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14th May 2009

Dear colleague

Office of Rail Regulation 2008 periodic review – independent evaluation

Following publication of its determination of Network Rail's outputs and funding for 2009-14 (control period 4) and completion of its 2008 periodic review, the Office of Rail Regulation (ORR) has engaged me to lead an independent evaluation of the review.¹

I am Chairman of First Class Partnerships and was previously Chief Executive of British Rail's Network South East business. My colleagues undertaking the evaluation are Mike Toms (Chairman of Northern Ireland Electricity and a Non-Executive Director of Oxera, previously Group Director, Planning and Regulatory Affairs at BAA plc) and Peter Vass (Director of the Centre for the study of Regulated Industries and Senior Lecturer in Accounting and Finance at the University of Bath). In addition, Chris Shapcott (Director of Regulation Value for Money) at the National Audit Office and Mark MacPherson (Portfolio Manager) at Audit Scotland are represented on the review group as observers.

The objectives of this evaluation are to:

- examine the way in which ORR carried out the periodic review (it is not the purpose of the evaluation to review the merits of the actual decisions that ORR took and its overall determination);
- seek views from stakeholders on the review process and whether ORR addressed the key issues in the review and consulted fully on its proposals and explained clearly its decisions; and
- produce a report on the findings of the of the evaluation and containing recommendations on areas that the review group considers ORR needs to give consideration to in planning and carrying out the next periodic review, planned for completion in 2013.

In carrying out the evaluation, we will take account of ORR's stated objectives for the periodic review (see appendix A). We will also give regard to established principles of good regulation and ORR's statutory duties (see appendix B). We intend to submit our final report to the ORR Board by the end of July 2009 and it is our understanding that ORR will then publish this on its website along with its response to our recommendations.

¹ Determination of Network Rail's outputs and funding for 2009-14, Office of Rail Regulation, October 2008. This may be accessed at <http://www.rail-reg.gov.uk/upload/pdf/383.pdf>.

My colleagues and I have already met the main stakeholder organisations and further meetings are being arranged to follow up on the initial meetings. The detail of these meetings is not shared with ORR.

The purpose of this letter is to give interested parties, who we will not meet face-to-face during our evaluation, the opportunity to submit their views and also to provide those who we have met the opportunity to provide any further input.

We are interested to receive any views you have. However, we would be particularly interested in your views in the following areas:

- ORR's objectives for the periodic review;
- the substantive/policy issues covered/dealt with in the review (which will not be a detailed assessment of the technical detail of the pros/cons of each policy issue, but rather was it (properly) covered as part of the periodic review process);
- the periodic review process (including its transparency and timetable, and also the new statutory process – based on the high level output specifications (HLOSs) and statements of public funds available (SoFAs) produced by the Secretary of State and Scottish Ministers);
- ORR's communication (consultation and engagement) process including feedback to respondents;
- the independence and integrity and expertise/competence of ORR;
- presentation (contents, legibility, etc) of ORR's consultation/decision/determination documents; and
- identification of what worked well in the periodic review, what did not work well and suggestions for issues ORR should consider addressing to improve the planning and conduct of the 2013 periodic review (including policy issues to be covered).

All of the documentation related to the 2008 periodic review is available on ORR's 2008 periodic review webpage.²

If you would like to respond, please send your response in an electronic format (or if not possible, in hard-copy format) by Wednesday 17 June 2009 to:

Rupika Madhura
Economist, Office of Rail Regulation
1 Kemble Street
London WC2B 4AN
Tel: 020 7282 2055
Email: rupika.madhura@orr.gsi.gov.uk

² ORR's 2008 periodic review webpage may be accessed at www.rail-reg.gov.uk/server/show/category.180.

Rupika is providing administrative support to the independent evaluation and any information she receives will remain confidential to the independent evaluation and will not be shared with others in ORR or published unless you are content for this to happen. Therefore, if you send a written response, you should indicate clearly if you wish all or part of your response to remain confidential. Otherwise, we would expect to provide it to ORR along with our final report. Following this we understand that ORR would make it available in its library and on its website and potentially quote from it. Where your response is made in confidence please can you provide a statement summarising it, excluding the confidential information, that can be treated as a non-confidential response. ORR may also publish the names of respondents in future documents or on our website, unless you indicate that you wish your name to be withheld.

Please contact me if there is any aspect of the independent evaluation that you would like to discuss further. Alternatively, if you would like to discuss the evaluation with ORR please contact Paul McMahon, Deputy Director of Rail Markets and Economics (tel 020 7282 2095, email paul.mcmahon@orr.gsi.gov.uk).

