

**Working papers 2 and 3: System operator responses contents list**

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24th August 2016

## **Introduction**

These comments respond to the ORR's Working Paper 2 on the ORR's initial views of potential issues, opportunities and benefits with how system operation in rail is currently delivered and on the initial views set by the ORR in Working Paper 3 on the framework for regulating Network Rail's system operator functions both of which form part of the PR18 consultation activity. The response is provided on behalf of Arriva plc, its subsidiary Arriva UK Trains Limited and its wholly owned train operating companies (TOCs), Arriva Rail North Limited, Arriva Trains Wales/Trenau Arriva Cymru Limited (ATW), DB Regio Tyne & Wear Limited (DBTW), 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).

Arriva views the Periodic Review (PR18) process as an important element of a coordinated series of activities necessary to ensure that all elements of the Rail Industry structure work together to support the delivery of the vital contribution that rail needs to make to society in the UK.

Therefore, Arriva has played an active part in the Periodic Review process to date and intends to do so going forward. In particular, Arriva is supporting the coordinated industry activity being undertaken by the Rail Delivery Group (RDG).

On this basis, Arriva endorses the responses provided to ORR by RDG relating to the consultation documents issued by ORR to date and confirms that Arriva's views are firmly reflected in the RDG responses.

However, Arriva would like to take this opportunity to emphasise a few key points that have emerged through the work undertaken to date.

## **PR18 Process**

Arriva welcomes the structured approach to the PR18 activity laid out by ORR – in particular,

- the clear identification of the context for PR18 and the associated influencing factors,
- the focus of the objectives of PR18 on delivering benefits for end users (passengers and freight customers)
- the clear identification of prioritised areas for consideration during PR18
- the staged approach using Working Papers for incremental engagement with the rail industry on identified priority areas to allow ideas to be refined progressively.

This has allowed Arriva and RDG to organise suitable resources to engage with ORR to progress the necessary activity in an incremental way rather than try to deal with a very wide range of open issues at the back end of the available time window.

## **Areas of Focus when considering System Operation**

System Operation is already undertaken in the rail industry and is key to the outputs the industry delivers. However, this is a somewhat “hidden” activity which is undertaken without an overarching structural framework by a wide range of industry parties. Establishing clarity of role, activity and process with regard to System Operation across the rail industry as a whole will enable current outputs to be delivered more cost effectively while also enabling a more structured approach for dealing with future challenges such as the Digital Railway.

Looking at the key areas of focus covered by the Working Papers 2 & 3, Arriva has the following observations in addition to those provided in the RDG responses:

- Scale of change involved in establishing effective System Operation in the rail industry:  
Implementing coordinated arrangements for effective delivery of System Operation across the rail industry will be a significant undertaking involving changes in activity and structure for many industry parties. However, simply establishing these arrangements with the necessary new relationships and ways for working has the potential to unlock significant benefits. Therefore, the initial approach to the Regulation of Network Rail’s System Operation should be proportionate to what will initially be immature structures and processes. For example, making clear what costs are associated with Network Rail’s System Operation activities would be a significant step in establishing transparency and would allow an assessment of the value for money delivered in this area. However, extending this to a “charging” regime to recover these costs directly would be over complicating matters significantly. We strongly believe that moving to separate charging as soon as 2019 would be difficult and a distraction to putting in place effective structures and processes. There may however be merit in starting a process that would lead to identification and monitoring of costs so that distinct charging could be considered in PR23.
- System Operation in the rail industry as a whole and Network Rail in particular:  
Enabling the industry to develop a proper understanding as to how and by whom system operation activities are delivered is a vital step forward in establishing how the industry can deliver better outputs more effectively in the future. As part of this, being very clear as to the system operation activities that Network Rail deliver will allow Network Rail establish effective internal organisational arrangements to deliver these system operation activities in a coordinated and efficient manner and be held appropriately to account. Arriva would suggest that this is the order in which these matters should be considered rather than identifying which elements of Network Rail’s current functional structure should be subject to Regulatory scrutiny in this area.
- Scope and focus of System Operation:  
Arriva would observe that the operational rules, asset management strategies and interface arrangements are key elements of system operation where a focused approach considering the key output objectives can deliver very cost effective improvements. Therefore, Network Rail’s activities in this should be subject to suitable scrutiny and incentivisation.

In addition, when considering system operation, the widest possible definition of the system needs to be used rather than just focusing on the Network Rail infrastructure. Specifically, the consideration of system operation should encompass, rolling stock, rolling stock depots and stabling facilities, stations and freight terminals and interfacing networks – even when some of these assets may belong to or be managed by 3<sup>rd</sup> parties.

Network Rail’s system operation activities should prioritise unlocking benefits cost effectively, particularly increasing the capacity delivered by the Network and the performance of operations while also reducing costs through a focus on effective operational and train planning, the proactive development of appropriate interface “rules” and operating procedures and systematic co-ordination of Network Rail’s activities as the first option before the consideration of asset enhancement.

- Interaction between Network Rail's System Operation functions and Operators:  
While the interaction between Operators and Network Rail's Routes will be key, it is equally important the Operators can establish strong and direct working relationships with the parts of Network Rail undertaking System Operation functions and that those parts of Network Rail feel accountable for the outputs they deliver.
- Outputs:  
Establishing suitable Output measures in a more complex environment with a more focused consideration of Network Rail's system operation activities will be a challenging task. However, getting this right is key to being able to drive successful delivery of the industries objectives.

Therefore, Arriva suggest that the Outputs workstream considering these matters needs to run throughout the PR18 process to ensure that developing thinking is reflected in the defined Output measures.

In addition, the overall focus needs to remain on end user outcomes.

### Conclusion

Arriva welcomes the focus that ORR is placing on System Operation in the rail industry in PR18 and the opportunity that this gives to enable a clear structure to be established within Network Rail for the delivery of its System Operation activities. Arriva sees greater clarity of structure and approach will enable the rail industry to deliver its objectives more cost effectively.

Arriva will continue to actively engage directly and through RDG.

Yours sincerely,



Richard McClean  
Managing Director  
Grand Central Railway Company Ltd.

## The Chartered Institute of Logistics and Transport – Working paper 2

Further to the Chartered Institute of Logistics and Transport's response to the general PR18 consultation, I set out below our comments on Working Paper 2. We have endeavoured to address each of your four questions, as appropriate, for the respective functions discussed.

Short term system operation - we agree that this is a critical area for delivery of customer satisfaction, especially for freight customers, whose business bears no relation to railway planning cycles. The responsibility lies partly at the centre (access planning and National control) but primarily at Route level for real time delivery. The current processes generally work reasonably well, but there is concern that risk aversion, driven by performance targets and penalties, can lead Network Rail to reject bids which operators feel can reasonably be accommodated. There may be a useful metric to be developed here for the number of rejected bids per Route per period - it could offer an interesting comparison of the attitude of different Route management teams and could act as a trigger for closer investigation by yourselves.

There is also concern that at times of disruption some users receive unfavourable treatment. This concern is likely to increase considerably with delegation to Routes, which will result in close relationships with users that are closely aligned with the Route - users whose business merely passes through the Route en route from locations outside the area will feel very vulnerable to being disadvantaged. We believe that the virtual Freight and National Passenger Route will need to have real influence and authority over geographical Routes to protect such cross-border flows which in freight, with the decline of coal and steel in favour of intermodal and construction, are rapidly becoming the norm.

Medium term system operation - we agree that Timetable Planning Rules are crucial in optimising the performance and utilisation of the railway. On the one hand, there are instances of unrealistic assumptions which cause poor performance but, on the other, capacity has been unnecessarily reduced by over-cautious margins through junctions, platforms etc.

We also believe that there are some very worthwhile capacity benefits to be had at relatively modest cost by improving the entry and exit speeds into/out of loops, stations and sidings, which are very often 15/20 mph. With approach control signalling bringing a train virtually to a stand before clearing the route into a loop or platform, minutes of capacity - and thus valuable paths - can be lost with a long and/or heavy train recovering momentum and getting inside. The same is true where such a train crawls out of a loop at low speed until the final wagon/carriage clears the turnout. Relaying such turnouts to a minimum of 40mph, and ideally 60 mph, wherever possible, would generate extra mainline path at low cost and with minimum disruption.

We agree that the current approach to medium-term capacity allocation may be overly focused on delivering current timetables and service patterns through consensus, rather than considering more radical options and potentially securing a higher value from the services that operate on the network. We also agree that timetabling is largely an incremental exercise, with additional requests often being fitted into existing timetables - this is driven by timetable process deadlines but should not preclude 'off line' capacity optimisations exercises. Indeed, we believe that this will become essential on an increasingly busy railway and that a specialist team should be created to undertake such exercises on a rolling basis.

We also believe that there are issues about network capability as well as capacity, most notably in respect of structure gauge. Network Rail has an excessively cautious approach to the gauging process. Clearly, safety is paramount, but we doubt that Network Rail knows, with any certainty,

what the physical clearances are at many of their structures, or that a location can go 'out-of gauge' as quickly as current rules suggest. With the growth of intermodal freight, let alone the introduction of new passenger rolling stock and the need for diversionary routes at times of disruption, this is a key issue.

We agree that it is difficult to estimate the relative value of services on different parts of the network - this is a particular problem with freight, where the track access income to Network Rail is modest but the contribution to UK plc, in terms of increasing GDP and the impact on the environment, is substantial. We believe that some form of cost benefit analysis should be employed for medium and long term horizons, although it is not likely to be appropriate for short term decisions.

Long term system operation - we agree that parties involved in developing proposals for changes to the network take decisions over different time frames and that this causes difficulties. Network Rail's natural focus is, understandably, on the 30-year time frame for route capacity and enhancements, but this can cause the process to become very slow moving and bureaucratic. Where customers require a quicker response, notably private party schemes such as new freight terminals, there is much frustration at Network Rail's inability to respond more quickly with well-thought-through, cost effective solutions.

Nor is this limited to private party schemes - as an example, Network Rail has taken years to come up with a robust scheme for increasing capacity to the Port of Felixstowe - Britain's biggest freight location. The line is bursting at the seams and there is considerable frustrated demand for rail movement, but Network Rail has produced a series of abortive proposals and still nothing has been done on the ground ( we understand that an initial scheme is finally about to get underway) which reflects very badly on Network Rail, particularly on the Infrastructure Projects organisation.

We also agree that the balance of regulatory incentives may create a bias towards undertaking large scale capital projects to deliver improvements in performance or capacity. Our example above regarding faster entry/exit from loops etc to increase capacity, rather than undertaking major civil and resignalling work, falls into this category. We believe that, as well as the RAB issue, Network Rail has lost many of the skills to identify, develop and promote such low cost schemes and defaults to the 'big ticket' investment schemes far too quickly. Both approaches are necessary and are by no means mutually exclusive.

This continues into Network Rail not facing significant revenue risk if projects do not deliver the improvements specified - there is no mechanism for requiring it to respond satisfactorily within a reasonable time to requests for information, costs or proposals, nor are there any penalties for deadlines being missed with the implementation of a scheme. With a private party scheme, particularly in freight, this can impact on a customer's bottom line and/or wider plans (e.g. in other parts of their supply chain or operation) quickly and seriously.

I trust this is helpful. The Institute, as an organisation independent from industry profit and loss considerations - and with a considerable body of experience and expertise - is happy to be involved further in the PR18 process and provide neutral objective input and assistance as required.

Kind regards

Daniel Parker-Klein  
Head of Policy, The Chartered Institute of Logistics and Transport

### The Chartered Institute of Logistics and Transport – Working paper 3

Further to the Chartered Institute of Logistics and Transport's response to the general PR18 consultation, plus Working papers 1 and 2, I set out below our comments on Working Paper 3. We have endeavoured to address each of your three questions, as appropriate, for the respective functions discussed.

The Institute supports the general thrust of the Shaw report and welcomes greater devolution of accountability for efficient delivery to Routes. We also welcome the creation of a virtual Freight Route, and its expansion to include national passenger operators, but remain concerned that the ability of the virtual Route to exert direction and influence over geographical Routes will be limited. We have considerable reservations that cross-border flows, especially freight, could be seriously disadvantaged by a greater - and potentially incentivised - focus on TOC's and customers enjoying close relationships with a geographical Route.

We believe that the geographical Routes should have a regulatory obligation to cater efficiently and fairly for cross-border flows to ensure that 'home' customers are not unduly favoured. The virtual Freight route and the System Operation function should, similarly, have obligations to ensure that long term capacity and capability enhancements are properly planned, that effective long term and short term paths are produced, and that overall performance meets agreed FOC/freight customer/national TOC specifications.

We support a more focused approach to the regulation of the System Operator function (and the virtual Freight route) but we do not believe that their costs or assets should be heavily regulated - they do not account for a significant proportion of NR costs or assets and it is the output of these organisations that is of critical importance, especially in regard to cross-border flows, so it is here that regulatory scrutiny should be focused.

We agree that attention should focus on those system operation functions that are undertaken centrally by Network Rail's System Operator business unit, with those system operation activities undertaken at route level, such as signalling and real time control, being dealt with as part of Route regulation. We believe it is essential that a National Operations Centre continues to manage cross-border and major incidents and in coordinating major engineering possessions.

We also agree that the central System Operator should be responsible for long and medium-term planning and crucially, for short-to-near term allocation of capacity that is requested and allocated after the working timetable has been agreed, notably paths allocated to freight in the spot market and paths allocated to train services through the very short term planning (VSTP) process.

We support the proposed measures of the System Operator's performance, but we do not support the SO raising its own charges and believe that Network Rail should have a single till, recovering the SO costs as part of its general charging. Nor do we see any merit in establishing an SO asset base. Incentives should be largely reputational, since the financials are not great, although there is scope for outputs to be linked to management remuneration.

I trust this is helpful. The Institute, as an organisation independent from industry profit and loss considerations - and with a considerable body of experience and expertise - is happy to be involved further in the PR18 process and provide neutral objective input and assistance as required.

Kind regards

Daniel Parker-Klein

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24 August 2016

*By e-mail*

*R. M. Bobocica,*

## **Response to Working Papers 2 & 3: System Operation**

1. Thank you for the opportunity to respond to the ORR's working papers on System Operation. We appreciate that the ORR's working papers split this subject between two papers; paper 2 focussing on the case for a System Operator and paper 3 focussing on options for regulating a System Operator. However, for the sake of simplicity, we are making a single response covering both papers. Our response does not specifically pick up the questions asked in each paper, but rather sets out our own thinking to date on the concept of System Operation.
2. We set out our objectives for the PR18 process in our response to the ORR's Initial Consultation<sup>1</sup>. We regard the establishment of an effective System Operator as an essential foundation for achieving these objectives. In particular, we see the System Operator as playing a critical role in supporting Network Rail (NR) devolution. This is central to our ambition to put the user at the heart of the railway. It is vital to ensure the rail system operates effectively at national as well as local level and meets the needs of freight and cross-country passenger operators and their customers.

### **Our objectives for System Operation**

3. In broad terms, we agree with the proposed outcomes of good System Operation set out in Fig 2.1 of Working Paper 2. However, we have identified our own more detailed objectives for the System Operator. In order to support our broader objective for both PR18 and broader rail policy, we are clear that an effective System Operator must:

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/541399/dft-response-to-orr-initial-consultation-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541399/dft-response-to-orr-initial-consultation-response.pdf)



- provide the pan-network services, such as detailed capacity allocation, timetable planning and enhancement planning, which will support a programme of radical and ambitious devolution of power and responsibility to NR's routes, making them better placed to serve the needs of their users;
  - be able to help deliver our strategic objective to increase rail capacity to meet demand, by having an expert understanding of the existing system capability, and by developing options for using the network better – including through revisions of standards, timetables and systems;
  - support the interests of operators whose services predominantly run across multiple routes, such as freight operators and cross-country passenger operators, ensuring that they are able to benefit from a more devolved railway ;
  - strike an appropriate balance between the empowerment of NR's routes and the mitigation of the risks for users arising from fragmentation;
  - be flexible on boundaries over time, with mechanisms to allow better performing routes to assume more responsibility in areas that would otherwise be within the purview of the System Operator where this does not conflict with cross-boundary interests;
  - work with NR's central functions, such as Infrastructure Projects, in a manner that encourages it to engage with the routes in a responsive and constructive manner;
  - be supported by a Technical Authority, which can ensure that, where appropriate, technical and safety standards and competency frameworks apply consistently across each route;
  - support NR's routes in managing the delivery of Government's rolling programme of investment in the railway, including the management of any short-term impacts on performance; and
  - be capable of managing the impacts of major investments, such as HS2, on services and timetables in a manner that helps to maximise benefits for users.
4. Some of these objectives can be primarily achieved through ensuring the System Operator has the proper powers and functions to be a credible and effective organisation. In other areas, the regulatory structure surrounding the System Operator will be key, particularly in ensuring it is incentivised to interact properly with NR's central functions. It is, therefore, of paramount importance that the regulatory structures that are applied to NR's central functions, its routes and the System Operator are properly aligned.
5. We agree with the potential issues set out in Fig 2.2 of Working Paper 2. We do not, however, consider that any of these issues are insurmountable and would encourage the ORR to work with both ourselves and industry to develop solutions.

### **Alignment of the System Operator functions with DfT**

6. Some of the decisions and trade-offs discussed in Working Paper 2 have significant interactions with the responsibilities of DfT, and in particular with the work that DfT does on service pattern design as part of its franchising programme. We would be highly receptive to a close working relationship with the System Operator on these issues, as well as on other issues in which we have a significant locus, such as long term capacity planning. The regulatory structure for the System Operator should enable and support this.

7. Working Paper 2 (page 14) identifies that changes to franchise contracts may be required to ensure that train operators have appropriate incentives to co-operate with a System Operator. We would welcome a more detailed dialogue with the ORR on the specific changes that might be beneficial.

### **Costs, capacity and performance**

8. Working Paper 2 further proposes that changes to Network Rail's incentives might be needed to provide the System Operator with a strong incentive to find and sell additional capacity on the network. We would agree that it is important that those involved in managing the railway are able to make robust and informed decisions regarding any necessary trade-offs between costs, capacity and performance and that the incentive regime should reflect this. We would note that this issue is broader than just the System Operator and we regard it as critical that the ORR explores the issues of incentives for optimising the use of capacity across the regulatory framework, including through broader work on charges and incentives.
9. We are, however, concerned that the wording of Working Paper 2, and specifically paragraph 3.9.C could be inferred to imply that the balance should generally lie in favour of releasing additional capacity, whatever the consequences. We are conscious that users of the railway often place a very high value on reliability. We would hope that any System Operator making decisions in this sphere would be required to engage closely with the affected service providers to understand the needs of customers and allow those needs to inform decision making.
10. We support the principle of setting a separate revenue requirement for the System Operator if it is determined that this is the best way to incentivise NR to be effective and efficient. We also agree that there are likely to be practical difficulties associated with achieving this. It is likely to be challenging to set clear, accountable outputs for the System Operator against which revenue can be allocated given the interrelationship with the outputs that the routes are going to be expected to deliver. It will also be challenging to derive a meaningful RAB, and we agree that the likely size of the System Operator RAB may not justify the costs involved in establishing it.

### **Performance incentives**

11. Working Paper 2 identifies that operators and NR do not always share common goals or incentives in respect of performance. We recognise and share this concern. As set out in our response to the ORR's Initial Consultation on PR18, our intention is to move towards the use of trajectories, rather than formal targets, to specify performance outputs in the HLOS. We would expect that this would make it easier to align the incentives for NR's routes with the incentives for franchised operators.
12. We are also keen to see impacts on passengers and freight users minimised through the intelligent delivery of system operator functions, including by understanding and considering impacts at a much earlier stage when planning renewals; and by ensuring decisions made during service recovery are based on

an understanding of passenger journeys and user needs, and minimise the disruption that is experienced.

### **Timetable recasts**

13. Working Paper 2 further identifies that the current approach to timetabling tends to be incremental in nature and that there are opportunities to be achieved from more fundamental timetable recasts on occasion, although these can be difficult to implement. This appears to be a fruitful area for further investigation, and aligns with our key aim that systems operation must be able to support the demands for safe and reliable capacity increases.
14. We are particularly aware that, while not strictly an issue for CP6, the opening of HS2 will require significant changes to timetables not just on the new line, but also on many parts of the classic network. Having an approach to timetabling with a mature ability to deliver ground-up timetable recasts will be highly beneficial for supporting preparations to begin HS2 services.
15. Alongside this, however, the System Operator will require a tight focus on short-term timetabling issues. This is particularly critical if it is to support the Government's programme of investment in the railway, as robust tactical decisions on timetabling will be essential for the management of disruption while projects are in the process of being delivered.

### **Regulation of the System Operator**

16. We are clear that a System Operator requires independent regulation. While we accept that there remains much work to be done to develop the details of the proposal, the high level approach to regulating a System Operator outlined in Working Paper 3 appears to us to be sensible. We are clear that the regulation of the System Operator must be properly aligned with other aspects of the regulatory regime. This should ensure that the System Operator is properly empowered to bring pressure to bear upon both NR's central functions and its devolved routes.

### **Approach to Regulation**

17. We agree with the proposal for more focussed regulation of the System Operator set out in Working Paper 3. We can see significant advantages to the prospect of a discrete settlement for the System Operator and believe that this model has the potential to best support an ambitious programme of route devolution and to bring a particular focus to the performance of the System Operator.
18. We further agree that it would be useful for the System Operator to be held accountable for a separate set of outputs. This would further sharpen the focus on its performance. It is vital that the process of setting the System Operator's outputs involves extensive engagement with customers. In terms of incentive mechanisms, we agree that management and reputational incentives are more likely to be fruitful than financial incentives at this time. It is vital that these mechanism are supported by an effective monitoring and enforcement framework.

19. We particularly agree with the statement in paragraph 2.10 of Working Paper 3 regarding the need for a shift towards more risk-based regulation.

*Yun (ms)*

*Richard Carter*

**Richard Carter**

## Freight Transport Association – working paper 2

Further to Working Paper 2 [http://orr.gov.uk/\\_data/assets/pdf\\_file/0019/21961/pr18-working-paper-2-potential-issues-and-opportunities-in-system-operation.pdf](http://orr.gov.uk/_data/assets/pdf_file/0019/21961/pr18-working-paper-2-potential-issues-and-opportunities-in-system-operation.pdf) our comments are as follows:

### **Working paper 2 Question**

To what extent do you agree that the issues and opportunities we have identified with the way system operation is currently undertaken are the most material ones?

**A**

It is correctly stated that this review takes place in a changed context of reclassification of Network Rail's ownership and thereby increased Government involvement. Also a context post the Hendy Review of current Control Period enhancements delivery and the Bowe Review of delivery of future enhancements, as well as the context of political devolution of funding and the route level devolution of Network Rail and the prospect of deeper alliancing as in the ScotRail Alliance model.

Therefore it is particularly important from a freight perspective that the Network Rail Freight and National (GB) Operators team is developed alongside the System Operator role.

### **Working paper 2 Question**

Are there other issues that you consider material that we haven't mentioned?

**B**

From a freight perspective what is particularly important is that enhancement schemes are delivered in a co-ordinated manner that deliver end-to-end journey time, capability, and capacity improvements over end-to-end corridors for the particular freight flows concerned.

Also, that the needs of freight as a cross (Network Rail) route boundary operation are catered for at a practical level regarding timetabling, disruptive engineering network access, diversionary routing capability and capacity. In this regard the development of the System Operator role is key. It is also important that passenger train franchising (particularly in a context of devolution of funding) recognises the timetabling and pathing needs of freight to offer customer service.

Further it is important to reiterate that unlike passenger which while privately delivered is to a state franchise specification, freight is (apart from some modal shift grant) a private sector activity. Rail freight runs in response to customer demand, passenger in response to a state / funder specification of service. Demand for freight can and does change, dramatically so at the moment with the premature ending of coal traffic. This means that the axis of freight operation around container traffic and aggregates is likely to move geographically southwards and on to the more congested parts of the network. This brings on to a further set of related points: cost, access, velocity. For rail freight to win more market share (and even to retain existing business) in the markets seen as potential for growth (deep sea and domestic retail intermodal) costs to the end user must come down, access for new traffic to the network must become easier, and end-to-end journey times must improve. Road freight is constantly improving its price (and environmental) efficiency. Rail must do likewise. It is therefore vital that efficiencies that affect price inputs such as network enhancements and OMR and FOC efficiency see their way to the customer as cost reductions. Cost increases such as happened with freight Track Access Charges in the last Periodic Review must not be repeated as they seriously damaged customer confidence in freight. It must never be assumed that a particular traffic is "captive" to rail: if costs or service levels shift against rail then customers will seek innovative means of using other transport modes that offer cost savings.

