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Dear Paul,

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2014 HIGH SPEED 1 PERIODIC REVIEW – FIRST CONSULTATION

This letter constitutes the response by DB Schenker Rail (UK) Limited ('DB Schenker') to ORR's consultation document entitled "2014 High Speed 1 Periodic Review – First Consultation". This response is also sent with the support of the Deutsche Bahn ICE Project, who intends to introduce high-speed international passenger trains on HS1.

Introduction

1.1. DB Schenker remains of the view that the High Speed 1 Line ('HS1') presents a unique opportunity of a fast link from the Channel Tunnel to London enabling the transit of international rail freight services to/from the UK via the Channel Tunnel to be accelerated, consequently helping to attract further modal shift from road to rail. HS1 also presents the UK's only realistic opportunity to accommodate larger gauge traffic to/from Continental Europe which will also further promote the growth of international rail freight through the Channel Tunnel. With this in mind, since November 2011, DB Schenker has operated over HS1 a regular weekly international conventional rail freight service utilising larger gauge wagons between Poland and London which, has subsequently been increased to twice-weekly.

1.2. DB Schenker also considers that HS1 is ideally placed to facilitate the further growth of open access high-speed passenger trains operating to/from London (via the Channel Tunnel) to many new destinations throughout Europe.

1.3. DB Schenker is, therefore, pleased to respond to ORR's first consultation document which sets the scene for the formal processes by which ORR will carry out its Periodic Review of HS1 ('PR14') for Control Period 2 covering the period between 1 April 2015 and 31 March 2020. DB Schenker is already encouraged by the open and collaborative approach the parties (HS1 Limited, Network Rail High Speed, ORR) have adopted in respect of stakeholder engagement and it hopes that this will continue throughout the PR14 process.

Key issues

2.1. In DB Schenker's view, the key issue in ensuring that the regular operation of international rail freight services on HS1 continues and grows relates to the price of access to the route.

2.2. To facilitate and encourage the use of HS1 for international conventional rail freight during Control Period 1 (1 April 2010 - 31 March 2015), HS1 Limited, with the financial support of the Department for Transport ("DfT"), adopted the mechanism contained in paragraph 6 of Schedule 3 to the Railways Infrastructure (Access and Management) Regulations 2005 to introduce a discount to the access charges for international conventional rail freight services operating overnight. This discount resulted in the normal rail freight access charge, which is now £6.92 per train kilometre, being reduced to £4.00 per train kilometre, thereby offering freight operators a saving of around 42%.

2.3. The rail freight industry warmly welcomed this approach as a positive step by both HS1 Limited and DfT to encourage and support the growth of international conventional rail freight following the adverse commercial pressures of recent years resulting from the global recession. Consequently, the introduction of the discount has already played a direct part in enabling the introduction and growth of DB Schenker's international rail freight service between Poland and the UK mentioned earlier in this response. Given that the economics of international conventional rail freight are so fragile it is probable that the growth of this traffic flow would not have occurred had the discount not been in place.

2.4. Alongside this positive picture, however, certainty is a crucial factor for the continuation and growth of the rail freight industry, particularly in respect of international conventional rail freight that needs to overcome significant obstacles in managing transit across many different railway infrastructures. Given that the current discount on HS1 is due to expire on 31 March 2015, uncertainty is beginning to manifest itself concerning whether or not the discount will continue to be available in Control Period 2 and, therefore, whether freight operators would be able to continue to afford to use the route.

2.5. From discussions DB Schenker has had with HS1 Limited thus far, the indications are that if the discount does not continue this will have a significant impact on the attractiveness of HS1 for international conventional rail freight resulting in curtailed growth and perhaps forcing existing services to cease altogether. Given that the current international conventional freight services operating on HS1 (owing to their larger gauge requirements) cannot use domestic rail routes as an alternative, it is likely that the goods conveyed would revert to using long distance road transport. This would be very unfortunate given the significant efforts of the relevant parties (including HS1 Limited, DfT and DB Schenker) in Control Period 1 to nurture and promote the use of HS1 for international conventional rail freight. Continuation of the discount (or, alternatively, significantly lower access charges) is, therefore, crucial in DB Schenker's view.

2.6. Of course, the more freight services that use HS1 (both conventional and high-speed) the lower the financial support needed by HS1 Limited to sustain the discount. Furthermore, DB Schenker hopes that HS1 Limited will again, as part of PR14, be reviewing its freight avoidable costs in line with expectations expressed by ORR both in this consultation document and in its previous decision concerning HS1 Limited's 2011 review of its freight avoidable costs. DB Schenker contributed a significant number of detailed comments in respect of this earlier review by HS1 Limited in 2011, many of which it considers would still be applicable in any review of freight specific costs as part of PR14. Of course, should freight avoidable costs reduce as a result of PR14, which DB Schenker hopes will be the case, then this too will also reduce the financial support needed to sustain the discount.

2.7. As a result of the above and to provide early certainty going forward for freight operators, DB Schenker, along with Europorte Channel and the support of HS1 Limited, has already requested early engagement with DfT to understand its position in respect of supporting a further discount for international conventional rail freight for Control Period 2 and hopes that discussions will begin in this respect shortly.

