

Rail Delivery Group

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Dear Andrew

Response of the Rail Delivery Group to the ORR Consultation on the formalisation of the Rail Delivery Group

This is the response of the Rail Delivery Group ('RDG' or 'the Group') to the consultation by the Office of Rail Regulation ('ORR'): *'The Rail Delivery Group Consultation on the formalisation of the Rail Delivery Group July 2012'*

The Rail Delivery Group is content for the entirety of its response to be placed on the ORR's website.

This response is in three parts. Part one is the background to the creation of the Rail Delivery Group, part two includes some general remarks about the importance of formalising the Group whilst part three answers the specific questions in the ORR's consultation.

Background

The publication by the UK Government of its Command Paper 'Reforming our Railways: Putting the Customer First' in March 2012 demonstrated that the Rail Delivery Group was central to the Government's plans for the rail industry. The Command Paper expressed the Government's view

"We want to see the industry, through the Rail Delivery Group, lead in driving up efficiency and demand for the railway".

The Command Paper was the Government's response to the Rail Value for Money (RVfM) Study, chaired by Sir Roy McNulty. The RVfM Study placed great emphasis on the lack of leadership in the industry. Sir Roy felt that this led to well-intentioned but ineffective responses to many industry challenges, such as addressing the industry cost profile. Responding to this call for leadership, the RDG was formed in May 2011 by the owning groups of train operating companies and freight operating companies as well as Network Rail.

The RVfM Study also challenged the GB rail industry to improve its efficiency and in response the Rail Delivery Group identified opportunities for cross-industry efficiencies that will enhance the value for money of Britain's railways.

General remarks

Introduction

The creation of the Rail Delivery Group was an early indication that the rail industry recognised that it had to be proactive in working together to provide leadership and improve efficiency.

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The RDG has met monthly over the last year and has been successful in attracting and maintaining the involvement of the senior players in the GB Rail industry. The Group has established its priorities and created subject-specific working groups to tackle a range of efficiency opportunities. The RDG has drawn on resources from across the industry to support its work.

The priorities being pursued by the Rail Delivery Group are

- Providing leadership to Britain's rail industry;
- Improving the asset, programme and supply-chain management of the rail industry through closer co-operation between Network Rail, operators and suppliers;
- Pursuing an agenda of contractual and regulatory reform designed to encourage industry efficiency;
- Embracing technology and innovation in the working environment to enhance the contribution made by one of the industry's key assets, its workforce;
- Identifying ways to improve the utilisation of the train fleet by reviewing demand management, service specification and operating practices;
- Finding ways to improve value for money in rolling stock planning and procurement;
- Working with the Technical Strategy Leadership Group to produce a long-term technical strategy for the rail industry; and
- Improving the industry's planning by guiding the production of the Initial Industry Plan and the Strategic Business Plan.

Although the RDG is focusing on industry-wide issues it is not duplicating or over-ride the primary accountability for delivery in the UK rail industry, which remains with the passenger and freight train operators and Network Rail.

Government's view of the Rail Delivery Group

The Government has expressed its support for the Rail Delivery Group in the Command Paper that was published on 8 March 2012. Amongst the comments regarding the Rail Delivery Group in the Paper were

Government therefore welcomes the establishment in May 2011 of the Rail Delivery Group, which has responded to the recommendations of the value for money report by taking and shaping the industry's agenda for a sustained programme of improved management and running of the rail network.¹

[The Government intends] to work in partnership with the Rail Delivery Group. As the Group's capacity and confidence grows, there will be opportunities for Government to return key roles and responsibilities to the rail industry.²

¹ Paragraph 3.43, 'Reforming our Railways: Putting the Customer First' Government Command Paper, 8 March 2012

² Paragraph 3.44, Ibid

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Many of the initiatives that will deliver savings are a matter for the whole industry working together. The Rail Delivery Group (RDG) will and must take a key leadership role in these areas. Among its immediate priorities are improved asset management, industry procurement, rail systems and standards, innovation and productivity and rolling stock. The RDG's work should generate confidence over the industry's ability to close the low end of the efficiency gap. Its goal will be to try and find ways of outperforming the efficiency targets we set the industry over the coming years, with objective of closing the high end efficiency gap of £3.5 billion.³

Formalisation of the Rail Delivery Group

The involvement of senior industry figures in the RDG continues to be voluntary but the Group has recognised that as commercial and political imperatives change it will be more difficult to maintain involvement on this basis. The Group has, therefore, decided to pursue a course of formalisation that creates an obligation amongst the senior executives of the industry to participate in the work of the Group. The establishment of RDG as a body with formal status and recognised links to wider stakeholders will be helpful in enabling the Group to fulfil its proposed purpose.

