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Office of Rail Regulation
1 Kemble Street
London
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28 January 2013

Dear Rob,

Consultation on Schedules 4 and 8 possessions and performance regimes

Thank you for the opportunity to comment on the consultation for Schedules 4 and 8 possessions and performance regimes. This letter constitutes the Go-Ahead Group's response and also represents the views of London Midland, Southeastern and Southern Train Operating Companies.

I confirm no part of this response is confidential and can be published on your web site.

Overall we are content with the future aims on how the regimes will be adapted in the next control period. Both regimes are critical in terms of our commercial relationship with Network Rail and it is important that the correct incentives are in place to work jointly with Network Rail to improve both possession planning and the impact of delays on passengers. This drives more strategic decisions on prioritizing investment for the future improving passenger satisfaction in the long term.

Our opinion is that the regimes are effective and well understood between the parties, therefore we do not propose any significant changes in our response to the questions. We do accept that there is a need for recalibration for the start of CP5 and are fully committed to assist with this work-stream.

The responses below all relate to the passenger aspects of the regime.

Q1. What are your views on whether or not passengers and freight customers adequately consult on the planning of possessions? What activity currently takes place?

The Engineering Access Statement advises us of possessions within the timeline described in Part D of the Network Code, followed by structured meetings to negotiate on the restrictions of use. When negotiations have been finalised this is then communicated to customers via our website and information at stations. For the more significant blockades we would hold stakeholder forums. Our relationship with the National Delivery Service is effective in terms of consultation.

Q2. What are your views on whether we should encourage Network Rail to consult with passengers and freight customers in the planning of its possessions?

The management of the relationship with passengers is a train operator responsibility. The impact of possessions and the changes to services are better understood by the

train operator and how this affects business. However, the proposal that Network Rail should be encouraged to consult with passengers particularly in respect of disruptive possessions does hold some merit and would expose Network Rail to passenger concerns. The proposal also projects a joint partnership to passengers of Network Rail and operators working together.

Q3. 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?

We do not view this as a priority as communication with passengers is a train operator responsibility. It is difficult to see where such an obligation would sit within the regulatory framework.

Q4. 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?

Yes – see response to question 5 below.

Q5. 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?

We agree that Schedule 4 & 8 should continue to fully compensate train operators. We do not agree with the rationale that should these be set below 100%, there would be an incentive for train operators work better with Network Rail to improve performance and minimise the number and impact of possessions. There are already incentives in place for both parties to meet these objectives as described in Table 1.1 of the consultation document. Altering the payment rates in both regimes in our view does not further incentivise either party as there are already key objectives to be met. This also increases the risk to franchise value and transfers the financial impact to Franchise Agreements possibly at greater cost and at no benefit to the industry.

Q6. 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?

We have no specific comments in relation to this question.

Q7. 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?

We agree with the proposal not to introduce the Joint Restrictions of Use concept into Schedule 4. Our view is that this would dilute Network Rail's role as infrastructure manager who is the responsible party for the safe operation of the infrastructure. The introduction of this concept would also create confusion as to when this could be

implemented especially if certain criteria is excluded from the “trigger scenarios”. Our experience is that we work collaboratively with Network Rail during severe disruption and consider the implementation of this proposal as unnecessary.

- Q8. 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.**

We do not have any particular concern in connection with the current contractual wording of Schedules 4 & 8.

- Q9. 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?**

We agree that that using Network Rail’s revised route based Schedule 4 costs would be more aligned as it would better reflect possession costs in the areas in which we operate rather than at a national level. We would expect visibility and transparency of the changes should this proposal be adopted.

- Q10. 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?**

The proposal above would be the first step in disaggregation, testing this first and the alignment between ACS and route level possession costs would determine a way forward with further disaggregation.

- Q11. 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?**

We think that bus mileage payments raised should be based on actual amounts during CP4 as this will provide a more accurate reflection of this element since being introduced at the beginning of CP4.

