

ORR consultation on Enhancements in Control Period 6: roles and responsibilities

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Matt Wikeley
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

30th August 2018

Dear Matt

Re: Enhancements in Control Period 6 – Roles and Responsibilities

As we finalise laying the foundations for CP6, Arriva welcomes the opportunity to comment on roles and responsibilities with respect to infrastructure enhancements. These comments are provided on behalf of Arriva plc, its subsidiary Arriva UK Trains Limited and its wholly owned train operating companies (TOCs), Arriva Rail London Limited, Arriva Rail North Limited, Arriva Trains Wales/Trenau Arriva Cymru Limited (ATW), Grand Central Rail Company Limited, The Chiltern Railway Company Limited (CR) and XC Trains Limited (XC). Arriva is a wholly owned subsidiary of Deutsche Bahn AG (DB AG).

In the context of significant ongoing infrastructure investment, supporting the introduction of new rolling stock and improved train services across our businesses, it is vital that the benefits secured from the available funding are maximised and that projects are delivered safely and sustainably, on time, to budget and to a specification, enabling promised improvements in capacity and connectivity for customers at the best value to funders.

We are broadly supportive of the ORR's proposed role, as described in the document 'Enhancements in CP6 Roles and Responsibilities, Draft for comment June 2018', with some key exceptions and other areas for consideration, as described below.

Reputational Incentive

We note a general shift towards reputational incentives as a mechanism for ORR to hold Network Rail to account for the delivery of the enhancements portfolio, in the context of the latter's reclassification as a public body.

In CP5, poorly managed and late delivery of nationally significant infrastructure enhancements has in some areas, such as the NWEF Phase 4 electrification of the Bolton Corridor, severely impacted our ability to deliver committed service improvements, added significant cost across the industry and damaged industry reputation as a whole. We question whether public accountability and reputational incentive is sufficient to establish a clear line of sight between Network Rail as deliverer of enhancements and customers as beneficiaries on the ground.

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We would particularly highlight that the major reputational impact of recent problems with the delivery of such projects has fallen, not on Network Rail, but on train operators and funders.

We support continued independent reporting by ORR via the Network Rail Monitor. Performance on enhancement delivery should however be accompanied by well-defined KPIs, rewards and sanctions to maintain momentum towards the timely and on-budget delivery of enhancements for our customers.

Cost efficiency and milestones at all stages of the pipeline

We note that for England and Wales, ORR proposes not to monitor the cost efficiency of enhancement projects or take action relating to specific milestones that are not regulated outputs.

In terms of efficiency, we question this decision in the context of expenditure challenges faced more widely by Network Rail (including ORR's requirement set out in the Draft Determination for Network Rail to generate an additional £659m saving through its CP6 Strategic Business Plans) and the rail industry. In light of the Hendy review into affordability of enhancements in CP5, compelling business cases are more important than ever to delivering enhancements through the Pipeline process.

High unit costs and late notice access requests are two examples that demonstrate the need for stronger incentives to deliver enhancements more efficiently.

To ensure that baseline costs established for delivery are in themselves value for money, the cost efficiency of enhancements should be monitored at all stages of the pipeline, as an integral part of ORR's role. This should include:

- The use of contingency/optimism bias and how this is applied at project and portfolio level.
- Feasibility studies and design.
- Adopting longer term planning horizons and effectively planning and de-conflicting engineering access opportunities in advance.
- Procurement, including planning to achieve efficiency in the supply chain.
- How enhancements are optimised with other work, such as renewals.
- Comparison between NR routes, in line with the approach taken in PR18.

In terms of milestones, whilst we support increasing transparency through the Network Rail Monitor, we maintain that reputational incentives are not sufficient to ensure that milestones are met. Arguably, as the customer facing organisation, missed milestones and consequential delays to benefits for customers mean that it is our reputation as a train operating company that is most affected, resulting in further damage to the industry as a whole. We therefore strongly believe that cost efficiency and performance against specific milestones should form key regulatory outputs.

It is also important that other funders of enhancements, including train operators and third parties, have some degree of assurance that there is strong ORR oversight of the efficiency of what remains as a monopoly supplier of such projects.

DfT's role in holding Network Rail to account

It would be useful to have a more detailed understanding of how ORR will work with DfT to hold Network Rail to account in a client/deliverer relationship. We would welcome a review of the existing structure of Project and Programme boards, and greater clarity on the emerging role of the Supervisory Boards in this context. Based on our own experience, we would encourage greater and earlier operator involvement in making key decisions. Once risks are identified to the successful delivery of enhancement schemes, more rigorous processes are required to govern how these are escalated, and to set out the timescales for mitigating them.

Key to establishing roles and responsibilities in this context is determining who within Network Rail is ultimately accountable as delivery agent. It is currently not clear whether this lies with the System Operator function, the geographically devolved routes, or Network Rail's Infrastructure Projects team. This will be critical in setting defined KPIs to measure performance against obligations set by the client.

