CrossCountry
5th Floor, Cannon House
18 Priory Queensway
Birmingham B4 6BS
crosscountrytrains.co.uk

Richard Gusanie
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

1st September 2011

Dear Richard,

Periodic Review 2013 – First Consultation

This letter represents CrossCountry's response to the ORR's first consultation on the 2013 Periodic Review. Whilst we do not wish to directly respond to all of the questions listed in the consultation document, we would like to raise a number of comments against issues that directly affect CrossCountry and the current Cross-Country franchise.

Objective for PR13

We agree with the ORR's proposed objective for the Periodic Review.

Price Control Separation and Network Rail devolution

Firstly, the devolution of Network Rail represents a significant commercial and operational risk to CrossCountry, and also to any other nationwide operators that currently traverse a number of Network Rail routes. Without a specific national body that is remitted (and empowered) to manage enhancement projects and timetabling on a national basis, there is a risk that any nationwide operator's interests will be marginalised against the majority operator on each route. This is a particular risk in terms of timetabling interests, but also for the delivery of discrete enhancement projects (for example those that are NRDF-funded). If Network Rail's finances are to be isolated on a devolved route-based level, then it is difficult to see how projects that have cross-boundary benefits could be realised unless they are managed by some form of overarching body.

The planned lengthening of Platform 2 at Stansted Airport provides a perfect example. This project that is being delivered in late 2011 will allow CrossCountry to operate 4-car Class 170 trains (vice the current 3-car maximum) on the heavily loaded Birmingham – Stansted services. In this case, the project is being managed and delivered by Network Rail's Anglia route, against whom the costs will be attributed, yet the key benefits (in terms of crowding relief) will actually be realised mostly on the LNW and LNE / M&C routes. Under a completely devolved structure, it is difficult to see where the incentive would be for the Anglia route to take this project forward, when they adopt all the costs and risk, yet see little of the benefits directly?

If expenditure for each of Network Rail's operating routes is to be determined individually (alongside route-based outputs) as the ORR suggests, then the necessary arrangements must be made for a national Network Rail body to have the authority and ability to move enhancement funds between routes and to manage cross-boundary projects that would have a national benefit.

Outputs

We support the general concept that Network Rail's defined obligations should be targeted at outputs (although these must be tightly specified) rather than through specified inputs, and we made this position clear in our previous response to the CP4 Delivery Plan consultation. Network Rail must be given the flexibility to manage itself and meet its regulatory commitments in the way that it sees best, but ultimately held to account for any failure to deliver.

A good example of how a flexible approach can work effectively is the current East Midlands train lengthening project in the CP4 delivery plan, which involves the lengthening of CrossCountry services and corresponding platforms at some smaller stations. CrossCountry and Network Rail agreed that Network Rail would fund the Selective Door Operation (SDO) fitment to CrossCountry's Class 170 fleet as a more cost-effective method of delivering the HLOS requirements, compared to the expense of lengthening platforms for a relatively small number of passengers. Network Rail, and therefore the rail industry, saved a notable sum of money in this instance. Operators and Network Rail can therefore work together to deliver imaginative solutions to specified outputs, provided that Network Rail is given the contractual flexibility in its Regulatory commitments to do so.

On this issue of 'whole-system' outputs, the difficulty with holding Network Rail to account for outcomes or whole-system outputs is that it is probably unfair, and unrealistic, to hold Network Rail responsible for issues that are outside of its control. We would much prefer that Network Rail was held specifically to account for its delivery on committed outputs that it has direct control over.

Incentives – Schedule 4 and 8

Unfortunately, our experience with the Schedule 8 contractual incentive is that (rather ironically), its effect in terms of incentivising either Network Rail or operators to improve performance is unclear. We have previously discussed our concerns over Schedule 8 with the ORR at length, but for the record, whilst Schedule 8 is intended to encourage Network Rail and operators to continuously improve performance, in our experience its complex mechanics mean that there is little visible relationship between an operator's performance and the flow of Schedule 8 funds. CrossCountry-generated performance since franchise commencement has for long periods been consistently and significantly above our franchise contracted levels, and has therefore clearly been beneficial to Network Rail in reducing TOC-on-TOC delays. Yet even when CrossCountry has performed well, there have still been substantial payments made to Network Rail which bore no direct relationship to this. The ultimate effect of this is that whilst CrossCountry was previously willing to make investments to improve its own performance (such as through investments to rolling stock reliability), there is now no clear incentive for us to make any further investments to improve performance on the back of any likely Schedule 8 savings.

Furthermore, due to the scale of monies involved with Schedule 8 payments, the commercial risks to a franchised operator from poor performance are far greater than those to Network Rail, which of course has much deeper finances. Additionally, the operator faces a greater risk than Network Rail as the operator's direct revenue, corporate reputation, and franchise commitments to the franchising authority are all at risk from poor performance. These factors all have a greater effect than Schedule 8 in terms of incentivising the operator to perform, yet there doesn't seem to be a clear link between Schedule 8 and Network Rail behaviour over performance as long as Network Rail is meeting its Regulatory PPM / delay minute targets.