**Working paper 2 Question** Does your experience, particularly of the system operation functions that Network Rail is currently responsible for, reflect our emerging views around issues / opportunities.

**C** Freight operates across routes (most freight flows cross a route boundary). While the ideas presented here of route based output enhancements and benchmarking are welcome, for freight a corridor based approach around end-to-end freight flows is crucial. What is certainly unwelcome for freight due to its added administrative complexity is proposals for route-based charging. For Britain-wide operators this will certainly add cost and complexity to rail freight, where it must be remembered rail freight is competing against road freight that does not have such level of network access financial regulatory complexity.

**Working paper 2 Question** Are there any examples you could provide of how Network Rail undertakes these activities that would either support or contradict our emerging views?

**D** Clearly a greater route-based approach is the direction of travel with devolution of funding regionally within England (funding already devolved to Scottish Ministers for the Scottish network). Against this background it is important that a strong System Operator role is developed to protect and advance the needs of freight. This is vital in respect of planned and emergency diversionary routing the former as per SFN schemes and the latter as per Lamington type situations.

Please feel free to contact me if you wish elaboration on any points.

The Freight Transport Association represents the transport interests of companies moving goods by rail, road, sea and air. Its members consign over 90 per cent of the freight moved by rail and over 70 per cent of sea and air freight. They also operate over 220,000 goods vehicles on road – almost half the UK fleet. The main rail freight operating companies belong to FTA as do the major global logistics service providers operating in the European and UK market.

FTA's Rail Freight Council includes all parties to the rail freight supply chain, including rail freight operating companies, Network Rail, wagon builders, logistics service providers and bulk, intermodal and retail shipper customers.

Regards,

Chris MacRae

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**Chris MacRae FCILT**  
**Head of Policy – Rail Freight and Scotland**  
**Freight Transport Association**

## Freight Transport Association – working paper 3

Further to Working Paper 3 [http://orr.gov.uk/\\_data/assets/pdf\\_file/0020/21962/pr18-working-paper-3-initial-views-on-the-regulatory-framework-for-network-rail-system-operator.pdf](http://orr.gov.uk/_data/assets/pdf_file/0020/21962/pr18-working-paper-3-initial-views-on-the-regulatory-framework-for-network-rail-system-operator.pdf) our comments are as follows:

**Working paper 3, Question A** To what extent do you agree with our understanding of how Network Rail fulfils its system operator responsibilities at the national level (by the system operator) and the routes?

Yes, this seems broadly correct.

**Working paper 3, Question B** What are your views on having a more focused approach to the system operator, possibly in the form of a discrete settlement that is part of an overall determination?

This review takes place in a changed context of reclassification of Network Rail's ownership and thereby increased Government involvement. Also a context post the Hendy Review of current Control Period enhancements delivery and the Bowe Review of delivery of future enhancements, as well as the context of political devolution of funding and the route level devolution of Network Rail and the prospect of deeper alliancing as in the ScotRail Alliance model.

Therefore it is particularly important from a freight perspective that the Network Rail Freight and National (GB) Operators team is developed alongside the System Operator role.

We welcome the approach to system operation. It is vital that such approach generates improvement for freight as a cross route operation.

Clearly a greater route-based approach is the direction of travel with devolution of funding regionally within England (funding already devolved to Scottish Ministers for the Scottish network). Against this background it is important that a strong System Operator role is developed to protect and advance the needs of freight.

**Working paper 3, Question C** What are your views regarding our initial ideas relating to the form of Network Rail's system operator settlement? Specifically, what are your views regarding our proposed approach to: i) the system operator's outputs framework; ii) the system operator's revenue requirement; iii) the system operator's incentives; and iv) the monitoring and enforcement framework?

It is vital that the needs of freight as a cross (Network Rail) route boundary operation are catered for at a practical level regarding timetabling, disruptive engineering network access, diversionary routing capability and capacity. In this regard the development of the System Operator role is key. It is also important that passenger train franchising (particularly in a context of devolution of funding) recognises the timetabling and pathing needs of freight to offer customer service.

Further it is important to reiterate that unlike passenger which while privately delivered is to a state franchise specification, freight is (apart from some modal shift grant) a private sector activity. Rail freight runs in response to customer demand, passenger in response to a state / funder specification of service. Demand for freight can and does change, dramatically so at the moment with the premature ending of coal traffic. This means that the axis of freight operation around container traffic and aggregates is likely to move geographically southwards and on to the more congested parts of the network.

This brings on to a further set of related points: cost, access, velocity. For rail freight to win more market share (and even to retain existing business) in the markets seen as potential for growth (deep sea and domestic retail intermodal) costs to the end user must come down, access for new traffic to the network must become easier, and end-to-end journey times must improve. Road freight is constantly improving its price (and environmental) efficiency. Rail must do likewise. It is therefore vital that efficiencies that affect price inputs such as network enhancements and OMR and FOC efficiency see their way to the customer as cost reductions. Cost increases such as happened with freight Track Access Charges in the last Periodic Review must not be repeated as they seriously damaged customer confidence in freight. It must never be assumed that a particular traffic is “captive” to rail: if costs or service levels shift against rail then customers will seek innovative means of using other transport modes that offer cost savings.

Freight operates across routes (most freight flows cross a route boundary). While the ideas presented of route based output enhancements and benchmarking are welcome, for freight a corridor based approach around end-to-end freight flows is crucial. What is certainly unwelcome for freight due to its added administrative complexity is proposals for route-based charging. For Britain-wide operators this will certainly add cost and complexity to rail freight, where it must be remembered rail freight is competing against road freight that does not have such level of network access financial regulatory complexity.

Please feel free to contact me if you wish elaboration on any points.

The Freight Transport Association represents the transport interests of companies moving goods by rail, road, sea and air. Its members consign over 90 per cent of the freight moved by rail and over 70 per cent of sea and air freight. They also operate over 220,000 goods vehicles on road – almost half the UK fleet. The main rail freight operating companies belong to FTA as do the major global logistics service providers operating in the European and UK market.

FTA’s Rail Freight Council includes all parties to the rail freight supply chain, including rail freight operating companies, Network Rail, wagon builders, logistics service providers and bulk, intermodal and retail shipper customers.

Regards,

Chris MacRae

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**Head of Policy – Rail Freight and Scotland**  
**Freight Transport Association**



Response to ORR consultation

Working papers 2 and 3 - system operation

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Freightliner Group

August 2016

## **System Operator working papers 2 and 3 - Freightliner response**

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### **Introduction**

This is the response of Freightliner Group Limited encompassing its subsidiaries Freightliner Limited and Freightliner Heavy Haul Limited to the Office of Rail and Road's (ORR) Periodic Review 18 (PR18) working papers 2 and 3 on system operation

Freightliner has been participating with the RDG in the various workshops to discuss this consultation and remains keen to continue to engage throughout the process.

### **Executive summary**

The Shaw review on the shape and structure of Network Rail has turned the spotlight firmly on Network Rail's national system operator function. The national system operator is one of the most important functions within Network Rail - it is the glue that enables devolution and the safety net that balances the risk of devolving more power to the routes, for national operators.

For operators, the relationship with the system operator is one of the most important interfaces with Network Rail. As we enter the PR18 process and attention is turned onto the regulatory framework that supports the national system operator now is the opportunity to shape its future role and ensure that it is incentivised to support the industry.

The productivity gains for UK plc and the congestion and wider environmental benefits generated by rail freight are worth over £1.6bn per annum to the UK economy<sup>1</sup>. For rail freight to grow, and for these benefits that fall off the railway balance sheet to increase, it is essential that the functions that fall under system operation support the efficient delivery of the network. We recognise that Network Rail is working to finalise the structure of their organisation and define the functions of the national system operator.

### **High level objectives of system operation**

In its Working Papers the ORR identifies six high level objectives of system operation which Freightliner firmly supports. Our response describes our current experience and identifies opportunities to improve outcomes and deliver these high level objectives.

### **Capacity allocation, identification and optimisation**

A central theme in last year's ORR consultation on system operation was capacity allocation and Freightliner strongly supports the need for a balancing metric to ensure that the right trade-offs are made between cost, performance and capacity. Freightliner's experience suggests that the system operator is not always incentivised to identify and allocate capacity to support new train services.

It is important to ensure that the system operator is measured on the outputs that are important for operators. Our response considers opportunities to measure how capacity is allocated and identified and how optimal the timetable is. Developing a catalogue of paths would allow operators to quickly respond to customer demand and provides more certainty over access to the network. This is an important enabler for growth.

There is also a need to ensure the timetable is optimised so that capacity is allocated in the most efficient manner. This will provide information to government and ORR on the implications of

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<sup>1</sup> Freight Britain, Rail Delivery Group, 2015

different service options and allow more informed decisions to be made on the pattern of services that delivers the highest socio-economic value.

The freight operators have worked closely with Network Rail over the last three years to relinquish underutilised paths in order to create ‘white space’ on the network and promote the development of strategic capacity. This creates an opportunity to look at the timetable holistically and ensure that the remaining capacity is planned efficiently.

Such an exercise requires a rolling programme of root and branch timetable analyses which, although a significant task, will help ensure that available funding is targeted most appropriately. It is anticipated that such an exercise would increase the efficiency of train paths with an improved average velocity and lead to the identification of either new train paths or strategic capacity to support growth.

### **Creating a centre of excellence**

These good outcomes are reliant on creating a centre of excellence which makes the national system operator a more exciting, rewarding and fulfilling place to work. Our response considers ways to promote the longer-term retention of talent and discusses the need to incentivise the collaborative partnership required between operators and Capacity Planning to find creative solutions that enable services to run. A regulated measure of customer satisfaction will help measure such collaboration.

### **Funding the national system operator**

Although the relationship with the system operator is one of the most important interfaces that operators have with Network Rail, we are opposed to an additional charge to raise some of the system operator’s revenue directly from operators. We discuss that Network Rail’s position as a monopoly supplier means that such a charge will not incentivise any change in behaviour and will become a pass-through. This will likely further increase the complexity of the charging regime and potentially make rail freight less competitive against road. Furthermore as the vast majority of our train bids are to help Network Rail take efficient possessions on the network it is important that the bid / offer process is collaborative and therefore the concept of levying a charge on operators would not be appropriate or constructive.

### **Regulatory framework**

Our response considers how the regulatory framework could support the high level objectives of system operation. In determining the regulated measures it is important to consider the broader outcomes and avoid too many detailed input metrics. We support the need for a regulatory measure that incentivises capacity allocation and enables an effective trade-off between capacity, performance and cost. Noting that TRL will report back with options in the autumn, we consider a number of other metrics that could be considered including the identification of strategic capacity, the completion of root and branch timetable optimisation and average freight train speed.

The response does not foresee the need to have a regulatory target to monitor the accuracy of Train Planning Rules (TPRs). There are already collaborative workstreams between operators and Network Rail that are reviewing the accuracy of these planning rules, with a view to consider whether changes to the planning values could improve outcomes - noting that changes to TPRs can often be detrimental to performance. TPRs are very much an input metric and there is sufficient scope to introduce output metrics that are influenced by the accuracy of TPRs.

### **Possession planning process**

Although Freightliner's experience of the national system operator's role in coordinating possession planning and ensuring national deconfliction is largely positive, there are opportunities to make the regulatory target more meaningful. Our response discusses options to improve the current Possession Disruption Index (PDI), which is not widely understood.

Freightliner welcomes the focus on the national system operator and firmly supports the ORR's high-level outcomes. This is an important area for Freightliner as the interface with the system operator is one of the most important relationships that operators have with Network Rail and we welcome the ORR's considerations for a regulatory framework to improve outcomes.

## **Response to ORR Working Papers**

### **1.0 National system operator**

The national system operator is one of the most important functions of Network Rail and it is welcome that as we enter the PR18 process attention is turned onto the regulatory framework that incentivises the system operator to better support the industry. As Network Rail devolves more functions to the Routes this drives the requirement for the central coordination of activities. Maintaining a distinct network-wide system operator function within Network Rail provides the glue that facilitates devolution - ensuring coordination and consistency between the Routes.

Importantly for freight operators the national system operator also provides a 'safety net'. The Shaw review on the future shape and financing of Network Rail noted the requirement expressed by national operators to balance devolution, and that freight operators in particular had been particularly vocal about the importance of the national system operator providing this balance. Indeed the ORR notes that increasing devolution to the Routes "increases the need to ensure coordination and safeguard users against discrimination in the delivery of these functions".

It is for Network Rail to define and design its structure and ensure that it supports the requirements of national operators and Freightliner understands that this task is underway. Once there is more clarity on the organisational structure, the ORR needs to understand how this structure impacts on the funding requirement and regulation of the national system operator.

Rail freight generates significant economic benefits for UK plc. The productivity gains for British businesses and the congestion and wider environmental benefits are worth over £1.6bn per annum to the UK economy. For rail freight to grow and for these benefits that fall off the railway balance sheet to increase, it is essential that the functions that fall under system operation support the efficient delivery of the network.

### **1.1 *Scope of national system operator***

Freight and national passenger operators have done a lot of work to map out the functions that must be maintained within the national system operator to provide a sufficient safety net. The outputs of a workshop run by the RDG to detail those functions, and the risks to operators if they were devolved, are included in Appendix A.

Notwithstanding the need for Network Rail to formally detail the functions of the system operator and whether those functions reside centrally or within the devolved routes, more details are awaited on to the role and the link between the Technical Authority and the system operator. This response considers the system operator activities assigned to Network Rail as described in the ORR's consultation last year.

Network Rail's national system operator activities can largely be grouped according to their time-horizons:

**Short-term activities:**

- Short-term capacity requests outside of the annual timetabling process. This includes VSTP requests.
- Managing the day-to-day operation of the network which includes operating signalling systems.
- Managing performance and perturbation across the network.

**Medium-term activities:**

- Producing annual timetables.
- Managing the inputs to timetable production, including the Train Planning Rules.
- Possession planning - agreeing engineering access on the network.
- Access planning and sale of access rights.

**Long-term activities:**

- Planning for future growth - developing proposals for changes to the rail network to accommodate growth.

Although there are other organisations that undertake different system operation activities our response to this consultation focusses on Network Rail in their capacity as national system operator and identifies the opportunities and issues to improve outcomes and the regulatory framework that could support this.

## **2.0 Desirable outcomes of system operation**

In its Working Papers the ORR identifies six high level objectives of system operation which Freightliner firmly supports. Based on our experience we describe below how Network Rail undertakes these activities and identify opportunities to improve outcome which will help deliver the high level objectives.

### **2.1 *Creating a centre of excellence***

With the spotlight turned on the national system operator there exists an opportunity to redefine the role of the system operator and reiterate the importance of the function to the wider industry. The high levels of staff turnover suggest many Capacity Planning roles are viewed as entry-level and a stepping-stone to other parts of Network Rail. The timetable is Network Rail's core product and as the network gets busier and funding for enhancements gets more constrained the requirement to have a team of highly-competent, analytic and creative planners becomes increasingly important.

A combination of fiscal incentives that recognise and encourage the development of skills and capabilities, a longer-term career track for planners and the identification and introduction of new systems could assist in making the national system operator a more exciting and rewarding place to work and help retain talent. Network Rail already has a programme to support the staff retention challenge and this is a case for further development.

Capacity planners have the opportunity to add real value to the industry - working with operators to further their commercial aspirations, squeezing the most capacity out of existing infrastructure and helping ensure that infrastructure interventions deliver the best value for money. However,

the role can also be laborious, and therefore opportunities could be explored to improve systems to better automate processes, particularly some of the data-entry tasks, to allow the planners to concentrate on the value-add activities.

Developing a better balanced regulatory framework may also assist in creating a centre of excellence. The current 98% accuracy target is the principle metric that considers how well the freight capacity planners are performing. Without a balancing metric that measures quality, delivering a product that customers want, or how well capacity has been optimised, there is little to incentivise the collaborative partnership required between operators and Capacity Planning to find creative solutions that enable services to run. This is where real value can be added, however a disproportionately high accuracy target can create a fear of causing delay, which is not conducive to delivering the best outcomes for the industry.

‘Helping train operators to deliver’ is recognised by the ORR as being a high level objective of system operation. This is absolutely the case, evidenced by the fact we recognise the relationship with the national system operator as being one of our key interfaces with Network Rail enabling us to deliver for our customers. Creating a centre of excellence, with a strong partnership between the train and freight operators and the national system operator, requires a change of culture but would undoubtedly be a step towards better helping train operators to deliver.

Should the national system operator receive its own settlement it is important that there exists enough scope to be able to make investments in people and systems, recognising that optimising the timetable and getting more out of the existing infrastructure is substantially cheaper than investments in new infrastructure (even if this is only a solution on some routes). This is an area where instead of focussing on reducing investment to the lowest absolute levels there could be scope to increase funding to deliver better outcomes and overall value.

## **2.2 *Incentivising the identification and allocation of capacity***

A central theme in last year’s ORR consultation on system operation was capacity allocation and it was highlighted that while cost and performance indicators are currently measured there is no metric which considers how optimally capacity has been allocated. Freightliner strongly agreed with this and believes that understanding capacity utilisation is necessary to ensure the right trade-offs are made between cost, performance and capacity. However we do caution against an absolute measure of capacity use as this wholly depends on the combination of different types of train speeds and stopping services being used on a route.

Freightliner’s experience suggests that the system operator is not always incentivised to identify and allocate capacity to support new train services. Key indicators that the system operator currently uses to track how well Capacity Planning are functioning focus on the amount of delays in schedules and adherence to the Network Code timescales. While undoubtedly important, neither indicator records the quality of outputs and specifically whether an operator has been able to secure a path at the right times to serve its customers.

The overwhelming focus on performance does not promote a collaborative partnership between operators and the national system operator. The risk of causing delay and the push to adhere to Network Code timescales can incentivise the rejection of train bids at the earliest opportunity. Network Rail and freight operators already agree in some areas not to strictly apply the Network Code timescales. This indicates that changes to the Network Code may be required to get a better balance between timescales and offering a product that customers want.

Changes to the regulatory framework in CP6 provide an opportunity to recalibrate the focus and provide balancing metrics that allow a trade-off between capacity and performance to be made.

### **2.3 Identification of strategic capacity**

The rail freight operators have been working closely with Network Rail over the last two years to drive improvements in the management of strategic capacity. Noting that freight services operate in reaction to demand the identification of strategic paths, or pre-defined paths in the working timetable linked to growth forecasts, enable FOCs to respond quickly to customer demand and provide more certainty over access to the network. Even for freight operators to keep overall business levels static new business has to be constantly developed as the requirements of customers change and businesses close, so identifying capacity is fundamental to freight operators' business model.

There are many benefits to identifying such capacity:

- it gives confidence to customers and operators that capacity is available for growth and will support private sector investment in rolling stock, terminals etc.,
- it enables the timetable to be optimised at the planning stage,
- it ensures that the planned benefits from investments are realised,
- it creates a better base for future long term planning of infrastructure by enabling better understanding of what spare capacity is available for future services,
- where paths are identified they can be used for short term and very short planning - saving time for both Network Rail and planners as the paths are already validated against the rest of the performance,
- the spare paths can be used as a performance buffer late running trains can be slotted into them - allowing the use of a validated path, and
- if operators are confident that spare capacity exists on key corridors they will be more open to giving up under-utilised paths in their own portfolio of access rights. This will help to create a virtuous circle of better utilised capacity

There is still a significant amount of work required to create a robust strategic capacity process that offers a catalogue of paths that operators can utilise, however the value in doing this cannot be overstated. If constructed carefully, a balancing metric that considers how effectively the national system operator is identifying and allocating capacity, could be an ideal opportunity to incentivise Network Rail to improve the management of strategic capacity. This aligns closely with the ORR's view that an outcome of good system operation is 'helping train operators to deliver'.

### **2.4 Improving efficiency and optimising capacity**

Freightliner believes that measuring capacity utilisation is a key stepping stone towards promoting the optimisation of the timetable. Freightliner strongly supports the ORR's assertion that an outcome of good system operation would be 'getting more out of the network'. That means ensuring that the timetable is optimised and capacity is allocated in the most efficient manner.

The freight operators have worked closely with Network Rail over the last three years to relinquish underutilised paths in order to create 'white space' on the network and promote the development of strategic capacity. This creates an opportunity to look at the timetable holistically and ensure that the remaining capacity is planned efficiently and the timetable as a whole is optimised.

Currently train services are largely rolled over from one timetable to the next, with minor tweaks requested by operators, which tend to erode the holistic optimisation of the timetable. It takes a lot of time and resources to construct timetables from scratch and a holistic, coordinated and network-wide approach to timetabling is required to ensure that the timetable is optimised. Each operator has an interest in optimising their resources and so bid to do this. Many franchised TOCs have very detailed train service specifications they must adhere to. However this can lead to inefficient use of the network. We would like to see the system operator reviewing the whole

timetable and offering choices to government and ORR on how capacity could be better utilised, if this was off-set against other compromises.

The creation of a centre of excellence which invests in skills and systems is likely to be a key enabler for this. While undoubtedly there is a significant amount of work involved to optimise the timetable and a culture change required to do so, the benefits are likely to be tremendous.

## **2.5 *Measuring capacity***

As noted in our response to the ORR's consultation on system operation there are a number of challenges when it comes to measuring capacity and care must be exercised when considering capacity utilisation metrics in order to avoid unintended consequences. However there are a number of soft indicators that we would expect to see from a timetable optimisation exercise, including more efficient train paths with an improved average velocity (unnecessary pathing time or looping time should be removed from schedules) and the identification of either new train paths or strategic capacity to support growth. These were outcomes of the root and branch optimisation of the West Coast Main Line timetable following its upgrade in 2008.

## **2.6 *The right services using the network***

The national system operator has an important role in ensuring that the right services are using the network. We would expect the system operator to model different service options and work alongside the regulator to provide information to government and the ORR on the economic value socio-economic value of different options in relation to identifying and allocating capacity. This could support decisions on access applications.

In Freightliner's response to last year's consultation on system operation we discussed how Network Rail's Congested Infrastructure Report highlighted how inefficient timetabling on the Midland Main Line had undermined freight capacity. Of the 28 "standard freight paths in the Up direction" through Bedford each day most had been compromised. The report highlighted that seven of the standard freight paths between 0600 and 2300 have been compromised by passenger services. Where long distance freight paths have been rendered unusable in this manner, there is a question over whether the correct decisions have been made by the system operator in terms of the right combination of services using the network.

It is important that the system operator considers the timetable holistically and fully understands the implications of different service options in order to ensure that on a capacity constrained network, the pattern of services that offers the highest socio-economic value is delivered.

## **2.7 *Choosing the right investment***

Financial constraints facing funders drive the need to understand how optimally capacity is utilised in order to ensure that the available funding is targeted most appropriately. Noting that timetable solutions are likely to be significantly cheaper than physical enhancements it is important to give assurance to funders that these options have been explored.

Where infrastructure enhancements are proposed there is a key role for the national system operator in supporting the identification of the most appropriate intervention. There is an important relationship between Network Rail's Infrastructure Projects unit and the national system operator. Where different infrastructure solutions are proposed a clear understanding of the relative outputs and performance impact of different options will help to ensure that the right investment is made.

## **2.8 *Balancing performance and managing timetable inputs***



Performance metrics are regularly reported on and while a balanced scorecard which allows a trade-off against capacity to be made is a priority, it remains important that the national system operator continues to strive to produce a high-performing, defect free timetable.

In its Working Paper the ORR correctly note that getting the data inputs right is an essential building block in the construction of a high-performing timetable. An understanding of the operational performance of rolling stock and detailed knowledge of the capability of the network are important inputs into the Timetable Planning Rules. The Working Paper correctly notes that deficiencies with these rules can impinge on operational performance.