National System Operator

The ORR's role in monitoring and reporting on the overall performance of Network Rail should include the activities of the National System Operator relating to long term planning and development of business cases, including how operators and passengers or end users are consulted and engaged.

The ORR should also work to ensure:

- That what DfT decide to fund aligns with what NSO have recommended, including timescales (which are a key consideration in a pipeline approach).
- That Network Rail's delivery of infrastructure enhancements supports operators delivering linked service enhancements.
- That NSO discharges its responsibility to programme manage the delivery of service output changes related to enhancements, including managing the impact on operators and passengers.

Role of Operators

Across our businesses, we are deeply embedded in engagement with DfT, Network Rail and ORR with respect to enhancements through a number of channels, focusing on both development and implementation. This may be through Programme Boards, Programme Delivery Groups and at working level in integrated and/or co-located project teams.

Operators have significant operational and infrastructural expertise, combined with knowledge of customer requirements, which should play a key role throughout the enhancements process – complementing that of DfT, Network Rail and ORR. We also jointly hold Network Rail to account through our Route Scorecards, and hold our own commitments to government that are dependent on enhancement delivery. We therefore encourage ORR to incorporate the roles and responsibilities of Passenger and Freight Operators into this document.

Third Parties

We believe it is increasingly important that DfT and Operators engage with wider stakeholders and develop business cases to leverage third party investment into the railway. It is also necessary that a coherent risk and reward framework is developed to ensure that third parties benefiting from rail enhancements are those that pay for them. We see DfT as having a key role in developing this framework. There is a need for the rail industry to disrupt the conventional enhancement delivery model by further promoting third parties as delivery agents. This is essential to reducing both capital and operational cost, and maximising the benefits to customers.

In the context of the Market Led Proposals (MLP) process and Network Rail Open for Business, it is important that there is clarity on ORR's role in relation to third party promoted or funded schemes, and for enhancements that are not delivered by Network Rail, including:

- How these are prioritised within the portfolio.
- NR asset protection and other charges.
- Cost efficiency comparisons.

Transparency

We are encouraged that Network Rail will be publishing a document to ensure transparency to its funders and customers on performance against its obligations for enhancement projects. We would welcome further information on the regularity of such reporting, noting that regular updates on performance against baseline and any subsequent changes is crucial to holding Network Rail accountable in line with our suggestions above.

In order for railway undertakings to plan their businesses with assurance, it is important that this document looks forward as well as back to the implications on customers of any missed milestones. We would suggest this document is published by both Network Rail as deliverer and DfT as client.

Access rights

The ORR's role in approving applications for new paths and access rights and the link to enhancements needs to be considered.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Mary Hewitt', with a stylized flourish at the end.

Mary Hewitt
Strategy & Policy Director, Arriva Trains UK



**Submission by the Chartered Institute of Logistics and Transport
to two ORR consultations: ‘Invitation to comment on roles and
responsibilities for enhancements in CP6’ and
‘Network Rail network licence review – Consultation on draft network
licence’**

1. The Chartered Institute of Logistics and Transport (CILT) is a professional institution embracing all transport modes whose members are engaged in the provision of transport services for both passengers and freight, the management of logistics and the supply chain, transport planning, government and administration. Our principal concern is that transport policies and procedures should be effective and efficient, based on objective analysis of the issues and practical experience, and that good practice should be widely disseminated and adopted. The Institute has a number of specialist forums, a nationwide structure of locally based groups and a Public Policies Committee which considers the broad canvass of transport policy. This submission has been prepared by the Strategic Rail Policy Group.

2. CILT(UK) recognises the changed nature of Network Rail (NR), both in its revised and devolved structure and also in its existence as a public sector arm’s length government body and acknowledges that this requires changes to the network licence.

3. CILT(UK) is however concerned that these changes could result in NR becoming exclusively focussed on the requirements of the DfT and Transport Scotland to the exclusion of other current and potential funding bodies. These include the Welsh Government, Merseytravel, Transport for London, Transport for the North and Transport for the West Midlands. There are similar concerns over non-DfT/TS rail funders such as Train Operating Companies and customers of Freight Operating Companies (eg for network connections). The re-designation as a public body means that independent enforcement action is the only sanction available to these bodies and it needs to remain available to ensure that NR delivers. We believe it is vital that the ORR ensures, through Licence enforcement, that equal attention is paid by NR to these other bodies, particularly in the case of enhancements to the rail infrastructure that these bodies are funding.

4. Experience has shown that, while NR will deliver agreed enhancement schemes for such bodies, they are often dilatory in progressing the early development of these schemes and this could be because of over-attention of resources to DfT/TS schemes. Late implementation due to delays in developing schemes does not meet the reasonable requirements of such Stakeholders. CILT(UK) believes that timely and efficient early development should be an output subject to monitoring and licence enforcement action. This should therefore be added to the changes being proposed to the NR Licence.