Yours sincerely



John Nelson

Annex A: ORR's objectives for the 2008 periodic review

ORR's overarching objective for the 2008 periodic is to ensure an outcome that secures value for money for users and taxpayers, by determining the level of Network Rail's access charges and outputs in a way that balances the interests of all parties.

In terms of outcomes from the railway, if this objective is achieved then ORR considers it should deliver a railway that is safer than ever before, is more reliable than ever before, whilst carrying significantly more passengers and freight, at a cost that represents ever better value for money for users and taxpayers.

ORR has established a range of specific objectives underpinning its overarching objective:

- To set Network Rail's access charges such that they are:
 - So far as practicable, cost reflective and therefore provide good signals to users and funders; and
 - Neither higher nor lower than they need to be to enable the high-level outputs to be delivered on an efficient and sustainable basis, and to provide value for money.
- To set Network Rail's outputs:
 - With improved definition (e.g. capability, availability, reliability), to focus Network Rail planning/management, and to facilitate measurement of outcomes;
 - So that they are targeted on what users and funders want from the railway and, wherever practicable, are based on final outputs rather than inputs; and
 - On a forward-looking basis, with a trajectory set in the short, medium and long term, to an appropriate level of disaggregation that challenges Network Rail to better understand the drivers of good performance in all time frames.
- To improve incentives, to:
 - Deliver continuous improvement in operations and maintenance and renewal/enhancement procurement efficiency;
 - Optimise cost/quality trade-offs, based on evidence of what railway users value;
 - Balance outputs in different time frames (e.g. performance in the short and longer term);
 - Challenge Network Rail to improve its knowledge/understanding of assets, especially its ability to predict the impact of changing patterns of usage and ways of working to optimise the extent/cost of accommodating forecast/emerging demand;

- Develop Network Rail's planning framework and asset knowledge; and
- Promote continuous improvement in health and safety.

Annex B: ORR's statutory duties

The ORR has a number of statutory duties under certain legislation, including the Railways Act 1993. The duties are set out below. The ORR must balance them when exercising its functions.

- Section 17 of the London Olympic Games and Paralympic Games Act 2006 provides that section 4 of RA93 shall be treated as including the objective of facilitating the provision, management and control of facilities for transport in connection with the London Olympics. It also provides that ORR shall consult the Olympic Delivery Authority about this aspect of the duty;
- Section 21 of the Channel Tunnel Rail Link Act 1996 provides that ORR shall have an overriding duty to exercise its regulatory functions in such a manner as not to impede the performance of any development agreement;
- Section 22 of the Crossrail Act 2008 provides that section 4(1) of RA93 shall be treated as including the objective of facilitating the construction of Crossrail. It also provides that ORR shall consult the Secretary of State about this aspect of the duty;
- To promote improvements in railway service performance;
- Otherwise to protect the interests of users of railway services;
- To promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent which it considers economically practicable;
- To contribute to the development of an integrated system of transport of passengers and goods;
- To contribute to the achievement of sustainable development;
- To promote efficiency and economy on the part of persons providing railway services;
- To promote competition in the provision of railway services for the benefit of users of railway services;
- To promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator;
- To impose on the operators of railway services the minimum restrictions which are consistent with the performance of ORR's functions under Part 1 RA 1993 and RA 2005;
- To enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance;
- To take into account the need to protect all persons from dangers arising from the operation of railways;
- To protect the interests of users and potential users of services for the carriage of passengers by railway provided by a private sector operator, otherwise than under a franchise agreement, in respect of the prices charged for travel by means of those services, and the quality of the service provided;
- To have regard to the effect on the environment of activities connected with the provision of railway services;
- To protect the interests of persons providing services for the carriage of passengers or goods by railway in their use of any railway facilities which are for the time being vested in a private sector operator, in respect of the prices charged for such use and the quality of the service provided;

- In the case of functions other than its safety functions as an enforcing authority for the purposes of the HSWA 1974, to have regard to any general guidance given to it by the Secretary of State about railway services or other matters relating to railways;
- To act in a manner which it considers will not render it unduly difficult for persons who are holders of network licences to finance any activities or proposed activities of theirs in relation to which ORR has functions;
- To have regard to any notified strategies and policies of the National Assembly of Wales and the ability of the National Assembly of Wales to carry out its functions;
- To have regard to any general guidance given by the Secretary of State, or Scottish Ministers in relation to Scottish railway services, about railway services or other matters relating to railways;
- To have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways or railways services;
- To have regard to the ability of the Mayor of London and Transport for London to carry out the functions conferred or imposed on them by or under any enactment;
- To have regard, in particular, to the interests of persons who are disabled in relation to services for the carriage of passengers by railway or to station services; and
- To have regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services, of the persons who make available the resources and funds and of the general public.