There are already a number of cross-industry workstreams (including TRIP) that are reviewing the accuracy of these planning rules with a view to consider whether changes to the planning values could improve outcomes. It is important to note that changes to planning values can work both ways - either reducing capacity on the network by increasing them or releasing capacity by optimising them.

Freightliner is a strong supporter of this workstream and believes that it is important to have accurate information about how the network performs. However that doesn't always mean that deficiencies in the rules should be fixed as such decisions may require a trade-off between capacity and performance to be made.

The analysis of the data to inform the rules, which underpins the timetable production process, is rightly identified by the ORR as a medium-term activity of the national system operator. While clearly an important building block the system operator should not require further incentive to improve the accuracy of the rules. Errors with the rules will likely manifest themselves in relation to the performance metrics which are being measured. Conversely with a suitable balancing metric the national system operator could be better incentivised to identify new capacity which should flow through to the optimisation of TPRs where they could release capacity.

Freightliner already works closely with Network Rail in this area, supplying OTMR and other pieces of observed data, and do not require any further incentive to engage collaboratively. Using observed data has to be treated with care because it risks baking into sectional running times with both delays and restrictive signals, so should only be used alongside modelling work. Over the medium term there is a desire for Network Rail to develop sophisticated modelling tools that can accurately replicate performance on the network.

## **2.9 *Continued safe operation***

The national system operator has a key part to play in ensuring the continued safe operation of the network. The system operator has a responsibility to provide an operationally robust plan and timetable that the routes can deliver. This also means agreeing a common set of technical and safety standards that are consistent across the routes.

## **2.10 *Provision of clear information***

Freightliner would strongly welcome improved systems to publish operational data and capability of the rail network. Data is currently available, but it is not easy to find or to use and this domain tends to be left to a small pool of experts. A mapping system that showed data such as maximum train weights and lengths, gradients and gauging information would be most welcome. Such a system could also be used to make available Strategic Capacity information easy to understand.

## **2.11 *Responsibility for gauge clearance***

The management of the gauge clearance of the rail network is a complex and specialist area. It is particularly important for operators when they are procuring new vehicles or operating vehicles on

new routes. It is currently unclear to users where the responsibility for managing the processes around gauge clearance lies. It would be helpful if the System Operator could be the clear lead in this area and provide specialist support and a one stop shop to both the Network Rail routes and operators

### **3.0 National system operator relationships**

The relationship with the system operator is one of the most important interfaces that operators have with Network Rail. Securing consistent and reliable access to the network is crucial to support the aspirations of all operators. The relationship is not just with Capacity Planning but with all system operator activities, including engineering access planning and when there are incidents restricting access to the network, the teams responsible for managing the perturbation across the network.

The devolved routes are also a customer of the system operator. The routes require a robust plan and timetable from the system operator that they can deliver and are themselves responsible for delivering a number of the system operator activities. The routes are responsible for the operation of the system which includes on the day signalling and performance management. The routes also allocate capacity at very short notice through the VSTP process. As such it is important that any balancing metric that incentivises the allocation and identification of capacity is consistent at route level and measures and incentivises the VSTP process.

The national system operator has an important interface with government and other funders. Given the financial constraints facing funders it is essential that the outputs of different infrastructure interventions are clear. Government need to be clear what train service specification can be accommodated from different infrastructure options. The national system operator has a responsibility to model different scenarios with the options communicated to funders via the publications that support the Initial Industry Advice or the routes' Strategic Business Plans.

### **4.0 Paying the system operator costs**

The Working Paper considers options for paying the system operator's costs and raises the possibility of levying a new charge to raise at least some of its revenue directly from operators. It is absolutely right that the national system operator views the train and freight operators as being their key customer and therefore we can understand why the ORR suggests this funding option. However Freightliner is opposed to such a charge. Network Rail's position as a monopoly supplier means that charging will not incentivise any change in behaviour and the charge will become a pass-through.

Their monopoly position means that there is limited scope to influence the system operator commercially - there is little option to withhold payment for poor service as the system operator costs will need to be paid and of course there is no option to use another organisation to perform the system operator activities. There is no direct charge to pay for any other department within Network Rail. Many personnel within the system operator there is likely to be limited knowledge of how the charges and incentive regime works, which could in part explain why the volume incentive has had such little influence.

It is also important to note that the majority of the bids that we make to Network Rail are to allow Network Rail to efficiently take possessions on the network and are based on the obligations laid down in the Network Code. In some weeks over 80% of the trains Freightliner Limited bids are to retime trains to enable Network Rail to take engineering blocks. These are either trains directly

affected by possessions or consequential retimings of other services. Many trains that are bid into the annual or bi-annual Working Timetable are also bid to accommodate Network Rail engineering blocks. This should be a collaborative process and the concept of levying a charge on operators would not be appropriate or constructive.

There is of course also an affordability consideration. Given that road, rail freight’s primary competitor does not bear such a charge to access the road network, there is a significant risk that such a charge would undermine the competitiveness of rail freight. It is also unclear whether such a charge would be considered a direct or variable charge and it is inevitable that such a charge would further increase the complexity of the charging structure.

## 5.0 Regulatory framework

Freightliner has considerable experience working with the national system operator and we have discussed above the opportunities and challenges that exist to improve outcomes. This section considers how the regulatory framework could support the high level objectives of system operation.

**Table 1: Suggestions for regulatory framework with possible metrics**

Regulated outputs	Possible metrics
Capacity allocation and identification	<ul style="list-style-type: none"> <li>• Train slots offered to satisfy customer requirements</li> <li>• Measurement against an agreed programme of root and branch timetable analysis, to include information to government and ORR on socio-economic value on different train service choices</li> <li>• Programme of strategic capacity development</li> </ul>
Timetable optimisation	<ul style="list-style-type: none"> <li>• Average freight train speed (10% increase?)</li> <li>• Measurement against an agreed programme of root and branch timetable analysis (as above)</li> </ul>
Customer satisfaction	<ul style="list-style-type: none"> <li>• Helping operators to deliver - measured by customer survey</li> </ul>
Performance	<ul style="list-style-type: none"> <li>• Delay minutes caused by planning errors per 100 miles</li> </ul>
Adherence to milestones	<ul style="list-style-type: none"> <li>• Measurement against an agreed LTPP programme</li> <li>• Timetable production</li> <li>• Engineering Access planning</li> </ul>

### 5.1 Capacity allocation and optimisation

Freightliner strongly supports the provision of a balancing incentive for Network Rail in order to consider capacity utilisation so that an effective trade-off between capacity, performance and cost can be made. However as we detailed in our response to the ORR consultation on system operation, care needs to be taken when measuring capacity in order to avoid unintended consequences. A formulaic approach to determining capacity utilisation based on theoretical total capacity is not recommended and could be detrimental to freight services which do not have the same characteristics as passenger services. In our view it is not possible to measure capacity formulaically and trying to do so could lead to incorrect and perverse outcomes.

We understand that the ORR has commissioned TRL to explore further measures to capture the system operator’s role in identifying and allocating train paths and importantly consider a means of capturing their socio-economic value. Freightliner regards this to be an important area of focus and believes that this will allow better decisions to be made about the services using the network.

Providing information to government and the ORR to support choices is an important role for the national system operator.

Freightliner considers that a 'task completed' measure could be considered as way of understanding how the system operator is progressing. For example following the West Coast Main Line upgrade, the timetable along this key line was optimised in 2008. This root and branch optimisation increased the efficiency of the timetable and increased the number of train paths available. Similar root and branch analyses of other lines could yield similar results and a measurement which tracks how such a rolling programme of timetable optimisation is progressing could be a helpful indicator.

As freight services operate in response to customer demand the identification of 'white space' in the timetable is of particular importance. If the timetable is planned holistically and is optimised to ensure that capacity is allocated in the most efficient manner we would expect a key output to be the identification of strategic capacity that supports growth on key freight routes. This could be a measurable output.

There are many instances where Freightliner's train paths are sub-optimal and have inefficiencies timed into them. In our response to the ORR's consultation on system operation we highlighted one of our train services - 4M13. Not an isolated example, this service has a substantial amount of unnecessary pathing time in its schedule which both reduces its average speed and degrades capacity over that line. (The train graph for this service is shown in Appendix B).

Therefore we would expect an exercise to optimise the timetable to yield higher average speeds, than the current 25 mph average. A 10% improvement in average speed seems like a reasonable target and would provide a measurable output.

## **5.2 Promoting collaboration**

A balancing metric that measures quality, delivering a product that customers want, or how well capacity has been optimised, is an important stepping-stone to incentivise a collaborative partnership between operators and Capacity Planning. In section 2.1 we highlighted the need to make the national system operator a more exciting, rewarding and fulfilling place to work in order to achieve the high-level outcomes of system operation.

The regulatory framework could help incentivise the collaborative partnership required between operators and Capacity Planning to find creative solutions that enable services to run. A regulated measure of customer satisfaction could be explored as a means of measuring such collaboration.

## **5.3 Measure of punctuality and reliability**

It should be noted that delays caused by planning errors represent a very small proportion of overall Network Rail caused delay. In Period 4 of this year there was on average 0.8 minutes of delay caused across the network by each freight train as a result of a planning error<sup>2</sup>. The most significant causes of Network Rail responsible delays are asset failures and external events, for example weather. These incidents are largely outside the control of the national system operator and therefore it does not seem appropriate that system-wide punctuality and reliability, as proposed in the Working Paper, becomes a system operator target. For that reason, it would not

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<sup>2</sup> FPSG Performance Summary Period 1704, Network Rail, August 2016

be appropriate for the Freight Delivery Metric to become a regulatory target of the system operator.

As the routes are responsible for the operation of the system there is an argument that how incidents are responded to could be considered a system operator activity. It is clear though that this is quite separate from the day-to-day punctuality and reliability of national operators and therefore any metric should be considered accordingly.

#### **5.4 *Quality of the system operator's timetable***

While it would not be appropriate for the overall reliability and performance of national operators to be a measure of system operator performance the quality of their timetable could conceivably be measured. The Working Paper discusses potential metrics that could be used to gauge quality. These include the system operator's success in developing a zero-defect timetable, the accuracy of the TPRs and the delay minutes caused by planning errors.

The metrics identified in the Working Paper suggest that timetable 'quality' is viewed as a proxy for delay minutes. Although delay minutes are one aspect of quality they are far from the only measure. Inaccuracies can also result in too much time in schedules, which are unlikely to result in delay minutes. The offering of a path that the customer wants, how optimal the timetable is, the average speed of freight services and the identification of white-space or strategic paths also provide a measure of quality.

The ORR recognises the need for a balancing metric to ensure that effective trade-offs can be made between performance and capacity and therefore when it comes to 'timetable quality' it is important that delay minutes do not continue to be over-incentivised. We suggest a suitable performance measure would be delay minutes per 100 miles for freight. We do not agree that there should be a measure for the accuracy of TPRs. TPRs are an input into other measures such as effective use of capacity and performance. Some TPRs will be understated and others overstated so they could be hiding other performance issues as well as causing performance delays. A measure would perhaps distort the careful decisions that need to be made when they are set around the balance of performance and capacity. Instead the ORR could measure against a programme to understand the accuracy of the planning rules.

Zero-defect timetables may not be a desirable as they may not lead to the right outcomes. Most importantly there is a need for transparent data including how a TPR is agreed the difference between the technical and planning values in order to ensure that the correct trade-offs between capacity and performance are delivered.

#### **5.5 *Possession planning***

Although Freightliner's experience of the system operator's engineering access planning activity is largely positive there could be scope to make the regulatory target more meaningful. The current Possession Disruption Index (PDI) is not effective as a tool to monitor the impact of possessions on operators, and is consequently not monitored by operators.

Network Rail's IAP work stream could offer a more effective means of monitoring disruption. The IAP programme has agreed a set of proxy values for valuing the impact of possessions on freight operators. These figures, which vary by commodity and by the nature of the disruption, consider the revenue impact on freight operators when possessions restrict access to the network. This is being rolled out across the routes as a tool to enable more informed decisions to be made over the scheduling of possessions.

A possession disruption metric could instead track these figures which would provide a more meaningful measure of the disruption caused to freight operators.

### **5.6 Ensuring regulatory targets influence scorecard**

One of the most important challenges for the national system operator is to ensure that the new regulatory framework translates into a meaningful scorecard for the employees working at the system operator. This could require a change of culture in some areas.

For instance, as discussed in section 2.1, the current freight train planners in Capacity Planning are measured against a 98% accuracy target and how quickly they process bids. The perceived risk of causing delays and the focus on adherence to Network Code timescales does not incentivise actually finding a path for the operator to support the needs of the end customer. In fact the opposite is likely true, with the fear of causing a delay likely to promote the rejection of train bids at the earliest opportunity.

We would expect a system operator balancing metric that considers how well capacity is allocated and identified to change behaviour at a planner level. The development of a metric that considers the train slots offered to satisfy customer requirements could promote a more collaborative partnership between operators and Capacity Planning to find creative solutions that enable services to run. This would be a far more meaningful measure for operators, result in better outcomes and provide the balance to performance which is lacking.

### **6.0 Further discussions**

Freightliner welcomes the focus on the national system operator and firmly supports the ORR's high-level outcomes of system operation. This is an important area for Freightliner as the interface with the system operator is one of the most important relationships that operators have with Network Rail and we welcome the ORR's considerations for a regulatory framework that could improve outcomes.

If you would like any further information or require any clarification on any of the issues identified please do not hesitate to contact us.

Appendix A

**System Operator Proposal:**

This table details the desired outcomes of a System Operator, the services to be delivered by in order to achieve those outcomes, and the risks of devolving those services.

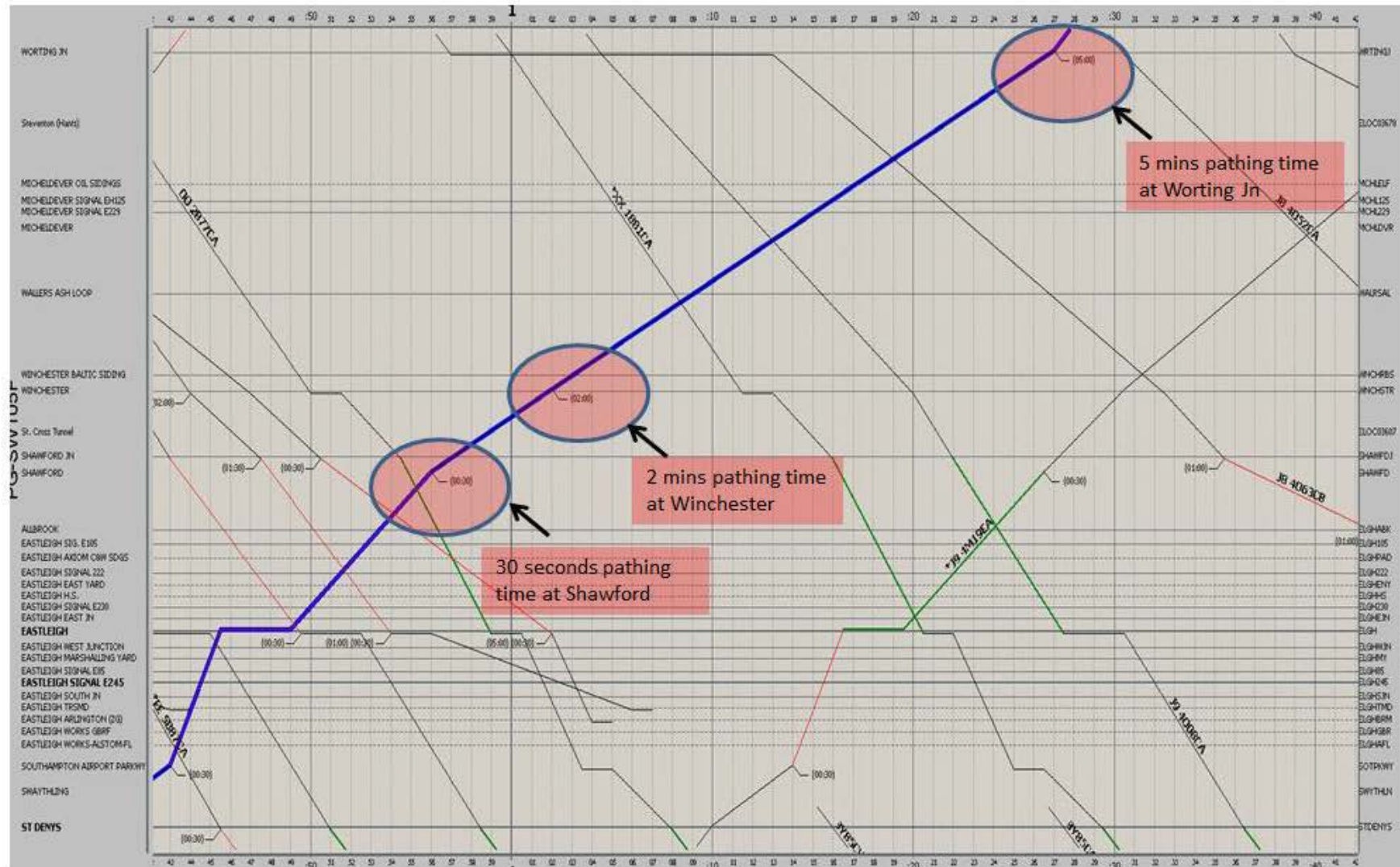
Outcomes	Services	Risk of devolution
Consistency, simplicity, clarity with neutral cost impact	Single Network Code -national process for network/vehicle change -national appeals body -national planning rules -managing disruptive events (loco rescue) -access rights transfer process -delay attribution -single national system for delay attribution  Central coordination of a single Track Access Contract -possession regime -performance regime  Central and fair coordination of sale of access rights  Transparent appeal process	Inconsistent treatment across the network, increased transaction costs, increased complexity, risk of unfair treatment.
Interoperability	Standards and rules -wagon approvals -gauge clearance -signalling standards -signage -RT3973 -exceptional loads -managing safety risk -national environmental standards	Increased transaction costs, multiple interfaces, slower process times, safety risk

Consistent national standards	Consistent management and policing of standards	Increased complexity, increased transaction costs, creates safety risk
Consistent and transparent network information	Central coordination of Sectional Appendix	Increased complexity, increased transaction costs, creates safety risk
Certainty of long term access charges	Central single charging and incentives framework	Increased charging complexity, risks confusion for end customers and resulting modal shift to road
Reliability of route availability	Central coordination of cross boundary engineering access and contingency planning	Risks lack of through paths, increased cancellation risk, lack of ability to offer consistent service, leading to modal shift from rail to road
Optimum management of cross boundary services	National Control function	Increased journey time risk, lack of prioritisation of key services, reduction in velocity if services only managed to route boundary
Velocity Improvements	Quality central capacity planning	Lack of ability to improve quality of cross boundary paths, risks rail losing any quality advantage over road
Optimum real time service management	Train Regulation code of conduct	Lack of quality service delivery, risks longer journey times adding costs to operators and end customers
Better use of capacity	One bid to one team with better quality response	Increased transaction costs, lack of central knowledge of freight and cross boundary train planning, poorer quality train paths, risking modal shift to road
Provide for freight growth	Management and development of strategic capacity	No management or overview of freight strategic future capacity needs. Risks the inability to realise latent growth, resulting in modal shift to road..



## Appendix B

Copy of train graph showing 4M13 between St Denys and Worting Jn. Pathing time is highlighted.



Alexandra Bobocica  
Siobhán Carty  
Office of Rail and Road  
One Kemble Street  
London  
WC2B 4AN

24 August 2016

Dear Alexandra/ Siobhán,

**PR18 Working Paper 2 and 3: Issues and opportunities in system operation and the regulatory framework for Network Rail's system operator function**

Thank you for the opportunity to respond to the ORR's PR18 consultation on the potential issues and opportunities in system operation and initial views on the regulatory framework for Network Rail's system operator function.

Govia is one of the leading rail operators in the UK and is a joint venture between the Go-Ahead Group (65%) and Keolis (35%). Govia has extensive experience running complex and challenging rail operations. Govia currently runs three major rail franchises: Govia Thameslink Railway (GTR), Southeastern and London Midland. Govia is the UK's busiest rail operator, currently providing around 35% of all passenger journeys. As a key provider of rail services, we welcome the opportunity to respond to your consultation regarding the 2018 periodic review.

This response represents the views of the three Govia-owned Train Operating Companies as well as Go-Ahead Group plc. Go-Ahead has contributed to the industry response prepared by RDG and this is intended to supplement that response.

Our responses to the specific consultation questions set out by the ORR are answered below:

**Working Paper 2**

***Question A: To what extent do you agree that the issues and opportunities we have identified with the way system operation is currently undertaken are the most material ones?***

We agree with the issues you have raised and agree that these are the most material concerns.

There is a fundamental misalignment of incentives between Network Rail and Operators, which does not always encourage the right trade-offs to be made between cost, capacity and performance within the System Operator functions. For example there is often a lack of incentive for Network Rail to consider increasing the available capacity on the network, which is a key priority for Operators, if this is perceived to present any risks to Network Rail in terms of delivering its Regulatory targets for performance. We also believe there is a lack of understanding around the incentives which have been introduced to drive the right behaviours.

The performance targets set out in a Train Operator's Franchise Agreement can sometimes be higher than the joint targets required under the PPRP which suggests that there needs to be an improved alignment between the setting of Regulatory targets and the franchising process. In terms of the franchising process, the current Operator performance should be taken into account; for example the bidders for the recent Northern franchise were set targets that aligned to Network Rail's regulatory settlement but were patently unachievable in the short term.

We agree that the issue of outdated train planning rules is a significant concern and in our experience maximising capacity benefits from enhancement projects has not been achievable due to a lack of understanding and knowledge about the network assets.

We also agree with the longer-term issue of Network Rail not necessarily facing revenue risk if enhancement projects do not deliver the improvements assumed. If projects fail to deliver the planned benefits, it presents little risk to Network Rail, particularly in comparison to the reputational impact experienced by Operators if the commissioning of the project is linked to the introduction of a new service for example, and the consequential impact is that the new service is delayed with commitments having already been made to stakeholders, shareholders and passengers.

***Question B: Are there other issues that you consider material that we haven't mentioned?***

A critical issue which we believe has not received sufficient attention is the capability of Network Rail's strategic train planning team which sits within the System Operator function. This is an area of increasing concern as the lack of continuity and experience within the central train planning team impacts our ability to operate a robust service which maximises the infrastructure available. We strongly believe that Network Rail resourcing and capability in this area requires specific focus as part of this review.

This is also reflected in the continued necessity for Network Rail to contract-out strategic train planning exercises for specific projects to external consultants, often with varying results, due to a lack of skilled internal resource. Perhaps, with hindsight, an over-reliance was placed on the introduction of a new train planning system that was considered to be able to replicate the abilities of a skilled train planner. Unfortunately this confidence was misplaced; Network Rail must now develop a strategy that emphasises train planning as a skilled, valued position within its organisation to be able to retain and develop a critical mass of experienced train planning staff that can optimise the use of the network.

Two further issues which we consider to be fairly material are Network Rail's understanding of risk, in terms of their decision-making and transparency in the processes they follow to reach their decisions. Transparency has become particularly important following Network Rail's reclassification as a public body.

***Question C: Does your experience, particularly of the system operation functions that Network Rail is currently responsible for, reflect our emerging views around issues / opportunities?***

**Short-term:**

One of the high level objectives of good System Operation, as raised in Working Paper 2, relates to making the right trade-offs. Whilst we do not have any structural issues with the on-the-day management of the network, we do have concerns about the consistency of regulation by signallers, which can vary significantly. These variations can affect right-time presentation at key locations and therefore influences capacity allocation on the day.

On the subject of trade-offs, in particular in terms of balancing capacity and performance, it should be noted that London Midland's own performance during service recovery (following delay incidents) on the West Coast Main Line actually improved in the period immediately following the December 2014 timetable change, even though it had increased the number of services operating on the route. The improvements in their ability to recover the service more rapidly was largely due to the joint work they had undertaken with Network Rail to establish a set of key principles for Control teams, including guidance on key services to prioritise. This suggests that there is not necessarily an explicit relationship between capacity utilisation and performance, although the two metrics are linked.

