



ASSOCIATION of TRAIN OPERATING COMPANIES

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A handwritten signature in black ink, appearing to read 'Dear Richard', is written in a cursive style.

NETWORK RAIL'S OUTPUT FRAMEWORK FOR 2014-19 – ATOC REPLY

The ORR's consultation on Network Rail's (NR) output framework for Control Period 5 (CP5) is a critical building block of the current Periodic Review process. The development of the output framework and the approach to be taken to delivery in CP5 needs to be effective, responsive and clear, including how the ORR will approach its responsibilities.

We believe that it is essential for the outputs set for CP5 to be aligned with the requirements of train operators, funders and passengers, building on progress towards this in CP4 and more recent work to implement to the Command Paper, and we welcome the recognition that NR's actions and behaviours needs to reflect this.

In developing the output framework for CP5, the ORR will of course recognise that there are a number of major ongoing changes within the industry. The most significant from our perspective is the major programme of work to rebrand the passenger railway. By 2014 a significant number of franchise competitions will have taken place, and over three quarters of the current franchises will have been relet by the end of CP5. Franchise reform is being introduced progressively, with each new competition, and the direction of travel is towards opening up more options for franchises to propose their own plans in areas such as timetables, passenger satisfaction and performance.

In addition, the establishment of the Rail Delivery Group by NR, TOCs and FOCs, demonstrates an important cross-industry commitment to institutional and behavioural change. Operators and NR are already working through the Group to improve the functioning of the industry, and to drive improved behaviours. We consider that normal commercial relationships between industry parties are a very effective means of securing outputs, and that the need for regulatory intervention should therefore be principally reserved for market failure.

It is important, therefore, that the outputs framework acknowledges the need for flexibility to accommodate the emerging outcome of franchise competitions and RDG's work, whilst also providing operators, the ORR and funders with assurance that NR's outputs are delivered. This means that outputs will need to be set to support industry reform and wider industry specifications, and to ensure that they promote efficiency, value for money and whole-industry outcomes. Specifically, where contractual or

commercial changes are desirable or necessary to underpin reform, we consider that the outputs framework should adapt rather than constrain the freedom of industry parties to make progress.

For any framework to be effective in operation, it needs to be proportionate, purposive and clear in both its objectives and its accountabilities. Where outputs are set as a regulatory target, then we consider it important that there is a clear owner and a well-defined monitoring and enforcement process *ex ante*. NR supplies access to train operators, who operate under franchise agreements that already contain output and incentive obligations, and the CP5 framework should be aligned as far as possible with the requirements of funding authorities.

We therefore consider that there are three key principles that the ORR should consider when setting NR's outputs for CP5:

- That any changes or extensions to the CP4 output framework should only be made where they clearly improve accountability and deliver effective regulation;
- That the output framework does not duplicate NR's licence obligations or introduce ambiguity or complexity; and
- That the CP5 output framework will not complicate or cut across obligations of train operators to funders and passengers.

Ensuring that there is a transparent, *ex ante* framework for monitoring and, if necessary, enforcing outputs, with clear recognition of roles and responsibilities across the industry will provide confidence for further engagement and industry planning. We look forward to working with our industry partners, funders and the ORR to develop the output framework. This consultation is part of an ongoing process that will reach its culmination with the Final Determinations next year.

The ORR's consultation sets out a number of questions and our detailed responses are set out accordingly below.

Q1. Do you agree with our proposals for outputs and indicators for passenger train service performance? Should we retain the sector-level outputs for PPM and CaSL (for England and Wales)? Is there more we need to do to ensure consistency with franchise obligations?

We welcome the ORR's recognition that reliability and consistent delivery of timetabled passenger services is critical to driving both usage and passenger satisfaction. The two HLOS documents set out Ministerial requirements for PPM improvement during CP5 as an outcome.