- Q12. 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?**

We agree that the current formula for calculating revenue loss compensation for cancelled train services should remain. As a train operator our objective is for passengers to travel on trains rather than buses therefore from our perspective we do not agree that the current formula could generate a perverse incentive for operators to agree to possessions when alternatives might be more appropriate. As in your consultation point 3.28 refers to the fact that Schedule 4 cannot deal with the complexities surrounding every possession and Schedule 4 is an ‘average regime’ so it

broadly reflects the circumstances surrounding most possessions.

- Q13. 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?**

As explained above in response to question 12 our objective is to minimise the disruption to our passengers and to be able to transport them on trains wherever possible. The compensation that is paid through Schedule 4 for estimated bus mileage does not drive business decisions as to the service/buses that will be run. The basis of our plans when restricted is taking into consideration network availability and the least disruptive plan to passengers.

- Q14. 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?**

We agree with the proposal to enable operators to recover direct costs related to amended or cancelled Type 1 possessions as short notice changes do not allow us to amend the train plan. Therefore we would have to maintain the plan inclusive of buses. This is an extra cost to our business which should be recoverable.

- Q15. If so, do you agree the threshold for triggering a claim should be £5,000 per possession? If not, please tell us why?**

The trigger of £5,000 is too high per possession, as quite often it would be difficult to achieve this threshold due to the nature of the additional costs. We suggest the £5,000 threshold should be per period rather than by possession.

- Q16. 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?**

We are unable to comment on this as there is no evidence in the consultation document for us to form a view.

- Q17. Do you have any further proposals for changes to notification discount thresholds and factors? If so, please explain your reasoning?**

We have no further comments.

- Q18. Do you agree that we should keep the Sustained Planned Disruption (SPD) revenue loss threshold the same and uprate the cost compensation by inflation (RPI)? If not, please tell us why?**

We agree that the SPD revenue threshold should remain the same and be uplifted by RPI.

- Q19. 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?

We do not have any particular concerns with the clarification of wording for the SPD mechanism.

Q23. 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?

We agree that the current Schedule 8 contractual wording in relation to SPP arrangements should remain as listed. It would be difficult to identify all types of categories and circumstances may arise in a train operators business which were unknown at the beginning of CP5.

Q24. Should we continue with the SPP threshold set at 10% or increase it? If not, please tell us why?

Our view is that the SPD threshold should remain at 10%. The view that this threshold is too easy to trigger is demonstrated by the number of operators that were eligible to claim compensation under this arrangement. However, regardless of where the threshold is set train operators would need to evidence their losses are above what has already been paid through Schedule 8. Therefore this would account for the small number of claims which have been submitted to Network Rail through this mechanism.

Q25. If we increase the SPP threshold, what are your views on the level we should set it at?
See comment above.

Q26. 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?

We agree that the timing of Schedule 8 payments should be unchanged. Should this be changed it is not clear as to the time span that would accurately reflect the relationship between performance and revenue loss. It would add complexities to a well understood process between the 2 parties with limited benefits. We do not consider that delaying payments would change train operator behaviour and apply more pressure to Network Rail on performance. This is an area that is key to our business in delivering passenger satisfaction as well as the risk to our reputation.

Q27. 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?

The current arrangements are appropriate and do not require amendment. We do not agree with Network Rail that this should be limited to major changes to the timetable as new evidence may emerge during the control period that requires appendix 1 to be recalibrated. This should not be an issue for concern for Network Rail providing train operators can provide evidence and information for the change.

Q28. 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?

See response to Q27.

Q29. 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?

We agree with the removal of the passenger charter element.

Q30. 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?

The current treatment of train operator cancellations to their own trains are appropriate as the cancellation of our service is rare given that it would disadvantage our passengers.

Please do not hesitate to contact me if you want to discuss any of the issues raised in the consultation in further detail.

Yours sincerely

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