**Medium-term:**

It is clear there is a fundamental misalignment in incentives between Operators and Network Rail, particularly with regards to accommodating additional traffic on the network and the management of risk. Much of this misalignment can relate to Network Rail's position in being one step removed from the end-user. Introducing additional capacity onto the network has significant benefits for passengers and the wider industry, however perceived performance risks and concerns regarding increased cost (due to additional maintenance requirements) can often act as disincentives for Network Rail and end up counterbalancing any potential benefits when new service proposals are considered in their entirety.

Some of the incentives which have been introduced to address this misalignment are often poorly understood, particularly at the appropriate level within Network Rail's organisation. For example, the Volume Incentive, which exists to encourage Network Rail to try to accommodate additional traffic without being left out of pocket due to increased costs, is not clearly understood apart from perhaps at

a very senior level. At SOAR level, in our experience there is little evidence to suggest that the Volume Incentive has any influence in the decision making process and performance risks appear to be the only priority.

The issue of outdated Timetable Planning Rules is a significant concern. Accurate TPRs are essential to operate a punctual railway and in our experience there is no clear process for updating TPRs to take into account signalling changes following infrastructure projects, or if there is a process it does not appear to be followed. In our experience, Network Rail's understanding of its assets is poor; information such as Sectional Running Times appear to contain numerous inaccuracies, particularly details such as operational platform lengths which are often incorrect. We also have concerns regarding 'historic' Permanent Speed Restrictions on the network; some of these speed restrictions have existed for so long that it is no longer known why they were imposed and the process to remove them is incredibly difficult. The removal of these redundant speed restrictions could yield capacity and performance benefits by streamlining linespeed profiles.

#### **Longer-term:**

We agree that historically in strategic planning there has been a bias towards undertaking infrastructure investment projects to accommodate service changes, rather than exploring more 'controversial' trade-offs between services which would create winners and losers. However, we believe this is perhaps as a result of conflicting political aspirations rather than driven by regulatory incentives.

The possibility of making service trade-offs has been explored previously in Network Rail's first generation Route Utilisation Strategies, however in those instances tested it proved impossible to marry the incompatible interests of local and national interests. The move in the more recent Route Studies to present 'Choices for Funders' rather than specific recommendations, to an extent just passes the responsibility for making these trade-off decisions to the DfT (or other funders). Going forwards, it is easy to see where devolution could make this conflict of aspirations even more of an issue if a greater level of specification for franchised services is passed down to a local level.

***Question D: Are there any examples you could provide of how Network Rail undertakes these activities that would either support or contradict our emerging views?***

#### **Misalignment of incentives**

When London Midland introduced its 110mph timetable upgrade on the West Coast Main Line in December 2012, Network Rail initially refused to support the application for access rights due to the perceived performance risks and a view that it might suffer financially due to the additional maintenance requirements arising from the operation of a greater number of services. The significant increases in capacity and new, faster journey opportunities were considered to be outweighed by the performance risks to Network Rail in meeting its regulatory targets. In our opinion, this was not a balanced view.

Similarly, whilst not entirely related to System Operation, it can often be difficult to incentivise Network Rail to consider discrete, small scale (NRDF-type) enhancements to the network if the outputs are not necessarily considered to provide any immediate benefits to Network Rail. Such experience includes Operators attempting to progress linespeed improvements or minor platform lengthening schemes which could provide benefits to passengers through reduced journey times or the easing of crowding. We believe Network Rail should be incentivised to support the Operator in addressing these issues where it has the power to make the difference.

#### **Projects fail to deliver planned improvements**

Some benefits of infrastructure projects have not materialised due to lack of understanding of the capacity of the system and out of date timetable planning rules. With regard to the Thameslink Programme and the rebuilding of London Bridge station that has affected the Southeastern and GTR franchises; theoretical assumptions were used to determine available capacity through the station rebuild, which subsequently the timetable planning rules did not support. In this instance, these theoretical assumptions have exceeded the practical capacity available.

We would be happy to discuss this in more detail if it would be helpful for the purposes of this review.

### Resourcing and capability of the capacity planning team

It is clear that there is a skills gap and continued lack of experience in Network Rail's train planning function due to the high turnover of staff, which leads to regular mistakes and inconsistency. The roles need to be made more attractive and must be better managed.

Communications also need to be improved between the train planning team and infrastructure project delivery teams to plan appropriately for new or reopening infrastructure. This particular issue materialised recently on the Southeastern franchise when Network Rail's capacity planning team were unaware of the progress Network Rail's project team had made in repairing the Dover sea wall. The line is due to reopen three months earlier than planned and while this is an undoubted success story, the capacity planning team appeared to be unsighted on the possibility of an early reopening.

### Working Paper 3

#### ***Question A: To what extent do you agree with our understanding of how Network Rail fulfils its system operator responsibilities at the national level (by the system operator) and the routes?***

We agree with the three key system operator functions listed in the Working Paper which Network Rail undertakes at the centre; (1) developing and recommending changes to the network through the LTPP, (2) medium-term management of capacity through capacity studies, scheduling engineering access and producing the working timetable and (3) short-term allocation of capacity and management of the operational timetable.

We agree that there are also some aspects of system operation undertaken through the individual Routes, such as signalling and incident management, which should remain focussed at Route-level. It would be more logical for capacity planning functions, on the other hand, to be best kept centralised due to the cross-boundary implications of longer-distance operators and freight, which to be effective itself needs to be integrated with the rest of the planning unit.

#### ***Question B: What are your views on having a more focused approach to the system operator, possibly in the form of a discrete settlement that is part of an overall determination?***

We support the proposal to have a more focused approach to regulating the system operator, which we agree will encourage more focus by Network Rail on the System Operator's performance, facilitate investment in the capability of the system operator, enable Operators to hold it to account and improve both transparency and the efficiency of decision-making.

#### ***Question C: What are your views regarding our initial ideas relating to the form of Network Rail's system operator settlement? Specifically, what are your views regarding our proposed approach to: i) the system operator's outputs framework; ii) the system operator's revenue requirement; iii) the system operator's incentives; and iv) the monitoring and enforcement framework?***

In terms of the output framework, we agree that it requires measures which identify the quality of timetables and which determines the System Operator's success at developing zero-defect timetables. Measures must retain focus on system level punctuality and reliability, whilst also measuring the System Operator's contribution towards increasing capacity on the network. Clearly, the System Operator should be measured against its achievement of agreed deadlines, such as timetable development timescales.

Measuring Operator's satisfaction is important, but we also believe it is important to measure the satisfaction of the end-user, i.e. passengers. The System Operator has the ability to influence passengers' perceptions of capacity, frequency of service, punctuality and reliability; therefore it seems appropriate that such measures and targets form part of the settlement.

We have been involved in the preliminary work undertaken to develop Route scorecards and we support the overall principle. Engagement between Network Rail and Operators has however been inconsistent; in some areas we feel there was not sufficient consultation before publishing scorecards and we would urge a more collaborative approach for the development of a System Operator scorecard.

We disagree with the assertion that Network Rail faces strong reputational and financial incentives in terms of network performance. Network Rail is isolated from the equivalent risks that an Operator is exposed to if it fails to perform at the required level, such as the risk of breaching its franchise obligations with the DfT or failing to win future franchise bids. Neither is it exposed to the equivalent financial risks that a private sector operator faces; performance penalties and Schedule 8 payments in the event of poor performance can be punitive for an Operator, but appear to have little impact in incentivising Network Rail to improve its performance, perhaps due to the unique way in which Network Rail is funded and governed.

We highlight the REBS scheme as a particular example of this, which rather than being an 'efficiency' sharing scheme, is simply contingent on Network Rail's financial planning capability; which the Operator has virtually no influence over.

If you would like to discuss this response in further detail please contact Chantal Pagram, Head of Rail Policy.

Yours sincerely,



Charlie Hodgson  
Managing Director, Rail Development

## **PR18 WORKING PAPER 2**

### **ISSUES AND OPPORTUNITIES IN SYSTEM OPERATION**

#### **Comments from Merseytravel**

**Question A: To what extent do you agree that the issues and opportunities we have identified with the way system operation is currently undertaken are the most material ones?**

Merseytravel agrees that the issues and opportunities identified within the paper are the most material ones. Current incentives do skew priorities towards performance of existing services rather than introducing additional services or maximising the use of capacity, but this works for operators as well as Network Rail. Train operators insert “performance allowances” into timetable bids to facilitate meeting their PPM targets. Neither party has much interest in challenging the status quo. Neither Network Rail nor the operators have been successfully incentivised to tackle the root causes of poor performance or to ensure the optimisation of available capacity.

The franchise structure encourages franchisees to make their proposed timetable changes and investment in rolling stock and facilities as early as possible in the franchise term, to maximise their returns on investment. There can then be a lengthy period with little or no development before the next franchisee takes over. The incentives for franchisees are to maximise profits while meeting the terms of the franchise contract, so the focus in later years tends to be on cost cutting (which can be delivered with reasonable certainty in the short term) rather than initiatives which could (but might not, or not quickly enough) grow revenue. Franchise contracts are focussed upon the delivery of specific outputs for a determined revenue/cost. There is little incentive to optimise capacity on the network. Industry incentives are not necessarily aligned, through franchise and track access contracts, and are not required to be. Franchise contracts are not standardised – they are very much based on what the franchising authority saw as the key principles, priorities and concerns at the time they were let, and as a result vary between relatively loose and very detailed specifications. ORR has tried with some success to standardise, or at least template, Track Access Contracts.

Standard rail industry modelling systems (MOIRA and PDFH) are good at extrapolating demand over time for existing train services, but poor at predicting demand for new services, where the base data within the models may be inadequate or non-existent. Split ticketing skews the data used by these systems, yet split tickets often offer by far the cheapest way of making a journey involving services of more than one train operator. To give an example, London Midland offers a very cheap, advance fare between Liverpool and Birmingham, which encourages passengers from Liverpool to stations south of Birmingham to buy separate tickets for each leg of their journey. As a result, we simply do not know, and have no way of knowing unless we carry out specific surveys, how many Liverpool – Birmingham and Birmingham – Bristol ticket sales are actually to passengers making journeys between Liverpool and Bristol, yet without this

information it is very difficult to make the case for a through service between Liverpool and Bristol.

**Question B: Are there other issues that you consider material that we haven't mentioned?**

With the best will in the world, we do not have perfect information or computer models, which are only as good as the data they contain and the methods they use to process it. There is still a role for an experienced train planner. We should value this knowledge and experience and ensure it can be transferred to future generations, which means recruiting, training and retaining within the industry an adequate number of capable and competent staff.

**Question C: Does your experience, particularly of the system operation functions that Network Rail is currently responsible for, reflect our emerging views around issues / opportunities?**

The main reasons why passenger timetables rarely see radical change are franchise structure and geography, both of which are largely based on a service pattern appropriate to the mid-1990s. It is difficult to make major changes even within a self-contained franchise, let alone in areas served by several overlapping franchises with differing styles of specification and expiry dates (for example in the large Northern city regions). Although train service specifications are now written around minimum service levels in time bands over individual route sections, and within this generally permit changes to stopping patterns and through linkages, track access contracts tend to lock both parties into a specific route and timetable structure for the duration of the contract.

Major timetable recasts really ought to start with the most complicated services, which are generally not the London-centred InterCity services traditionally given pride of place as "first on the graph," but actually long distance cross country services such as Liverpool – Norwich, a service which crosses every radial main line from London to both Northern England and East Anglia on flat junctions. Splitting this service at Nottingham into separate Liverpool – Nottingham and Nottingham – Norwich services was considered a few years ago, but the timing constraints along its route were found to be so severe that, if the service had been split, connections across Nottingham between the two halves could not have been maintained.

This raises another issue: in a devolved, geographic route-centred Network Rail, how do we ensure that long distance, cross-route boundary passenger and freight services are given adequate focus alongside services which operate entirely within a single route? It should be recalled that many of these services, including the Liverpool – Norwich service, were introduced, developed and expanded after British Rail changed from a geographically based to a business sector based management structure in the early 1980s.



We should look to other national railway operations in other European and globally for benchmark and examples of best practice such as considering the Swiss practice of making major timetable changes once every two years, co-ordinated across the whole railway network, and allowing only minor timing changes in between – with infrastructure investment aligned (and delivered) to suit.

**Question D: Are there any examples you could provide of how Network Rail undertakes these activities that would either support or contradict our emerging views?**

Nothing to add.

## **PR18 WORKING PAPERS 3**

### **INITIAL VIEWS ON THE REGULATORY FRAMEWORK FOR NETWORK RAIL'S SYSTEM OPERATOR FUNCTION**

#### **Comments from Merseytravel**

**Question A: To what extent do you agree with our understanding of how Network Rail fulfils its system operator responsibilities at the centre (by the system operator) and the routes, as illustrated in Figure 2.2?**

Merseytravel is content with Figure 2.2.

**Question B: What are your views on having a more focused approach to the system operator, possible in the form of a discrete settlement that is part of an overall determination?**

Network Rail is a single legal entity, so the corporate centre has responsibility for co-ordination and adjudication between the routes. The systems operation function is split between the centre and the routes, and it may be necessary or desirable to change the division of responsibilities during the Control Period, for entirely practical reasons. Merseytravel believes ORR should focus on achieving efficient and effective system operation, which does require that Network Rail has flexibility to adopt the best methods for delivery of these outputs, including movement of responsibilities between centre and routes where appropriate. It is important that any regulatory targets or settlement should encourage rather than hinder efficient and effective system operation.

**Question C: What are your views regarding our initial ideas relating to the form of Network Rail's system operator settlement, as summarised in Figure 3.2. Specifically, what are your view regarding our proposed approach to: i) the system operator's outputs framework; ii) the system operator's revenue framework; iii) the system operator's incentives; and iv) the monitoring and enforcement framework?**

The Working Paper appears not to contain a Figure 3.2, so these comments may require modification.

- i) Merseytravel agrees that short term outputs can relatively easily be measured, whereas medium and long term outputs cannot be. Care should be taken not to measure allocation of additional train paths independently of performance, as there is a trade-off between use of capacity and performance. How do we assess whether Network Rail is optimising this trade-off?
- ii) Merseytravel is not convinced that there should be a separate revenue framework, covering costs which by definition are common costs and are difficult to allocate fairly to individual train operators.
- iii) No comments.
- iv) Merseytravel's view is that enforcement has to be against Network Rail as a whole, as the legal corporate entity.

Siobhan Carty  
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19 August 2016

Dear Siobhan

## PR18 Consultation

MTR Crossrail welcome the opportunity to comment on the ORR consultation to inform policy development for Network Rail Control Period 6 (PR18). We have provided our comments related to each of the three Working Papers below:-

### Working Paper 1: Implementing route-level regulation

MTR Crossrail supports in principle route-level regulation. However, the regulatory measures put in place need to reflect the operations of the route in question and the requirements of the train operators that run on the route.

It would be helpful if the ORR could provide greater clarity as to how it decides appropriate action in the event of Network Rail targets not being met.

Consideration also needs to be given to train services that run on/off the Network Rail network – for example, MTR Crossrail will be operating services that run from Network Rail to TfL infrastructure, and back on to Network Rail infrastructure again; it is important that whatever route-level regulation is put in place encourages Network Rail to work with other infrastructure managers or local transport authorities in order to ensure that such through services operate well.

### Working Paper 2: Initial views on potential issues and opportunities in system operation - Question A

#### **Timetable Planning Rules**

The process for developing and reviewing Timetable Planning Rules (TPRs) needs an overhaul.

The process is time consuming, with changes being identified but not implemented for many months or even years.

For metro operators (such as MTR Crossrail, who will eventually be operating 24 trains per hour) the current Timetable Planning Rules may not be suitable in the future.

Station dwell times and Sectional Running Times can only currently be expressed in 30 second intervals. In order to deliver good performance and make best use of capacity there may be a need to move towards more granular values (i.e. 45 second dwell times or 75 second SRTs).

There are other TPR values that probably need to be reviewed, for example a junction margin may vary depending on the type of train (i.e. a long slow moving freight train will take more time to cross a junction than a fast moving passenger train). Dwell times may need to vary by

time of day (due to passenger loadings). More detail of movements to and from freight yards and within depots and sidings may be needed.

There also needs to be a consistent and documented process and methodology for calculating TPR values, supported by suitable systems and analysis / simulation. The process for revising TPR values needs to be more dynamic.

There should also be a published, rolling TPR review programme (perhaps linked to when major rolling stock, infrastructure or timetable changes are proposed), which should also involve a comprehensive review of the timetable structure and identify potential improvements from revision to maintenance strategy through to a review of existing values (for example removal of obsolete 'pathing time').

### **Capacity Allocation / SOAR Process**

Changes to the Working Timetable are generally reviewed by the Network Rail Sale of Access Rights Panel (SOAR). The SOAR panel does not directly involve train operators and as a result there is a risk that decisions will be made without understanding all of the implications (such as efficient rolling stock and train crew diagramming and the impact on customers).

SOAR panel process appears to take the same approach to all applications regardless of their risk to the network, which may result in too much scrutiny being applied to small low-risk changes and not enough applied to major timetable changes or higher-risk proposals. A consistent, risk based process may be more appropriate, informed by a number of factors (such as network capacity – see below) and with more input from train operators where appropriate (i.e. how robust are the supporting train crew diagrams).

Consideration should also be given to how short notice (STP) changes are introduced, especially if they could have a negative impact on operators with Firm Access Rights. In some cases it may be appropriate to apply the same scrutiny to STP paths as LTP paths receive via the SOAR panel (for example changes associated with major engineering work).

### **Developing a long Term View**

There are occasions when timetable specifications (in Concession / Franchise agreements) are not consistent with published Route Strategies.

There are also opportunities to develop a long-term timetable strategy, especially in London where TfL has a long-term view, which is less impacted by franchise change.

Future timetable should be designed to make best use of infrastructure and capacity, including the efficient use of rolling stock and train crew resources and a thorough understanding of freight flows.

## **Working Paper 2: Initial views on potential issues and opportunities in system operation - Question B**

### **London**

Planning of an integrated transport system in London is complicated.

There are several infrastructure managers (LUL, Network Rail, HS1, HAL, TfL), several network Rail routes (LNW, LNE, Anglia, Southeast, Wessex and Western routes). There are also various different operators including DLR, Trams, LUL, London Overground, freight, InterCity and Metro operators. These include franchises, concessions and open access operators with both TfL and DfT involved in specifying services.

A review of how transport in London is planned and integrated may be required. There may be benefit in setting up a Network Rail London Route in order to better cater for the increasing

number of operators serving the London area or devolve some of this responsibility to Transport for London.

### **Timetable Development Process**

The timetable development process is over-complicated, slow and labour intensive. The timetable process needs to be more dynamic, more automated (i.e. conflict detection and greater visibility of possessions to reduce manual checks), with fewer systems and closer working between Network Rail and TOCs (to move away from the 'bid/offer' process). The ability to quickly simulate the impact of a timetable change needs to be available.

Moving away from a six-monthly timetable process and towards a perpetual timetable should be a future objective, with Access Rights agreed and then reflected in planning systems until they expire and only modified for engineering work or as a result of an agreed change (i.e. infrastructure change). Network Code Part D may not be appropriate in the longer-term. The timetable could change at any time, subject to an appropriate assurance process. It may also be appropriate to move away from the Informed Traveller (T-12) deadline for all operators. This may not be appropriate for a metro operator. A perpetual timetable may enable this date to be extended further out for InterCity operators, helping them to compete with airlines etc.

There is also the question of how prescriptive access rights should be. On one hand some flexibility is required to avoid paths being too 'hard wired' to the detriment of other operators and efficient use of capacity, but equally a high frequency metro operation (such as MTR Crossrail) will require trains to enter the central London tunnel every 2½ minutes (24tph) so flexing a path by a couple of minutes would not work.

There should also be a regular review of unused train paths but equally provision made for anticipated growth and engineering trains (where appropriate).

Train planners may not always have a good understanding of the relevant Track Access Contracts and as a result they may not optimise capacity. It is important that train planners understand what is specified in Track Access Contracts (i.e. flexing rights, journey time requirements) to enable them to make correct decisions and avoid disputes later on.

### **Understanding Network Capacity**

There does not seem to be a common understanding of how congested each part of the network currently is – or in other words how much of the capacity is currently used, how much is available for new services and what the impact is on train performance as more capacity is utilised.

There needs to be a more detailed understanding of network capability and a consistent way of measuring capacity. This should also identify where capacity is not efficiently utilised - perhaps due to the type of rolling stock, length of trains, stopping patterns or other timetable constraints. It may be appropriate to charge a premium to operators that do not use capacity efficiently (i.e. an operator wanting to depart at a certain time).

The process could also identify timetable, rolling stock or infrastructure enhancements that could release additional capacity in the future.

Consideration should also be given to service recovery in the event of an operational incident to make sure that capacity is prioritised appropriately, including the implications on other Routes.

### Working Paper 3: Initial views on the regulatory framework for Network Rail's system operator function – Question A

One of the challenges that Network Rail faces is how to effectively manage operators that cross several Network Rail routes (i.e. freight and CrossCountry Trains) and more local operators that run across only one or two Routes (i.e. MTR Crossrail). The current Network Rail route structure does not align with the majority of operators, so a review of this structure may be beneficial.

In addition, whilst timetable planning and engineering work strategy is developed at a national level (in Milton Keynes), detailed planning of possessions is undertaken at Route level.

Network Rail needs to bring timetable planning, engineering work planning and detailed possession planning closer together, making sure that the needs of both local operators (running on one or two Routes) and operators that cross several Network Rail routes are considered.

Network Rail should make sure that the teams planning the national timetable and engineering work plan work closely alongside the teams planning possessions at a Route level, tapping into local knowledge and experience where appropriate.

Decision making at a Route level needs to take into account the national picture and vice versa.

Network Rail and local operators should be encouraged to work closely together to develop a timetable, engineering work plan and possessions that are as efficient as possible, whilst meeting the needs of the train operator. This needs to be done without compromising longer-distance operators that cross several Routes.

In London for example, there is a need for Network Rail to work closely with TfL to develop an integrated plan for all transport modes across London, including the London Overground and Crossrail networks, which use large sections of Network Rail infrastructure (*this links to the 'London' comments in response to Working Paper 2, Question B*).

It may also be appropriate for the funding and development of enhancement schemes to be managed at Route level, to bring in funding from outside parties and in London work closely with TfL to develop and fund enhancement schemes.

### Working Paper 3: Initial views on the regulatory framework for Network Rail's system operator function – Question B

There is some merit in providing a national settlement to facilitate the ongoing development of the System Operator role (i.e. improving national IT systems) alongside Route based system operator funding (i.e. for timetable planning and possession planning) to enable Routes to be flexible in their approach.

### Working Paper 3: Initial views on the regulatory framework for Network Rail's system operator function – Question C

The Routes should be incentivised to consider the national picture when planning timetables and engineering work.

Equally, the national System Operator team should be incentivised to work closely with the Routes.

The settlement needs to reflect the move towards greater 'devolution' of rail services to the regions (i.e. to TfI) and should not stifle innovation by over-specifying how Network Rail should structure their business.

For example, the train planning team could still fulfill their 'system operator' duties without being centralised in Milton Keynes. Placing train planners alongside possession planners in a Route may be preferable to having train planners in Milton Keynes and possession planners in the Routes.

Network Rail could be monitored based on how efficiently timetables and possessions are planned at a route level as well as how timetables and possessions impact on cross-route operators such as freight.

Different measures may be required that meet the requirements of different types of operator. For example measuring compliance with Informed Traveller (T-12) may be important to InterCity operators who need to compete with airlines, but different measures may be appropriate for metro type operators (such as MTR Crossrail).

MTR Crossrail has noted that there are regular late changes to possession plans, resulting in short notice changes to timetables and rolling stock and train crew diagrams. Measuring how many late changes are made to the plan (late notice possession changes etc) may be appropriate, to encourage Network Rail and operators to work collaboratively to plan engineering work and deter late change which adds cost, risk and safety implications.

Monitoring asset reliability (i.e. points failures) should also continue, but with a greater weighting being placed on the route and type of operation (i.e. a points failure on a metro route may cause more trains to be delayed and passengers inconvenienced than a points failure on a regional route).

Engineering work could also be monitored to understand how much work is planned in a possession and then how much of the planned work is actually completed, to make sure that possessions are planned efficiently and executed properly.