5. CILT(UK) is concerned that the ORR has excluded all non-DfT/TS Stakeholders from its draft “Enhancements in CP6: Roles and responsibilities” paper published in June 2018. It is of further concern that the ORR proposes NOT to monitor the cost efficiency of enhancement projects or take action in relation to specific milestones (para 1.18, fourth bullet point). While we recognise this is the position agreed between the ORR and DfT we believe this could be taken as a precedent for other bodies. CILT(UK) would therefore wish to see an OVERT statement that the ORR will provide this monitoring for non-DfT sponsored schemes. As indicated above, monitoring (and enforcement action) should be applied to the early development of such schemes.

Submitted by:
Daniel Parker-Klein
Head of Policy
The Chartered Institute of Logistics and Transport
22 Greencoat Place, London, SW1P1PR

August 2018



Midlands Connect Comments

ORR Consultation: Roles and Responsibilities for Enhancements in CP6

1. Executive Summary

- 1.1. It is vital that ORR support the Government in recognising and addressing the many lessons to be learnt from Control period 5 – the delays and cancellations of schemes have caused major negative impacts across the Midlands. ORR need to play a role in regaining public and business trust in the railway network.
- 1.2. We welcome the early moves to address issues, including supporting a pipeline approach to progress enhancements proposals hereon (known as RNEP). It is vital that all bodies support a process where schemes that are committed to with Government (or private sector) funding can be confident of the costs and timescales to be delivered. We are working with DfT to pioneer the new pipeline approach and will also consider opportunities to pioneer market-led proposals. **We remain concerned about the clarity for how scheme sponsors are expected to interact with ORR and others throughout this process.**
- 1.3. There remain fundamental questions for the ORR and DfT to answer or work with investors and sponsors to pioneer the new RNEP, market-led proposals and wider changes to Network Rail and rail franchising. Sub-National Transport Bodies can offer a single, united voice as a forum and resource to ensure that regional evidence bases contributes to a comprehensive consideration of the costs and benefits of proposals and ultimately an enhancements pipeline that deliver on time and budget for the benefit of users, residents and businesses.
- 1.4. We are concerned that there is no recognition, by ORR or DfT, of local or regional stakeholders in the new enhancements approach. **We would expect some degree of consultation or clarity on regional evidence bases that are already in place can help ensure the right decisions are made for (and through) our areas.**
- 1.5. It is vital the railways see the necessary and effective improvements that will benefit users, unlock economic growth and move trips away from roads. Businesses and investors tell us that they need confidence in a long-term economic vision and a realistic pipeline of infrastructure improvements to rebalance the economy and invest in existing and new assets.
- 1.6. Currently, the process for progressing and overseeing effective rail enhancements does not achieve that long term confidence which is something we would be eager to help DfT resolve. **The ORR proposal that transparency only be offered for schemes after the final investment decision does not offer much reassurance.**
- 1.7. Some of these questions may not be roles for ORR in its final proposal, in which case we would request clarification from DfT to answer any remaining points below.

2. Specific Comments:

- 2.1. Para 1.3 – It is not clear how ORR will consider its approach to market-led proposals alongside its oversight of the wider rail enhancements pipeline. There is scope to consider the consistency and overall programme of enhancements proposed and committed across the rail network together to avoid duplication and conflicts. This would also align with supporting Network Rail’s wider System Operator function, rather than just considering enhancement options through the discreet devolved teams which could lead to inconsistent outcomes. The risk for ORR is that it can not fulfil its oversight requirements where attention to enhancements is carried out so differently across Network Rail and DfT.
- **ORR should set out how it will report and monitor the progress of all enhancements, including market-led proposals to ensure that all parts of the UK benefit from a clear and consistent pipeline of rail enhancements.**
- 2.2. Para 1.13 – ORR refer to their role in overseeing Network Rail’s requirements to engage and consult ‘stakeholders’. Network Rail have separately set out their views on updating their Code of Practice¹ for engaging stakeholders which offer a very high level assurance on the quality of their approach. There is no further recognition by ORR of overseeing engagement with stakeholders in the rail enhancements process. Without such consideration, ORR offers limited assurance and transparency that decision-making uses ‘stakeholder’ input effectively.
- **ORR should set out how it will oversee the DfT and/or Network Rail’s engagement with stakeholders through the rail enhancement process.**
 - **DfT should clarify how stakeholders will help input and assure proposals through the RNEP process, to ensure the most robust evidence is used to make the right decisions.**
- 2.3. Para 1.17 – It is not clear how DfT can agree a funding baseline for enhancements with Network Rail when the pipeline approach will give DfT the final decision on who should fund and deliver schemes. This requires clarification as it is not clear whether an indicative funding envelope, for enhancements in general or schemes in particular, will be agreed before the Design stage of the RNEP. The risk is that Network Rail and scheme sponsors/funders have different expectations of the realistic delivery of emerging proposals where no funding envelope is available.
- **ORR should clarify whether it expects DfT to agree and publish an indicative enhancements funding envelope.**
- 2.4. Para 1.21 – ORR state that Network Rail should publish a list of schemes that are ‘post-Final Investment Decision’ which is not clear as the RNEP refers to the final ‘two’ stages as ‘deliver’ and ‘deploy’. It is also not clear therefore how, or if, the ORR will ensure transparency of the earlier RNEP gateways. The consultation mentions

¹ <https://www.networkrail.co.uk/industry-commercial-partners/information-operating-companies/stakeholder-code-practice/#consultation>

incentivising Network Rail to deliver a high level of performance, including reviewing Network Rail's capability, but this seems difficult where there is no clarity or transparency on emerging network improvements. There is a risk Network Rail are in fact incentivised to manage short term actions as a result of a diverse set of enhancements being produced by external bodies. It is not clear how ORR can oversee and support NR's capability effectively when ORR does not have a role / sight of the scale of outputs emerging through earlier enhancement gateways.