Further to the points previously made about management of nationwide interests, CrossCountry's breadth of operations means that we (alongside freight operators) are a natural carrier of 'knock-on' delays around the rest of the country. CrossCountry have the highest TOC payment rates which reflect the high cost of TOC-on-TOC delays. If the biggest risks are to be found in deteriorating performance on cross-country routes, then it is even more important that Network Rail are able to manage these routes and the investment that is needed on them in at a national (or similar) level.

Incentives – capacity

One of the stated challenges for CP5 is for 'optimising the use and development of the network'. Note that financial incentives (eg. introducing new charges) are not necessarily the only way to incentivise Network Rail to make optimum use of capacity. CrossCountry services currently endure significant amounts of pathing time within their schedules, which not only extends journey times beyond their realistic lengths (reducing the overall 'value' of the franchise), but also soaks up capacity on the network unnecessarily. If making more efficient use of capacity is to be a key objective for CP5 then this issue must be addressed. In all likelihood, the suppressed benefits that could be realised by reducing inter-city journey times outside of London could only be achieved through a national timetable recast. As the move to a devolved Network Rail structure is only likely to reduce the likelihood of achieving this further, it is likely that this would need ORR instruction akin to the WCML 2013 timetable project in order to provide Network Rail with sufficient incentive.

Furthermore, one constraint with the existing financial arrangements is that there is perhaps a perverse incentive to Network Rail's train planners to *not* extract maximum use of network capacity due to them wanting to avoid any timetable-related delays arising and being attributed back to train planning.

Not surprisingly, we are interested in the suggestion of a single body that would be directly responsible for whole system capacity utilisation on a national basis, provided that it is suitably empowered with the authority to direct individual routes where necessary. We believe that this body, with the right governance and authority, could be best placed to tackle some of the capacity issues discussed here.

Incentives – Benefit sharing

On the subject of Network Rail / TOC revenue and cost-sharing, on the face of it there could be benefits realised through a benefit-sharing mechanism linked to enhancements. For example, CrossCountry are committed to achieving journey time savings and one option for achieving this is through linespeed improvements. Conversely, Network Rail receives no benefit from the raising of Permanent Speed Restrictions (PSRs) or by making any other discrete speed improvements, and therefore has almost no commercial incentive to do so. Theoretically, a mechanism that allows Network Rail to share in any financial benefits from an enhancement such as this (eg. faster journeys = greater revenue) could act as an incentive to Network Rail to deliver such projects more pro-actively. However, the contractual arrangements behind this would need to be very carefully managed, as any revenue sharing mechanism between Network Rail and a particular operator would impart considerable risk to other operators on the route whose interests could end up being marginalised.

The question of exposing operators to changes in Network Rail's costs at Periodic Review is one for the franchising authority to decide, although note that this option is likely to import a significant level of risk into the bidding process and hence risk potentially reducing the overall value of a franchise.

Structure of charges

As a national operator with services traversing a wide number of routes, the geographical disaggregation of variable charges is likely to lead to considerable additional complexity, and bear in mind that the structure of charges was consulted on in detail for PR08 as part of a lengthy process, with route-based charging for variable access charges considered and rejected on the basis of complexity. Variable access charges are already disaggregated greatly by vehicle class, and we do not necessarily see any overwhelming reason to completely re-assess the structure of variable charges as part of the next Periodic Review.

From a franchised operator's perspective, we do not agree with the concept of introducing a charge for network scarcity. The effect that the structure of access charges has on a franchised operator's behaviour is minimal. This is because a franchised operator is contractually tied to a specific service level dictated by the franchising authority, and the franchised operator will simply price any additional costs in as part of the franchise bid process. Any additional charges will only have the effect of increasing a franchised operator's marginal costs and acting as a disincentive to develop its service pattern beyond its contractual SLC 'core'. If anything, the effect that this additional charge might have would be on the franchising authority's policy rather than a franchised operator's behaviour, and is there not also a risk that introducing a scarcity charge on a route that subsidised (ie. non profit-making services) operate would increase the level of overall subsidy required? If this is the case then it is difficult to see how this additional charge would meet the objectives of the Review.

Furthermore, as far as Network Rail would be concerned, the majority of its income comes directly from the UK Government, so the incentive to utilise scarce capacity on the basis of additional variable income is likely to be minimal unless variable charges are increased to a level whereby the additional income to Network Rail becomes technically 'profitable'.

We trust that you find the comments raised here of use, and of course would be pleased to discuss further.

Yours sincerely,

James Carter
Track Access Manager