We look forward to working with ORR, Network Rail and other industry colleagues to inform the development of the strategy for PR18.

Yours faithfully



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## **Network Rail's response to ORR's PR18 System Operator working papers**

Working paper 2: Initial views on potential issues and opportunities in system operation

Working paper 3: Initial views on the regulatory framework for Network Rail's system operator function

*24 August 2016*



## Executive Summary

This is our response to ORR's working papers on System Operation and the regulatory framework for Network Rail's System Operator function published on 7 June 2016.

We recognise that our response is detailed. Therefore, we set out, below, some of the main points that we raise in the rest of this response:

- we welcome ORR's recognition of the potential benefits of the System Operator approach
- most system operation activities are carried out within our Network Strategy and Capacity Planning function. There are also some system operation activities carried in other functions within Network Rail and other parts of the industry. This adds complexity to the regulation of the System Operator
- regulation should support the way the industry is structured, and the way it operates;
- ORR should be realistic about what can be achieved in CP6
- regulation of the System Operator should be proportionate and flexible, recognising the evolving nature of the System Operator
- ORR should align its System Operator work programme so that it can build on the outputs of Network Rail's 'Fit For The Future' programme
- there is little appetite within the industry for new System Operator charges or a separate revenue requirement as this would introduce undue complexity
- there is a need to use consistent language when referring to different aspects of System Operator to avoid unintended confusion
- the success of the System Operator should be assessed based on its own balanced scorecard, which is developed with customers

## Structure of our response

The first part of this response provides our high-level views on the early thinking outlined by ORR in its working papers. The two annexes provide specific comments on more detailed options and issues explored in the working papers and during the working group discussions of system operation – including the potential regulatory developments in respect of the System Operator activity.

Our annexes address the following subject areas and specific working paper questions:

- **Annex A: Working Paper 2** - Issues and opportunities ORR has identified with the way system operation is currently undertaken (Questions A-D)
- **Annex B: Working Paper 3** - Network Rail's undertaking of system operation and ORR's focusing on how activities are split between the system operator business unit and the routes (Question A) and developing the regulatory framework for the System Operator (Questions B-C)

## Context and challenges

We have already provided a full response to the initial PR18 consultation and many of the points made in that – especially around customer focus and regulatory frameworks – are

relevant to the separate response on Working Paper 1 on Route Regulation, and to this combined response for Working Papers 2 and 3.

There is industry recognition that the detail of many areas explored in Working Paper 2 and Working Paper 3 (and the other working papers) will be developed in consultation documents and further stages in the PR18 process. We envisage that the joint Network Rail and ORR working groups will continue to operate throughout the rest of the PR18 process as we believe they provide useful fora to work through the detailed issues. We welcome the whole tone and purpose of the ORR working papers which are intended to facilitate a more dynamic process of industry engagement to support an iterative approach to developing policy.

Whilst the System Operator's key customers will be the routes, as the ORR's previous work on the concept of system operation highlighted, there are also a wide range of direct relationships which the System Operator will have with other parties across the industry. With this in mind we welcome the ORR's open approach in progressing the system operation and System Operator elements of its work and its engagement with the RDG's System Operator Better Regulation Working Group.

We believe our working groups link well with this more collaborative approach and are pleased with the constructive engagement they have provided. Our discussions, shaped by the presentations and questions posed by the ORR, have naturally informed the content of this response alongside the questions contained within in the working papers.

Based on these discussions we anticipate that industry stakeholder responses will seek to argue the need for proportionate, efficient and flexible regulation in the area of system operation – an approach we would welcome.

We expect to work closely with industry and ORR over the next 18 months in order to identify a suite of measures that is appropriate to the activities that the System Operator and its customers consider are most important.

## **Summary of our response to Working Paper 2 (Annex A)**

Working Paper 2's approach of effectively reviewing system operation end-to-end through the planning, contracting, allocation and operations - and seeking to identify opportunities to improve system operation - is both timely and welcome.

The paper also provides an opportunity for all parties to recognise the boundaries between the Network Rail System Operator function and in particular government, regulator and Network Rail's contributions to system operation.

In our response, we highlight where the opportunities and improvements identified by ORR are already being addressed. We agree with many of ORR's points. However, we think that the working paper contains a number of areas where we either do not recognise the issue that has been identified. We also think there are a number of unsubstantiated points.

We agree with the comments raised in industry working group sessions with the ORR that any regulatory reforms around the System Operator should have a clear rationale and be focused where there is a demonstrable need for change and where regulation will add value.

There are potential opportunities for the System Operator to take a stronger role in capacity allocation that could be further examined by Network Rail and the ORR following on from ORR's working paper.

Issues identified in these papers affecting matters outside of Network Rail and the ORR are ones that we would not anticipate being taken forward within the scope of PR18. There may be opportunities to address these through other relevant fora.

## **Summary of our response to Working Paper 3 (Annex B)**

### Understanding of how Network Rail fulfils its system operator responsibilities at the national level and the routes

Planning and managing the network fairly, in a way that is optimised for the benefit of the network as a whole, is the responsibility of the System Operator. At the core of this activity sit our responsibilities for fair allocation of capacity on routes, timetable planning and network planning.

In the past year, a series of reviews have looked at Network Rail's role in strategic planning, the planning and delivery of enhancements, and capacity allocation and timetabling. Whilst those reviews have all acknowledged our central role as the System Operator in these activities, we seek to continuously improve these activities.

Within Network Rail, Network Strategy and Capacity Planning has been carrying out much of our System Operator functions for some time but the changes in our external environment require us to strengthen our organisation, processes and tools.

The System Operator's outputs are also essential to support funders and the regulator in the discharge of a number of duties, and have a wider impact on funders, customers and the system as a whole. We therefore believe that the System Operator has additional responsibilities to:

- deliver a range of outputs direct to customers through industry planning, timetabling and management of industry and business codes and policies
- support national governments with the development of their transport strategies
- foster our relationships with devolved planning and funding bodies at the appropriate national, regional, and local level
- advise ORR in its role as capacity regulator with the quality information it needs to make allocation decisions
- support the high-performing devolved routes with a clear and transparent national framework for capacity allocation.

With the, above, responsibilities in mind, we believe that we need a System Operator function, which has the organisation, skills, processes, relationships and tools to make it fit for the future. We have provided you with initial details of our work programme 'System Operator: Fit for the Future' which seeks to put in place a structure to deliver these responsibilities. We will provide further details as they emerge to support the preparation of the final determination including relevant outputs. It is important that this programme concludes before final decisions are made.

### Possible design of any settlement for the system operator functions

We think that it is important for the Network Rail System Operator to have its own regulated outputs. However, whilst the activity of the System Operator is crucial to the efficient operation of the network, the costs involved are relatively low (c.£25m per year) in

comparison to the size of a geographic route. The Network Rail System Operator is also asset light, i.e. it has very few physical assets. Therefore, we do not think that it needs to have its own revenue requirement, or a new charge.

Instead of a separate revenue requirement for the System Operator, we think that the most appropriate approach for CP6 is for it to recover its efficient costs through each route's revenue requirement. This will mean that System Operator costs will be recovered through access charging income through each of the routes. This approach could avoid the need to create a new RAB for the System Operator. Any capital costs incurred by the System Operator could be charged to each route (this could be allocated in proportion to traffic metrics or charging income).

We consider that the System Operator could be appropriately incentivised without the need for its own RAB. However, if it was concluded that the System Operator should have a RAB, we do not think that this means that there would need to be a separate System Operator charge to users. Instead, the System Operator's RAB costs (amortisation and return) could be recovered through cross-charges to routes.

The success of the System Operator would be likely to be judged by stakeholders by the extent to which it has delivered a range of outcomes, including cost efficiency although it is unlikely to be the most important measure of its success. Therefore, the System Operator could be incentivised to operate and invest efficiently through its balanced score card.

In Annex B, we consider the regulatory principles that Network Rail believes would support the System Operator. In summary, we think that the System Operator should have:

- its own plan (including outputs and expenditure) for delivery in CP6
- a scorecard developed with routes and other customers particularly focussing on the quality and customer responsiveness of the service provided
- capacity for its own supplementary sources of income from third parties (e.g. contracts to supply services to other infrastructure managers)
- a similar approach to routes in terms of flexibility of budgets and transparent reporting of outputs

We do not believe it necessary for the System Operator to have:

- a separate system operator RAB
- a separate charging mechanism
- a separate revenue requirement for CP6

## **ANNEX A: RESPONSE TO WORKING PAPER 2 INITIAL VIEWS ON POTENTIAL ISSUES AND OPPORTUNITIES IN SYSTEM OPERATION**

There have, as ORR will be aware, been a number of helpful discussions on this topic already. We have not sought to capture all of those discussions. Our response focuses on the key issues that we have identified when considering ORR's consultation questions.

### **Related ORR questions**

*Question A:* To what extent do you agree that the issues and opportunities we have identified with the way system operation is currently undertaken are the most material ones?

*Question B:* Are there other issues that you consider material that we haven't mentioned?

*Question C:* Does your experience, particularly of the system operation functions that Network Rail is currently responsible for, reflect our emerging views around issues / opportunities

*Question D:* Are there any examples you could provide of how Network Rail undertakes these activities that would either support or contradict our emerging views?

### **1. Background to ORR's system operation issues and opportunities work**

Working Paper 2 progresses the discussions and consultation undertaken last year by the ORR and the parallel Consultation on System Operation Dashboard conducted by Network Rail at that time.

We agree with the relevance of the desirable outcomes of system operation, as set out in ORR's Figure 2.1. However, but would also add that an additional outcome of good system operation is 'Planning the future of the network'. These outcomes should serve as a base for discussion about the performance of the whole railway system.

The limitation of this approach (continuing the previous system-wide focus on System Operation) is that, while issues and opportunities do include the work of the System Operator functions in Network Rail, the outcomes identified are also driven by the decisions of other parties. These include areas associated with public transport strategy, specification of franchise requirements, capacity allocation and direction and operation of the infrastructure.

Below, we set out some observations in relation the outcomes in Figure 2.1 in Working Paper 2. We would welcome further discussions with ORR on the points we raise.

#### *Outcome 1: Continued safe operation.*

We agree that System operation activities delivered both by the System Operator and Technical Authority will have significant roles to contribute to continued safe operation of the network (e.g. standards, planning and timetabling). More broadly safe operation is also the role of the infrastructure operator and operators using the system.

#### *Outcome 2: Getting more from the Network.*

We agree that all parties to system operation have the potential to contribute to enabling different types of use from the system.

Under current arrangements, the System Operator can only process applications for access rights that train operators submit. This places a significant constraint on the System Operator's ability to optimise the use of network capacity. For example, franchising authorities decide many of the services that are applied for (93% of train km on our infrastructure are operated by franchised passenger TOCs to deliver their franchise agreements<sup>1</sup>).

However, there has been recent progress to increase the flexibility of access rights, which has helped to mitigate some of the effect of this constraint.

ORR also has an important role to play in seeking to optimise the use of network capacity, given its role in approving access rights. This is particularly true, where there are complex choices to be made (e.g. the recent ECML capacity decision).

*Outcome 3: Making the right trade-offs, and Outcome 4: The right services using the network.*

We agree that identifying an appropriate balance of capacity, performance and cost is key to system operation. The complexity of balancing outcomes was addressed in our work on developing a System Operator Dashboard. However, we note that Working Paper 2 continues to use the term 'right' in relation to these decisions without any discussion or consultation on what 'right' might mean. It may be better for decision making to focus on the best outcome for the system, against a set of factors. In our response to ORR's August 2015 consultation we stated:

"It is hard to identify what "right" might mean – it is certain that it will mean different things to different parties affected by the system. Does it mean assessing every decision in terms of socio-economic value – and who would define how that value is assessed where the assumptions are contentious?"

*Outcome 5: Helping Train Operators Deliver*

All parties involved in system operation have a role in respect of this outcome. We believe that the primary relationship between the System Operator and train operators is through the routes. However, the network-wide role of the System Operator means it has the capability to support consistent expectations of customers in application of policy and process across routes. This should also mean that each train operator will have a single track access contract on our infrastructure rather than one for each route.

There are a number of specific relationships between the System Operator and operators. Given the relatively small proportion of operators that do not cross a route boundary, some customers will see the System Operator as a 'protector' of the access needs of their markets (cross-border, freight) even if there is a specific route managing our direct relationship with these customers. Points of direct interaction include:

- stakeholder engagement in the Long Term Planning Process
- agreeing access rights approaches to ORR
- potential specialist services such as timetabling activities

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<sup>1</sup> 2015/2016 data from ORR data portal tables 12.13 and 13.25

The System Operator should be able to develop commercial opportunities in its service offering for a range of bodies including third-party investors, customers, other infrastructure managers and potential access applicants. A potential 'one-stop-shop' could enable potential quick wins for operators if they had a single place to go to for operational research.

#### Outcome 6: Choosing the right investment

Similarly to Outcomes 3 & 4, there is a difficulty in determining 'right' given the competing demands on the system. System investment in capability and capacity is not simply about projects – infrastructure alone delivers nothing without associated timetable, rolling stock and other interventions. Social benefits and other public priorities may lead funders to choose infrastructure investment in preference to more commercially viable options such as potentially sensitive train service alterations.

It is possible to be clearer in respect of the role to be performed by the System Operator function in respect of investment. The System Operator functions that could be regulated could include:

- supporting the development of transport strategies by funders
- developing a set of outputs capable of meeting these needs and the aspirations of customers
- making proposals to funders as to how the system / network could develop to deliver these outcomes needs in the medium / longer term

#### Root causes

The potential root causes of perceived system operation issues are widely drawn in the working paper. Given their generic nature, we have addressed these in specific comments on the examples in Section 3 of the working paper. We see particular relevance in the first two items around skewed incentives for Network Rail and franchisees. For example, we have seen this in Scotland where the franchise agreement has different requirements to those set for Network Rail.

We would, however, suggest that:

- Root Cause 1 (financial incentives) is a subset of number 2 (industry incentives)
- Root Cause 4 includes two potentially different issues (system capability includes physical factors)
- Root Cause 5 (risk aversion and industry culture) may in part be a consequence of underlying regulatory, franchising, and contractual framework and these root causes have consequently been omitted

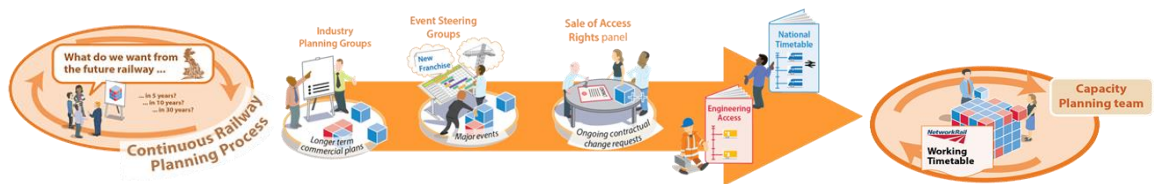
## 2. Potential issues and opportunities in system operation

The structure of part 3 of Working Paper 2, based on ORR’s proposed definitions of short, medium and long term system operation, is one that we believe does not take a number of key activities and responsibilities into account.

Specifically, on-the-day operation is a markedly different activity to, and is delivered very differently from, requests for capacity outside of the bi-annual timetabling process (which begins 16 months prior to the start of the relevant timetable period). The wider process starts two years before the timetable period with the Engineering Access Statement and then Timetable Planning Rules consultation documents. However, the paper combines these two elements as a single area of ‘short term system operation’. The key point discussed in this section of the paper (paragraph 3.5) is about decisions taken much earlier in the sequence of processes.

It may be helpful to refer back to established industry process, which shows the distinction between the definitions of short term, medium term and long term system operation (see Figure A.1 below). This was set out in our detailed in our response to ORR’s August 2015 consultation.

**Figure A.1: Industry capacity planning process diagram**



### Specific observations on the issues and opportunities identified in Section 3

#### Para 3.4

This should recognise the move towards more of a continuous planning and funding process, as well as recognising the strategic plans of devolved or regional funders (or sub national transport authorities).

#### Para 3.5

In summarising the example we are concerned that relevant details of this case have been overlooked. At a working level it was understood that the timetable would be less robust but it was considered that capacity was of a higher priority than performance in this case. However, we are not convinced that an overall system view was assessed appropriately.

We consider that the above point highlights the need for continued discussion about the trade-offs between capacity and performance.

#### Para 3.7b

In regards to the discussion that Timetable Planning Rules may limit capacity, there is a point (as noted above) about how decisions are made. We consider that more work is needed to understand what ORR means by ‘optimised’.



Para 3.7c

We welcome the fact that ORR recognises the need for a balanced charging, incentives and outputs framework which provides sufficient flexibility for Network Rail to make appropriate trade-offs between cost, capacity and performance. The regulatory framework should support efforts to grow traffic on the network, where appropriate, and meeting the aspirations of customers and funders. Improvements could be made to the current regulatory regime to incentivise traffic growth. We would welcome further discussion with ORR in relation to this issue.

ORR correctly highlights that we face strong reputational and financial incentives to maintain train performance levels. These reputational and financial incentives are significant and closely linked to the outputs framework and our performance targets, which are reinforced by the actions of the regulator. Hence, the importance of getting the appropriate approach to train performance and ensuring that they incorporate sufficient flexibility for trade-offs to be made, where appropriate.

We also note that the additional income that Network Rail receives through charges for running an additional train is relatively modest, and does not cover the additional cost of maintaining train performance levels as the network gets busier. This may be one reason for the strength of reputational incentives associated with maintaining train performance levels.

In relation to the Volume Incentive, it is worth noting that the mechanism is quite complex which makes it difficult to forecast. Payments are relatively small because we are only rewarded for traffic growth above forecast levels, and are insufficiently large to fund additional investment in the (payments are made in the following control period). In order to address this issue, the charging, incentives and outputs frameworks should be considered together.

The Timetable Rules Improvement Programme was primarily performance-led and we would suggest that to widen the scope is outside of its remit. There is an opportunity that we are pursuing to embed the principles of the Timetable Rules Improvement Programme in our business as usual approach.

Para 3.9 e

When approaching medium-term capacity allocation, the requirements and expected outcomes of the timetable should be understood by this stage of the process. Radical options should be considered earlier within the process (i.e. the 'long term' part of the process), at Event Steering Groups.

Para 3.9 f

We do not support the use of the term 're-cast' as it is not defined and can be interpreted in different ways. Our view is that the term could refer to a significant change to sequence, interval, calling pattern, journey time or quantum within a timetable. As a timetable change of some scale can have geographically wide-reaching implications (e.g. a significant change of the WCML timetable could impact services to Cardiff, Portsmouth, Felixstowe etc.) we would not initiate working on something of this scale unless the following were true:

- a) we could not deliver what was required from the timetable without doing so; or
- b) we knew we could deliver a clear industry benefit from doing so

We agree that most timetable change is incremental. We also agree that more fundamental changes ('re-casts') can be controversial and prompt political interest. Therefore, we do not consider having regular 're-casts' would necessarily improve things.

#### Para 3.9 g

It is stated that currently capacity is mostly allocated using administrative processes. This approach reflects the obligation on Network Rail to comply with the Network Code. Most of the time, questions of choice related to commercial or social value are absent from such discussions and where they do arise the position that Network Rail is "agnostic to the operator of the train" means that the capacity allocation decision in question is effectively passed to ORR.

As part of our reform agenda, there is clearly scope to consider whether Network Rail could and should take a wider perspective in taking such decisions, indeed this could increase its effectiveness as a system operator.

We also note that ORR states that it will consider sending appropriate 'price signals' about making appropriate use of capacity as part of the structure of charges project and system operation work. We would urge ORR to ensure that these workstreams remain joined-up. We also consider that it would be helpful if ORR could provide further detail on how it might seek to send appropriate 'price signals', given it concluded in April 2016 that it would not be developing the value-based charging option further for CP6.

In our view, trade-offs between performance, cost and capacity are complex, partly because they are all measured in different ways. We also note that there is no industry established measure of 'capacity'. ORR should also bear in mind industry proposals to move away from a simplistic measure of performance, such as PPM, towards more situation specific measures which will vary by operator.

#### Para 3.10

In relation to the issues and opportunities in long-term system operation, identified by ORR, we think that an additional issue is that, as enhancements take many years to develop and deliver, the priorities or plans of funders may change which then leads to different outcomes.

#### Para 3.10b

In terms of opportunity for long-term system operation, we think that there should be reference to the opportunity to attract third-party capital into the industry. This will be important for the system operator and the industry in meeting growing demands for capacity, especially when government funding may be limited.

#### Para 3.10c

We agree that it is difficult for funders to specify enhancements in detail, well ahead of delivery. As a result of this, it is equally difficult for us to provide costs and programme estimates with certainty if the scope to deliver the outputs is so flexible and subject to change. It is important that funders should be clear on the outcomes they seek from the railway at all times.

#### Para 3.10d

With regards to the Long Term Planning Process (LTPP), it is important to recognise that this activity is not simply about investing in infrastructure projects – infrastructure alone

delivers nothing without associated timetable and rolling stock and other interventions. To reiterate, the purpose of the LTPP is to:

1. Understand and examine the longer term needs of customers and outcomes desired by funders and the potential demand for rail travel
2. To develop a set of outputs capable of meeting these needs
3. To develop longer term strategies to deliver these outputs
4. Make proposals to funders as to how the system / network could develop to deliver these outcomes / needs in the medium / longer term

The LTPP seeks to support the development and use of the existing network (with committed changes) and to understand what the trade-offs are between different competing requirements for capacity both within and between the different market sectors.

The LTPP will consider infrastructure enhancements to understand whether future demands. Options are assessed using governments' transport appraisal criteria however consideration will also be given to the wider economic benefits of a particular option, the strategic fit of options, and their likely affordability.

Para 3.10e

ORR states that Network Rail does not face significant revenue risk if projects do not deliver the improvements assumed. This is not necessarily true. For example, alliance arrangements may lead to revenue risk sharing. However, if we are exposed to revenue risk, it is important to be clear about what that risks we are exposed to. We should also be involved in development of the business case and subsequent decisions about whether to proceed with the project.

Para 3.10f

We note that in the case of Wales, the LTPP looks at a balance of different choices, many of which are lower cost and which are closely aligned to planned renewals.

## **ANNEX B: RESPONSE TO WORKING PAPER 3 – INITIAL VIEWS ON THE REGULATORY FRAMEWORK FOR NETWORK RAIL'S SYSTEM OPERATOR FUNCTION**

There have, as ORR will be aware, been a number of helpful discussions on this topic already. We have not sought to capture all of those discussions. Our response focuses on the key issues that we have identified when considering ORR's consultation questions.

### **NETWORK RAIL'S UNDERTAKING OF SYSTEM OPERATION**

#### **Related ORR question**

*Question A: To what extent do you agree with our understanding of how Network Rail fulfils its system operator responsibilities at the national level (by the system operator) and the routes?*

#### **Requirements of Network Rail's System Operator function**

Working Paper 3 discusses system operation within Network Rail.

We have recently published our transformation plan 'Delivering for our Customers' which sets out the overall transformation journey that Network Rail is undertaking and highlights the changes that we plan to make in the coming years – including the creation of a System Operator function that is fit for the future.

In it we make clear our commitment to a vision of a customer-focused business demonstrably meeting customer needs, both at route and network level with clear accountabilities, and able to make decisions quickly.

This need was reflected in the Shaw Report into the future financing and structure of Network Rail which observed that

“1.35: While the consultation responses and discussion sessions confirmed a general acceptance of further corporate devolution within Network Rail, there has still been a significant call for measures to ensure some form of national system co-ordination and coherence.”

Just as route-based regulation should support our efforts to become closer to our customers, through empowering our devolved businesses to build better and more effective relationships, regulation of the System Operator should support the need for the railway to operate as a single system – and enable continuous improvements in how this is achieved.

We note in Para 1.4 that the ORR's "ideas for regulating the system operator function are at a relatively early stage" and that "We are keen to get stakeholders' views to help develop our thinking. We are also interested in any alternative ideas to those that we set out in this paper."