- 2.5. There is scope for ORR, or another body, to help provide assurance that Network Rail (as System Operator), DfT and any scheme sponsor are progressing an effective portfolio of rail improvements through the RNEP process. If rail users and businesses are to continue in supporting the use of railways as a mode then more confidence and transparency is required about the specific future of the services they use.
- **ORR should clarify how it will input into earlier stages of the RNEP process, including 'Develop', 'Determine' and 'Design' stages.**
 - **DfT should clarify how public and business confidence will be maintained in the railways, including transparency through the early stages of the RNEP process.**
- 2.6. It is disappointing that the regulator, with a remit to consider economic impact, has not recognised DfT's new 'Rebalancing Toolkit'² and a potential role to ensure this has been used and appropriately so. If this toolkit is to be effective and help reassure stakeholders and the public as intended it requires some assurance of its use and transparency.
- **Midlands Connect would welcome clarification that ORR will oversee use of the 'Rebalancing Toolkit' in the periodic Review settlements and wider RNEP envelope.**

² <https://www.gov.uk/government/publications/transport-business-case>

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20th August 2018

Dear Matt,

Enhancements in CP6 – Roles and Responsibilities: Northern's Response

As we finalise laying the foundations for CP6, including plans for what Network Rail will deliver and how these will be regulated, Northern welcomes the opportunity to comment on roles and responsibilities with respect to infrastructure enhancements. Following the Bowe, Shaw and Hendy Reviews, DfT's Pipeline approach to enhancements published in March 2018 builds on the 2016 Memorandum of Understanding (MoU) between DfT and Network Rail and a shift away from five-year funding cycles.

Northern is currently driving an ambitious transformation agenda featuring 98 new trains and an additional 2,000 services per week by December 2019. To secure further step-changes in connectivity, capacity and journey time for our customers, the roles and responsibilities of Network Rail, DfT, ORR and Operators must be clearly defined with respect to enhancement projects. This includes increasing the role of third parties in funding, design and delivery. In light of this, we set out our key points in response to ORR's document for consultation below.

Reputational Incentive

Northern notes a wider shift towards reputational incentives as a mechanism for ORR to hold Network Rail accountable for the delivery of the enhancements portfolio, in the context of the latter's reclassification as a public body. We question whether public accountability and reputational incentive is sufficient to establish a clear line of sight between Network Rail as deliverer of enhancements and customers as beneficiaries on the ground.

Northern's transformation programme features major structural timetable change predicated on nationally significant infrastructure enhancements, notably the Northern Hub and NWEF Schemes. Our customers have suffered from the repeated delay of these schemes, which has impacted our ability to deliver committed service uplifts. This has been manifest most recently through the further delay to the NWEF Phase 4 electrification of the Bolton Corridor, announced in January 2018, requiring us to defer service improvements originally planned for May 2018.

It is positive ORR will continue independent reporting through the Network Rail Monitor. Performance on enhancement delivery should however be accompanied by well-defined KPIs, rewards and sanctions to maintain momentum towards the timely and on-budget delivery of enhancements for our customers.

DfT's role in holding Network Rail to account

It would be useful to understand in more detail how ORR will work with DfT to hold Network Rail to account in a client/deliverer relationship. Northern would welcome a review of the existing structure of Project and Programme boards, and greater clarity on the emerging role of the Supervisory Board in this context. Based on our own experience we would encourage greater operator involvement in making key decisions, and strongly support the development of a North of England Supervisory Board or equivalent forum. Once risks are identified to the successful delivery of enhancement schemes, more rigorous processes are required to govern how these are escalated, and set out the timescales for mitigating them.

Key to establishing roles and responsibilities in this context is determining who within Network Rail is ultimately accountable as delivery agent. It is currently not clear whether this lies with the System Operator function, the geographically devolved routes or Network Rail's Infrastructure Projects team. This will be critical in setting defined KPIs to measure performance against obligations set by the client.

Transparency

Northern is encouraged that Network Rail will be publishing a document to ensure transparency to its funders and customers on performance against its obligations for enhancement projects. We would welcome further information on the regularity of such reporting, noting that regular updates on performance against baseline and any subsequent changes is crucial to holding Network Rail accountable against defined KPIs as referenced above.

In order for railway undertakings to plan their businesses with assurance, it is important that this document looks forward as well as back to the implications on customers of any missed milestones. We would suggest this document is published by both Network Rail as deliverer and DfT as client.

