastructure Limited (“**NRIL**”) proposed new Decision Criteria as set out in Part D of the NRIL Network Code (the “**Consultation**”) issued to HS1 Ltd on 10 June 2011.

At the outset, it is worth noting that HS1 Ltd is not party to the NRIL Network Code and is therefore not seeking to influence NRIL’s access arrangements. In previous bilateral meetings between HS1 Ltd and the Office of Rail Regulation (“**ORR**”), HS1 Ltd has committed to comprehensively review the changes to Part D of the NRIL Network Code and consider such changes in the context of Part D of HS1 Network Code. Although both NRIL’s and HS1 Ltd’s timetable development process is managed by NRIL and accordingly may be seen to be similar, any changes to the Decision Criteria in Part D of the HS1 Network Code will need to take into account the different nature of the operation of HS1. Accordingly, this response is without prejudice to any further considerations or decisions which HS1 Ltd may take in relation to the Decision Criteria set out in Part D of the HS1 Network Code.

1. General

HS1 Ltd understands that the changes to the Decision Criteria in Part D of the NRIL Network Code are part of the second phase of changes to Part D of the NRIL Network Code. Generally, the reason for the proposed changes is to reduce and simplify the current Decision Criteria set out in Part D of the NRIL Network Code. HS1 Ltd supports this proposed change if it aids clarity and transparency to the use of the Decision Criteria and provided that there remains a fair and efficient process for the determination of those train slots offered to bidders during the timetable development process.

2. Objectives

HS1 Ltd notes the introduction of ‘the Objective’ in the proposed Decision Criteria and is supportive of the inclusion of an objective as it provides a clear focus in making decisions during the timetable development process. On a similar note, parties should be mindful that the final version of the definition of ‘the objective’ should not incentivise the wrong behaviours between the participating parties in the timetable development process. HS1 Ltd believes that maintenance and renewal of the network is a vital consideration and should be included within ‘the Objective’ because in

sharing capacity in the most efficient and economical manner, the ability to maintain and renew the Network should be seen as a balancing factor.

3. Considerations

HS1 Ltd notes the proposed creation of 'the considerations' in the proposed Decision Criteria in Part D of the NRIL Network Code which are to be used to achieve 'the Objective'. These are clearly based upon the existing Decision Criteria, although in certain cases have been simplified and HS1 Ltd would like to enter a cautionary note about over simplification as integral elements of the meaning can be lost. However, in general, HS1 Ltd is supportive of the simplified version as long as in doing so does not create ambiguity and provided that it will reduce the likelihood of potential access disputes. In addition, it is important that the amalgamation of some of the Decision Criteria into a 'consideration' does not lose the intent behind of the original Decision Criteria in the current Part D of the NRIL Network Code or leads to confusion in the manner in which such Decision Criteria should be applied.

HS1 Ltd has provided specific comments on the following considerations:

b) maintain and renewing the capability of the Network and securing its development, improvement and enlargement

HS1 Ltd recognises that the consideration has been extracted from various parts of the current Decision Criteria in Part D of the NRIL Network Code. Despite having no significant issues with this criteria, HS1 Ltd questions the need to use the words 'development, improvement and enlargement' in the criteria. The words can potentially cause some ambiguity in the practical interpretation in the timetable development process.

c) that the spread of services throughout the day reflects demand

HS1 Ltd has two comments on this criteria: i) that it will be most appropriate to capture this consideration in obtaining access rights in a track access contract and particular provisions could be included to this effect; and ii) if it is included in the Decision Criteria in Part D of the NRIL Network Code, the meaning needs to be made more clear to allow an objective assessment.

e) that journey times are as short as possible

HS1 Ltd is concerned that this could result in priority being given to non-stop services over stopping services and accordingly seems unfair. As currently worded, NRIL may be required to give priority to long distance fast services rather than stopping services. In the context of HS1, trains stopping at Ebbsfleet International station should not have a lower priority than any non – shopping trains.

g) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant, of which Network Rail is aware

HS1 Ltd is concerned that this consideration will be difficult to apply in practice, as there may be disputes as to how NRIL can be said to be aware of a particular contract. It should be made clear how NRIL obtains this awareness.

h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed

HS1 Ltd is satisfied to see that this has been included in the proposed Decision Criteria as it provides international passenger operators with greater certainty that particular paths will not be changed.

4. Summary

HS1 Ltd is currently reviewing Part D of the HS1 Network Code and is considering all changes to the Part D of the NRIL Network Code; with the aim of making suitable amendments to Part D of the HS1 Network Code which take into account the specific operation of HS1. As HS1 Ltd intends to undertake its own consultation in Part D of the HS1 Network Code subsequent to assessing the approved changes to the Part D of the NRIL Network Code, HS1 Ltd encourages the ORR to keep HS1 Ltd fully informed on the outcome of the Consultation.

HS1 Ltd looks forward to considering your final conclusions in relation to the proposed changes to the Decision Criteria in Part D of the NRIL Network Code. If you would like to discuss further any of our comments in relation to the consultation, 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 blue ink, appearing to read "Chinua Labor", written over a horizontal blue line.

CHINUA LABOR
Regulatory Contracts Manager

Cc
Brian Blackwell
Naina Mistry
Martin Llewellyn