We have, therefore, taken the opportunity to set out in this annex our emerging thoughts on the requirements for the System Operator function – these are being developed by our programme System Operator: Fit for the Future, which will conclude its work on this by July 2017. These requirements should enable it to have the organisation, skills, processes and tools to produce and maintain high quality long term plans, timetables and provide clienting services for enhancement schemes. These will:

- produce agreed outcomes for capacity, performance and journey times for each route and the system as a whole
- provide a long term sustainable strategy for the network
- maximise the benefits from network-wide planning in a devolved industry
- balance the needs of multiple operators when planning enhancements to the railway, to build a national timetable and coordinate the network access plan to build and maintain the railway
- identify the appropriate improvements to the railway at the appropriate time
- be based on consistent transparent decision making across geography and time ensure

The System Operator will:

- provide a framework of codes, rules and policies to support decisions about short term capacity allocation and arrangements during disruption
- provide a line of sight in the pipeline of strategic studies, enhancements and timetable production
- work with Network Rail routes and its other functions, operators and funders to understand their requirements
- work with the Technical Authority to provide plans that are consistent with, and where appropriate inform, standards and appropriate advances in technology.

We note the reference in Box 1.1.'The Shaw Report and System Operation' to the creation of the virtual freight route. For clarity we note that the freight route is on a par with our operating routes and not part of the system operator.

The Shaw Report did highlight additional areas that could be considered as we progress with establishing arrangements for the System Operator to work in CP6. Among these the Decision Criteria is a key opportunity for reform:

“these are embedded in the regulated track access contractual regime between train operators and Network Rail, and in theory give the System Operator and Technical Authority the tools it needs for dealing with complex trade-offs. They also provide a basis for routes as they consider conflicting requests for access. However, they, as with the network change process, were written for a much less congested network. Reconsideration of these criteria would be a sensible step to ensure that the System Operator and Technical Authority and the routes have the tools they require to balance trade-offs appropriately.”

If the System Operator were to assess competing requests to use the infrastructure (whether through access applications or the timetabling process) on these criteria, it may be preferable for it to apply a wider set of criteria that mirror ORR's Section 4 duties<sup>2</sup>. In such cases, the System Operator could still undertake all work (e.g. including socio-economic modelling) and then handover to ORR to formalise the decision. It would also be necessary

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<sup>2</sup> Section 4 duties are included in the Railways Act 1993 as amended

to articulate greater objectivity in the set of criteria and to consider weighting the criteria. At present the interpretation and application of the criteria is too subjective to support decision making.

The suitability of the criteria to be applied in making these decisions is of critical importance before any framework for measuring the success of the System Operator can be developed.

The System Operator offers a potentially more efficient and faster route, than is currently the case, for agreeing uncontested (i.e. non-contentious) sales of capacity between routes and customers (as ORR currently has to approve all changes to access contracts). We consider that this could be explored as a delegation of powers from the ORR.

We believe that ORR is correct in identifying trade-off relationships between the uses of capacity, performance and cost. However, we note that Working Paper 2 consistently uses the term 'right'. As we previously discussed in Annex A, we do not consider that there is likely to be a 'right' answer in most situations.

Working Paper 2 refers to opportunities for the System Operator to identify more efficient use of capacity. Under current arrangements, the System Operator can only process applications for access rights that train operators submit. This places a significant constraint on the System Operator's ability to optimise the use of network capacity. For example, franchising authorities decide many of the services that are applied for (93% of train km on our infrastructure are operated by franchised passenger TOCs to deliver their franchise agreements<sup>3</sup>).

### **ORR's focusing on how activities are split between the system operator business unit and the routes.**

As the System Operator develops, its success will be as much about how we do things as it is about what we do. Promoting the right customer relationships is at the heart of our approach. To be clear:

- the relationship between the System Operator and train operators is through the routes and through specialist activities where the system operator will have direct relationships with its customer (e.g. timetable development). The System Operator will additionally seek to involve operators in the LTPP
- quality customer service, innovation/problem solving, and long-term, whole-network thinking should be central to the aims of the System Operator
- System Operator will also need to support the routes in developing their business plans.

The System Operator should have the capabilities to actively advise a number of external parties in the industry, such as:

- competent authorities in the development of transport strategies
- project developers and funders on the business cases with relevant asset costs
- the regulator in assessing the effective allocation of capacity

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<sup>3</sup> 2015/2016 data from ORR data portal tables 12.13 and 13.25

It should promote the upskilling of people, processes and technology in the functions it manages including the timetabling and capacity allocation process.

A strong System Operator is required to understand and balance the needs of multiple passenger and freight operators, identify and deliver appropriate enhancements to the network and coordinate access across the network to do so, allocate capacity and build a cohesive national timetable.

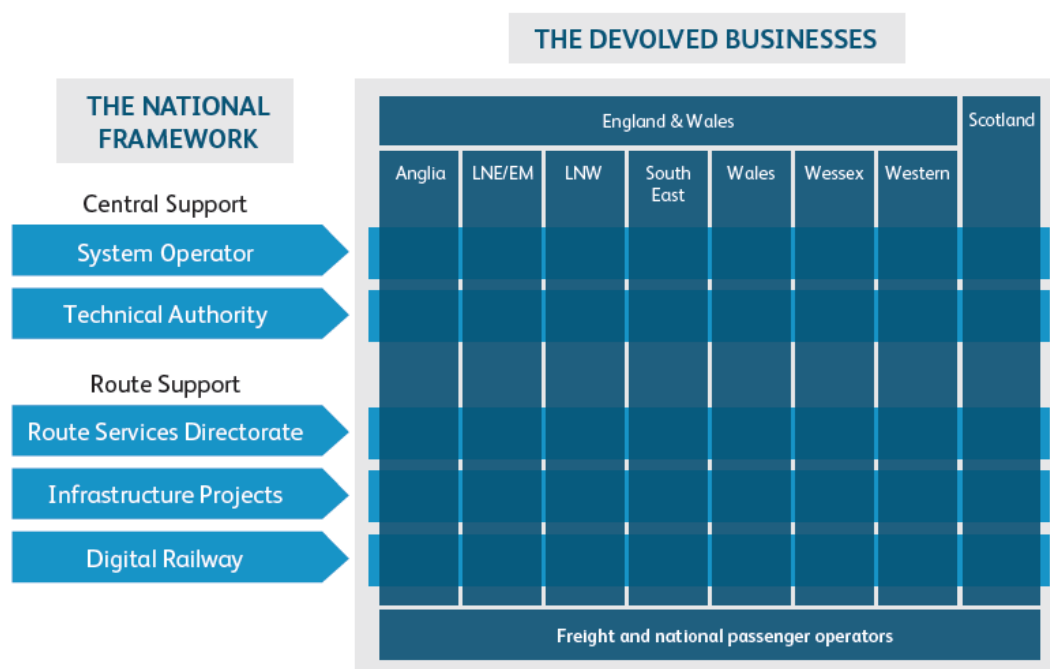
The role of the System Operator means it has the capability to consistently support the expectations of customers in applying policy and processes across routes and to enable a single track access contract for each operator on our infrastructure rather than the complexity of one for each route. We understand that train operators would strongly prefer to need only one track access contract to operate on our network.

The relationships between System Operator and operators require a clear level of customer service and expectations on both sides. The service requirements in some areas of activity are likely to be set out in contracts and codes and many already are. System Operator regulation should therefore focus on the right behaviours and effective incentives to drive quality customer relationships – but without directing operational decision making.

To retain the benefits of an integrated network we believe the System Operator should be able to offer services for all parts of the GB rail network that can be purchased by other IMs including HS1, HS2, Heathrow spur – as well as our devolved routes. Indeed this approach already operates effectively. We consider that this could be further clarified by classifying this as permitted business. In any event, managing the information flow across boundaries, both internal and external to Network Rail, will be an important part of the System Operator's activities.

We welcome ORR's support for route devolution, which is complemented by a System Operator. Figure A.2 below sets out how the System Operator should engage with Network Rail's routes. We refer to this operating model as our 'matrix'. The model could be extended so that the System Operator could work with other infrastructure managers.

**Figure A.2: Network Rail’s devolved operating model**



As we move towards further devolution, the routes will strengthen their relationships with our train operating customers. We will have a wider range of funders as central government also devolves powers and funding to the regions and as we seek funding from new sources to reduce our dependency on public funding for investments.

Whilst devolution to the routes is critical to meet customer and local funder needs, it is imperative to ensure that the network is planned and capacity is allocated and managed in a coordinated way to avoid the loss of network benefits that could otherwise occur in a more fragmented industry.

The System Operator’s role is not to make routes work in an identical way in all respects as this would be counter to the principles of devolution. Consistency is desirable but the System Operator’s role should be limited to setting some frameworks within which individual routes decide how to manage their activities.

Therefore, it follows that routes need to be engaged in System Operator customer touch points such as the process of agreeing access rights and timetabling conferences. Our routes also play an important (real time) role in system operation that must be recognised. This role will include local access planning for engineering work, as well as signalling and management of disruption.

**Specific observations on the issues and opportunities identified in Working Paper 3, Section 2 – a case for a focused approach to regulation of Network Rail’s system operator function**

Para 2.3

Our emerging policy position is that system operator will have its own plan and regulated outputs as will be the case for the routes. The system operator budget and outputs should



be treated in a similar way to route businesses including in terms of the transparent arrangements we will have in place to manage these.

It should also allow for flexibility which will enable the development and evolution of the system operator structure and responsibilities in CP6.

#### Paras 2.6-2.11

We agree with ORR's proposal to deploy a more focussed and risk-based approach to regulating the system operator. This will allow Network Rail to focus on delivery of the system operator's key priorities and milestones as determined by our customers and stakeholders.

We also agree that the system operator would complement the devolved routes. We too believe in investment in the capability of the system operator

#### Fig 2.1

Overall, we see the pros in figure 2.1 as outweighing the cons. We welcome increased focus on the system operator role and we also believe that a high performing system operator helps to facilitate high performing routes.

#### Para 2.14

The Shaw Report reinforced the need for clarity of roles within the rail industry and the definition of system operation is central to that. We have initiated the System Operator: Fit for the Future programme which will provide a clear vision of the role of the System Operator its name, structure, tools and processes and ensure that associated changes are in place. This will allow a focus on customers and support a more deeply devolved structure.

#### Box 2.1

We consider this is a narrow definition of the long term function of System Operator (i.e. 'recommending projects'). The work undertaken here is more complex in that infrastructure alone delivers nothing without associated timetable and rolling stock and other interventions. This activity concerns our role in planning the future of the network and identifying choices to meet the long term needs of funders and customers.

It is also the system operator's role to lead industry planning groups and events steering groups. We consider that the stated key function of the system operator as "Developing and recommending projects for changes to the network" is too narrow a statement of the purpose and output of the long term planning process. The purpose of the LTPP is to:

1. understand and examine the longer term needs of customers and outcomes desired by funders and the potential demand for rail travel
2. to develop a set of outputs capable of meeting these needs
3. to develop longer term strategies to deliver these outputs, which may involve timetable, technology or enhancement solutions (or a combination thereof)
4. make proposals to funders as to how the system / network could develop to deliver these outcomes / needs in the medium / longer term.

## DEVELOPING THE REGULATORY FRAMEWORK FOR THE SYSTEM OPERATOR

### Related ORR questions

Question B: What are your views on having a more focused approach to the system operator, possibly in the form of a discrete settlement that is part of an overall determination?

Question C: What are your views regarding our initial ideas relating to the form of Network Rail's system operator settlement? Specifically, what are your views regarding our proposed approach to: i) the system operator's outputs framework; ii) the system operator's revenue requirement; iii) the system operator's incentives; and iv) the monitoring and enforcement framework?

Please note: In our response below, we have used the term 'revenue requirement' to describe separate allowed revenues (i.e. made of up regulatory building blocks). We think that this has a more precise meaning than 'settlement'.

We would expect to work closely with industry and ORR over the next 18 months in order to identify a suite of measures that is appropriate to monitor the activities that the System Operator and its customers consider are most important. Initial discussions suggest that qualitative measures are likely to be of more practical use than quantitative.

Measures should be informed by what routes and customers want the System Operator to do. It would be premature to try to define these at this stage in the process when the programme to set the scope and remit of the System Operator has yet to be concluded. This approach could be made consistent with the scorecards recently introduced by each of our routes.

In developing more detailed proposals for the regulatory framework for the system operator, we believe that there are broad elements that should be consistent across the regulation of Network Rail.

Using the approach established in Working Paper 1, we have set out the key elements that we believe should guide the ORR's approach to regulation of the System Operator in CP6 alongside that for the routes:

- Financial framework: Determining the System Operator's funding
- Outputs framework: Approach to determining System Operator outputs for CP6
- PR18 process and interfaces: Implications of System Operator relationships
- Reporting and monitoring during CP6: Implications for the System Operator during CP6.

### **A potential financial framework for ORR's determination**

In developing proposals for System Operator regulation, we hope that ORR seeks to avoid undue complexity.

We think that it is important for the Network Rail System Operator (NRSO) to have its own regulated outputs. However, whilst the activity of the NRSO is crucial to the efficient operation of the network, the costs involved are relatively low (c.£25m per year) in comparison to the size of a geographic route. The NRSO is also asset light, i.e. it has very

view physical assets. Therefore, we do not think that it needs to have its own revenue requirement.

Neither we nor our customers want a new charge to operators, which specifically recovers the costs of running the NRSO. An 'NRSO charge' would be complex and burdensome. The benefit from having a separately identified revenue stream to the NRSO could largely be achieved from having a transparent allocation of NRSO costs to the routes. However, this does not stop the NRSO from charging users outside of the traditional network for its services, e.g. HS1 or other rail networks.

Instead of a separate revenue requirement for the NRSO, we think that the most appropriate approach for CP6 is for the NRSO to recover its efficient costs through each routes' revenue requirement. This will mean that NRSO costs will be recovered through access charging income and booked to the routes. The costs of the NRSO would then be cross charged, in a transparent manner, to the geographic routes. This approach could avoid the need to create a new RAB for the NRSO. Any capital costs incurred by the NRSO could be charged to each route (this could be allocated in proportion to traffic metrics or charging income). This would provide routes with an opportunity to challenge the capital costs of the NRSO. It may also be appropriate to include a measure of capital expenditure performance in the System Operator balanced scorecard.

We consider that the NRSO could be appropriately incentivised without the need for an NRSO RAB. However, if it was concluded that the NRSO should have a RAB, we do not think that this means that there would need to be a separate NRSO charge to users. Instead, the NRSO's RAB costs (amortisation and return) could be recovered through cross-charges to routes.

Potential incentives for delivering additional capacity utilisation should be considered to drive growth if it can be effectively measured.

Within the financial framework, there need to be mechanisms to deal with variances in the System Operator's costs compared with its budget. Overspend should initially come from the System Operator's budget and then from a central reserve, only if necessary. Underspend by the System Operator should be returned to the centre.

### **Outputs framework**

Network Rail considers that:

- Some of the System Operator's activity requires a clear level of delivery and customer service, however these requirements are, in many areas of activity, set out in contracts and codes and while compliance could be reported, the outputs themselves are relatively fixed. System Operator regulation could focus on encouraging the right behaviours, performance and process improvements, and effective incentives to drive quality customer relationships and efficient use of the infrastructure.
- Scorecard measures should be informed by customers (route and train operator). Details and potential areas of inclusion are still likely to evolve as work to clarify the scope and remit of the System Operator as part of our transformation strategy. We would expect to work closely with industry and ORR over the next 12 months in order to identify a suite of measures that is appropriate to the final suite of activities.

- Initial discussions suggest that qualitative measures are likely to be of more practical use than quantitative measures. We think that System Operator regulation should be capable of allowing the System Operator to evolve to meet the challenges in CP6 and beyond.
- Target KPIs may be difficult to set since it is not possible to identify specific system operator outputs that are not influenced in some way by the decisions or actions of other bodies in System Operation or operation of the network. The clear mapping of parties with the ability to influence system operation outcomes is useful in highlighting the limitations in setting targets for regulated outputs that are entirely within the control of the System Operator function.
- While we note, and will continue to collaboratively support, the work being carried out by TRL on the subject of capacity measures, we recognise the internationally accepted limitations of simple numerical attempts to define a concept as complex as capacity (UIC Leaflet 406).
- We are developing the proposed structure and outputs of the System Operator function in the 'System Operator: Fit for the Future' programme and will share these with ORR in due course.

### **PR18 processes and interfaces**

Network Rail considers that:

- Our aim is to engage with customers and funders in order to develop their understanding and gain their support for our System Operator CP6 plan
- The SBP should include the business plans for the System Operator function, including its budget and scorecard, recognising these form part of Network Rail's overall plan
- The System Operator will be charged with the role to establish frameworks within which devolved route businesses (in relation to system operator functions) are able to collaborate with their customers
- The System Operator will have the ultimate decision making capability across the network for the contracting and allocation of capacity

### **Reporting and monitoring during CP6**

Network Rail considers that:

- System Operator regulation should be capable of allowing the System Operator to evolve in CP6 and be flexible in size and shape. Just as Network Rail should be able to adjust the budgets of each route in light of emerging performance, it should also have flexibility to adjust the System Operator budget to reflect emerging performance. In the event that budget adjustments are made, the impact on outputs should be considered and be reported.
- As well as reporting system performance, the regulatory framework should facilitate evolution and innovation, and incentivise further use of the network through transparent incentive mechanisms.
- Further external and industry changes are inevitable and require a flexible regulatory framework that can respond to these when appropriate and to a proportionate level.

- The approach to System Operator reporting and ORR monitoring should be based on balanced scorecards that support customers, routes and funders in holding the System Operator to account
- System Operator expenditure (and 3rd party income) should be included as part of Network Rail's overall financial reporting
- The Network System Operator Dashboard provides a means of reporting overall performance of system operation by the parties engaged in System operation, whereas the Network Rail scorecard for the System Operator will be focused on the outputs of the function.
- Through publications such as the Dashboard, the System Operator should make available information to support discussions around the overall capability and performance of the Network. Network Rail's System Operator Dashboard provides a transparent way of reporting improvement indicators through its reporting on programmes to improve our abilities in these areas. These include Timetable Rules Improvement Programme which is validating the building blocks (rules) of the timetable, and Industry Access Planning Phase 2 which is improving industry planning processes, providing better timetables.

### **Specific observations on the issues and opportunities identified in Working Paper 3, Section 3 – a possible design of any settlement for the system operator functions**

#### Para 3.3.-3.5

Whilst we recognise the difficulty in measuring performance with respect to medium- and long-term functions we do not believe there is a need for input-based measures in this area. Such an approach appears to conflict with the rationale set out in paras 2.6 – 2.11 for a more focussed and risk-based approach to regulating the System Operator. It should also be noted that Network Rail's network licence also sets a number of clear system operation obligations with which Network Rail is required to comply.

We believe that emphasis should be placed on the importance of customer and funder input into Network Rail's plans, from which scorecards are developed and that ORR sets outputs for the system operator on the basis of these customer and stakeholder-driven scorecards. One area that is not specifically mentioned in this paper is that there will be System Operator outputs that are delivered by routes and those that are delivered by the centre.

We would anticipate that those System Operator outputs delivered by routes would be included in route scorecards if appropriate and these would not form part of the System Operator determination. The system operator outputs delivered by the centre would be based on a central system operator scorecard or alternatively through the provision of a dashboard of information (i.e. the network system operator dashboard that has been developed and published in collaboration between Network Rail and ORR).

We also believe that outputs need to be flexible and respond to the possibility of changing customer requirements and other circumstances (e.g. growth) over the control period.

Regarding the measurement of the system operator's performance, and in line with our views on the outputs framework more broadly, we consider that there needs to be a more balanced scorecard approach, in which a basket of measures are determined, with assessment of them together (rather than individually) at a route-level. This would recognise

our achievements in meeting most (if not all) of our targets and avoid the perception that we are 'failing' because of one or two missed outputs.

#### Box 3.1

We consider that in regards for the business and for our people, getting meaningful measures is going to be absolutely critical for your described short, medium & long term system operation and the system operator.

A general concern in this area is about the measurement of capacity and how this would be done in a way that is straightforward (to measure and useful (so that the industry gets a benefit as a direct result of it being measured)). For example, a measurement around 'additional train paths' or 'creating paths that people may or may not wish to use' could be met but not be seen as useful if operators do not want to use them.

The paper suggests that there could be "measures that capture the SO's role in identifying and/or allocating additional train paths, including by considering their socio-economic value". If such measures are to be applied, we consider it essential that the ability of the system operator to duly discriminate on such a basis is clearly defined. In recognising societal benefits, if we used these ourselves to determine paths, in its own processes, we would welcome a discussion around whether ORR would retain the final approval for new access rights.

#### Para 3.14

Whilst the Railways Act 1993 continues to provide provision for financial penalties in the case of licence breach, we believe that following reclassification it no longer makes sense for enforcement policy to focus on financial penalties and that a broader suite of regulatory tools should be considered. We would welcome a more detailed conversation with ORR about this matter.



# Rail Delivery Group Response to ORR's Working Papers 2 & 3: System Operation and System Operator Regulation

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.



## **1.1 Overview**

This paper addresses the questions set out by Working Paper 2 (WP2) on the ORR's initial views of potential issues, opportunities and benefits with how system operation in rail is currently delivered. It then comments on the initial views set by the ORR in Working Paper 3 (WP3) on the framework for regulating Network Rail's system operator functions.

The RDG has already provided a full response to the initial PR18 consultation and many of the points made in that – especially around customer focus and regulatory frameworks are relevant to the separate response on Working Paper 1 on Route Regulation, and to this combined response for Working Papers 2 and 3.

There has also been, and will continue to be, extensive industry engagement and discussion with the ORR through the industry working groups that the RDG has set up for PR18. To date there have been a total of 5 RDG 'Better SO Regulation Working Group' meetings – each of which has been attended by the ORR. The RDG values this engagement and we believe the ORR has also found it helpful.

The industry recognises that the detail of many areas explored in WP2 and WP3 (and the other working papers) will be developed in further stages of the PR18 process. We envisage that the working groups will continue to operate throughout the rest of the PR18 process as we believe they provide useful forums to work through the detailed issues. We welcome the tone and purpose of the ORR working papers which are intended to facilitate a more dynamic process of industry engagement to support an iterative approach to developing policy.

We believe our working groups link well with this more collaborative approach and are pleased with the constructive engagement they have provided. Our discussions, shaped by the presentations and questions posed by the ORR have naturally informed the content of this response alongside the questions contained within in the working papers. This response therefore provides a high-level industry view on the early thinking outlined by the ORR and provides specific comments on more detailed options and issues explored during the working group discussions of system operation – including the potential regulatory developments in respect of the System Operator activity. The response includes views on where there is industry agreement, or not, on the proposals in the paper.

In general we do not repeat the points already made in the RDG response to the initial consultation.

We confirm that we are content for this response to be published on the ORR website.

## **1.2 Terminology**

Given the change in the range of themes between the two working papers - from the overarching concept of System Operation, through to the more specific consideration of the Regulation in CP6 of the System Operator activities carried out by Network Rail at a Network level – we would like to be clear on terminology.

This response uses the terms System Operation (SO) to refer to the activities being carried out across industry including by DfT, ORR, Network Rail, other Infrastructure Managers (IM), RSSB and even train operators - as explored in WP2 and the ORR's previous (2015) consultation on SO.

We recognise that SO activities may be undertaken in a number of places within Network Rail, including in the Routes and the Technical Authority. In discussing the regulation of the delivery of Network Rail's System Operator (NRSO) activities we have assumed that the majority of these will be carried out by a single function within Network Rail. We believe this to be that part of the organisation (identified in Network Rail's organisational matrix) that undertakes the lion's share of system operation activities including Long-Term and Capacity Planning. We note that the function primarily responsible for these activities is itself embarking on a programme to ensure that the NRSO activities are fit for the future as part of Network Rail's transformation plan.

## **Working Paper 2: System Operation**

***ORR question A: To what extent do you agree that the issues and opportunities we have identified with the way system operation is currently undertaken are the most material ones?***

### **2.1 General comment**

We welcome the mapping out by the ORR of the wider aspects of SO across industry. The accountability of all parties engaged in SO needs to be clearer and the consultation attempts to clarify the roles and responsibilities of the key parties that influence or decide upon each stage in the capacity planning and allocation process.