Cost efficiency and milestones as Regulated outputs

Northern notes that for England and Wales ORR has specified it will not monitor the cost efficiency of enhancement projects or take action relating to specific milestones, which are not regulated outputs. Primarily considering efficiency, we question this decision in context of expenditure challenges faced more widely by Network Rail (including ORR's requirement its requirement set out in the Draft Determination for Network Rail to generate an additional £659m saving through its CP6 Strategic Business Plans) and the rail industry. In light of the Hendy review into affordability of enhancements in CP5, compelling business cases are more important than ever to delivering enhancements through the Pipeline process.

High unit costs and late notice access requests are two examples demonstrating the need for stronger incentives to deliver enhancements more efficiently. This includes adopting longer term planning horizons, shaping contracting strategy to minimise risks posed by fluctuations in supply chain activity, effectively planning and deconflicting engineering access opportunities in advance, and aligning renewals with improvements to network capability. We urge Network Rail to seize the opportunity to develop business cases to enhance the network concurrently with CP6 renewals. It is crucial that Network Rail utilises its asset management expertise to fully cost up the options for enhancements concurrently with renewals and views them as cases for longer-term investment.

Northern is also concerned by ORR's decision not to take action relating to specific milestones. Whilst we support increasing transparency over performance against milestones through publication of the

documentation referred to above, we maintain reputational incentives are not sufficient to ensure Network Rail or other deliverers to hit these milestones. Thus Northern strongly believes that cost efficiency and performance against specific milestones should form key regulatory outputs.

Role of Operators

Northern is deeply embedded in engagement with DfT, Network Rail and ORR with respect to enhancements through a number of channels focusing on both development and implementation. As an example we attend the North of England Programme Board and Programme Delivery Group forums steering the delivery of the nationally significant NWEF schemes. Enhancements are at the core of our strategic Alliance Board with Network Rail. At the same time we continue to drive forward schemes that deliver stakeholder aspirations such as the introduction of a second train per hour between Harrogate and York, working with Network Rail and North Yorkshire County Council.

Operators have significant operational and infrastructural expertise combined with knowledge of customer requirements that should play a key role throughout the enhancements process – complementing that of DfT, Network Rail and ORR. We also jointly hold Network Rail to account through our Route Scorecards, and hold our own commitments to government that are dependent on enhancement delivery. We therefore encourage ORR to incorporate the roles and responsibilities of Passenger and Freight Operators into this document.

Third Parties

The document does not reference roles or responsibilities relating to third party funding and financing into enhancement projects, nor third parties as delivery agents. Considering initially the former, Northern believes it is increasingly important that DfT as well as Operators engages with wider stakeholders and develop business cases to leverage third party investment into the railway. It is also necessary that a coherent risk and reward framework is developed to ensure that third parties benefiting from rail enhancements are those that pay for them. We see DfT as having a key role in developing this framework.

There is a need for the rail industry to disrupt the conventional enhancement delivery model by further promoting third parties as delivery agents. This is essential to reducing both capital and operational cost, and maximising the benefits to customers. To do this, we must collaborate to smooth the process for introducing greater contestability into the enhancements sphere. We note DfT's enhancements Pipeline was released It was released alongside a call for private companies to make proposals for the delivery of a Southern Rail Link to Heathrow. Termed a 'Market Led Proposal' by DfT, this representing a shift from public to private sector funding and delivery of enhancements that we have also seen in the case of East West Rail. It is thus key that the roles of DfT, ORR and also Operators in stimulating greater third party and private sector involvement are fully captured.

Northern looks forward to further constructive dialogue with ORR along with wider industry partners with respect to enhancements in CP6 as the Pipeline framework matures. Should you require any further information, please do not hesitate to contact me.

Yours Sincerely



Georgia Ehrmann
Track Access Manager



Open Access Rail

Office of Rail and Road
1 Kemble Street
London

30th August 2018

By Email:

Dear Mr Wikeley,

2018 Periodic Review: Comments on “Enhancements in Control Period 6 Roles and responsibilities”

In respect on the above consultation please find attached the response on behalf of Open Access Rail Limited.

Open Access Rail Limited is an independent company specialising in the provision of new open access rail services. As capacity is a key constraint on the network, enhancements that seek to create additional capacity are particularly important to open access.

With regard to enhancements in England and Wales and how successful delivery of a project is met and monitored. We would ask that the stated benefits that underpin the scheme business case are the output that is monitored by the DfT

Open Access Rail Limited

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Open Access Rail

and the ORR. We suggest this as in the past enhancements have been built that deliver the scheme but not the stated business case benefits. This is not good for the taxpayer, government or railway.

For example, the business case benefits for the Norton Bridge Flyover are stated by Network Rail to be:

- "Two extra trains per hour (off peak, each direction) between London and the north west of England
- One extra train per hour (each direction) between Manchester and Birmingham
- One extra freight train per hour (each direction) through Stafford"

However, Network Rail is unwilling to sell additional capacity created between London and the North West. There are other schemes where the business case benefits have not been realised, which we would happily discuss with the ORR.