The Railways Act 2004 White Paper clearly established that Network Rail is responsible for whole-industry performance, and we do not consider that this regulatory accountability should be diluted in CP5. There are provisions within franchise agreements where TOCs can be penalized should they not deliver performance targets.

We recognise that delivering performance requires all industry parties to work together, and therefore the output regime should reflect contractual, regulatory and reputational incentives. The outputs defined in CP5 need to be aligned with the contractual responsibilities contained in Schedule 8 of the Track Access Agreement

This process operates well and with the wide support of industry parties, which provide a basis for regulated targets for NR at a disaggregate level. Setting benchmarks for

Schedule 8 consistent with the overarching PPM target will clarify overall industry obligations.

The England and Wales HLOS does not specify sectoral-level targets, and we do not believe that these add significant incentives or relevance to the majority of customers. We therefore support their abolition. We also support the establishment of TOC by TOC performance outputs. These will initially be developed as part of the SBP. Funders have freedom when letting franchises to vary their required performance targets, so the ORR should ensure that, if necessary, change mechanisms are in place to avoid any ambiguity and perversity should new franchise specifications not reflect the assumptions in place at the time of the ORR's Final Determinations.

We recognise that PPM is the appropriate outcome measure within current franchise agreements, and is well-established, as is CaSL, as an outcome rather than a management measure, for England and Wales. However, we should recognise that PPM is a retrospective measurement and that the outputs framework should ensure that all parties are provided with the correct incentives to deliver their obligations.

As a general principle, operators need to have assurance that they have a clear regulatory route to ensure that NR delivers its committed targets – through Customer Reasonable Requires and a straightforward process to ensure timely action. Operators normally work closely with NR and we will continue to progress collaboration to deliver improvements to performance closely aligned to where passengers and stakeholders will see the greatest benefit.

We would therefore expect that the ORR will work with the industry to ensure that there is a clear process for performance monitoring and enforcement that respects industry roles and supports delivery across all parties. For clarity and transparency this needs to be in place well before the start of CP5 to inform industry planning and to provide assurance to TOCs and bidders as to the operation of the performance regime.

In this context, the purpose of setting performance targets for NR in the Final Determinations is to provide a baseline and a benchmark with respect to NR's

delivery of its obligations to access rights holders, and therefore we consider that the output that the ORR should prioritise its activities towards should be focused on activities over which NR has control and where its decisions on interventions to improve performance will have the greatest effect. These will vary across the network, depending upon the physical characteristics and traffic densities, and we believe that a clear focus on improving the reliability of business-critical assets will drive up performance across the industry.

There are well established and mature processes and data available at individual TOC / Route level to provide detailed overviews on performance and associated issues which are generally discussed in appropriate forums, and with commensurate measures for taking action and developing interventions as necessary. We believe that performance management in CP5 needs to reflect both current and evolving industry structures and incentives, and that the ORR should consider what additional data and incentives it may require.

The delivery of performance outcomes in CP5 is fundamental to satisfying Ministerial requirements. There needs to be ongoing dialogue to ensure that there is a clear and consistent approach to management and ownership, as well as enforcement, and we expect the ORR to engage with the National Task Force, as a member of it, going forward to provide visibility and promote cross-industry ownership of targets. To ensure appropriate participation and support for continuous improvements, this will require

early clarity and engagement to enable appropriate targets to be set in NR's Strategic Business Plan in 2013, securing the support of the wider industry.

Q2. Do you agree with our proposals for an output and indicators for freight train service performance?

We recognise that the freight market differs significantly from the passenger market. However, as with setting outputs for passenger performance, we believe that there needs to be a strongly-evidenced proposal that must be judged on whether it would result in any significant changes to delay attribution methodology that might influence NR behaviours. However, we believe that the outcomes required by FOCs do not create any significant problems for managing operational performance on a mixed-traffic network, especially with cross-industry visibility and engagement through the NTF.