Parties undertaking SO activity should engage with other industry parties including the Routes and the Operators in their planning of the network. For example, in its long-term planning, the NRSO should coordinate these opportunities to develop capacity through a range of options for interventions. Emphasis should be on the engagement with funders, NR routes and train operators in the preparation of Route business plans, flexibly managing processes, identifying physical and operational options for increasing capacity, improving production of timetables and developing joint industry working and ownership.

### **2.2 Direct influence**

We note the wider considerations made in WP2 and concur that activities that can influence, and potentially fall within the scope of, system operation are currently undertaken by a range of organisations. For example, Competent Authorities establishing long-term transport policy and enabling delivery (including output specification, determining funding, project sponsorship, public service obligation (PSO) tendering), through to the ORR itself directing parties to enter into sales. It is for this reason that we believe special care needs to be taken when considering appropriate measures against which the NRSO might be judged or targeted as it is likely any chosen metric could be the product of the actions of more than one entity engaged in system operation.

### **2.3 Industry Mapping**

We raised questions during the working group discussions about ORR's SO mapping (Figure 2.2 of Working Paper 3); e.g. setting basic design and capability elements of the system are not simply inputs to system operation.

In its descriptions, the ORR should be clearer that funders do not allocate capacity. Equally, it is noted that there are various bodies responsible for rules changes that govern how the system is used and that incentives do not necessarily flow through from the regulatory regime.

Working Paper 2's scope is significantly wider than PR18. A number of SO issues or opportunities can be identified here that are likely to require more significant change to industry, government or regulatory responsibilities and processes (e.g. developing the coordination of SO activities between ORR and DfT in relation to franchises). While the working paper acts as a useful marker for future areas of discussion, we anticipate these would not be taken forward as part of the PR18 determination and have limited our comments accordingly.

***ORR question B: Are there other issues that you consider material that we haven't mentioned?***

## **2.4 Proportionality**

The industry is keen to avoid a complex and prescriptive regulatory framework for NRSO regulation that risks being bureaucratic or creating artificial / immovable barriers between: Network Rail's Routes; between routes and national activities; and between Network Rail activities and national/cross-route operators.

Processes should be simple and transparent and the RDG would therefore be concerned to see a regulatory framework established for SO that places a disproportionate cost on the industry and funders due to an over emphasis on regulating the process involved.

Given the relative proportion of OM&R (operations, maintenance and renewal) expenditure to overall SO costs, a proportionate regulatory burden on the NRSO activity would allow a view of 'how' the NRSO carries out its work but would not be one that imposes significant regulatory reporting activity. The regulatory framework might otherwise result in the NRSO placing more importance on the ORR than on the Routes and their customers, restricting the ability for the network to manage shocks, or stifling future reforms.

## **2.5 Services to other infrastructures**

We believe NRSO should, to retain the benefits of an integrated network, be able to offer services for all parts of the GB rail network that can be purchased by other IMs including HS1, HS2, Heathrow spur, or any future concessions. In any event, managing the information flow across boundaries both internal and external to Network Rail will be an important part of the NRSO activities.

## **2.6 Relationship with Technical Authority**

Within the wider understanding of SO, the setting of technical rules (standards, criteria and specifications for areas such as operations, interfaces, asset maintenance and renewals) and Asset Management Policies are key Technical Authority (and in some areas RSSB and European Rail Agency) activities which all have a bearing on the outputs that the system can deliver - as well as the costs incurred in delivering those outputs.

Experience shows that significant improvements in the capability of the system can be delivered quickly and cost effectively by focused and proactive development of arrangements in this area. For example, "Sprinter" speeds which allow light, high performance trains to operate faster than heavier trains on the same infrastructure enable the delivery of faster journey times and higher capacity at very low cost. In addition, optimising inspection, maintenance and renewal regimes can deliver higher asset reliability, longer functional life and reduced asset cost.

Through its long-term planning activity the NRSO has the potential to identify physical capabilities of the system that could be developed to deliver capacity or operational benefits. Its working relationship with the bodies (internal and external) responsible for developing and updating the requirements and standards that would need to be updated will be important and needs to be taken account of in the process for regulating the NRSO.

***ORR question C: Does your experience, particularly of the system operation functions that Network Rail is currently responsible for, reflect our emerging views around issues / opportunities.***

## **2.7 Opportunities**

As well as providing the glue that holds the routes together in an increasingly devolved arrangement, NRSO has the crucial task of delivering efficient train paths on across the UK network now, and in future years. The clarification of the role and outcomes expected of the NRSO is a welcome opportunity to support this area of Network Rail's transformation.

Opportunities should be sought to change the culture of how the industry plan and use the railway so that it is more customer focused and innovative. It is also important to address the increasing challenge of congestion on a growing network, whilst providing a focus on continuous improvement of processes and investment in systems and personnel.

Opportunities include both instances of good system operation where changes could realise further benefits, and 'environmental' opportunities – including features of the evolving rail industry environment which could facilitate better outcomes in the future. This could potentially include:

- operational research into new ways of working to unlock potential capacity including timetabling interventions;
- supporting government with planning and investment of enhancements with progressive reviews of options ahead of enhancement investment;
- supporting technological change;
- enabling further devolution within Network Rail;
- getting to a higher level of understanding of available capacity and greater optimisation of that capacity (Traffic Management will assist here);
- improving / monitoring post-project close out to check if project aims have been met and timetable planning rules have been updated; and
- better publication of information including a potential single point of information for all information relevant to network access (Register of Infrastructure, Network Statement, Capacity Statement, Vehicle Register)

As part of its work to enable the best use of the network the NRSO could seek to use the contractual flexibility, timetabling information and planning skills at its disposal to develop and protect (with relevant Network Code Changes) pre-arranged paths (as per the arrangements used in international rail freight corridors) that can accommodate additional traffic. Through dialogue with customers the NRSO could manage and provide insight into white space and allow train operators to establish commercial opportunities with greater confidence.

## **2.8 Issues**

Areas in which the PR18 offers opportunities to improve good system operation outcomes include encouraging more holistic thinking of outcomes. This would address the increasing risk that, driven by customer and route local perspectives, locally optimal solutions could

result in overall sub-optimal use of the network as a whole. Quality of outcomes could be given a higher profile. This could include reductions in inefficient paths being rolled over, and addressing codes and contractual requirements (to accommodate flexible/agreed timeframes for responses) that enable solutions to path or timetable requests to be developed and proposed rather than be driven by short-term time frames that may not permit the necessary analysis and validation of options.

## **2.9 Existing benefits**

There are elements of SO activity which are performing relatively well and, at least for the time being, should not be disrupted by 'change for change's sake'.

The ORR has already noted that where good system operation is happening, it should continue and continue and be facilitated by changes to the regulatory framework and incentives that are put in place for PR18. As proposals are developed we would therefore suggest that the ORR also captures and makes equally clear the benefits of the current arrangement that it is seeking to maintain and protect while promoting regulatory reform in this area.

***ORR question D: Are there any examples you could provide of how Network Rail undertakes these activities that would either support or contradict our emerging views?***

## **2.10 Introduction**

The national position of the NRSO means it should be able to develop the capability to support consistent expectations of customers in application of policy and process across routes. It also enables, importantly, a single track access contract per operator for Network Rail's infrastructure rather than the complexity of one for each Route.

The industry notes that in July Network Rail published its transformation plan setting out how it intends to deliver for its customers. This includes Network Rail's System Operator: Fit for the Future programme which seeks to put into place a function that has the organisation, skills, processes and tools in place to be effective in its role. As this programme progresses Network Rail needs to work with industry (e.g. through the Planning Oversight Group - POG) and the ORR to clearly identify the necessary activities to be performed nationally, their funding requirement, and accountability for delivery. Similarly, it is essential that clear governance arrangements are established for how the NRSO engages with train operators and Routes. Additional clarity as to which SO activities the ORR propose to come under its initial NRSO split for the purposes of the PR18 determination could be provided as part of the next consultation.

The approach to route-level regulation should support Network Rail's devolution plans to become closer, and more accountable, to its customers and hence to passengers and freight users. Establishing appropriate industry governance arrangements and processes is important to help make the Route/customer engagement work effectively in practice. This is discussed further in our response to Working Paper 1. The governance arrangements and processes should clearly include the engagement between customers and the NRSO; this would help achieve a consistent approach as well as appropriate consideration for network-wide matters.

## **2.11 Building customer relationships**

The relationship operators have with the NRSO includes some of the most important interfaces that these companies - especially freight and other cross-route operators - have

with Network Rail. While the relationship between the Routes and their customers needs to be developed to improve the efficient operational performance of the whole industry, that between the NRSO and operators will also be crucial for successful network planning, development and planned use. RDG members would want both the NRSO-route and the NRSO-customer relationships reflected in the NRSO's monitoring and reporting. Therefore the regulatory framework should focus on outcomes over both inputs and outputs and consider the quality of the service provided to operators as well as to the routes. There are a wide range of potential relationships between the NRSO and operators:

1. the regular direct contact through the capacity planning & especially timetabling process;
2. given the relatively small proportion of operators that do not cross a route boundary, the NRSO supports the cross-network nature of most customers. Some customers will see the NRSO as a guarantor of their access needs and ability to serve their markets (cross-route passenger and freight) - even though there is a specific route in Network Rail providing a direct service for the freight and cross-route customers;
3. points of direct interaction include stakeholder engagement in the Long-Term Planning Process;
4. through agreeing access rights approaches to the ORR and supporting routes and customers in the contracting of access;
5. through Routes being customer focused and collaborative, TOCs and FOCs will exercise a role in pushing for change in network capability and influence the routes' demands on the NRSO; and
6. finally, there may be some commercial opportunities for the NRSO to develop its service offering for customers and potential applicants.

NRSO regulation should therefore focus on the right behaviours and effective incentives to drive quality customer relationships and help customers manage their business needs – but without directing operational decision making.

## **2.12 Consistency**

Maintaining a consistent approach to route based activities is a key area of consideration. It is important therefore that measurements and incentives that consider the identification and allocation of capacity need to be consistent despite activity being performed by different parts of the IM. Where capacity allocation is delivered by the NRSO centrally within A for C timescales the approach taken and likely outcomes should be consistent with decision making at route level where the routes deliver the VSTP (Very Short Term Planning) process. Similarly, approaches to VSTP requests and the timetable outputs need to be delivered consistently across routes as well as between routes and the centre when short-term planning moves into VSTP.

## **Working Paper 3: System Operator Regulation**

This following part of the response addresses the subject of 'Better System Operation in Network Rail' and therefore focuses on Working Paper 3.

***ORR question A: To what extent do you agree with our understanding of how Network Rail fulfils its system operator responsibilities at the national level (by the system operator) and the routes?***

### **3.1 National roles**

There are a wider range of interactions that the NRSO should have, or develop, given its unique capabilities to actively advise and engage with other industry parties:

- competent authorities (and the National Infrastructure Commission) in the development of transport strategies and potential franchise or concession requirements;
- project developers and funders on the business cases with relevant asset costs; and
- the regulator in assessing the effective allocation of capacity.

The focus across this range of long-term and capacity allocation activity should enable innovative behaviour and a systematic review of perceived wisdom of network capabilities. It would be useful to clearly identify UK Network responsibilities held by Network Rail that go beyond its own routes, e.g. some services cover other IMs (e.g. timetabling) and potentially connected facilities (e.g. Network Statement).

### **3.2 Network Capacity**

The NRSO's expertise in planning future capacity requirements and managing capacity allocation should allow it to provide the ORR with the necessary analysis to decide on issues of capacity allocation without the need to undertake extensive research of its own, and perform the required work associated with declarations of congested infrastructure.

An improved understanding of capacity and the value of access for various purposes should allow the production of comparable and contrasting options for uses that can be assessed with equivalency, using models and able to be verified by ORR using real commercial data. ORR has a clear role in capacity allocation and passenger regulation, but the NRSO should be able to provide much of the necessary information for decision making.

### **3.3 Route support**

The ORR's support for route devolution supported by clearly defined System Operator activity is welcome and evolving arrangements should be supported by a clearer role, purpose, and resourcing for the NRSO that reinforce the importance of the activities that it conducts and seek their quality delivery over CP6.

Activities delivered by the NRSO should provide a matrix within which the Routes and other IMs can conduct business with customers, while the NRSO promotes and protects the system benefits and cross-network processes.

The NRSO provides a coordinating function for routes, maintains a number of cross-network responsibilities, and provides a single entity for contracting purposes. However, it does not direct routes in how to deliver their operational responsibilities.

In its work on developing a NRSO fit for the future, Network Rail will be able to be clearer about the point at which it stops working in a range of areas. As routes should be responsible for the totality of actions delivered at Route level, any System Operation activities identified as being delivered at Route level (e.g. on the day planning) should be reported by the Route rather than the NRSO.

**ORR question B: What are your views on having a more focused approach to the system operator, possibly in the form of a discrete settlement that is part of an overall determination?**

### 3.4 NRSO Regulatory framework

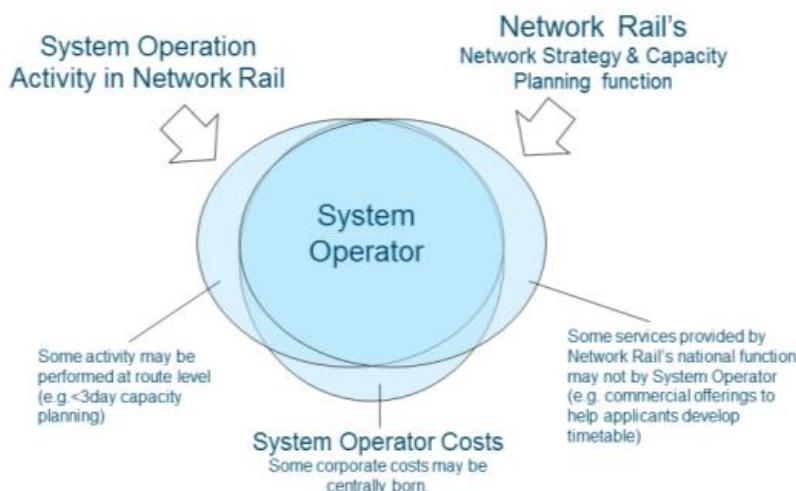
While an increased focus on the regulation of System Operation activities is welcome, its organisation and funding need to be future proof and flexible. Along with separate outcomes for the NRSO, there should be transparency of NRSO costs in NR's budget for PR18.

The regulatory settlement should not set out a prescribed organisational view, or specify the management activities performed by Network Rail; it is for Network Rail to determine, through its own business planning, the detailed shape and role of the functional and departmental activities undertaken centrally (and/or nationally) for the national network either on behalf of routes or as national operations. This includes the Long Term Planning Process (overseen by POG on behalf of the industry) including developing options, clienting of schemes and early scheme development, management of capacity, producing the timetable, and allocating timetabling centrally. Even where these are done on behalf of the whole network (and any NRSO developments should be consulted with wider industry as part of the business planning process), it is noted that these do not always need to be undertaken in one place 'centrally'.

In terms of charging mechanisms, the NRSO should have transparent funding within the wider Network Rail settlement and not be complicated by charging mechanisms. There is no need for a new, separate, charge to operators or the creation of any billing mechanism for Routes to pay for NRSO services. This would be an added complexity, increase the amount of work needed in PR18, and add little value – especially as Network rail could report actual costs against the determination to provide the necessary transparency.

The NRSO should have a set of regulated outputs based on a balanced scorecard reflecting outcomes for customers (including both routes and operators) and the quality of its work. There is no requirement for a system operator RAB as recovery should be through allocation to routes who then include costs in their revenue requirement.

We also recognise that there may not be an absolute overlap between the totality of System Operation activities in Network Rail and NRSO activity and costs (see diagram).



NRSO regulation should allow for activities to be moved into or out-of the national function in Network Rail and budget should be able to be moved accordingly – both of which requires



flexibility in the regulatory settlement and transparent reporting of outputs and costs by Network Rail. This needs to be balanced by financial and output control processes within Network Rail that are sufficiently robust to prevent NRSO work streams being readily stopped and resources moved as a reaction to pressures elsewhere in the organisation – this could be demonstrated by a high level breakdown of costs and reporting these alongside any anticipated impact on outcomes.

The NRSO's activities will involve providing services direct to train operators as well as indirectly via the Routes. In particular, the train planning process tends to be a direct interaction between train operators and the NRSO.

Network Rail is not currently funded for R&D to deliver 'undirected research' into capacity – a potential wider industry need. However the potential reward for relatively small investments in capability in this area should be considered in the development of the NRSO's business plan and budget. In addition, where there is a direct need and with agreed funding, it is important that bodies can approach the NRSO to request the identification and examination of options for the network's development, with both local and network-wide views explored and provided.

There may be commercial opportunity for delivering additional services to competent authorities, operators and new access applicants, and also opportunities under what could be permitted business for services to be able to be provided to other IMs in the UK.

In determining the required financing for PR18, the ORR should have mind to the NRSO needing to cope with an increasing workload relating to;

- ancillary parts of the network (i.e. depots and sidings);
- new capacity reporting requirements;
- increased levels of congested operation; and
- higher levels of capacity innovation needed to make best use of the infrastructure.

Just as Network Rail should have flexibility to move resources from one Route to another – or other national activities - it should also have flexibility to move resources between a Route and NRSO where there is more efficient and effective way of working available.

By giving the NRSO the ability to balance its objectives and hence outcomes, it should be able to explicitly manage trade-able outcomes through a clear process. A fixed set of target performance measures may therefore not be appropriate.

We suggest that a scorecard approach is adopted for the NRSO to provide transparency. Any possible scorecard approach for output reporting could be separate to regulated outputs. A scorecard should be significantly informed by customers' feedback on experience and service of the NRSO.

The ability is needed to balance objectives – the NRSO's regulated outputs need to 'trade-able' while being clear of the change control process. The NRSO needs ability to move activity along with outputs or budget in a flexible and transparent way.

We do not believe it should be possible to 'trade-off' safety and technical standards but they should be part of the considerations of the NRSO in looking at the impacts of its decisions.

The NRSO should encourage medium to long-term focus throughout the industry and with funders. It needs to support the quality exchange of information between those involved in all areas of System Operation, so that the use of capacity is consistent with its planning and funding.

***ORR question C: What are your views regarding our initial ideas relating to the form of Network Rail's system operator settlement? Specifically, what are your views regarding our proposed approach to: i) the system operator's outputs framework; ii) the system operator's revenue requirement; iii) the system operator's incentives; and iv) the monitoring and enforcement framework?***

### **3.5 Outputs framework**

It is important that effective regulation and performance reporting is in place for System Operator activities. The PR18 process provides an opportunity to establishment properly monitored and clear whole-network outputs from the NRSO activities.

Care needs to be taken in the development of any regulatory targets at an NRSO level as these can be expected to have a likely wider impact on the industry as a whole. Target KPIs may not be appropriate where it is not clear what incentives can clearly operate exclusively at the NRSO level without the responses engendered impacting on routes and their customers. It is not clear that a group of measures that work together indicate an overall increase in options for the capacity being obtained from the existing network. It is also likely that decisions taken on capacity options will need to be a balanced in a wider range of measures and contractual arrangements including franchise specs. It is not clear that any regulated input measures are appropriate for the NRSO given the heavy reliance on other actors in the system – e.g. the NRSO doesn't have total control of engineering possession plans, selection of projects by funders, franchise driven service pattern requests – and it would be inequitable to penalise the NRSO where it is driven by such factors.

Quality customer (route and operator) service, innovation / problem solving, and long-term, whole network thinking should be central to the aims of the NRSO and reflected as such in its regulatory reporting. Measures should be able to indicate whether the NRSO is working in the right direction for customers on quality of service that the customers report receiving - and there should therefore be a significant customer (route and operator) input into the establishment of the outputs framework.

Seeking to measure outcomes most relevant to operators should drive a need for a balancing metric that considers how well capacity has been identified and allocated. We believe this means it is important to focus on the quality of the NRSO's output. For example, a performance measurement that considers planning delays will pick up any deficiencies in the Timetable Planning Rules (TPR) - a regulatory target specifically on data or TPRs is not needed.

Suggested measures may include:

- **CAPACITY GENERATION:** use of the network to generate capacity – both the capability of NRSO and effective use of investment to support a re-balancing from a punctuality focused industry to capacity;
- **QUALITY:** efficiency and effectiveness of delivery (how many errors / resource allocation / behaviours / engagement);
- **SPACE:** possession optimization, how does the NRSO contribute and compare to rest of OM&R;
- **VOLUME INCENTIVE:** the volume incentives needs to be geared appropriately;
- **SUPPORTING OPERATIONS:** suggest performance is not a measure unless serving as a proxy for baton change – e.g. focus on freight or cross-country; and
- **LONG-TERM THINKING:** a key area of SO activity in providing a centre for long-term industry thinking and problem solving.

The regulatory framework should encourage and support the industry members to collectively deliver whole-industry outcomes through a clear framework that sets out the relationship between NRSO activity and both the Routes in operational delivery and the Technical Authority in supporting the technical standards and capability of the network.

System Operator regulation should be capable of allowing the NRSO to evolve in CP6 and be flexible in size and shape. The ORR needs to be mindful that it does not create artificial barriers in its regulation of the NRSO that discourage collaborative activities across the industry. Financial flexibility and the ability for Network Rail to adjust budgets is essential as we commented on above and in the response to the initial consultation.

In addition, as well as reporting system performance, the regulatory framework should facilitate evolution and innovation through a transparent Network Rail change control mechanism against which any justified changes in budget allocation (e.g. between routes and the NRSO) can be reported if Network Rail reorganises activities. Transparency will also cover the effect (if any) on outputs.

### **3.6 Incentives**

Incentives should be in place for NRSO to encourage cost effective solutions to maximise the capability of the current network and plan the future network. This requires the NRSO to identify the whole-system requirements and support a range of different ways of delivering the NRSO's challenges. Care should be taken to avoid incentives that promote undue avoidance of risk.

The NRSO should be incentivised to actively identify opportunities to increase network capacity and capability, subject to any affordability or deliverability constraints and with an understanding of any performance risks. The industry believes that the impact of extra trains on performance targets (and hence reputation) is a main driver when Network Rail makes decisions on providing access for new paths. Instead, capability and effective use of investment requires the NRSO to rebalance away from PPM to capacity and develop cost effective solutions to maximize the capability of the current network and plan the future network.

Volume measures don't significantly incentivise capacity at an operational level, however given that NRSO costs will not vary significantly in response to levels of traffic a share of the Volume Incentive could be explored as a potential income source for the NRSO in order to encourage efforts to support identifying additional capacity.

### **3.7 Charges**

We suggest that as a monopoly supplier any separation of charges are unlikely to influence behaviour or generate efficiencies and would become a cost pass-through. We note that rail freight's main competitor – road – does not bear an equivalent cost so could undermine the competitiveness of rail compared to other modes, impacting on modal shift and reducing the benefits delivered by rail freight to the UK economy. Parts of the passenger market are subject to similar demand elasticity considerations.

We ask ORR to confirm our understanding of its approach that where an issue has been addressed and closed as part of the PR18 preparatory work (e.g. charges and incentives) that it is not the ORR's intention to reopen these as part of its SO work.

Where issues and opportunities are intended to be addressed as part of the PR18 SO consultations (e.g. Volume Incentive) any intention to do so should be clarified as soon as

possible. This is especially the case if it is likely to reopen any issues related to charging and incentives where the industry has already sought to obtain agreement and confidence in CP6 arrangements.

### **3.8 Monitoring and enforcement**

The industry believes that the scorecard approach should form a key component in the monitoring of the System Operator's functional performance.

The work done on the NRSO Dashboard to date is a useful start but includes all System Operation rather than only the NRSO outputs and would be inappropriate for regulatory reporting.

In its annual regulatory reporting there may be a suitable way of presenting in one place the combined effect of all SO activity undertaken across Network Rail at Route and NRSO level.

Where services are chosen by routes, operators or other IMs, the level of regulation can be less onerous.

The NRSO is an important safety net for cross-route operators in the face of increased devolution to the routes. Therefore any movement of activities between routes and the NRSO needs to be cognisant of the need for the safety net.