Yours faithfully

Open Access Rail Limited

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Open Access Rail

Jonathan Cooper

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Rail Delivery Group

Response to

**ORR's consultation on roles and
responsibilities for enhancements in CP6**

Date: 31 August 2018

Rail Delivery Group response to ORR's consultation on roles and responsibilities for enhancements in CP6

Organisation: Rail Delivery Group

Address: 200 Aldersgate Street, London EC1A 4HD

Business representative organisation

Introduction: The Rail Delivery Group (RDG) was established in May 2011. It brings together Network Rail and passenger and freight train operating companies to lead and enable improvements in the railway. The purpose of the RDG is to enable Network Rail and passenger and freight train operating companies to succeed by delivering better services for their customers. Ultimately this benefits taxpayers and the economy. We aim to meet the needs of:

- Our Members, by enabling them to deliver better outcomes for customers and the country;
- Government and regulators, by developing strategy, informing policy and confronting difficult decisions on choices, and
- Rail and non-rail users, by improving customer experience and building public trust

For enquiries regarding this consultation response, please contact:

Tom Wood

Rail Delivery Group

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Introduction

1. This document outlines the key points from our members in response to the ORR's consultation on roles and responsibilities for enhancements in CP6. We are making separate responses to the consultation on the Draft Determination and the consultation on changes to the network licence.
2. The consultation document appears narrow in scope and focuses on the delivery of committed enhancements that governments have chosen to fund. However, the industry also believes it is important to consider the broader roles and responsibilities for developing the network. We have therefore divided this response into two sections; the first dealing with the specific issues raised in the consultation and the second to include broader matters related to enhancements.
3. RDG is content for this response to be published on the ORR website.

Comments on the respective roles of ORR and government at the delivery stage for enhancements once the funder has agreed the scope of a project

4. The RDG agrees with the roles and responsibilities for the delivery of committed enhancements as described by the ORR and supports the response from Network Rail. The proposed roles and responsibilities were developed following extensive trilateral work between Network Rail, ORR and DfT over the last 6 months.
5. Further discussions are required to agree a suitable format for a CP6 Enhancements Delivery Plan.
6. We support the ORR role in relation to change control for enhancements. There is the potential for changes to the enhancements baseline in CP6 to affect the PR18 settlement and so it is important that the process for regulatory change control of that settlement is fully aligned with that for enhancements.
7. We support the continuing engagement with the ORR in its work to develop a wider competency framework which it would then propose using in CP6 to monitor Network Rail's capability with regard to enhancements.

Comments on wider roles and responsibilities for developing enhancements

8. The ORR consultation covers roles related to the delivery of committed government funded enhancements. The RDG believes it is also important to consider the wider roles and responsibilities for developing enhancements, irrespective of funding source, and the rest of this response sets out the areas that industry members would like clarity on.
9. We would welcome clarity on how operators and passengers or end users and other stakeholders are consulted and engaged in the overall process for enhancements. This would help provide visibility on what schemes are under consideration before they become

committed, or before a decision is taken to pause development. It would therefore help prospective scheme promoters decide whether to invest time in developing ideas for enhancements or not.

10. The supply chain would also benefit from being involved at an early stage in the overall process for developing enhancements to assist in identifying the most efficient solution.
11. The ORR has an important role in approving applications for new access rights which additional capacity from enhancements make possible. This should be recognised in the overall process for developing enhancement schemes and delivering the required end outcomes.
12. The ORR also has an important role in potentially determining whether an enhancement is a 'reasonable customer requirement' given the funding available, even if it won't be determining the efficient cost of DfT funded schemes. It also needs to ensure that all operators' reasonable requirements are protected.
13. It is also very important that there is clarity on the ORR role in relation to third party promoted or funded schemes, as well as those enhancements that are not delivered by Network Rail.
14. Clarity on ring fenced enhancement funds (if there are to be any) in CP6 would also be welcomed.
15. The ORR has a role in assessing renewal efficiency and the industry considers it important that the way efficiency is assessed does not prevent Network Rail from doing the right thing in terms of small scale enhancements on the back of renewals. We described our views on this more fully in paragraphs 14-16 of our [response to the consultation on renewals efficiency last year](#).



30 August 2018

Railway Industry Association

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ORR CONSULTATION: ENHANCEMENTS IN CONTROL PERIOD 6 – ROLES AND RESPONSIBILITIES

1. INTRODUCTION

1.1 This letter constitutes the response from the Railway Industry Association (RIA) to the above consultation published in June 2018.