The Government's Command Paper expects the Rail Delivery Group to take a leadership role within the rail industry in order to drive efficiency and improve value for money for the passenger, freight customer and taxpayer. Formalising the Group will also reinforce RDG's ability to fulfil this role.

In considering the formalisation of the Group the RDG decided to adopt a number of principles that would underpin its formalisation:

Principles of formalisation

1. The Rail Delivery Group will lead the GB rail industry by developing and agreeing policies and strategies for the industry and the Group's structure should facilitate this role;
2. The voluntary nature of the RDG is not sustainable in the long term and therefore there needs to be a compulsion to participate in the Rail Delivery Group and for that participation to be at the highest level;
3. A formalised Rail Delivery Group would be a legal body. As the RDG would not be a commercial entity, would not have financial interests and would not need share capital the RDG would become a Company Limited by Guarantee;
4. The RDG will not intervene in private contracts but should use its leadership role to press for contractual change where this is necessary;
5. Engagement with the wider rail industry is an essential part of the RDG's leadership;
6. The entitlements and obligations of membership should be set out in formal documentation; and
7. The activities of the Rail Delivery Group should be transparent and there should be a code of conduct that governs behaviour and rules of engagement.

³ Paragraph 6.18, Ibid

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Purpose of the Rail Delivery Group

The formalisation of the RDG will be built around the purpose of the Rail Delivery Group. This was originally articulated in the terms of reference. With a year's experience of operation combined with the expectations of the Group in the future (including those described in the Command Paper) the Rail Delivery Group sees that its purpose is to:

- a) Lead Great Britain's rail industry in providing a safe, efficient and high-quality service for its users and for taxpayers;
- b) Be the leadership body and collective voice of the GB rail industry on cross-industry issues; and
- c) Develop, promote and establish policies, strategies and plans for the rail industry,

and to do so in an open and transparent manner (subject to confidentiality appropriate to achieving these purposes in an effective and timely way).

To deliver this purpose the Rail Delivery Group proposes to perform the following roles:

- a) To lead the development and implementation of policies, strategies, plans and reforms that it considers are necessary to accelerate and influence change across the GB rail industry;
- b) To identify, propose and promote the necessary reforms, changes to industry architecture and actions required by others;
- c) To be the key resource for the governments of the UK, Wales and Scotland, the ORR and other industry stakeholders in promoting change in the industry. Over time RDG will seek to take back to the industry from government key roles and responsibilities;
- d) To pursue efficiency opportunities and better ways of serving the industry's passengers and freight customers; and
- e) To resolve industry-wide issues by guiding, directing and focusing the activities of the key rail industry cross-industry groups and subject-specific working groups, which RDG creates to pursue specific topics and initiatives;

Equally important to describing its purpose is for there to be clarity about what the Rail Delivery Group will not do. The Rail Delivery Group will not

- a) Be a trade association;
- b) Be a commercial organisation with financial interests; and
- c) Duplicate or over-ride the primary accountability for delivery in the UK rail industry (which remains with the passenger and freight train operators and Network Rail) or the need for much stronger collaboration between these companies at a local level.

Although the Rail Delivery Group's strategies and policies will neither bind the Group's Members nor alter existing commercial and contractual agreements they may point the way to future changes that will improve industry efficiency.

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Membership

The consultation document describes the RDG's proposals on membership in detail. The RDG believes that those who are most directly accountable for, and capable of affecting directly, the efficiency of the rail industry should be the leadership members of the Rail Delivery Group. The Group also recognises that there are other parties in the industry that can have a major impact on the efficiency of the industry. RDG has therefore proposed that there should also be categories of licensed and associate members. The Group is particularly keen that licensed and associate members contribute to the work of the RDG's specialist sub-groups.

Voting

The RDG will seek to agree its policies and strategies by consensus but there may be occasions when this is not possible and a decision will be put to a vote. In these circumstances the Group proposes that each member will have a single vote and a simple majority will cause a vote to be passed. There will be two exceptions.

RDG recognises Network Rail's critical role in many industry activities and also acknowledges the importance of freight to the industry. If either the Network Rail or Freight Leadership members signal opposition to a particular course of action the Chairman will postpone a vote for two months to allow further discussion.