2.8. Other important factors for the continued growth of rail freight services on HS1 include:

- the capability to operate rail freight services at 100 kph as well as 120 kph or higher (*This is a key requirement for rail freight to achieve the original objective for freight on HS1 set by the House of Commons Committee on the Channel Tunnel Rail Link Bill that "the Link should be capable in every way of carrying as much freight as possible"*).
- the availability of suitable and sufficient capacity throughout the day (including capacity availability overnight not being unreasonably constrained by engineering work).
- an affordable performance regime.
- The commissioning of links to the national railway infrastructure to increase the range of journey opportunities.

2.9. DB Schenker is also developing with its many associates, new high-speed passenger services which will directly link London with Amsterdam and Frankfurt using HS1, the Channel Tunnel and high-speed networks in Continental Europe. Many of the key issues that DB Schenker has expressed above in respect of facilitating the continued operation and growth of rail freight on HS1 equally apply to the development and growth of further open access high-speed passenger services, particularly in respect of the price of access to HS1 and the willingness of HS1 Limited to continue to offer discounts on that price to encourage the further use of the network.

ORR's Specific Questions

Q1. Do you agree that CP2 outputs should balance HS1 Ltd's vision, contractual requirements and customer views? Are there any other relevant considerations?

3.1. DB Schenker is content that the CP2 outputs should certainly balance HS1 Limited's vision, contractual requirements and customer needs and expectations. However, DB Schenker also considers that EU and UK government policies on developing rail infrastructure for the growth of rail freight, in particular, should also be considered an important element in any outcome.

Q2 Do you agree that a wholesale review of the contractual incentives mechanisms is not necessary? In your experience, are the existing performance regime and possessions regimes working well?

3.2. The structure of the performance and possessions regimes appear to be working well thus far in DB Schenker's view and, consequently, it agrees that a wholesale review is not necessary.

3.3. However, as mentioned earlier in this response, DB Schenker considers that an affordable performance regime is an important factor for the continued growth of rail freight services and the development of further open access services on HS1. The current extremely high per minute of delay payment rate that applies to international passenger services on HS1 in particular, effectively precludes the operation of freight services during much of the day as a single incident could result in a severe financial penalty to a freight operator. DB Schenker, therefore, notes with interest that HS1 Limited will be reviewing the performance regime thresholds, payment rates and associated caps and would hope to be kept updated on these reviews through the regular Performance Regime stakeholder sessions already programmed by HS1 Limited.

3.4. DB Schenker is also interested to note that HS1 Limited will also be recalibrating the performance regime to take account of the future entry of another operator (or operators) on HS1 and the effect this will have on payment rates and thresholds, particularly in regard to its aspirations to introduce high-speed international passenger trains on HS1 directly linking London with Amsterdam and Frankfurt. Again, DB Schenker would hope to be kept updated on the recalibration through the regular Performance Regime stakeholder sessions already programmed by HS1 Limited.

3.5. DB Schenker notes the reference to the Delay Attribution Board in paragraph 2.19 of the consultation document in respect of identifying improvements in the processes for allocating delays. DB Schenker understands that the role and responsibilities carried out by the Delay Attribution Board are set out in Part B of Network Rail Infrastructure Limited's Network Code in respect of the domestic national UK network. There appear to be no similar roles and responsibilities for the Delay Attribution Board under Part B of HS1 Limited's Network Code. DB Schenker, therefore, questions what locus the Delay Attribution Board would have in respect of delay allocation on HS1.

Q3 Do you have further thoughts and ideas on the ways in which parties can work with HS1 Ltd to improve efficiency, including comments related to the outperformance mechanism?

3.6. HS1 Limited's freight specific assets (e.g. the Ripple Lane Exchange Sidings) contribute the major proportion of costs that make up the access charge for freight services on HS1. Such assets do not, in DB Schenker's view, need to be maintained to the same demanding tolerances that those assets required to support high-speed trains on HS1 are to be maintained to. DB Schenker has considerable experience in maintaining and operating freight specific infrastructure, particularly yards and sidings. It, therefore, believes it can assist HS1 Limited with its review of the freight avoidable costs of HS1 with the aim of identifying efficiencies which would reduce the costs of rail freight and in turn reduce access charges for freight services on HS1.

Q4 Do you consider that the existing structure of charges is consistent with the Regulations? Do you consider that the existing structure of charges creates efficiency incentives?

3.7. It is stated in the consultation document that freight operators only pay incremental costs. DB Schenker does not believe this to be the case. Leaving aside the current discount that is applied to the access charges paid in respect of the operation of conventional freight services operating overnight, the current freight access charge of £6.92 per train kilometre is made up of a variable element (£2.05 per train kilometre) representing the variable operations, maintenance and renewal costs incurred by freight services and an element reflecting the freight avoidable costs (£4.87 per train kilometre).