However, the ORR must recognise that the majority of the rail network is available to both freight and passenger operators, and that there needs to be a clear whole-industry focus on performance issues, to ensure that all operators are aligned and minimize their delay causation.

Q3. Do you agree that outputs for Network Rail in relation to named projects, capacity metrics and funds should be project-specific milestones defined in the enhancements delivery plan? Do you have any comments on how useful the enhancements delivery plan has been in CP4? What are your views on indicators to measure the efficiency and effectiveness of the use of the funds?

We believe that the processes in place for monitoring CP4 outputs are generally robust and effective. We therefore believe that, subject to there being a satisfactory change control mechanism in place, that there does not need to be a significant amendment to this process in CP5.

In both the DfT and Scottish HLOS documents there are significant resources allocated to specific funds to allow the industry to develop enhancement proposals. We believe that the success of these funds is dependent upon there being clear governance arrangements that are proportionate and involve all relevant stakeholders. We consider that the ORR should monitor the transparency of the decision-making process, as well as the efficient expenditure that is to be logged up to NR's RAB.

The ORR's capability to provide assurance to operators and funders that enhancements have been delivered to time, budget and have resulted in the required outcomes is critical. We therefore expect that the ORR's strategic planning will demonstrate its recognition of the importance of effective monitoring and the provision of expert challenge to NR going forward

Q4. We propose to define delivery plan milestones to ensure Network Rail delivers a plan to reduce risk at level crossings, and to use certain indicators to monitor Network Rail's delivery of these outputs and its wider legal obligations. Do you agree with this approach?

Both the DfT and Scottish HLOS specify additional ring-fenced funds to the rail industry to further reduce risk at level crossings, reflecting the identification of industry risk. We consider that, as these are funds over and above the industry's statutory duties, the governance and monitoring arrangements should reflect and parallel those for general enhancements. We consider that NR's licence obligations and existing regulatory reporting are appropriate for non-specific safety schemes.

Q5. Do you have a proposal for an alternative to the existing network availability (for reducing disruption from engineering works) outputs, which

could be viably implemented in time for the start of CP5? If the existing outputs are retained do you have any proposals to improve them?

The introduction of possessions disruption indicators, and targeting, in CP4, followed the industry's initiatives to promote more efficient engineering access in CP3 and CP4.

We believe that there is a need for continued monitoring of access planning and engineering activity going forward to achieve the following outcomes:

- Possessions being planned that provide appropriate quanta of access for an efficient infrastructure manager to operate, maintain, renew and enhance the network while minimizing the disruption to access rights holders;
- Maximising the notice of disruptive possessions to enable alternative arrangements to be made for train services and passengers, co-ordinating to ensure that diversionary routes are available;
- Measurement of productive use of possessions, as well as effective and timely handback with agreed network capability.

Any new measurements should be designed to reflect these, as these are areas where effective management intervention can deliver improvements – recognizing that the different geographies and markets served by the network will support different planning and access strategies. We look to the ORR to work with the industry to identify how this can best be progressed.

We believe that the issues are being addressed increasingly through behavioural and organisational changes, including alliancing, and the current RDG workstream addressing possessions efficiency, and are covered through Network Rail's licence. We therefore consider that PDI-P should be retained as an indicator of actual performance, rather than as a national target that could cut across local decision-making and the operation of alliances.

We recognise that the strength of the approach adopted for PDI-P is that its calculation was designed to take into account disruption to passengers and therefore to the earnings of TOCs. However, as has been observed, PDI-P is a complex measure and therefore difficult to translate into behaviours on the ground.

Thus although we do not consider that there a regulated output for availability will necessarily drive improved outputs, there may be merit in considering whether a suite of indicators, that directly reflect passenger and operator experience, may be better adapted to measuring outcomes. These indicators would need to reflect different network geographies, demand patterns and the costs imposed on both operators and users and they should by design respond in a rational way to management driven change.

Q6. Should we introduce a measure of the efficiency of the use of possessions, and if so how could this be defined?

