Investing in the rail network: a guide for investors

8. Rebate mechanism

8.1 The rebate mechanism is designed to allow third-party investors in large-scale enhancements to recover a fair proportion of the costs incurred in funding an investment scheme where other parties benefit from the use of the enhancement.

8.2 Once an enhancement to the network is operational, any train operator can apply to Network Rail for access to it. If granted, the charge for access is payable to Network Rail, and as a general principle reflects the marginal cost of providing access. Under current arrangements, therefore, a third-party funder cannot charge operators directly for access to an enhancement in which it has invested. Consequently, operators may be able to 'free ride' on the investment of others.

8.3 This means that the investor could be at a competitive disadvantage, reducing the incentive to invest and ultimately meaning that beneficial investments may not go ahead.

8.4 Third-parties investing in large-scale track infrastructure enhancements to the network can apply to Network Rail for a rebate charge to be put in place. This charge will be levied on operators that access and benefit from the enhancement. Government-funded schemes are outside the scope of this mechanism.

8.5 Investors will only be eligible for the rebate mechanism if they can demonstrate to Network Rail (and us) that they satisfy one of two criteria:

- The funder is a private sector third-party funder and:
    - there is a stand-alone business case for the investment in the absence of the

rebate and free riding; and

- there is a real likelihood of free riding on the investment by competitors, which would mean that the project could not be undertaken without the prospect of such higher charges.

Or

- The funder is a public sector third-party funder and:
  - the scheme represents value for money in the absence of the rebate;
  - funding constraints mean that the scheme could not proceed, or would be delayed with significant adverse effects, without the prospect of recovering higher charges via the rebate, due to a lack of available funding; and
  - the prospect of recovering higher charges via the rebate would ease the funding constraint.

8.6 In either case, the project should not be being funded through other mechanisms, such as franchise arrangements, grants or innovation funds; and the funder should have explored thoroughly the possibility of joint-funding arrangements before applying for the rebate mechanism.

The rebate charge

8.7 The rebate charge is an (index-linked) tariff levied per benefiting path, and will be payable to Network Rail as a premium to the access charge. Network Rail will then have responsibility for distributing the tariff received to the appropriate investing party(/ies), the rights to which will be set out in the relevant access contract or access option.

8.8 The level of the charge should be calculated by Network Rail and be based on the average annual cost of the investment per relevant path available. The charge will be applicable only for the ex-ante payback period of the investment, as set out in the access rights or options of the investing entity. If the original investor loses its access rights with respect to the enhancement, the mechanism for paying a rebate charge to the investor will survive, unless the investor has been appropriately compensated for its investment.

8.9 The mechanism will be implemented through applications under section 17 to 22A of the

Railways Act 1993. The level of the rebate charge and the expiry date of the charge should be set out in schedule 7 of the track access contract.

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