When a vote is taken after this time it will only be passed if supported by the Network Rail members who must have regard to Network Rail's licence obligations in casting their vote.

Relationships with cross-industry groups

One of the benefits of formalising the Rail Delivery Group as the industry leadership body is to legitimise the guidance currently being given to existing cross-industry groups such as the Planning Oversight Group, National Task Force and the Technical Strategy Leadership Group

Formalisation will help RDG to continue to direct the work of subject-specific working groups created to tackle various elements of the efficiency agenda.

Establishing a relationship with other cross-industry bodies, such as RSSB, will also be facilitated by the formalisation of RDG.

A critical element for establishing RDG's leadership of these groups is for RDG members to take an active interest in their work and for an RDG member or nominee to lead each group.

Transparency and communications

The RDG has always adopted a transparent approach to its communications except in areas of strategic sensitivity. It has also maintained deliberately a low public profile. The formalisation of the Group, the widening of membership and its leadership role in the industry will create an expectation of greater transparency, increased communication and a higher profile.

Whilst RDG's communications will evolve with time and experience the Group proposes to continue its engagement with a range of bodies and organisations that can help the RDG fulfil its purpose.

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Department for Transport

The RDG will continue to meet the Secretary of State on a regular basis to give her the confidence that the Group is providing leadership to the industry, is tackling the efficiency agenda and is achieving change. RDG will have a number of issues on which it will wish the Secretary of State to act in order to unlock further efficiency opportunities. The Group also expects to meet officials on specific issues. This will enable an exchange of information on high-level issues and priorities and an understanding of DfT and Government priorities.

Transport Scotland (TS) Ministers and officials and Welsh Assembly Government

The Rail Delivery Group recognises the importance of maintaining regular contact with the devolved administrations.

Office of Rail Regulation

The relationship with the Office of Rail Regulation is essential to unlock efficiency opportunities and RDG will meet regularly with the Chairman, Chief Executive and staff to highlight specific areas where ORR needs to take a policy position to allow the industry to achieve its efficiency potential.

Transport for London and Passenger Transport Executive Group

The focus on devolution emphasises the importance of the RDG communicating its work to organisations such as Transport for London, the Passenger Transport Executive Group and the individual PTEs

Licensed members

The RDG anticipates undertaking formal communication through the industry forum and the annual report whilst informal communication will be undertaken through working groups and specific areas where members will be asked to contribute to the RDG's work.

Specifically RDG will communicate with members through ATOC, the Rail Freight Operators' Association and with Open Access Passenger Operators.

Associate members

Associate members will come from a wide range of interests but will have in common the ability to have a material impact on the efficiency of the GB rail Industry. The RDG would expect to have active dialogue with a range of organisations and companies including, but not limited to

The supply industry

- Railway Industry Association with its Council and Director General;
- Individual Industry suppliers; and
- ROSCOs

Customer bodies

- Passenger Focus;
- Rail Freight Group; and
- Freight Transport Association

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Trade Unions

- TUC; and
- The railway trade unions - recognising that individual RDG members will continue to have the primary relationship with the Trade Unions:

Other infrastructure providers (HS1, Crossrail, Eurotunnel)

Wider communication

RDG produces a summary of its proceedings that are posted on the Group's website together with presentations made on behalf of the RDG. This will continue. RDG will also hold an annual forum and publish an annual report describing its achievements in the previous year and laying out its plans for the coming year.

Resources

The Rail Delivery Group has decided that as part of its formalisation the Group should appoint a Director General / Chief Executive to manage and administer its activities.

The Director General's role will be to serve, not lead, the Rail Delivery Group. The leadership of the Group will rest with the Chairman and the vice-Chairman although of necessity the Director General will have a role in representing the views and interests of the Group when the Chairman and vice-Chairman are not available.

The Director General will need to have an appreciation of the GB rail industry and have an understanding of its policies and strategies. The Director General will be administering the RDG's activities, should have organisational skills and be able to work with senior industry executives.

The RDG also intends to engage a limited number of resources to support the subject-specific working groups. These resources will report to the Director General.

Funding

The RDG's current minimal level of funding is split between Network Rail and ATOC. Network Rail is willing to provide additional transitional funding for the Group up to the end of CP4. In the longer term funding would come from all leadership members. Network Rail will fund 50% of the work of the RDG and the remaining financial obligation would be split equally between the other leadership members.