2. BACKGROUND TO RIA

- 2.1 RIA is the trade association for UK-based suppliers to the UK and world-wide railways. It has 215+ companies in membership covering all aspects of rolling stock and infrastructure supply and covering a diverse range of products and services. As well as the vast majority of the larger, multi-national companies, 60% of RIA's membership base is comprised of SMEs.
- 2.2 The Oxford Economics 2018 report shows that the UK rail sector contributes annually over £36 billion Gross Value Added (GVA) to the UK economy, employs 600,000 people and generates £11 billion in tax revenues. It is also a growing industry with the numbers of rail journeys expected to double in the next 25 years along with significant growth in rail freight traffic. The full report can be accessed via the following link: https://www.riagb.org.uk/RIA/RIA_new/Press/Oxford_Economics.aspx
- 2.3 RIA provides its members with extensive services, including:
- Representation of the supply industry's interests to Government, Network Rail (NR), TfL, HS2, ORR and other key stakeholders
 - Providing opportunities for dialogue and networking between members, including a number of Special Interest Groups
 - Supply chain improvement initiatives
 - Provision of technical, commercial and political information every week
 - Export promotional activity, through briefings, visits overseas, hosting inwards visits
 - Organising UK presence at exhibitions overseas.

Executive Summary

- **RIA would welcome clarity on ORR's role in respect of enhancements other than those funded by DfT and Transport Scotland and delivered by Network Rail (paras 3.1 and 3.3))**
- **We request confirmation of who will monitor the efficiency of the DfT-funded portfolio – we assume DfT (para 3.2)**
- **There is a need for an holistic approach to enhancements (3.3)**
- **A visible pipeline of future enhancement schemes for CP6 is needed for the supply chain to operate efficiently – a view shared by the Transport Select Committee (paras 3.4-3.7)**
- **There is a likely hiatus in enhancement schemes at the start of CP6 which will impact the enhancement skillset capability, which is not exactly the same as those for renewals (paras 3.5-3.6)**

- We look forward to early publication of Network Rail’s document providing to provide transparency to its funders and customers on its obligations for enhancement projects (para 3.8)
- We would welcome the opportunity to discuss with ORR these and other issues identified in our separate Draft Determination response (para 4.1)

3. ORR ROLE AND RESPONSIBILITIES

Scope

- 3.1 RIA note that the consultation focuses on enhancements that are funded by the DfT and Transport Scotland and delivered by Network Rail, and therefore does not explicitly cover enhancements funded by other bodies, third party funded enhancements and enhancements delivered by other parties. Clarity would be welcomed on ORR’s proposed role in respect of these other enhancements (ie those outlined in the three bullets on page 3, paragraph 1.3 of the consultation document) – and see also para 3.3 below for more detail.
- 3.2 It is noted from the fourth bullet in paragraph 1.18 on page 7 of the consultation that it will not be part of ORR’s role to monitor the cost efficiency of DfT funded enhancement projects, nor will they be regulated outputs. Presumably this will now be part of DfT’s role – clarification on this would be welcomed.
- 3.3 Given the above, RIA is concerned that without the inclusion of all types of enhancements, there will not be a visible, coherent and holistic approach to enhancements. ORR will have a role in rail market-led proposals that are privately funded and/or financed. Similarly, it is not clear what bearing the role of the ORR, as proposed, would have in relation to the DfT Rail Network Enhancements Pipeline (RNEP) over and above monitoring delivery. There may be a role for the ORR around the inclusion and ranking of enhancements projects in the pipeline, and whether enhancement scheme/projects are moving up or down the pipeline relative to new schemes as these are added. Some third party funded enhancements are still likely to need some element of public funding – in such cases it would be helpful to understand the proposed role of the ORR, which the consultation document does not appear to cover.

Visible & Comprehensive Enhancements Pipeline

- 3.4 The Statement of Funds Available (SoFA) for CP6 contained, RIA believes, an element of roughly £9bn, a unwelcome reduction from the roughly £15bn for enhancements in CP5, in respect of those enhancements held over from CP5 (the ‘Hendy Tail’). For the first time, the ORR Draft Determination for PR18 does not deal with these enhancements because responsibility for the funding them now rests with DfT and they will be subject to a rigorous stage gate approval process.
- 3.5 Whilst we fully understand the need for appropriate ‘checks and balances’ to be applied to Government funded projects, our concern is that this will delay enhancement schemes coming to the market in CP6, particularly when viewed alongside the fledgling process for attracting third-party funded enhancement schemes. The previously published Rail Network Enhancements Pipeline (RNEP) – which needs to be regularly updated – contained no obviously construction-ready schemes. If unaddressed, this is likely to result in a significant reduction in enhancements workload in the next few years.
- 3.6 RIA’s main concern here is that, although the increase in CP6 renewals funding is very welcome, the likely hiatus in enhancements is problematic because different supply chain skillsets are required for renewals and enhancements. Whilst renewals tend for the most part to be single discipline-specific (e.g. track, signalling, civils), major enhancement projects are multi-disciplinary and require different co-ordination, technical integration and project management skills to ensure

successful delivery. There is a danger, therefore, that if the enhancements workload falls away during CP6, the relevant skillsets will either be eroded or lost, as companies will be tempted to seek work with other rail clients, or in other sectors, or possibly overseas. It may also be difficult to recover any lost skills which could lead to difficulties as and when the enhancement programme ramps up. We have made similar observations at paragraph 4.9 in our substantive response of the same date to the Draft Determination consultation for England and Wales

