

**Process for the ORR periodic review of HS1 Ltd 2019 (PR19) –
Responses to April 2019 further consultation**

<https://orr.gov.uk/rail/consultations/policy-consultations-by-topic/economic-regulation/process-for-the-orr-periodic-review-of-hs1-ltd-2019-pr19>

1. HS1 Limited – 15 April 2019
2. Network Rail (High Speed) Ltd – 15 April 2019
3. Eurostar – 11 April 2019



Mr Graham Richards
Director, Planning and Performance
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

15 April 2019

Dear Graham

Office of Rail and Road periodic review of HS1 Ltd 2019 (PR19)

Thank you for your letter of 11 April 2019, responding to the queries we raised in our letter to you of 10 April 2019. That letter was sent in response to your letter to us dated 8 April 2019 and to your letter to stakeholders of 8 April 2019 in relation to options for varying the PR19 process.

In these letters, you referred to three options in relation to the PR19 process. The first option ("**Option A**") was, as set out in your letters of 8 April 2019, decided upon at an ORR board meeting on 26 March 2019 and involved adding a step to the PR19 process giving Eurostar the opportunity to make representations directly to the ORR by mid-June, after the submission of the 5YAMS by HS1 in May. In your letters of 8 April 2019, you also informed stakeholders that, subsequent to the ORR's decision on Option A, Eurostar put forward an alternative proposal which required further consideration and so you have sought stakeholders views on two further options which would involve a variation to the process and one-month delay to the final 5YAMS being submitted to the ORR. These options were:

- delaying the final 5YAMS submission from 31 May 2019 to 1 July 2019 and otherwise retaining the existing milestones ("**Option B**"); and
- delaying the final 5YAMS submission from 31 May 2019 to 1 July 2019, delaying the publication of the Draft Determination from 30 September 2019 to 14 October 2019 and otherwise retaining the existing milestones. ("**Option C**").

Our views on Option B and Option C are set out below.

Options B and C

As an overarching point we wish to emphasise that the procedural integrity and fairness of the PR19 process must be maintained. Accordingly, we consider that any additional time provided to Eurostar to provide its response on the draft 5YAMS issued by HS1 Ltd for consultation on 28 February 2019 should also apply to all other stakeholders and such stakeholders should have the opportunity to supplement any existing feedback provided to HS1 Ltd.

(i) Timescales

Under the original timescales set for PR19 there is a seven week period between the deadline for stakeholders to respond to the draft 5YAMS published by HS1 Ltd (being 10 April 2019) and HS1 Ltd submitting the final 5YAMS to the ORR by no later than 31 May 2019.

If the date of submission of the final 5YAMS was deferred to 1 July 2019 as contemplated by Options B and C, HS1 Ltd would need to have at least six weeks to consider stakeholder responses (including Eurostar's detailed response) and to take stakeholder feedback into account in preparing the final 5YAMS. This would mean that Eurostar's and other stakeholder responses would need to be received by HS1 Ltd no later than 18 May 2019.

Given the planning and resourcing that HS1 Ltd has undertaken for the PR19 process we would prefer that no changes be made to the timescales. However, HS1 Ltd could accept a reduction

in the period for preparing the final 5YAMS as contemplated by Option B provided that the ORR is comfortable it has sufficient resources to produce the Draft Determination by 30 September 2019, being a reduction in the ORR's timeframe for producing the Draft Determination of 4 weeks (from 17 weeks to 13 weeks).

We do not favour deferring the date of the Draft Determination to 14 October 2019 as contemplated by Option C as this reduces the period of time HS1 Ltd has to consider the Draft Determination and revise the Final 5YAMS, which may result in material adverse consequences for HS1 Ltd's business. As mentioned in our letter of 5 March 2019 we have structured our regulatory, legal, financial and other resources in such a way as to comply with the existing timescales for the PR19 process. We consider that changes to the existing PR19 timescales should be minimised and a reduction in the period for revising the Final 5YAMS following the publication of the Draft Determination could require HS1 Ltd to engage additional resources and cause significant expense.

(ii) Contractual Requirements

As you will be aware the HS1 Concession Agreement establishes the framework for the periodic review of the HS1 infrastructure (other than stations). The contractual framework requires HS1 Ltd, amongst other things, to submit the final 5YAMS to the ORR in accordance with the timescales set by the ORR in its periodic review process document and in any event by no later than 10 months before the end of the current control period.

