

Office of Rail Regulation Economic Enforcement Policy and Penalties Statement Review

Response from DB Schenker

February 2015

1. This is the response of DB Schenker Rail UK to the consultation issued by ORR on 8th December 2014 on options for improvement of the ORR's Economic Enforcement Policy and Penalties Statement Review.
2. We were pleased to be able to take part in the stakeholder workshop on January 12th and ORR is hence already aware of many of our views.
3. DB Schenker is the largest rail freight operator in the UK. We operate in all sectors of UK railfreight and are the principal operator of international railfreight services via the Channel Tunnel. We also operate charter passenger trains and provide a range of services to support the UK rail sector. Our ultimate owner is Deutsche Bahn AG, the second largest logistics provider in the world.

General Comments

4. DB Schenker has considered this review from the perspective as to how the balance of duties and functions of the ORR best supports the needs of the rail freight sector. DB Schenker acknowledges that other industry parties might have different perspectives and the ORR itself might draw a different balance.

Specific Questions

5. **Question 1** – Yes, DB Schenker strongly supports clarity and simplicity in the regulatory regime.
6. **Question 2** – Whilst understanding the importance of the Transparency agenda, DB Schenker is not convinced that publishing more correspondence /documents would necessarily be an appropriate and proportional use of time and resource across the industry. We can appreciate that there might be circumstances where this is appropriate, but we are not convinced there is a compelling case for a change of policy.

For a national operator such as DB Schenker, the prospect of having to deal with segmented network regulation aimed at “*reputational incentives*” is unattractive.

7. **Question 3** – whilst reputation and shared “whole industry incentives” are “good things” and may drive the type of behaviour ORR seeks to encourage, commercial

organisations tend to react more strongly to financial incentives.

We would also encourage active, informed, appropriate ORR participation in industry dialogue and bodies to help ensure emerging issues are addressed by the industry at the correct level – if necessary by informal escalation within individual organisation or to other industry bodies.

8. **Questions 4-8** – in principle a “*seriousness of breach*” table is helpful in providing both a framework and clarity. How effective it actually is in reality seems rather open to question. One issue is the asymmetry of the size of Network Rail against all other industry parties – what can be a major sum of money to another licence holder is relatively insignificant to Network Rail. This can be addressed via percentages of turnover – but it is important for reasons of proportionality that this should be the turnover of the entity fined, and not its entire group. In addition such percentages are more complex to understand at face value - and we are strong supporters of simplicity.
9. Even where Network Rail has been fined significant sums of money, it is not apparent that this has had any serious deterrent effect. In very large organisations this is perhaps rather inevitable. In general terms, reparations and undertakings to effect process/physical improvements related to the breach in question seem to us to be a better way to proceed, both philosophically and practically.
10. **Questions 9-11** – it is important that the outcomes of licence breaches are themselves proportionate to the breach. Where there are clear public policy implications, then it seems to DB Schenker that issues such as public apologies have a relevance that does not apply to (eg) a licence breach where the licence holder (such as a FOC) has a different purely commercial relationship with end customers. In such circumstances any reputational issues are different and it is important that ORR keeps this in mind and tries to avoid a “one size fits all” outcome.
11. As stated before, in general we support offers of reparations. It ought to be self evident that early discussion of issues potentially leading to a licence breach can only be a good thing – but licence holders will need to be confident that any such discussions will not complicate the actions they plan to undertake or potentially be held against them.
12. **Question 12** – we support the use of enforcement orders. Our experience with the Freight Recovery Board shows how effective these can be in addressing difficult issues, and helping to change behaviours. We support revision to the ORR’s policy to allow a more effective use of both provisional and final orders. However, in noting that the ORR aspires to use these to be “more proactive and forward looking”, it is important that ORR sets out, and agrees, revised criteria for their use and in particular that their use should always be proportionate to the situation. In particular we would have concerns if a greater use of enforcement orders led to creeping regulation.
13. **Question 13** – We have no general comments on format or style.