The RDG work referred to above is addressing the effectiveness of possessions, both in terms of planning and in delivery of scheduled outputs. Operators recognise the need for NR to have access for maintenance, renewal and enhancement of the network, but also expect NR to plan this with a whole-industry focus upon minimising disruption and providing appropriate route capacity for service options where available – therefore possessions should both be used effectively and efficiently and handed back in good time to run the scheduled train service.

The incentive regime operated through Schedule 4 of track access agreements is currently under review, and we would expect the ORR to incorporate its findings in the NR output requirements for CP5. Ensuring that the Schedule 4 supplement is calculated correctly and disaggregated would provide more assurance that possessions planning and utilisation is effective, as well as increasing transparency and accountability.

Q7. Do you agree that we should retain the CP4 network capability output? Do you have a view on the usefulness of the indicators suggested, or any further suggestions for improvement?

In order for the rail network to function effectively, there is need for accurate information and for there to be no changes to its capability that have not been agreed through industry process. We consider therefore that there is a need to ensure that there is a capability output that reflects both the stated baseline condition at the end of CP4 and committed enhancements in CP5, broadly based on the same approach that is currently in use.

The range of indicators indicated is comprehensive – but we would also consider that the ORR will need to be satisfied around the capability of current and future signalling systems to deliver at least the current capacity of the network, especially ERTMS, and that the targets and monitoring should support the delivery of the best journey time and headways as practicable.

Q8. We want to improve the definition of the existing station condition output (SSM – station stewardship measure) and introduce a new measure – SSM+ - which provides a clearer disaggregation for measuring condition and better, value-based, weights? Do you agree with this new approach?

The consultation recognises that the current arrangements may need to be updated as some future franchises will take responsibility for station condition through changes to lease arrangements. We consider that the development of SSM+ should take into account obligations included both within the franchise contract – in particular any relating to passenger satisfaction with stations – and within the lease relating to individual station condition to avoid duplication and potential double jeopardy. In this context any implementation should only take place when there is wide support and a verifiable evidence base.

We assume that NR's CP5 output obligation will continue to be set so as to maintain average condition at an overall portfolio level. Care will therefore be needed, should individual station portfolios be transferred to TOCs from NR as a result of refranchising, to ensure that NR's output obligations for its remaining portfolio remain consistent and that any resulting changes to funding allocations are well understood.

We would also point out that there must be a clear means of distinguishing between the effect of NR's asset management activity to meet its SSM/SSM+ obligations and the impact of wider industry funds, for example the ring fenced HLOS station funds, which will by their nature also contribute to improving station condition.

Q9. Do you agree that we retain the current CP4 measure of depot condition but treat this as an indicator rather than an output?

We consider that the ORR needs to consider carefully what it is trying to achieve with measurement of depot condition, given the diverse nature of rolling stock supply arrangements (many of which will not involve NR-owned depots) as well

as demonstrating that it is resourced sufficiently to address issues arising. Measuring outputs is not necessarily a precursor to behavioural change, and where members have

been most concerned is that there is no alignment between NR's incentives and their reasonable requirements for modern, appropriate depot facilities.

We believe that the existing measure should be continued, and that the ORR should also consider how the incentives and funding arrangements can best be developed to promote investment and improvement at depots, berthing facilities and sidings, facilitating cross-industry engagement and proposing and enabling future action. The provision and location of depot and stabling facilities is critical to the efficient operation and delivery of the network, particularly as demand grows, and we would expect that regulatory engagement should facilitate commercial and operational outcomes.

Q10. Do you agree with the proposed new approach to strengthen the focus on further asset management improvements? Do you have any specific comments on the detailed measures?

As economic regulator, the ORR's principal function is to ensure that NR complies with its regulated outputs, including sustainable asset management policies. Therefore this area is critical to the success of the CP5 Final Determinations, and we welcome the ORR's focus on this critical area. We consider that the ORR needs to take into account a range of areas including capability, quality and availability of information.

