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Dear Robert

Direct Rail Services (DRS) is pleased to respond to the ORR's PR13 November 2012 consultation on Schedules 4 and 8 possessions and performance regimes. DRS do not have any issues with this content being published on the ORR website.

Summary

DRS believe that overall the schedule 4 and 8 performance regimes works well and should continue to work well.

It is particularly important to freight operators that they are properly and fairly compensated for cancellations and delays.

Throughout the PR 13 review we have noted that ORR and NWR talk in terms of incentivising the operator's behaviour in working more efficiently with NWR.

To this end we would urge that the ORR plays its part in this by taking cognisance of the overall financial impact of all the various charges to the freight operators.

The biggest incentive for freight operators is to keep their existing customers and to be able to attract new business.

We hope that ORR keeps this in mind throughout this consultation as unlike in the track access charges where it readily accepted a percentage decrease in rail freight as a result of these charges.

Questions

Transparency of possession management

1. What are your views on whether or not passengers and freight customers adequately consulted on the planning of possessions? What activity currently takes place?

Good planning of possessions is essential to trains getting through and where necessary to making alternative arrangements.

We believe that our relationship and communication process with our customers keeps them sufficiently advised.

2. What are your views on whether we should encourage Network Rail to consult with passengers and freight customers in the planning of its possessions?

NWR consulting directly with freight customers could add another unnecessary level of complication and could impinge on the operator/customer relationship in their respective business operations requirements.

3. If we were to encourage Network Rail to consult with passengers and freight customers in the planning of its possessions, do you have any suggestions on how we might go about doing this, for example, how such an obligation would be phrased and monitored?

As through our responses to Q1 and Q2 we do not believe that there is a need or requirement for NWR to consult with freight customers on planning possessions.

Schedules 4 and 8 overall

4. Do you agree with the SDG research findings and conclusions on whether to set Schedule 4 and 8 payment rates so they do not compensate train operators in full for the impact of service disruption due to Network Rail and other train operators? If not, please tell us why?

We agree that there will be no overall industry benefit in setting Schedule 4 and 8 payment rates so that they do not compensate train operators in full for the impact of service disruption.

5. Do you agree that we should continue to set Schedule 4 and 8 payment rates so that they compensate train operators for the full financial impact of service disruption due to Network Rail and other operators, where we do so currently? If not, please tell us why?

DRS agree with this

6. Are you of the view that there are other steps we could take to encourage train operators to have a stronger influence on the behaviours of Network Rail, in addition to those we are doing already?

DRS believe that existing processes give sufficient engagement with NWR without over complication.

7. Do you agree with our proposal not to introduce the Joint Restrictions of Use concept into Schedule 4 of template track access contracts? If not, please tell us why?

As this appears to relate to the schedule 4 passenger possession regime DRS agrees with the ORR's proposal of not introducing the joint restrictions of use concept to the schedule 4 freight regime.

8. To what extent (if at all) do you think the current contractual wording of Schedules 4 and 8 is acting as a barrier to Network Rail and train operators minimising disruption to passengers and freight customers during extreme disruption, e.g. during severe weather? If you are of the view that it does act as a barrier, we welcome any specific proposals on how it can be improved.

DRS do not consider the current contractual wording of schedule 4+8 to act as a barrier in times of severe disruption.

Schedule 4 passenger possessions regime

9. Do you agree that the Access Charge Supplement (ACS) should be calculated using Network Rail's revised route based Schedule 4 costs estimation methodology? If not, please tell us why?

No comment

10. Do you consider there is further value in Network Rail achieving greater disaggregation in the methodology of the ACS calculation and if so do you have any suggestions how this might be achieved?

No comment

11. Do you agree that we should update the estimated bus mile payment rate based on actual amounts paid during CP4, rather than simply uplift the current rates by cost inflation? If not, please tell us why?

No comment

12. Do you agree that we should continue with the current formula for calculating revenue loss compensation for cancelled train services when there are replacement buses? If not, do you have any suggestions for how we could improve this aspect of Schedule 4?

