Periodic Review 2103 – Consultation on Schedules 4 and 8 Possessions and Performance Regimes

Response from Rail Freight Group

January 2013

1. Rail Freight Group (RFG) is pleased to respond to the ORR's consultation on the Schedule 4 and 8 possession and performance regimes.

2. These two regimes are of particular significance to freight operators, and the contractual arrangements they have with Network Rail, and do not apply directly to the wider customer base. As such, RFG's interests are generally limited to the broad impact of these regimes, rather than the detailed analysis of the rates and benchmarks.

Overall Impact of PR13 on Freight Operators

3. As outlined in our response to previous consultations, we are concerned that the various consultations and policy changes being considered by ORR together cause a significant increase to the financial and risk exposure of the FOCs. The ORR's conclusions on freight charges, coupled with Network Rail's consultation on the allocation of the variable charge are likely to lead to a significant increase in access charges for some, if not all, sectors, coal spillage charge is set to increase, and the capacity charge is to be recalibrated.

4. It would therefore be very unfortunate if changes to the possessions and performance regimes added additional financial uncertainty or risk to the freight operators, at a time when they already have to find ways of absorbing these other increases within their businesses. ORR should ensure that the overall impact of the periodic review decisions on freight operators is balanced, and is not excessive.

5. We are concerned that some elements of this proposal do appear to increase risk to freight operators from these regimes, whilst leaving Network Rail neutral. The risk on smaller operators may be greater than for larger operators, which would act against the development of competition for rail freight services.

Specific Questions

6. *Q1, 2, 3* Freight customer do of course care that they get a reliable service, and that disruption due to possessions is minimised. There are also potential customers who do not use rail because they cannot get the service level they need – for example at weekends.

7. However, we do not believe that there is a compelling case for Network Rail to routinely consult freight customers over possession planning. Instead, we support Network Rail establishing possession plans such that the network is open for business – in particular by use of diversionary routes. The work on the

Freight JNAP has made a start on this, but there is some way to go before this is actually achieved in practice across the network.

8. There are of course occasions where standard plans are not applicable, and customers may need to be consulted on options for their business. With the freight operators it is of course vital that Network Rail do this. However, this should be exceptional.

Questions 4, 5, 6

9. We agree that schedule 4 and 8 rates should continue to compensate 100% (noting that, for freight the schedule 4 rates are not intended to fully compensate). Freight operators already bear the marginal revenue risk, and the reputational risk of poor performance, and, in seeking to grow their businesses, are incentivised to offer services when customer wish them. We do not believe that further financial exposure is necessary to sharpen their behaviour.

10. The SDG analysis shows that the predicted costs to the operators of such a move would be in the order of £3m per annum. This is a considerable sum set against the recent profits of operators, and the increases in costs already announced as part of PR13.

11. We note that the Freight Recovery Board has been successful in improving freight performance, and would encourage the model to continue.

Questions 20, 21, 22

12. We note that the schedule 4 compensation regime for freight has been working broadly satisfactorily and agree that there is no compelling case for major reform. Freight operators already bear costs which are not recovered, as well as reputational risk, and are therefore incentivised to work with Network Rail to minimise the impact of possessions.

13. As outlined above, the better use of diversionary routes to enable freight business to continue to operate is one of the key elements in reducing the costs of possession regimes for freight. Network Rail must be strongly encouraged to proceed with this work, which can be complex particularly in the devolved structure.

14. ORR may wish to consider whether increasing the rates for passenger operators without increasing rates for freight services will lead to perverse outcomes, where Network Rail are less incentivised to protect freight services during disruptive work.

Questions 31-42

15. The Schedule 8 freight performance regime is complex, and RFG is not sufficiently expert to comment on much of the detail. However, we would make

the following comments.

16. We would expect ORR to look holistically at the changes across all parts of the regime (payment rates from NR, from FOCs, NR benchmark, FOC benchmark). The current proposals treat each element separately and it is unclear that the overall risk to freight operators is not increased by the proposals. For example, it appears that the freight operator payment rate is to be reviewed, whilst the Network Rail rate remains essentially unchanged. The consultation does not comment on whether this is likely to increase costs/risks; this should be confirmed as soon as possible.

17. In calculating the payment rates, the increased average payload per train should be taken into account – data from Network Rail shows that since the start of PR08 the number of commercial freight services has decreased whilst the traffic moved has risen. This additional payload means that the commercial cost of delay per train will be greater. We also note that, unlike the passenger business, the marginal revenue effect of delay is not included, and question whether it should be.

18. The proposals for the Network Rail and Freight Operator benchmarks appear to be based on different time periods. We question whether this is an equitable approach, given that performance improvement requires joint action. We would expect to see both assessed on a comparable approach.

19. As noted above, the number of freight trains has reduced since the start of CP4. We would expect this to be taken into account in any congestion metric.

20. We consider that bonus payment rates should be reviewed in the context of revised benchmarks, and decisions on retaining the liability caps. A 100% bonus rate might provide a greater incentive to improve performance, particularly if benchmarks reduce, however smaller operators would need to certain they were sufficiently protected.

21. We do not support proposals to remove the requirement on Network Rail to offer incident caps in return for an access charge supplement. We understand that this system has worked well in the last control period, and that there is not any significant financial imbalance emerging. It is therefore unclear why these proposals are being considered.

22. Incident caps are vital in supporting new entrants, and smaller operators who do not have the financial size to bear uncapped risk. By removing the obligation, ORR would, in effect, be limiting the market for freight haulage to larger companies, and reducing the possibility of increased competition in the market.

23. ORR considers that the private insurance market may have a role to play. We understand that the freight operators have not been able to identify those players prepared to offer such policies –and it would therefore be helpful if ORR could clarify the discussions it has had with the insurance market ahead of making these proposals.

24. We agree that there may be a case for considering appropriate annual liability caps by operator; again we are unclear that this can be efficiently insured in the private sector.