This will become increasingly important to train operators as the industry reform process continues, as engagement with NR will be strengthened through assurance about its asset quality. Going forward, willingness to invest and share risks will be increased through confidence in the infrastructure, and the ORR should at this stage be looking beyond CP5 in developing its approach to asset management. The capability and credibility of the ORR is critical in this area, and we would expect to see your proposals aligned with the ORR Business Plan to demonstrate to the industry that this area will be given appropriate priority in CP5.

Q11. Which, if any, of the asset management measures do you think should be regulatory obligations (equivalent to outputs), and which should be enablers/indicators?

We consider that the regulatory outputs should be sufficient to ensure that NR is able to meet its obligations to access rights holders and the ORR, and that the targeted measures should be such that they provide predictive capability should any investigation or action be required. These should be disaggregated to route level where appropriate and where this will support industry delivery and accountability. However, we consider that NR should be given sufficient flexibility to manage its business and to innovate, and therefore that the output measures should be high-level and reflect a range of asset management policies rather than individual categories.

Other asset management information is important and will be necessary for developing proposals for CP6 and beyond, and we would therefore expect that a much more comprehensive suite of information will be available as enablers and indicators.

Q12. Recognising that certain indicators are needed to monitor HLOS delivery, and that Network Rail is in the process of deciding on further indicators, do you have views on specific environmental indicators which we should monitor?

We note that the ORR is proposing indicators reporting on reductions in carbon emissions related to NR activity, as well as wider carbon efficiency and embedded carbon indicators. These respond to HLOS requirements, and we consider that these will be necessary. We support the continuation of specific NR sustainable development KPIs.

Wider environmental indicators are important, but are not necessarily required for NR outputs. Where there are statutory requirements, the industry will comply with them, and should there be additional outputs required through franchising then these will be embedded within the relevant contracts. We do not consider that it is necessary for the ORR to propose further measures as part of NR's output framework.

Q13. Should we introduce a new indicator of changes in journey times? Do you have views on how this measure should be calculated? Should we also introduce a measure of accessibility to stations?

Journey time is an important output for passengers, and significant improvements can also improve productivity within the industry. Therefore there is a strong argument to ensure that NR, and by extension, the industry, takes a proactive approach to effective capacity management. Reviewing journey times and network reliability is important, as there will inevitably be trade-offs around capacity, cost and reliability. A scorecard-based approach may be of benefit to ensure that these trade-offs are fully reflected and that behaviours across the industry reflect passenger and funder priorities.

However, any measure at an aggregate level will be of limited application in specific areas of the network, and therefore may not drive the behaviours and outcomes expected. We consider that the ORR should continue to monitor the relevant provisions of the Network Code and track access agreements, and work with the industry to determine whether there is any case to develop indicators going forward. More generally, there is limited value in developing new requirements for monitoring if there is no clear pass-through to action to be taken to achieve outputs.

While there is clear public interest in a measure of station accessibility and connectivity, we do not consider that there is any merit in a proposal that seeks to categorise or systematise a number of variables as regulatory indicators. Promoting connectivity is a market-driven action, within the constraints of the physical capacity of the rail network and the distribution of population, economic and social activity. In a suite of outputs for the infrastructure manager, it is

difficult to see a justification for a measure of network accessibility over which the predominant influence will be in the hands of funders and other external bodies.

Q14. Should we introduce a new indicator designed to measure improvements in passenger information provision and how should this be measured?

The industry is already working together to improve the quality and delivery of information to passengers. We consider that any indicator should reflect the large and growing number of channels through which passengers can obtain information, as well as the evolution of technology and platforms, and should therefore be primarily qualitative rather than quantitative. It should be clear that this is monitoring compliance with licence obligations, as well as industry processes, and that there should be no explicit linkage within the CP5 outputs.