No comment

13. Do you consider the way in which the revenue loss formula compensates franchised passenger operators when using replacement buses encourages passenger train operators to run too many buses (rather than trying to run train services using diverted route, for example)? If so, please explain why you think this is the case?

No comment

14. Do you agree that we should extend the scope of the protection provided by paragraph 2.9 of Schedule 4 to enable the recovery of direct costs related to amended or cancelled Type 1 possessions? If not, please tell us why?

No comment

15. If so, do you agree the threshold for triggering a claim should be £5,000 per possession? If not, please tell us why?

No comment

16. Do you agree that we should update the new working timetable notification factor to reflect changes to delay multiplier values in the Passenger Demand Forecasting Handbook (PDFH)? If not, please tell us why?

No comment

17. Do you have any further proposals for changes to notification discount thresholds and factors? If so, please explain your reasoning?

No comment

18. Do you agree that we should keep the Sustained Planned Disruption (SPD) revenue loss threshold the same and update the cost compensation by inflation (RPI)? If not, please tell us why?

No comment

19. Are you of the view that the provisions for claiming compensation under the SPD mechanism would benefit from clarification? If yes, please highlight which areas should be clarified?

No comment

Schedule 4 freight possessions regime

20. Do you consider the current regime appropriately compensates freight operators for losses resulting from severe disruption caused by possessions? If not, what do you consider the level of compensation should be based on?

As mentioned in the summary DRS believe that schedule 4+8 works well and does compensate appropriately for losses resulting from severe possession disruption.

The freight payment rates were reduced during CP4 as NWR were going to exceed their set budget and as such DRS do not believe that operators are currently compensated for 100% of costs.

21. Do you consider that the current regime appropriately incentivises Network Rail to reduce the amount of disruption faced by freight operators due to possessions? If not, how do you think incentive effects can be strengthened?

The difference between the schedule 4 freight and schedule 4 passenger regime payment rates could disincentivise NWR to facilitate freight operators and make it easier to cancel trains and take possessions.

22. If Schedule 4 compensation payment rates for freight operators were increased, should this be funded by government? If so, please explain why you think this should be the case? If not, please tell us why?

We understand that ORR has sufficient information about payment levels over CP4 to make an assessment of the level of funding required over CP5 and perhaps this exercise should take place to determine if indeed increased payment rates would mean additional funding,

Schedule 8 passenger performance regime

23. Do you agree that we should keep the current Schedule 8 contractual wording in relation to what train operators can claim for under the SPP arrangements? If you do not agree, do you have any proposals for alternative wording?

No comment

24. Should we continue with the SPP threshold set at 10% or increase it? If not, please tell us why?

No comment

25. If we increase the SPP threshold, what are your views on the level we should set it at?

No comment

26. Do you agree that we should leave timings of Schedule 8 payments unchanged, with payments due within 35 days following the end of each four-week accounting period? If not, please tell us why?

No comment

27. Do you agree that we should keep the circumstances in which Network Rail and train operators can propose amendments to Schedule 8, appendix 1 via paragraph 17 the same? If not, please tell us why?

No comment

28. Are there any specific areas of paragraph 17 where you are of the view the drafting needs to be made clearer? If not, please tell us why?

No comment

29. Are you content for us to remove the passenger charter element of the Schedule 8 performance regime? If not, please could you tell us why and whether you would like us to take any alternative course of action?

No comment

30. Do you agree that we should not change the way train operator cancellations to their own trains are treated under Schedule 8? If not, please tell us why?

No comment

Schedule 8 freight performance regime

31. Do you agree that we should keep the Network Rail payment rate the same, but uplifted for inflation? If not, please tell us why?

DRS have concerns that the NWR payment rate is proposed to remain the same, uplifted for inflation, whilst there is a strong likelihood that the freight operator rates will increase significantly, creating an uneven playing field.

32. Do you think that the current Network Rail payment rate accurately reflects the financial impacts incurred by freight operators as a result of Network Rail caused delays to freight trains? If not, please tell us why?

Different operator commodities with different values and different customer contractual arrangements and a uniform rate for freight?