3.8. Schedule 3 of the Railways Infrastructure (Access and Management) Regulations 2005 ('the Regulations') provides the following stipulations:

- *Sub-paragraph 1(4) - The charges for the minimum access package and track access to service facilities referred to in paragraphs 1 and 2 of Schedule 2 shall be set at the cost that is directly incurred as a result of operating the train service.*
- *Sub-paragraph 2(1) - In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the Office of Rail Regulation under the access charges review or, in the case of a rail link facility, the Secretary of State through the development agreement, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of international rail freight.*
- *Sub-paragraph 2(2) - The effect of sub-paragraph (1) must not be to exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.*

3.9. On the national domestic network, all freight services pay a variable usage cost thus conforming to sub-paragraph 1(4) of Schedule 3 of the Regulations. In addition, those freight services which are deemed by ORR to be able to afford a 'mark up' on top of the variable usage cost (currently those services conveying ESI coal and spent nuclear fuel)

pay a contribution to the freight avoidable costs of the national network in the form of a freight-only line charge This conforms to sub-paragraphs 2(1) and 2(2) of Schedule 3 of the Regulations.

3.10. Given that the Regulations apply equally to both the national railway network in the UK and HS1, if these same principles are also applied to access charges for freight services on HS1, DB Schenker questions whether both elements of the HS1 freight access charge (i.e. the variable element and the freight avoidable costs element) should be levied on freight services that cannot afford to pay a 'mark-up'. Given that the freight services operating on HS1 belong to a market segment that ORR has deemed cannot afford to pay a 'mark-up', DB Schenker considers that this would imply that to conform to the Regulations, such services should only be levied the variable element of HS1 Limited's freight access charge (i.e. £2.05 per train kilometre) as the £4.87 per train kilometre representing the freight avoidable costs element would be considered as a 'mark-up'.

Q5 Are there other issues that we should take into account as we consider the operation of the escrow arrangements?

3.11. DB Schenker has no further issues to add to those already identified by ORR and set out in the consultation document.

Q6 Do you consider that there are gaps in the benchmarking programme put forward by HS1 Ltd?

3.12. As far as DB Schenker is aware, HS1 is the only high-speed line that was designed to permit the operation of conventional rail freight services. Therefore, DB Schenker is concerned to ensure that in seeking to benchmark HS1 against other high-speed railway networks in other countries, both in Europe and beyond, that this does not lead to additional costs being weighted toward the operation of conventional freight or any other disadvantages that could result from an analysis that does not take this difference into account.

3.13. DB Schenker believes that it may be difficult for Network Rail to match other maintainer's costs for the maintenance of certain freight-only infrastructure, particularly yards and sidings, because it does not have separate standards for such maintenance and, therefore, must apply its applicable standards for the national network. This could result in maintenance, operation and renewal costs being higher than otherwise need to be the case if separate and more applicable standards for the maintenance of freight yards and sidings are applied.

3.14. DB Schenker, therefore, considers that HS1 Limited should also carry out some benchmarking of its freight avoidable assets, particularly the Ripple Lane Exchange Sidings which are the major contributor to the current level of freight avoidable costs of HS1 against examples of other similar sidings in the UK maintained either by Network Rail or by third parties.

Q7 Do you agree that this document comprehensively covers those areas which should be considered as part of PR14? Are there any other areas which you consider we should be exploring?

3.15. DB Schenker agrees that the consultation document comprehensively covers the majority of those areas which should be considered as part of PR14. However, DB Schenker believes that further consideration should also be given to the important issue of the continuance of the freight discount as outlined earlier in this response.

3.16. As mentioned in paragraph 2.8 above, an important factor for the continued growth of rail freight services on HS1 is the availability of suitable and sufficient capacity, throughout the day (including capacity availability overnight not being unreasonably constrained by engineering work). DB Schenker, therefore, also considers that the PR14 process should consider introducing a regime through the Asset Management Statement that incentivises HS1 Limited to be more flexible with regard to the operation of rail freight overnight at the same time as necessary engineering work.

3.17. The default position should not, in DB Schenker's view, result in a maintenance regime that assumes blanket network closures to suit HS1 Limited's engineering contractors. A more balanced approach is instead required between the needs of freight operators on the one hand and the needs of HS1 Limited to maintain its network on the other. HS1 was designed to allow the continued operation of trains during most routine maintenance so DB Schenker considers that HS1 Limited (through its contractors) should be incentivised to use this flexibility to the full.

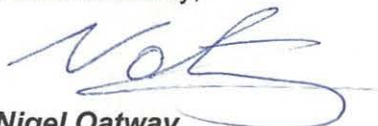
Q8 Do you have any comments on the timescales set out in this chapter?

3.18. DB Schenker considers that the timescales set out in chapter 3 of the consultation document appear challenging but entirely achievable.

Q9 Do you have any further comments on any aspect of PR14, including any subjects not explicitly discussed in this document?

3.19. DB Schenker has no further comments to add to those it has already made in this response at this time, however, it would hope to continue to provide its input throughout the PR14 process through stakeholder sessions, individual meetings with ORR/HS1 Limited and future consultation documents.

Yours sincerely,



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