Q15. Should we also consider new indicators for example covering Network Rail's supply chain management and approach to innovation?

We consider that expenditure in the innovation fund should be subject to similar governance and monitoring to other funded activities. However, the concept of developing monitoring of NR's supply chain management and innovation appears to be a potentially excessive response and one which will require considerable NR management resource without a clearly-defined output. The ORR's primary function is to ensure that NR is compliant with its output requirements, and this would represent a significant increase in input monitoring.

Q16. Do you have views on the introduction of a new measure on how Network Rail is developing its capability as a system operator, and what the measure should cover?

We welcome the continuing progress of industry reform, and recognize that there remains some considerable distance to travel. In this journey it is not yet clear how far responsibility for infrastructure management will be devolved, or with what structures. We strongly believe that this process will continue during CP5, and that the delivery of efficient industry outcomes should be prioritized over any single model of infrastructure delivery.

The current consultation addresses a number of NR outputs, including timetable planning, possessions planning, capacity availability, network planning and network change. Since many of these are covered by licence obligations or other output indicators, we would not consider that this should be a priority for the ORR in CP5. Recognising that there are a number of trade-offs in terms of network management, we consider that issues around capacity charging and the most efficient use of the network are sufficiently important and fundamental that they will require cross-industry engagement and visibility. We therefore do not consider that the areas you propose would add value or clarity to NR's delivery in CP5.

Q17. Should we have a mechanism to allow formal trade-offs to be made between high-level outputs during the control period?

The HLOS process and the Final Determinations are, by their very nature, relevant to a point in time. CP5 runs until 2019, by which time the institutional, policy and operational context of the rail network will have developed. Additionally, there will have been changes to demand patterns, refinements to enhancement programmes and potential alterations in service specifications that reflect the ongoing development of the industry.

We therefore consider that there should be a clear mechanism that engages the whole industry and funds should there be a requirement to change regulated outputs, but which gives reassurance to funders, users and stakeholders that this will be used only for material changes to the required outputs, and that the overall value for money of rail services will be protected.

Q18. What do you think of the idea of a scorecard to provide context to our assessment of Network Rail's performance in CP5? Do you have views on our proposed scorecard and do you have alternative suggestions?

The provision of a "scorecard" approach to provide context has merit with respect to putting NR's delivery in a wider context. It should not be part of the NR outputs requirement, as in many cases delivery of final outcomes is the responsibility of a number of industry parties. We believe that this can build on existing activity, such as the ORR's NR monitor and National Rail Trends, rather than creating a further focus of industry activity.

The contents of the scorecard proposed need to be considered both in terms of their usefulness and their practicality. Some of the measures such as connectivity are not within the gift of the industry, and reporting "soft" issues may not provide a quantitative basis. There is a risk that the results of a simplistic approach would be mis-interpreted by stakeholders and political decisionmakers. We therefore consider that it would be most appropriate to avoid a "traffic light" approach given the complexities, interdependencies and differing accountabilities for the outcomes.

Conclusion

In developing the output framework for CP5, the ORR should consider both the purpose and the practicality of its approach. Since the framework is set for NR, the measures and indicators should focus on those activities that NR has accountability for, rather than whole-industry outcomes that could create additional effort without identifiable reward.

The CP4 outputs are continuing to be delivered, and we see considerable merit in leaving the framework intact unless there is a strongly-evidenced and value-for-money case for change. We do not consider that new and complex measures added to NR's obligations will deliver improved efficiency or transparency, and that the presumption should be to minimise both complexity and innovation in CP5 given the scale of wider industry change.

There are clearly areas where considerable further work will be needed to ensure optimal use of the network, for example NR's developing expertise as a systems operator, if that is the route that Government elects to go down. We believe that the ORR should work with the industry outwith the Periodic Review process to identify where changes and reforms can best promote the objectives that TOCs are franchised to deliver and which are enshrined in policy and passenger requirements.

Yours sincerely



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