In the context of PR19 this means that HS1 Ltd must submit the final 5YAMS to ORR by 31 May 2019. A delay to the date for submitting the final 5YAMS as contemplated by Options B and C would require a variation or waiver of the relevant requirements in the HS1 Concession Agreement.

HS1 Ltd would be willing to work with the ORR and the Department for Transport to agree the necessary contractual changes to the HS1 Concession Agreement to implement Option B. HS1 Ltd has considered its lending and shareholder requirements for agreeing a variation or waiver for this purpose and notes that, provided drafting in respect of the same is forthcoming, there should be no reason for implementing the changes quickly.

At this time and for the reasons set out above we would not be minded to alter the HS1 Concession Agreement to facilitate the implementation of Option C. We also note that, given the potential material adverse consequences that Option C may have on HS1's business, seeking a variation or waiver to give effect to this proposal may require shareholder consent. HS1 Ltd has been informed by our shareholders that such consent may take up to six weeks.

For clarity, we note that the position is different in relation to the HS1 stations period review, in that provided that the date of submission of the equivalent 5YAMS documentation is not deferred beyond 30 June 2019 HS1 Ltd does not consider any changes to the existing contractual arrangements are required.

For courtesy a copy of this letter is being sent to the Department of Transport.

Yours sincerely

A handwritten signature in black ink, appearing to read "Dyan".

Dyan Crowther
Chief Executive Officer

Network Rail (High Speed) Ltd.
Singlewell Infrastructure
Maintenance
Henhurst Road
Gravesend
Kent
DA12 3AN

Graham Richards
Director, Planning & Performance
Office of Rail & Road
One Kemble Street
London WC2B 4AN

Delivered by email only to PR19@orr.gov.uk

15th April 2019

Dear Graham

ORR Periodic Review of HS1 Ltd (PR19)

Thank you for your letter dated 8th April 2019, in relation to the PR19 process for HS1 Ltd Control Period 3 ('CP3'). The letter follows your previous consultation following correspondence from Eurostar International Limited ('Eurostar') seeking to suspend the PR19 process for two months due to Brexit preparations and the impact on their business. Network Rail (High Speed) Ltd ('NR (HS)') provided a response to the ORR consultation on 12th March 2019.

NR (HS) would like to reiterate that it fully understands and appreciates the position that Eurostar faces regarding the impact of Brexit, as we continue to engage with multiple stakeholders developing and updating plans as the situation surrounding Brexit continues to evolve.

Your letter advises that an alternative proposal has been received from Eurostar, requesting to delay the final HS1 Ltd 5YAMS from 31st May to 1st July 2019, and delay the publication of the Draft Determination from 30th September to 14th October 2019. As we set out in our previous response on 12th March 2019 to your consultation, NR (HS) would not support extending the date of the publication of the Draft Determination, beyond those set out in the timetable contained in the Annex of the ORR consultation letter.

To support this position, NR (HS) would like to restate the following paragraph from our previous letter:

“As you may be aware the CP3 renewals work bank increases significantly from the previous control period, and requires detailed planning given that high speed renewals to this scale have not been undertaken in the UK to date, therefore funding certainty, market engagement and other activities such as securing access, plant and resources are critical to the successful delivery. For this reason, NR (HS) would not support extending the latter stages of the process in terms of draft and final determination beyond those set out in the timeline.”

We support the acknowledgement the ORR have made in recognising the impact that the Eurostar proposal would have on stakeholders, including the ORR’s existing workplans to support the overall PR19 process.

If you have any further questions, please do not hesitate to contact me.

Yours sincerely,



Katie Frost
Managing Director
Network Rail (High Speed) Ltd

11 April 2019

Graham Richards

Director, Planning and
Performance
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Dear Graham

ORR Periodic Review of HS1 Ltd 2019 (PR19)

Thank you for your letter of 8th April. We welcome the decision by the ORR to consider further our representations made in February and since, and to allow a brief additional period to consult stakeholders.

As we stressed in February, the process is an important one for Eurostar and for passengers using High Speed 1. This is especially the case given the very significant cost increases now proposed by HS1 in their draft 5YAMS document and the profound consequences this could have on the future sustainability and development of the railway.

