



West Coast Trains Ltd.  
North Wing Offices  
Euston Station  
London NW1 2DS

R. Gusanie  
Office of Rail Regulation  
1 Kemble Street  
LONDON WC2B 4AN

2<sup>nd</sup> September 2011

Ref: WC/ORR/RH063

Dear Mr. Gusanie,

**West Coast Trains – Response to the Office of Rail Regulation’s  
Periodic Review 2013 – First Consultation**

West Coast Trains Ltd [WCTL] welcomes this opportunity to respond to the first consultation exercise in relation to the forthcoming Periodic Review 2013 (PR13).

**1. Foreword**

1.1.1 WCTL has endeavoured to respond to this consultation exercise in its current capacity as the incumbent West Coast Main Line Franchised Passenger Train Operator, but mindful of the fact that it also one of the short-listed bidders for the impending ICWC franchise competition. We have therefore approached such consultation with a view that expresses a summation at a higher level of those key components raised within the consultation, rather than answer individually, any specifically proposed questions.

**2. Objective for PR13**

2.1 WCTL welcomes the ORR’s approach to ensuring that PR13 is based upon both a combination of providing Network Rail with the flexibility and sufficiency of achieving outputs necessary to manage its business effectively and efficiently, as well as, being able to react to the developing needs & changing circumstances of its customers and funders.

2.2 The ORR’s onus in specifying the outputs of Network Rail, (rather than its inputs), in terms of fully transparent targeted measures, taking full account of both taxpayers and funders / customers is generally supported. We also note the changes that the ORR highlights in Para 1.15 relative to franchising, but pointing out that any mix of *approaches* across the Industry must be undertaken in such a way that no one particular operator, becomes burdened financially in having to support another.

2.3 We also welcome one of the primary features contained within this PR13 documentation, in that it sets in motion the development of stronger incentives and greater efficiencies for Network Rail and ourselves (the operators), to work together to reduce costs, both at a route level and as we consider below, nationally.

- 2.4 It is nonetheless vital that in seeking to fulfil its statutory duties in conjunction with this next Control Period, that the ORR understands ‘what’ the Funder and Customer both want from the railway and how it should be delivered, whether that be from a strategic perspective or financial standpoint.
- 2.5 Taking into consideration the ORR’s urgency to respond to such challenges and issues, we do not understand why for example, there is a desire by the ORR to initiate a timetable capacity review exercise for the WCML (the “West Coast Event Steering Group”) in parallel with the ICWC franchise competition. Given that bidders will be unlikely to declare any elements of their bids in an open process such as this, in advance of tenders being submitted to the Department for Transport, the process will proceed without the most significant operator on the route having any substantial input.
- 2.6 We do not see how this workstream will achieve the objective of PR13 being market and incentive based, nor will it protect the interests of customers, funders and taxpayers. It is inconsistent with ORR’s stated approach to be engaged with and understand what the Customer wants strategically from the railway (Para 3.8a refers) and is not as productive a start as it could otherwise be to addressing the challenges it faces in bringing together the regulatory framework for the next Control Period.
- 2.7 We believe the most appropriate way forward for the “West Coast Event Steering Group” is to make minor changes to the current timetable for December 2013 (on the basis that only the first stage of North West Electrification will have been completed by this date), with further timetable changes developed with substantial input from the successful bidder for the new ICWC franchise, once it has been awarded by the Department for Transport.

### **3. High Level Timetable**

- 3.1 WCTL notes that the three phases of the PR13 timetable being proposed by the ORR follows a similar structure as used in previous control periods. However this PR13, cuts across a number of Train Operator re-franchising workstreams, which means it is essential for the ORR to give guidance as to how each re-franchise might be affected by such process or vice-versa.
- 3.2 For example any proposals to introduce incentive improvements in the form of Efficiency Benefit Sharing Mechanisms (EBSM) or changes to access charging (e.g. scarcity charges) at either a route and/or national level, appears to be worthy of further review, particularly where you have suggested the benefits are retained by the operator, as a means of encouraging such initiatives.
- 3.3 With regards to removing financial protections in the franchise agreements, our view is that the exiting protections should remain unchanged.

### **4. Regulatory Framework**

#### **4.1 Devolution & Transparency of Data and Price Control Separation**

- 4.1.1 WCTL is receptive to the expectation that the devolution of Network Rail to a route based structure will not only provide a greater focus on the needs of its customers but also provide for improved transparency of costs and outputs.
- 4.1.2 However, despite the approach laid out by the ORR as presented in annex “B”, we remain unconvinced as to how this will, in essence work, at such route levels or between Scotland and England & Wales. There is no real clarity on how the benefits and risks would be apportioned across such boundaries, particularly if train operators are vertically integrated or have bespoke arrangements with Network Rail over certain sections or areas of routes.