33. Do you agree that we should re-examine the evidence base for the Network Rail payment rate with the freight industry and Network Rail in CP5, and if necessary adjust the rate to reflect cost and revenue impacts on freight operators due to Network Rail caused delays? If not, please tell us why?

We are concerned at this proposal at this stage with the potential uncertainty this could bring to the industry and beyond but agree that the evidence base should be re-examined for CP6 and not CP5 unless there was confidence of being able to conduct a comprehensive review in time.

34. Do you agree that we should keep the Network Rail cancellation payments the same but uplift them for inflation? If not, please tell us why?

It has been shown that historically freight trains are fewer, longer and heavier and the financial impact of cancellations has become greater, we would ask that the ORR considers this in reviewing the cancellation rate.

35. Do you agree that we should update the congestion factor used in the calculation of adjustments to the freight operator benchmark, in order to take into account of evidence being collected as part of the update of the capacity charge? If not, please tell us why?

DRS agree that the congestion factor used in the calculation of adjustments to the freight operator benchmark should be revisited in light of the evidence being collected in connection with the update of the capacity charge.

We also believe that ORR should reconsider the freight operator's proposal submitted in November 2012 of a compromise on the FOC benchmark.

36. Do you agree that the Network Rail £ per delay minute payment rates used in the calculation of the freight operator payment rate should be weighted by third party freight operator delay affecting each service group? If not, please tell us why?

DRS agree with this proposal.

37. Do you agree with our proposal to continue to set the bonus payment rates at 50% of the level of the compensation payment rate? If not, please tell us why?

DRS disagree with this proposal and believe the rate should be reset to 100%, whilst we understand the ORR reasoning of protecting smaller operators, depending on performance levels other operators can be disadvantaged at 50% and we would suggest that smaller operators have the option of the 50% rate through bespoke arrangements.

38. Do you agree with our proposal not to require Network Rail to offer incident caps in return for an access charge supplement? If not, please tell us why?

DRS are not aware of any data to support this proposal other than reference to the charter incident cap.

39. Do you agree that incident caps are something that could be provided by the private insurance market if Network Rail were not to offer incident caps at a reasonable price? If not, please tell us why?

We are not convinced that such a facility currently exists but would not rule this out; would ORR/NWR have any information that would prompt such a question?

40. Do you agree that we should continue to allow operator specific annual liability caps? If not, please tell us why?

DRS agree that ORR should continue to allow specific annual liability caps.

41. Should we continue to set reciprocal annual liability caps for smaller and new freight operators? If not, please tell us why?

ORR should not need to continue to set reciprocal caps for smaller and new freight operators. Such operators should be permitted, as larger freight operators already are, to agree their own annual liability caps with Network Rail (subject to ORR approval) to meet their own specific requirements including taking account of their projected growth profile.

42. Should we continue to set reciprocal annual liability caps in instances where Network Rail and freight operators cannot agree on the level the cap should be set at? Or are caps on annual liability something the private insurance market could provide if no agreement is reached?

We agree that this should continue where NWR and operators cannot agree subject to ORR approval and as previously mentioned we are not aware that such a facility exists and perhaps ORR could shed some light on this?

Compensation for charter operators

1. Do you agree that a separate charter operator payment rate should be calculated using the same methodology used to calculate the freight operator payment rate, but based on delays caused by charter operators to other train operators? If not, please tell us why?

DRS agree with this proposal.

2. Do you agree with our proposal not to require Network Rail to provide incident caps to charter operators on the basis this currently results in a subsidy to charter operators? If not, please tell us why?

This proposal would place a massive financial liability on charter operators as they have no performance regime benchmarks.

3. Do you agree that incident caps are something that could be provided to charter operators by the private insurance market? If not, please tell us why?

As Q 39

4. Are you content for us to set the Network Rail payment rate in the charter operator performance regime so it is the same as the Network Rail payment rate in the freight performance regime? If not, do you have any proposals on how we should update it including on the evidence we could use?

DRS agree with this proposal

5. Are you of the view that there are any other areas of the charter Schedule 8 performance regime that should be amended?

DRS believe that the charter performance regime should be reviewed completely to bring it into line with other benchmarked performance regimes.

Yours sincerely

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