The need to review the process has been driven by the fact that Eurostar has faced quite exceptional and unprecedented regulatory and commercial challenges to ensure continued operation of Eurostar services outside the territory of the UK to take into account (ongoing) Brexit uncertainty. It has been inevitable that these challenges have drawn upon the same regulatory and legal resources as would otherwise be committed to the PR19 process. If we had not responded to these challenges, it would have threatened the viability of both Eurostar and the HS1 Concession and consequently invalidated the entire basis for the Periodic Review

This has not left us time, before now, to commit the depth of analysis and resource necessary to provide the proper response which the draft 5YAMS demands. I copied to you my recent letter to HS1 giving provisional views which serves to underline both the importance of the topics and the need for further work. Eurostar's very strong concern with the idea of an "additional opportunity" for us to comment, as previously suggested by the ORR, was that we have not had a proper first opportunity. As things stand, this means that Eurostar's considered views would not be heard until after HS1 had finalised the 5YAMS (a critical document) and after a material amount of further work by ORR. It was – and is – our opinion that such an approach would be deeply prejudicial to Eurostar as a business. Given that we are by far the largest operator exposed to commercial risk from the outcomes, this would mean that the process itself was fatally flawed. In particular it would be excluding at a crucial stage the voice of the business most closely able to reflect and represent the interests of passengers.

In our initial representations we sought a two-month delay to the process. This was to allow for the uncertainty surrounding the nature of the expected implementation of Brexit at the end of March. In practice, whilst Brexit has not (yet) happened, Eurostar has nevertheless proceeded to implement our own contingency plans. This means that we can free up the necessary resources to now focus on PR19 and also leaves us less exposed to the same pressures in the event of a sudden shift in the Brexit dynamic at a later stage in the PR19 process. With this in mind, and in the interests of finding a reasonable way forward, Eurostar is prepared to start work on its full consultation response immediately.

Eurostar International Ltd
Times House
Bravingtons Walk
London N1 9AW

eurostar.com

In your letter, you set out two potential options:

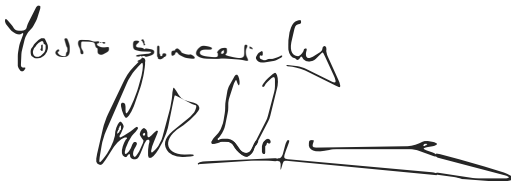
- A proposal which extends the deadline for HS1's submission of its final 5YAMS until 1 July and then maintains the existing PR19 timetable thereafter; and
- A "Eurostar" proposal which retains the same 1 July 5YAMS deadline but subsequently pushes back the draft determination deadline by two weeks.

For Eurostar the most critical consideration is our opportunity to have time to formulate a proper, considered response to the draft 5YAMS before HS1 starts proper work on finalising it. Originally, the timetable allowed 13 weeks for this process – 6 for the Eurostar (and other RU) consultation, and 7 for HS1 to finalise the 5YAMS. Both of the new options compress this into 11 weeks. It is Eurostar's view that this is achievable. Since neither ourselves nor HS1 come at this from a standing start, it should be possible for both companies to shorten their respective processes by a week, allowing Eurostar 5 weeks (say until 18th May) to submit our response and HS1 the remaining period until 1 July to finalise the 5YAMS.

Thereafter Eurostar considers the choice between the options as principally a matter for the ORR. The purpose of the pushing back the draft determination, as aired by Eurostar previously, was to allow ORR the full period for its consideration of the final 5YAMS in order to undertake its formal functions in relation to the periodic review. We consider this to be in the interests of all parties, especially since there may be opportunity to accelerate later stages of the process and, frankly, even delaying the final determination of charges would be unlikely to have material real-world consequences (there is no real cashflow exposure – especially with the current healthy escrow balance and a one-off adjustment the next month could easily be made). However, if the ORR considers it can compress its own consideration over the next phase to draft determination from 15 weeks to 17 weeks, Eurostar would not object.

To summarise, therefore, Eurostar welcomes this further consideration of process by the ORR; we wish to continue to engage pragmatically. For Eurostar the critical element is to maintain a reasonable period for us to formulate a response before HS1 starts material work on the finalisation of the 5YAMs. Eurostar believes both options secure this, provided they allow for at least 5 weeks for EIL to respond (starting from 15th April). If this is granted, Eurostar's preference remains for ORR to have more time at the next stage and to slightly delay the draft determination, but we would not object to either option.

I am copying this letter to DfT and HS1.

Yours sincerely


Gareth Williams
Strategy Director and Company Secretary
Eurostar International Limited
Times House | Bravingtons Walk | London N1 9AW