- 4.1.4 With operators providing so many services with such varied rolling stock over so many geographically and infrastructure diverse routes, it will be critical to ensure there is a robust benchmarking mechanism in place, to provide both the incentives to change / improve as well as balancing any inequitable 'risks or rewards' between Network Rail and Train Operator. Such issues appear to be complicated further, where Train Operators would cross route boundaries or indeed operate between Scotland and England.
- 4.1.5 Furthermore, if, through ongoing analyses and benchmarking, there does indeed exist a difference in efficiencies between routes and/or Scotland and England & Wales, then how would such inefficiencies be driven through to positive change. Taking into consideration that each of the ten devolved routes would be accountable for their own businesses, it is unclear what impetus would be in place, to get such inefficiencies improved, especially if the outputs are retained wholly within each business unit (price control option 'b'); or could the management of this be one of the expected roles of the concession unit?
- 4.1.6 We note the two alternative options to route based price control, both of which come with their own risks and benefits; again it is unclear which option is most suitable as there are no benchmarks with which to assess them against. Although an interim review would be a latter opportunity to revisit such potential problems in the future, the whole issue as to which is the most viable option remains unproven, and is therefore a concern.
- 4.1.7 Lastly there is an onus on the type of information being requested (and that shown in annex "B" appears suitable as a base from which to start). Such supply of accurate and practical data both from Network Rail needs to be suitably benchmarked to make it meaningful. We consider that the TOC aspect is already adequately managed by the franchise management process.

## 4.2 Setting Outputs

- 4.2.1 Any setting of outputs needs to be not just a focus on outputs but also outcomes. From WCTL perspective, we have a responsibility to our customers in terms of efficient and effective delivery. Outputs are a means to achieve such end. Therefore when establishing what the outputs and outcomes are to be, there needs to be a 'blend' of both outputs and outcomes (with appropriate measures – as highlighted in your Annex "C"). ORR may wish to consider whether appropriate contractual provisions are introduced in access contracts to encourage the delivery of such outputs / outcomes.
- 4.2.2. Whilst there is discussion regarding price controls being set on a route level basis, we would welcome further clarity, (despite the logical requirement to have such outputs based at a route level), on how any under / over performance is to be addressed and what implications / risks this would introduce to funders and operators.
- 4.2.3 There is also a need to ensure that where a route based structure is introduced, that the outputs are defined on a bottom-up basis, such that those obligations on the route to deliver such outputs are clearly defined and measurable.

## 4.3 Improving Incentives

- 4.3.1 The whole issue around incentivising any industry is centred upon whether the incentives do actually provide an effective and efficient ability to change the outputs. In terms of the rail industry it is essential that the incentives are sufficient to make an

explicit change to both performance and capability to deliver, whether this is in terms of customer satisfaction or reduced maintenance or renewals etc.

- 4.3.2 To this end we consider that the existing financial incentives do appear to be working reasonably well including the Schedule 8 regime, although we would welcome a review of the Schedule 4 regime, in particular, improving the incentives (especially if at a route level) on Network Rail to reduce both the length of the possession planning process and the number of possessions required; either through a greater visibility of those costs & workstreams involved, and / or improved compensation thresholds (e.g. the current Sustained Planned Disruption process is ineffective as it currently stands).
- 4.3.3. Taking cognisance of our views on the financial framework and outputs generated through having route business units in place, we note that an EBSM mechanism might be beneficial at route level. Whilst we are currently not confident about Network Rail's ability to deliver and thus in this case creating a continual payment from the TOC's if this was introduced in its raw form, the concept is theoretically possible. We also note that a formulaic approach would be too complicated to introduce (Para 4.1.4 refers) and thus bespoke arrangements would be the most practical. The current JNAP process could be the precursor to such a bespoke mechanism relating to capacity & possession management for example.
- 4.3.5 There is also the thought that with all the proposed incentive changes whether the ORR would have to approve both the flows of revenue & cost between one party & another as well as each bespoke EBSM arrangement? It could generate a whole new element of work within the approvals process.
- 4.3.4 In view of the ORR's considerations relating to sharing of risks & rewards between both franchised & non franchised operator and Network Rail through the introduction of a revenue/cost sharing mechanism, we nonetheless consider that the arrangements currently in place are sufficient.

#### 4.4 Financial Framework

- 4.4.1 WCTL considers that the present Control Period duration is consistent with meeting its necessary requirements, and that the ORR's intention to retain its current approach to both the single till and amortisation throughout PR13, to be receptive to Network Rail and industry requirements. WCTL has no comments on the approach to 'risk & uncertainty' or the risks that Network Rail may incur going forward.

#### 4.5 Structure of Charging

- 4.5.1 WCTL considers that the whole process of charging would need to be reviewed if there was a likely disaggregation to route level. Setting aside our concerns over route level price control mechanisms, we note that in terms of variable charging this would indeed have to be geographically split, and based on a bottom-up approach. Such an approach, whilst complicated (but necessary) would, we suggest, have to be constructed based on route specific features for both NR and the operators.
- 4.5.2 In this way it would reflect the actual route level usage and 'wear & tear', but it would have to be clear how such charging was to be applied. By this we mean that one franchise operator for example, should not subsidise (in ratio terms) an 'open access' operator for example operating over similar routes, otherwise, particularly for capacity reasons, there would be no incentive on TOC's to work with Network Rail to improve timetable capacity and operating practices.
- 4.5.3 Similarly, the scarcity charge does appear to be a viable option for managing and improving capacity on currently constrained routes; but it is not clear how, for those

paying the charge, how this would be disaggregated across the network and between operators, and thus who would actually benefit from it. In addition there is no clarity as to how this would be calculated and presented across the routes

- 4.5.4 We would also suggest when considering the proposed reservation charge as well as the scarcity charge that both mechanisms would need to be introduced around a further revised set of rules managed, possibly, through Part “J” of the Network Code.

WCTL would naturally be pleased to share its views further with the ORR, should there be an additional requirement for more information pertaining to the above,

Yours Sincerely

Mike Hoptroff  
Head of Operations Strategy