### **3.9 High-level process and timeline**

The proposed high-level process and timeline in Figure 1.1 is useful. However, System Operator regulation is complex and much work still needs to be undertaken to develop any potential metrics. For example, we note the work being conducted by TRL (Transport Research Laboratory) to consider the potential for any metrics around the concept of capacity – a challenge in its own right. Progressing the overall NRSO regulation, especially in areas of such complexity, will therefore require considerable industry engagement and analysis to get it right and we are concerned that some timescales look very tight.

We suggest that ORR prioritises its work program and focuses its efforts only on the most important issues. In addition, we urge ORR to present its various PR18 initiatives and projects as a coherent work programme.

## **2018 Periodic Review of Network Rail (PR18) - Initial Consultation and Working Papers 1-3**

### **Response from Rail Freight Group**

**July 2016**

1. Rail Freight Group (RFG) is pleased to respond to the ORR's Initial Consultation on PR18, and the Working Papers 1-4 issued in parallel. No part of this response is confidential.
2. RFG is the representative body for rail freight in the UK. We represent around 120 member companies who are active across the rail freight sector, including train operators, end customers, ports, terminal operators and developers, rolling stock businesses and support services. Our aim is to increase the volume of goods moved by rail.
3. RFG is participating in the RDG Working Groups on PR18, and in the DfT working group on charges, part of DfT's freight strategy workstream. Our comments in this response reflect our overall position as RFG which should be read alongside the industry views from these working groups.

### ***General Comments***

4. There can be no doubt over the importance of periodic reviews to the rail freight sector. As independent, private sector business without direct Government contracts, the impact of changes in railway charges, incentives and structure has a direct and immediate impact on the financial position of freight operators and their customers.
5. With most rail business being in direct competition with road freight, the consequential impacts of increased charges or other costs on modal shift must be a key consideration for all aspects of this review. Analysis by ORR during PR13 highlighted that most market sectors are unable to withstand an increase in charges without loss of traffic to road. Such a move would therefore lead to a reduction in environmental and economic benefits to the UK, and whilst some rail costs would be saved, there would be a resulting increase in road costs.
6. Increased charges also impact on the ability and desire of the sector, both operators and end customers, to invest in rail freight. Conversely, stable and simple charging can help to support this investment, which in turn is helping the efficiency of the sector, for example in longer and better loaded trains.
7. It is therefore imperative that work to determine costs and charges for freight is executed as quickly and as simply as possible in the review, and that a holistic assessment of charges is undertaken to ensure that the overall result maintains affordability for the sector. Given the scale of activity implied by the overall programme for PR18, ORR should look to prioritise only those areas of work where there are expected to be significant benefits and consider which, if any,

elements of work relating to freight charges should be prioritised.

8. We note the work that is underway to look at how DfT might continue to support the rail freight sector if charges become unaffordable (under the FISG group and DfT rail strategy workstreams). Whilst we support this work, it must be clear that this is a backstop provision rather than a desired outcome. As the work to date indicates that many options are not legally possible, and that others have major downsides in resource allocation, ORR should look to avoid such an outcome as far as is possible.
9. We note that, unlike in previous periodic reviews, a key focus is on the structure of the regulatory settlement, as well as on the charges themselves. This is inevitable given Network Rail's devolution and the recommendations of the Shaw report. We also note that the review is taking place in parallel with other changes, which are not yet fully included in the consultation, such as the Virtual Route for Freight and Cross Country. Our response provides our initial comments on these plans, recognising that there is much detail yet to be developed.

### *Specific Comments*

#### *Chapter 2 – Context for the Review*

10. Network Rail's plans for devolution are not yet fully articulated. The announcement of the Virtual Route for freight and cross country has been widely welcomed, and is seen as a positive move for the freight sector. However there are yet many details to be established around the relative roles of the Virtual and geographic routes, and the system operator.
11. It will be important that Network Rail is free to develop their structure, rather than this being led by plans for its regulation. Early sight of the structure will also be important to allow operators and the wider sector to provide coherent feedback on how regulation can best support the desired outcome from any proposed framework.
12. Whilst it is not a matter for this review as such, we would expect to see greater clarity from Network Rail in coming months on areas including;
  - a. The external Governance of geographic and virtual routes (Route Boards etc.) and System Operator;
  - b. The internal Governance within Network Rail including decision making and authority between routes, and the role of the centre and of the system operator;
  - c. Clarity on engagement with operators, both formal and informal, including for freight consideration of how engagement with the geographic routes, as well as the virtual route is secured;
  - d. Clarity on engagement with freight customers, ports etc., and with passenger representatives;

- e. How costs and charges will be paid and allocated between routes, noting the imperative of a single national variable access charge.
13. Separately, the decision by Government to channel the network grant through train operators could have implications for the freight sector. Although we have been assured it is unlikely that any part of the network grant would be passed via the freight operators, we have yet to see a final decision on this, or any conclusions on what alternative mechanism might be used. This will need to be resolved as part of this work.
  14. In addition there needs to be rapid clarification from Government whether they do or do not intend to expose franchises to any change in access charges – and to what degree. This is important as if there is no intention to do so, the impact of any change is limited to freight and open access, and the priority of that element of work should be assessed accordingly.
  15. The context for freight has also shifted since the last periodic review, with the ongoing and sharp decline of coal. This has a number of implications for the review, not least around the ongoing applicability of charges levied specifically on that market (coal spillage charge and most of the freight specific charge). We welcome the early assessment that the coal spillage charge should be stopped.
  16. The shrink in volume has also overall financial position of the freight operators, and their ability to absorb any increase in charges. The work that ORR did during PR13 highlighted that most market sectors could not afford an increase in charges without some reverse modal shift, and this position is highly unlikely to have changed.
  17. It remains the case that any significant increase in the overall level of charges paid by freight will be difficult, indeed impossible, to absorb, and is likely to lead to reverse modal shift or reduced growth. Road costs remain highly competitive, helped by a prolonged freezing of fuel duty and a low oil price. We note that elements of the CP5 settlement included caps on certain charges and the treatment of this will also need to be resolved.

### *Chapter 3 – Focussing the Review*

18. We agree that given the scale of the challenge, and the relative immaturity and fluidity of Network Rail's new structure, the review must prioritise the key areas for action. Broadly, we agree with the proposed areas. We question whether significant work to assess and change freight access charges is an equal priority given the scale of expected work in other areas.
19. We understand and support the need to reduce Network Rail's costs. Freight operators have, particularly over the last five to ten years, responded to incentives to do this, for example,
  - a. Widespread introduction of track friendly bogies

- b. Running significantly fewer trains on the network (as a result of efficiency, even prior to the recent decline in coal)
  - c. Improving loading of services to run more goods on fewer trains
  - d. A step change in performance
  - e. Releasing unused paths into strategic capacity and white space
  - f. Measures, at the time, to reduce coal spillage
20. Yet despite these measures, freight operators have seen access charges increase, and face the possibility of a further increase in this review. This suggests that the link between operator action and the costs they face is not working. Whilst Network Rail's fixed costs *may* have reduced in consequence, there is no understanding of this reduction, nor any feed through into lower charges.
21. This failure to link action with reduced charges could significantly weaken the incentive on freight operators to pursue such measures in future. We therefore consider it essential that;
- a. Incentives on operators are clear, deliverable and specifically linked to outcomes;
  - b. Operators feel that they share in the gain from taking the 'right' action;
  - c. The regulated outputs take into account measures to support the efficiency of operators as well as of Network Rail, particularly if operators will not see reduced charges as a consequence of their actions.
22. ORR must also continue to challenge Network Rail to be more efficient in absolute terms, not just in reduced activity or by incentivising lower train movements.

## *Chapter 4 – Proposed Approach*

### *Route Based Regulation*

23. As outlined above, it is difficult to fully comment on proposals for route based regulation given the current early development of Network Rail's own plans for route devolution. In particular, the plans for how the virtual route will operate within the devolved structure have yet to be confirmed, and therefore it is difficult to comment on how best it should be regulated. The working paper needs to be updated in light of this development, as the virtual Route is missing from various diagrams and text.
24. We are however clear that the virtual route must be on an equivalent footing to the geographical routes, as far as is possible, (as defined in the Shaw report) and is not to be considered as some subsidiary function of the System Operator, or otherwise
25. We would therefore expect that ORR will need to consider how it chooses to regulate the virtual route, with particular regard to;



- a. An equivalent process for developing a route business plan, including the engagement with operators and the wider freight sector;
- b. The financial flow of costs and revenues to and from the virtual route, albeit that there will not be the same financial framework or regulated settlement as for the geographic routes. This should ensure that there remains a single, national freight charge, and also that the virtual route is adequately funded for its activities.
- c. The regulation of key outputs of the Virtual route, and how they interact with the geographic routes and system operator on areas where shared action is necessary for delivery.

26. More generally, route based regulation should not lead to additional complexity/cost for operators and customers, and should enable Network Rail to retain flexibility to operate a national network effectively.

### *Improving System Operation*

27. As with route based regulation it is difficult to comment on how the system operator should be regulated until there is further clarity on its structure and roles. However we agree that it is a critical area, and one which requires further development. As such targeted and effective regulation should have a role to play.

28. For rail freight, the poor quality of timetabling on the network is currently one of the greatest barriers to cost efficiency. In particular, the impact of poor end to end journey times prohibits effective asset use, and looping causes higher than necessary fuel costs, and is a performance risk particularly with low speed junctions to and from loops. The management of strategic capacity is also poor.

29. Whilst we recognise the complexities of a mixed traffic railway, and that freight is considered as a marginal user, Network Rail do not appear to be equipped to look at different options which may help network efficiency, and are reluctant to use tools they already have, such as flexing rights.

30. We believe therefore that there should be a specific regulated target on the system operator related to freight efficiency – for example, in improving attained average velocity on the network.

31. The Working Paper 2 references potential weakness in the TPRs which may also contribute to this, and to a lack of technological innovation which might hinder timetable development. Regulation of the System Operator should target areas such as this, at least for the upcoming five year period, to support necessary investment in tools and resources.

32. The Working Paper 2 makes repeated references to trade – offs, and to assessing the value of services as part of timetabling. This would require much greater definition and clarity on outcomes than is presented here. For freight, we

would not expect to see challenges to existing rights and strategic capacity arising from such approaches. The priority is surely to improve timetabling, not to 'price off' services from the network.

33. Working paper 3 makes an explicit reference (3.10) to levying an additional charge on operators to fund the System Operator. We oppose this, given that system operation is a fundamental activity of any infrastructure management and should be covered in the core funding settlement.

#### *Refining the Framework for Outputs*

34. We agree that the setting of appropriate outputs is important to drive the right behaviour for Network Rail, operators and customers. It is also important to set a simple framework which drives key improvements and does not lead to perverse outcomes.
35. Network Rail should clarify how they anticipate working with freight operators and the wider sector in developing the (freight) scorecard for the Virtual route. The discussion in paras 2.15- 2.18 of the working paper references this, but does not clarify the need for a scorecard for the Virtual route, or how freight outcomes might be represented across routes.
36. Network Rail will also need to decide how national measures, such as FDM, should be allocated between routes. It will be essential that all routes are fully incentivised to deliver outcomes such as FDM, even if they are principally a target for the virtual route (and vice versa for other measures).
37. We broadly agree with the proposed areas in the working paper. We would particularly support;
- a. Retention of FDM for freight performance (and not, as per para 4.62, freight delay minutes) which would apply across all routes
  - b. A new output aimed at improving the efficiency of freight operations which could be around improving freight journey times or average attained velocity, which should be an output for the system operator
  - c. Ongoing regulation of capability, and network availability as now.

38. We support the ongoing survey of freight operator and customer satisfaction, but question whether it needs to be a regulated outcome.

#### *Costs and Incentives*

39. We note that further consultation on charges and incentives is expected later this year, and that at this stage, detailed proposals are not fully understood.
40. Although the early engagement in this consultation therefore remains high level, we have been concerned over proposals tabled at the RDG working groups regarding ORR's more detailed plans for charges. These plans appear to include geographic disaggregation of the variable charge, and reopening the approach to calculating charges, based on previous studies by University of Leeds. This risks

a potential increase in access charges, and adding significantly complexity to the regime.

41. Although we have been assured that a holistic assessment of charges will be undertaken, it remains unclear how this will be done. For example, work to look at the capacity charge, which has been identified as a priority by RDG, is not being captured presently either in the charges work or the Schedule 4 and 8 work.
42. It is wholly unclear to us how geographic disaggregation of charges will provide any significant incentive effect for freight operators, whose choice of route is limited and whose services operate in response to customer demand. Even for passenger operators, and to the extent they are exposed to charges, the ability to respond to such an incentive is limited.
43. Whilst there may be interest in understanding the factors which influence costs, the necessity to translate into charges is at best unproven. A clear statement of the incentives which are expected to be delivered is needed, and an understanding of the specific actions which are expected in response should be made. Given the necessity to supplement with a scarcity charge, the likely impact of geographic disaggregation will be an increase in access charges, which will lead to negative outcomes for freight.
44. The calculation of variable costs was considered extensively during PR13 and we are unclear why ORR wishes to reopen the evaluation. The recent Implementing Act on direct costs is also relevant at least until the UK exits the EU.
45. Our specific comments at this stage are therefore;
  - a. ORR should rapidly prioritise the overall work programme for PR18 and confirm why any significant rework of charges is a key priority for this review, given the extensive work required in other areas.
  - b. A holistic approach must be taken to all costs and charges, recognising that operators are exposed to the totality of changes. This includes the capacity charge, and schedules 4 and 8 as well as the variable charge. Any significant increase in freight charges will lead to traffic reduction, and this must be explicitly understood in the context of Government policy for rail freight.
  - c. ORR should be clear on the outcomes for operators and customers that they expect geographic charges to deliver, and be able to explain how and why those outcomes are beneficial to the railway as a whole. Incentives must be realistic and deliverable and aligned to customer needs.
  - d. Freight must maintain a national charging structure and a single freight charge which does not differentiate between competing customers on different routes. Any proposals for geographic charges must be absolutely explicit in their intent and the behaviour they intend to drive.

## *Enhancements*

46. We note the desire from Government and ORR to explore alternative ways of specifying, and managing, enhancements. We absolutely recognise the difficulties with the CP5 enhancement programme, and support the aim of a better, well managed process for CP6 and beyond.
47. It is yet too early to understand the specific proposals and how they might impact on freight. However;
- a. There must continue to be an appropriate framework for specifying freight enhancements should Government wish to fund them. This should include ring fenced funds such as Strategic Freight Network.
  - b. There must be an appropriate way of supporting projects which cross Network Rail route boundaries
  - c. There must continue to be a strategic approach to projects which provides a longer term pipeline of work and avoids short term decision making.
  - d. Network Rail must be incentivised to make significant improvements in its enhancement programme including portfolio management as well as on individual schemes.
48. There are significant implications from the ERTMS programme for freight, and any approach to this must ensure that freight is not disadvantaged. This includes costs and programme of locomotive fitment, operational requirements and policy and regulatory changes.

## *Chapter 5 – High Level Framework*

49. Overall, we consider that the ORR's agenda for PR18 is significant, and there may need to be a pragmatic approach to prioritisation of activity in the available time and resource.
50. As outlined above, we expect that ORR will consider how the virtual route aligns with the proposed approach, as this is not included in the consultation.

## *Chapter 6 – Process and Engagement*

51. We welcome the early engagement from ORR, and the open process to date. As outlined above, we consider that some elements, such as engagement with operators, are a matter for Network Rail to determine in the first instance, and ORR should work with Network Rail to ensure that regulation does not lead the approach, but respond to it.
52. There must be ongoing debate throughout the process, and there should be clear line of sight on how ORR has responded to feedback, and how they intend to prioritise their work plan accordingly.

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WC2B 4AN

Your ref:

Our ref:  
PR18/WP2/01

Date:  
24 August 2016

By e-mail

## Response to PR18 Working Papers 2 and 3: System operation

Thank you for the opportunity to respond to your *Working Paper 2: Initial views on potential issues and opportunities in system operation (WP2)* and *Working Paper 3: Initial views on the regulatory framework for Network Rail's system operator function (WP3)*.

There are a number of common themes that arise over both working papers and so in the interests of simplicity we are making a single response covering both papers.

Set out below are some general points that we would wish the ORR to reflect on as well as some more specific points relating to the key themes and issues as set out in the working papers. Many of these points have been made in response to previous ORR and Network Rail consultations on system operation that have been held over the past two years.

### System operation and Scotland's Railways

Following the publication of, and in response to the Shaw Report, there is a general consensus of support within the railway industry for the principle of increased local autonomy and collaborative working in the operation of the railway to ensure that customers' needs can be better considered.

As indicated in previous responses, the Scottish Government strongly supports the full devolution of Network Rail to Scotland. In the absence of this we continue to support any measures that will help to further reduce Network Rail's historically large corporate centre, transfer more responsibility of decision making to the Scotland route, and help to strengthen accountability to the Scottish Government as principal funder, particularly around the planning and delivery of major projects.

There are a number of perceived system operator functions that the Scottish Government believes could be more effectively carried out if they were devolved to the Scotland route. This includes areas such as timetabling, strategy and planning and capacity utilisation. It remains our view that such a system could include the necessary safeguards to satisfy the requirements of freight and national passenger operators and to ensure appropriate consideration of cross-route priorities.

We would reiterate the key points that we made in response to your consultation on system operation last year. These are:

- The Scottish Government believe that a more integrated approach across the whole industry is in the best interests of the railway. This is reflected in the ScotRail Alliance which has brought together Abellio ScotRail and Network Rail Scotland to work as one organisation to support the delivery of better, more reliable passenger services and a more efficient management of the rail network in Scotland. The Scottish Government would support the further devolution of all functions and responsibilities to the Scotland route, including those related to the system operator function, unless there was a clear, compelling case to retain central control.
- The system operator role has both a spatial and sectoral dynamic to it, which may not in all circumstances benefit from a consistent approach across the whole GB network. The right approach has to balance the differing needs of ensuring an alignment of the system operator functions and local priorities while protecting the position of both passenger and freight services which operate across a number of routes.

### **Outcomes of good system operation**

We broadly agree with the outcomes of good system operation identified in WP2 (figure 2.1). More precisely, we would highlight that in order for these outcomes to be met, the system operator must:

- Support the Scottish Government in its strategic aim to increase rail capacity to meet increased demand by having a comprehensive understanding of the existing system capability and by developing options for using the existing network better in the first instance – including through potential revisions of standards, timetables and systems;
- Influence, encourage and where required, compel NR's residual central/ HQ functions to engage with the routes in an effective and constructive manner;
- Be capable of managing the impacts of our enhancements programmes on services and timetables in a manner that helps to maximise benefits for users whilst also managing any short-term impacts on performance whilst enhancements projects are being delivered;
- Understand and consider service and passenger impacts at a much earlier stage when planning renewals and assess whether such work could be intelligently programmed with other works, such as vegetation management, to ensure that disruption is minimised.

In addition we would expect that the outputs of good system operation correlate to the delivery of the broader social, economic and environmental priorities of the Scottish Government as the principal funder of railway activities in Scotland.

### **Possible root causes of issues in system operation**

In terms of the five possible root causes of potential issues in system operation (WP2, figure 2.2) we would suggest the addition of a further root cause, “decision-making on system operation being taken in the wrong place”, to reflect the potential for well-intentioned decisions to be taken in the centre but to fail to adequately take into account local circumstances or expertise, resulting in sub-optimal outcomes. The example cited in WP2 highlighting the flaws in data relied upon by NR's centre to inform new timetables for Southern Govia Thameslink Railway (GTR) (paragraph 3.5) clearly illustrates this point and we have further such examples from the Scotland route that we are happy to share with the ORR should this be required.

We believe that mechanisms to address these root causes can be devised and agreed between Government, the rail industry and the ORR as we proceed through the PR18 process and further refine our respective understanding of what form system operation should take in the context of an increasingly devolved railway network.

### **Short-term, medium-term and long-term system operator functions**

We found the discussion on the distinction between the time horizon applicable to different elements of the system operator function helpful and reflective of the current position (WP2, Section 3). We also note the concerns outlined regarding the differing time horizons to which various industry players operate, the impact that this could have in terms of misaligning the incentives driving individual train operators and NR, and how this affects medium to longer-term system operation. One example cited in this regard is the time limited nature of passenger franchises (page 14) and we would welcome further dialogue with the ORR on the specific changes they envisage could be made to franchise contracts to enable better alignment with system operation.

We note also the comments expressed on aligning industry incentives in such a way as to enable the right trade-offs to be made between costs, capacity and performance (WP2, paragraph 3.9) and we look forward to exploring this matter further in the forthcoming consultation on the PR18 financial framework.

We agree with the comments made in respect of timetabling being a largely incremental exercise (page 15). We are clear that going forward the emphasis must be on maximising the utility of our existing railway network in the first instance before exploring the case for expansion. We are therefore interested in the opportunities that may arise from exploring a more radical approach to timetable recasts and reconfiguration where required to safely unlock additional capacity as a cost-effective alternative to other interventions and we would welcome further investigation of this area.

### **System operator regulation**

We broadly agree with the proposal for more focussed regulation of the System Operator set out in WP3 and the greater move towards risk-based monitoring that this would entail (paragraph 2.10).

Notwithstanding the points made above, we also broadly agree with the proposed high-level approach towards regulating the system operator i.e. a separate settlement and outputs set in respect of those system operator functions undertaken by the centre with route-level system operator functions falling within route level settlements and outputs (paragraph 2.14), provided that:

- such a settlement respects the separate requirements of Scottish Ministers and the separate funding (and borrowing) arrangements for Scotland and that;
- individual routes are funded in accordance with the additional responsibilities and functions being devolved to them.

We would stress that there should be considerable customer/ industry engagement in determining the central system operator's outputs. This should include passenger and freight train operators, passenger user groups, freight industry bodies and government funders. We note also the work that the TRL is undertaking on behalf of the ORR on measuring capacity and we await the completion of this work with interest.

Finally, we support a strong incentive regime with effective monitoring and enforcement across all parts of the industry. However, this must appropriately reflect the arrangements in place following reclassification, particularly in terms of financial incentives and enforcement.

Yours sincerely,



**Aidan Grisewood**  
**Director, Rail**



ORR PR18 Consultation - Welsh Government Comments on Working Papers 1, 2 and 3

I am writing to provide the Welsh Government's comments on the 'implementing route-level regulation' and 'system operation' working papers issued by the ORR to support the development of detailed policy for PR18.

The Welsh Government welcomes proposals to focus on regulation of the rail network at the route level. Devolution of greater responsibility to Network Rail's routes should result in the Welsh Government's role in decision-making in relation to Wales being enhanced in respect of both activities funded by the UK Government and the Welsh Government. Alongside this, a high level of accountability and transparency will be needed throughout. We would like the ORR to continue to engage with the Welsh Government to ensure that the regulatory regime will be fit for purpose in respect of arrangements yet to be finalised for delivering the South Wales Metro system.

Powers to direct Network Rail and funding for rail infrastructure have not yet been devolved to the Welsh Government. However, in recent years the Welsh Government has stepped in to fund a number of rail infrastructure enhancement schemes and Network Rail has delivered many of these schemes. The mechanisms and accountability arrangements available to the Welsh Government in delivering these schemes have been inadequate. It will be important for this to be addressed, with Network Rail's accountability for delivery not differing depending on which public body is providing funding.

The development of route-level strategic business plans provides an important opportunity for local engagement. These need to be informed by meaningful and timely consultation with stakeholders. The Welsh Government has an interest in a number of routes enabling connectivity within – as well as to and from – Wales (including the virtual route for rail freight and national passenger operators). The arrangements for specifying and changing outputs should take account of the new devolved context. The ORR should also ensure mechanisms are put in place to join up national and route level thinking so that economies of scale and opportunities for linking renewal and enhancement works are not lost.

A requirement for stakeholders to be involved in the development of performance measurement mechanisms needs to be set which, once in place, includes

meaningful and transparent feedback in both directions between Network Rail and stakeholders.

The Welsh Government's previous Minister for Economy, Science and Transport responded to the ORR consultation on network charges which sets out our view in this area.

Best regards,  
Matt

Matt Edwards  
Rail Policy Programme Manager  
Transport - Policy, Planning and Partnerships | Welsh Government