- 3.7 RIA therefore urges the ORR to ensure that DfT publishes a visible enhancements pipeline as soon as possible along with an indicative funding envelope. This would give the rail sector longer-term visibility and greater certainty about the schemes that will ultimately be delivered, so that RIA's supplier members can plan and invest, and keep their supply chains intact. It is worth noting here that the Transport Select Committee (TSC) in its report of 19 June 2018 into Rail Infrastructure Investment called for *"Full transparency of projects in the Railway Network Enhancements Pipeline (RNEP)"*.
- 3.8 Paragraph 1.19 of the consultation document states that, 'Network Rail will publish a document to provide transparency to its funders and customers on its obligations for enhancement projects'. RIA notes that a purpose of this is to provide transparency on enhancement commitments, which should incentivise Network Rail to deliver a high level of performance and inform public and parliamentary debate around this performance. This is welcome and thus it would be helpful to know when this will be published.

Contestability

- 3.9 We believe that greater contestability in the UK rail market would not only provide the opportunity and encouragement for third parties to invest in rail infrastructure improvements to help meet the growing needs of the network but would also play a part in helping the sector to grow, benefiting the rail supply sector and the wider economy too. Therefore, a visible and holistic enhancements pipeline is a key building block in this endeavour. It would go hand-in-hand with the DfT role (paragraph 1.17 of the consultation document) to establish a funding baseline for enhancements and agree its management.

Change control

- 3.10 The ORR's proposed role in change control around enhancements is to verify that a reasonable process is in place and has been followed by Network Rail, and not to sign off any change, but to note changes that impact materially on the PR18 settlement. Such changes are themselves subject to a different change control policy through which the ORR can publish its decision on a proposed change ahead of it being implemented by Network Rail. There is a risk that separate change control processes could create confusion amongst stakeholders.

4. NEXT STEPS

- 4.1 RIA would be delighted to talk through with ORR any aspect of this response and how that might be reflected in the CP6 enhancements process going forward. In our above-mentioned parallel submission on the Draft Determination for England and Wales, we have suggested a bilateral discussion with ORR to discuss a number of issues and it would make sense to include in those discussions the issues highlighted here.

For more information, please contact RIA Policy Director Peter Loosley.

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(By email only)

31st August 2018

Dear Matt,

Stagecoach Group and Virgin Trains (incorporating East Midlands Trains and Virgin Trains West Coast) Response

ORR's Roles and Responsibilities on Enhancements in CP6

Stagecoach Group and Virgin Trains welcome the opportunity to comment on the draft document, which sets out the role that the ORR proposes to play in enhancements during CP6, in relation to that of the DfT, Transport Scotland and Network Rail.

Our comments below are based on the consultation document that ORR sent on 27th June 2018.

Firstly, we wish to place on record that we are generally supportive of comments expressed in the RDG's response to this consultation. In addition, we have some comments of our own below:

- We acknowledge that the DfT must increase its scrutiny of work conducted by Network Rail for which it is the client and it is therefore a sensible step that the DfT is responsible for determining whether the cost is affordable. However, the proposed roles and responsibilities of the ORR on the Enhancements portfolio funded by the DfT seem relatively passive and there is a 'gap' where the ORR appears to be relinquishing any oversight of DfT's decision making on value for money. As an independent regulator, it is vital that the ORR has this oversight role to ensure that DfT's decision making on value for money is not skewed by political objectives and pressures. This role would also ensure that Network Rail sets a price at an efficient level to avoid early costing errors and monitor financial performance of major projects, perhaps through benchmarking its enhancement schemes against those being constructed by other Infrastructure Managers where appropriate, such as Highways England, Aviation and overseas rail Infrastructure Managers.
- We are supportive of the ORR's roles in relation to the change control process when a change is required to the published baseline of Network Rail's Enhancement Delivery Plan.
- One notable omission in the consultation document is that ORR does not set out the role that

operators should have in the development and delivery of Enhancement schemes. We believe that operators should be explicitly involved from the outset as they can provide valuable input to business case development, help facilitate delivery at an efficient price and assist in gaining stakeholder buy-in to schemes. We would welcome ORR's further clarification on this.

- Throughout the Periodic Review of 2018, the ORR has stressed the importance of stakeholder engagement and advocated that collaborative working is vital for improving efficiency across the network. This particular key point has been omitted from this consultation document on roles and responsibilities on enhancements for CP6. We share the DfT's view that there should be a greater level of collaboration between Network Rail and train operators to maximise the benefits of investment and drive cost efficiency. We would welcome ORR's further clarification on this.
- Considering the overarching objectives of reducing industry costs and improving efficiency, one common way of generating value for money enhancement schemes is to deliver smaller scale opportunistic enhancements on the back of renewals schemes. We are concerned that the new approach to enhancements and ORR's envisaged roles together do not adequately incentivise Network Rail to consider schemes that offer some of the greatest value for money.

We hope above inputs are useful. Should you require any clarification regarding any of the above or wish to discuss any points further, please feel free to contact me.

Yours sincerely,

Lanita Masi
Track Access & Network Change Manager
East Midlands Trains