

Robert Mills
Office of Rail Regulation
One Kemble Street
London
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25 January 2013

Dear Robert,

Periodic Review 2013 Consultation on Schedules 4 and 8 possessions and performance regimes November 2012

Thank you for the opportunity to comment on the above mentioned consultation. Alliance is content with the consultation, with the exception of the use of enforcement. The consultation document mentions enforcement briefly but does not consider its wider impact. In our experience, ORR performance enforcement can create disincentives on Network Rail that lead to a refusal to sell existing capacity.

ORR issued an enforcement action against Network Rail for the Long Distance passenger sector in September 2012. Since this enforcement took place Network Rail has cited the performance enforcement as a reason not to sell additional capacity as part of an agreed application. This is despite the fact that Network Rail receives the capacity charge to cover the impact on network performance for additional services. The impact of ORR enforcement therefore creates a disincentive on Network Rail to sell additional capacity and, as a result, it undermines the capacity charge.

Alliance is also acutely aware of the Rail Value for Money Study and the requirement to get more for less. The study states: "*..there needs to be a renewed focus on making better use of existing capacity,*". Dis-incentivising Network Rail to sell its existing capacity is not good use of tax payer's money. This is not what ORR intended with its enforcement - but this is one of its side effects.

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Alliance therefore would wish to see an enforcement process that creates well balanced incentives on Network Rail in relation to performance and the sale of access rights. In addition, the enforcement process must align with the capacity charge incentive and the Rail Value for Money Study.

Yours sincerely



Ian Yeowart
Managing Director