Giving effect to the formalisation of the RDG

The need to create an obligation to participate in the Rail Delivery Group points to the creation of a licence condition as the most effective way of achieving the outcome anticipated in the Command Paper. The licence condition will apply to Network Rail and the freight operators. In the case of the passenger owning groups the licence condition will apply to each franchised TOC and will create an obligation on the TOC to procure that its parent company belongs to the Rail Delivery Group.

The Articles of Association will form the supporting legal documentation, which will be published on the RDG's website prior to the ORR's formal consultation in October 2012.

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Conclusion

The Governments' plans for growth in the railways that are set out in the High Level Output Specifications build on the recent growth experienced by the industry. Central to those plans for growth are the efficiency improvements described in the Command Paper. Responding to the challenge from Governments requires effective industry leadership and it is the Rail Delivery Group that will provide that leadership. Formalisation of the Group is an essential element of the RDG's development into the leadership role that will enable the industry to meet the needs of passengers, freight customers and taxpayers.

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Response to Consultation questions

Please comment on whether you consider that the purpose of RDG set out in paragraphs 2.3 to 2.5 will drive the changes and improvements envisaged by the McNulty study (*paragraph 2.6*).

The Rail Delivery Group considers that the purpose and role of the Group described in paragraphs 2.3 to 2.5 will enable it to drive the changes and improvements envisaged by the Rail Value for Money Study. Equally important the Group believes that the purpose and roles will also enable RDG to lead the industry's response to the Command Paper and the High Level Output Specifications whilst meeting the needs of users and taxpayers.

Are you content with the proposed structure of the RDG board set out in paragraphs 2.16 to 2.24, particularly in terms of scope of representation and the criteria for membership (*paragraph 2.25*)?

The Rail Delivery Group has proposed a membership structure for its Board that requires participation from those companies best placed to influence the efficient delivery of rail services. The structure provides for leadership members to join and leave the Group in accordance with transparent membership criteria.

Please comment on how you consider RDG could best engage with licensed and associate members (*paragraph 2.30*)?

Formalising the Rail Delivery Group will place greater obligations on the Group to be transparent about its activities and to communicate within and beyond the rail industry.

The RDG is formalising its leadership role and much of its communication will derive from this role as it explains and justifies the policies and strategies that it is adopting. In part these will be connected to the production of the Strategic Business Plan and other communications related to the industry planning process, the High Level Output Specifications and the Periodic Review.

RDG intends to communicate ideas or strategies that emerge from the subject-specific or existing cross-industry groups. Licensed and associate members will have an essential role to play in developing and disseminating the ideas, plans and actions emerging from the RDG's working groups.

The RDG will have a communication plan that will involve regular meetings with industry parties and stakeholders. RDG will continue to publish information on its website and each year will hold an industry forum and produce an annual report.

(For licensed train operators and Network Rail) - in view of these proposals would you be content to agree to the introduction of the new condition at Annex B into your licence? If not, what changes would you wish to see which would allow you to provide that agreement (*paragraph 2.41*)?

The current members of the Rail Delivery Group have stated that they are content for the ORR to propose the licence modification at Annex B.

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Will the proposed voting and quorum arrangements set out in paragraphs 2.45 to 2.47 provide you with assurance that any decisions taken by RDG had sufficient cross-industry support to justify implementation (*paragraph 2.50*)?

The Rail Delivery Group has given careful consideration to the voting and quorum arrangements to ensure that they are fair and transparent. The RDG is conscious that the leadership group members have a wide range of interests but have a common purpose in seeing a growing and successful rail industry. Leadership group members will be conscious of the interests of the sector in which they operate (passenger, freight and infrastructure), the interests of the industry as a whole and the wider interests of users, funders and taxpayers.

The voting and quorum arrangements proposed by the RDG ensure that cross-industry support is needed to ensure strategy and policy implementation.

Are there any specific commercial protections that you feel will need to be included within the competition compliance document (*paragraph 2.53*)?

The Rail Delivery Group recognises the importance of compliance with competition laws.

Please comment on whether you consider the funding arrangements proposed in paragraphs 2.59 and 2.60 to be appropriate (*paragraph 2.61*)?

The proposed funding arrangements have emerged from discussions amongst the existing RDG members. The current limited funding is provided by Network Rail and ATOC. Network Rail has agreed to provide additional funding until March 2014. Network Rail has stated that it is willing to provide 50% of the RDG's funding thereafter, which reflects the scale of Network Rail's activities within the industry as a whole. RDG members believe that dividing the other 50% of the funding equally between the other leadership group members is an administratively simple and transparent approach to funding.