

HS1 stakeholders  
By e-mail only

Dear HS1 stakeholder

28 March 2025

## **Periodic Review of High Speed 1 Ltd. 2024 (PR24) Implementation**

I am writing to set out our decision with regards to the Fixed Cost Wash-Up (FCWU) mechanism, which was proposed by operators during PR24.

On 31 January 2023 we published our Approach to PR24. In this document we noted that since the last periodic review, the COVID-19 pandemic and other events had introduced a high level of uncertainty in the HS1 system, for example, on costs and traffic levels. We also noted that during CP3, there had been some discussion of the legal mechanisms and processes available to deal with this uncertainty, but there were no clear strategies to improve them.

To support growth of the HS1 system, our approach to PR24 made a commitment to work with High Speed 1 Ltd (now trading as London St Pancras Highspeed (LSPH)) and other stakeholders to understand the mechanisms available to them to address the risks arising from the inherent uncertainty in the HS1 railway system.

During PR24 we delivered on this commitment through detailed review of the existing contractual mechanisms, and engagement with operators, LSPH and other parties, at a level far in excess of what had been undertaken in previous periodic reviews. In this review we determined the efficient costs and charges for the use of the HS1 infrastructure and stations and we also undertook to review the Passenger Access Terms contracts (PATs). We received 25 proposals to amend the PATs from the parties to them (current passenger operators and LSPH) and we approved 21 of these to be taken forward for legal drafting.

One of the proposals supported by both operators (South East Trains Ltd. and Eurostar International Ltd.) was the introduction of a Fixed Cost Wash-Up (FCWU). Currently the fixed costs to renew and maintain the network are allocated between operators based on the First Working Timetable at the start of each year. Following the COVID-19 pandemic the actual number of trains that ran differed significantly from the start-of-year timetable. So operators proposed the FCWU to review the allocation at the end of each year and re-allocate costs fairly between operators, based on the actual number of trains run.

In our PR24 Draft Determination we put forward the proposal for a FCWU mechanism, for consultation. We received feedback through the consultation and we

held a series of workshops to discuss the mechanism in detail with operators and LSPH. Both of the existing operators supported the introduction of the FCWU; and LSPH set out provisions which would allow it to take forward the FCWU, ensuring LSPH was not at risk of under-recovery.

In our PR24 Final Determination we said that *“we welcome the constructive dialogue between LSPH and operators in the various workshops held to discuss how a fixed cost wash-up mechanism would work in practice. This has taken matters forward and will be finalised through legal drafting produced by LSPH. In light of the constructive engagement with industry in developing this proposal we approve its introduction”*.

Our PR24 Final Determination instructed LSPH to proceed with making changes to the PATs to include the FCWU; ORR would then review the changes to confirm they were consistent with our Final Determination. On 3 February 2025, LSPH formally accepted ORR’s PR24 Final Determination and confirmed it was proceeding to draft the necessary changes to the PATs and other contracts required to implement our determination.

On 3 February 2025 LSPH shared initial legal drafting of the PAT changes for ORR’s review. LSPH noted that its drafting of the PATs included terms to address complex interactions between the new FCWU and other contracts, notably the Domestic Underpin Agreement (DUA) between the company and the Secretary of State for Transport. We sought feedback from operators and DfT on the proposed changes to the PATs, to support our review. On 24 February 2025, Eurostar International Ltd. wrote to us expressing its concerns about the risks arising from these interactions between the FCWU in the PATs, and other contracts.

Following discussions with the parties, we concluded that the details of LSPH’s approach to addressing interactions with other contracts had implications for the financial risk borne by operators and DfT. As such we could not make a final decision until operators and DfT had been given reasonable opportunity to review the implications and confirm to us whether they still supported the FCWU. However, we concluded that the changes to the PATs not related to the FCWU were consistent with our PR24 Final Determination. So, on 17 March 2025 we issued our notice implementing PR24 for passenger operators, but we included a condition in the PATs allowing ORR to make a final decision on the FCWU (and any consequential amendments) by 28 March 2025, allowing operators and DfT more time to reach a fully informed position.

Following that Implementation Notice, discussions have continued and resulted in Eurostar International Ltd. identifying, on 25 March 2025, a significant risk from the interaction between the FCWU and the DUA, which it is not able to accept and which means it no longer supports inclusion of the wash-up as envisaged by the Final Determination. Potential solutions have been identified but at the point at which this risk was identified there was insufficient time before the end of the control period to test whether they would work in practice and whether they align with the principle that there should be no under- or over-recovery for LSPH.

On 26 March 2025 it was mutually agreed by the parties that the only feasible option was to remove the FCWU from the PATs.

We remain of the opinion that a version of the FCWU, which deals appropriately with the risks arising from interactions with other contracts, could be developed before the wash-up could first be applied in April 2026. However, the PR24 timeline requires ORR to make a decision before the start of the control period and we cannot wait for these issues to be resolved. Operators, LSPH and DfT have all informed us that it is their intention to continue discussions after the start of the control period, to develop a version of the FCWU which is mutually acceptable to the parties. If LSPH and operators can agree the changes, then they are able to initiate changes to the PATs at any time during the control period. The changes would require ORR approval, but would not require an ORR determination. We will continue to support discussions between the stakeholders in any way we can.

**In summary:**

- In our PR24 Final Determination we determined that LSPH should proceed with legal drafting to introduce a FCWU. Our determination was made on the basis that the introduction of a FCWU was supported by both of the existing passenger operators.
- Following production of the legal drafting and review by stakeholders, considering interactions with their other contracts, it became clear that the FCWU as drafted was no longer supported by both operators and there was insufficient time before the end of the control period to test that potential solutions align with the principle that there should be no under- or over-recovery for LSPH.
- This changed the basis on which our determination was made and, in line with the process we set out in our Implementation Notice of 17 March 2025, we reviewed the evidence and decided to remove the FCWU from the PATs which will be implemented at the start of CP4 (starting on 1 April 2025).
- We understand that LSPH and operators intend to continue developing a FCWU mechanism. They are able to make changes to the PATs to introduce the FCWU at any time, subject to agreement by all parties and approval from ORR. We will continue to support the development of the FCWU in any way we can.

Yours sincerely

**Feras Alshaker**