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Paul Carey
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Our Ref: L-BU-RR-00006-04-HSO
Your Ref:

16 March 2011

Dear Sirs,

Review of Part J (Changes to Access Rights) of the Network Code – A Consultation Document - HS1 Limited Response

HS1 Limited (“**HS1 Ltd**”) would like to thank you for the opportunity to respond to the consultation document Review of Part J (Changes to Access Rights) of the Network Code (the “**Consultation**”).

At the outset, it is worth stating HS1 Ltd is not party to the Network Rail Network Code and is therefore not seeking to influence Network Rail's access arrangements. However HS1 Ltd does have an interest as a neighbouring Infrastructure Manager to ensure that changes to Network Rail's arrangements do not have an adverse effect on HS1's access arrangements. As such, the comments contained in this letter are no way intended to have any effect in relation to HS1 Ltd's Network Code, Part J.

Furthermore, HS1 Ltd would want an obligation on Network Rail to consult with it on changes to regulatory access arrangements in particular where it intends to amend rights within its regulatory access arrangements.

General

HS1 Ltd note the ORR's proposals in the consultation particularly relate to freight train operators, where competition between train operators requires fair and effective means of securing the surrender or transfer of access rights for which an operator no longer has a reasonable commercial need. HS1 is a maturing railway and HS1 Ltd has certain obligations to ensure fair and non-discriminatory access to HS1 as well as an interest in promoting access to HS1 by freight train from operators using the Channel Tunnel, to ultimately develop the international railway market. Discussions around access rights between international operators (passenger and freight) will increasingly become a subject for discussion and therefore HS1 Ltd requires flexibility to transfer underutilised access rights in the interest of maximising capacity, for the benefit of all train operators and HS1 Ltd. Accordingly the consultation is of interest to HS1 Ltd and we have carefully considered the ORR's proposals for Part J of Network Rail's Network Code.

As a general response to the consultation, HS1 Ltd fully encourages diplomatic dialogue with regards to access rights between train operators and Infrastructure Managers as this can lead to a more efficient use of resources and a harmonious railway environment.

On specific points contained in the consultation, please see below our response to the following conditions:

Condition J12 – Reasonable On- Going Commercial Need (ROCN)

This concept is included in the HS1 Network Code and as such the consultation is of particular interest. In the context of the Network Rail's Network Code Part J, HS1 Ltd acknowledges that ROCN is the source of various disputes due to its ambiguous wording and lack of transparency in the provision set out in Condition J12. HS1 Ltd welcomes the ORR's suggestion for the basic principles to reflect that of the process for considering applications for track access. Furthermore, HS1 Ltd fully supports the statement in the consultation document referring to it being unnecessary for an operator to have rights in its track access contract which may never be used. HS1 is a maturing railway and HS1 Ltd has an interest in promoting international operation through the Channel Tunnel. As such to accommodate future international operators efficiently utilising unused capacity is the key to maximising efficient timetabling development process (for both passenger and freight operators). As such, on the assumption that ROCN will be interpreted similarly in the HS1 Network Code (to which HS1 Ltd reserves the right to consider), HS1 Ltd has no objections to the ORR providing a simple and transparent process with clear outputs, obligations and requirements.

Condition J13 – Dispute Resolution and Condition J14 – Appeal Procedure

HS1 Ltd notes the ORR's suggestion to amalgamate Condition J13 and J14 into one dispute resolution condition and simplifying the dispute process so it becomes faster and less onerous. HS1 Ltd have no objection to this approach and note that the HS1 Network Code is different to the Network Rail's Network Code in this respect.

HS1 Ltd also notes the ORR's suggestion to amend the ADRR by way of dispute resolution timescales and simplify the two stage process. HS1 Ltd recognises that in certain disputes arising in the context of Part J, a quicker process for resulting such disputes is necessary and HS1 Ltd would welcome the ORR's proposal to not be the first point of contact in disputes situation, so that it retains distinct appellate function, as provided by the Railways Infrastructure (Access Management) Regulations 2005. HS1 Ltd does however have reservations on the ORR having general rights to expedite the appeals procedure as this could potentially have an adverse effect on the ability of a party to properly make its case on an appeal.

Summary

The consultation provides solutions for simplifying NRIL's Network Code - Part J aimed at providing a simple and clear direction for both NRIL and train operators in the process of discussing and negotiating access rights. In particular, a collaborative process is envisaged which HS1 Ltd would welcome if the potential for disputes to arise is reduced. It also promotes better relationships between industry parties, with Infrastructure Managers and train operating companies working together to fulfil goals rather than against each other. HS1 Ltd is supportive of this exercise as transparency will avoid potential dispute situations.

HS1 Ltd looks forward to considering your final conclusions in relation to the proposed changes to Part J of NRIL's 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 be "Richard Martin", with a horizontal line drawn through the middle of the signature.

CHINUA LABOR
Regulatory Contracts Manager

cc Doc Con
Richard Martin
Brian Blackwell
Naina Mistry
Tim Smart