
Subject: *HS1 Ltd response to ORR Business plan consultation, Financial Year 2013/14*

Date: *20 February 2013*

Overview

HS1 Ltd welcomes the opportunity to provide input to ORR's business planning process for financial year 2013/14. While we have regular engagement with ORR at a number of levels it is helpful to consider the overarching purpose of regulation and the key priorities for the coming year.

We provide comment against each of the ORR's identified five strategic objectives, and also against the questions set out in the consultation document.

A main comment is that we could not see any reference to HS1 in the document. While we are clearly not the main activity for ORR in resource terms, it is an important role nevertheless.

In general we endorse the priorities and principles set out by ORR, and the desire to do less not more. HS1 Ltd is an instructive test-case where we have focussed and commercial arrangements in place with our partners and are working together to improve the customer experience. As we have agreed with the ORR, the three key risks are around some sort of system break-down:

- Our customers take the view that they no longer trust us to give them a fair price and the quality they want and therefore that they will be better off objecting to the HS1 Ltd proposals and relying on the ORR to settle the matter
- HS1 Ltd decides not to work actively with our sub-contractor Network Rail (High Speed) on the right balance between cost and outputs and instead waits for either customers or ORR to settle the matter; and/or
- ORR decides that it cannot accept a package even where that is agreed by customers and HS1 – that instead it must be seen to make some changes otherwise it's not adding value.

We are being proactive in the principal areas identified for change in the coming year, including:

- undertaking our Periodic Review process in an open and transparent manner; and
- working across boundaries (domestic and international) to deliver a seamless journey for passengers and freight customers.

ORR objectives

This section sets out brief comments on each of the five strategic objectives proposed by ORR.

1. Drive for a safer railway

Safety is clearly the number one priority and must be the first objective for ORR. We are challenging ourselves to develop a deeper safety culture that actively implements appropriate standards and which embeds safety within the action of everyone within the organisation.

We consider that it is important to explicitly link safety objectives to the economic regulation activities, otherwise the merit of an integrated safety / economic regulator is very limited.

We would also encourage the ORR to reflect on the trade-off between ex-ante prevention and ex-post enforcement, with both elements having an important role to play.

2. Support a better service for customers

The ultimate purpose of the railway is to provide services to passenger and freight customers. The way that ORR sets its regulatory targets and creates incentives must reflect that.

As with the feedback from industry at the 7 February 2013 consultation workshop, we don't think that ORR's role extends to further research around customer wants. We think this function is performed well by Passenger Focus.

We recognise that the onus is on us, as an IM, to provide a very clear line of sight from the services we provide to the customers. We would expect to do this via our own direct customers – the operators – who clearly have the detailed knowledge, expertise, and incentives to provide a quality offering. The commercial world in which we operate reinforces this model. It would be challenging to our relationship with operators if we were to second-guess what they consider to be the best outputs.

3. Secure value for money from the railway, for users and funders

We consider that it would be helpful to mention PR14 as well as PR13.

Value for money is extremely important, and we endorse the objectives. We have a vision to be the world's leading high-speed railway, and this is all about taking every opportunity to do things better.

4. Promote an increasingly dynamic and commercially sustainable sector

We endorse, and this is very much the model used in the creation of the HS1 framework and Concession process.

For us, the 'European policy landscape' referenced by ORR is important. Both in terms of the effective harmonisation of regulations taking into account the UK specifics, and facilitating cross-border traffic. We have a number of ongoing workstreams around this, but ORR can (and does) play an important role.

5. Be a high-performing regulator

We welcome the commitment to greater transparency around the costs and impact of regulatory activity.

We encourage the use of options to develop staff capabilities and provide opportunities – for example through secondments – to get a broader flavour of the industry and the practical impacts of regulation. We would be delighted to talk to you about a secondment opportunity with HS1.

Specific consultation questions

Q1. Does this look like the right balance of activity bearing in mind where we are in the regulatory cycle? Yes. We consider it is appropriate for ORR to be focussing on not just shorter-term deliverables but the overall strategic vision.

Q2. Do our proposed areas of activity on customer experience and transparency have the right focus? As set out in our comments above, we endorse the aims around delivering services to customers, however we do not consider that the ORR's role should be in commissioning / undertaking further research around customer needs. The role should more

be to encourage industry participants to work together and demonstrate that there is a clear line of sight from outputs to customer wants.

Q3. Does our activity to promote a dynamic and sustainable sector have the right level of ambition? Yes, the vision represents a win-win-win situation for all parties.

Q4. Have we demonstrated sufficient depth of aspiration in our activity? Yes, though there is clearly a challenging trade-off between broad aspirations and the focus on core tasks.

Q5. Do we have the right organisational capacity to carry this out? We have had good dealings with the ORR in the lead-up to and since concessioning of HS1. The only comment we would make in this area is that there is a risk of being over-reliant on certain key individuals within ORR.

Q6. Have we done enough to monitor Network Rail's efficiency and performance? Is there anything you think would get better outcomes? We have no comment to make in this area as we have had no direct involvement in these workstreams.

Q7. What measures would you want to see us use to measure our own efficiency and effectiveness? As discussed at the 7 February 2013 the costs should include all relevant costs related to discharging ORR functions – for example the independent reporter costs. We consider there is some scope for benchmarking. This could include a review of the time and resources involved in a Periodic Review decision vis-à-vis other regulators. Are there any substantial differences and are there any lessons to be learned? For example, the split between in-house and external resources, the roles played by regulator and regulated utility, the split of resources by workstreams etc. There also appears to be scope for greater use by ORR of regulatory impact statements (likely to be picked up in the commitment to evaluating the cost / impact of regulatory activity) and shared use of consultants as is working successfully in PR14.

Q8. Are there any major omissions of activity? As noted at the outset, there is no reference to HS1.

Concluding remarks

We do not consider our submission to contain any confidential information and are happy for it to be published by ORR.

Should any of the above be unclear, or if it would be helpful to discuss in more detail, please contact:

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