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Cc Ian Williams

By email

3 December 2015

Dear Bill,

**IMPROVING SCHEDULE 5 OF THE MODEL FREIGHT TRACK ACCESS
CONTRACT**

1. Thank you for the opportunity to comment on the proposed changes to the Schedule 5 Model Freight Track Access Contract. We note that these changes were discussed and developed as part of the Rail Delivery Group (RDG) working group. This group looked at contractual changes in order to give Network Rail greater flexibility for the timetable development process. We have reviewed the consultation and we have provided our comments below.
2. We also note that the ORR is consulting on revisions to the model passenger contract again driven by changes discussed and developed by the Rail Delivery Group. Given the significant overlap between these two consultations we believe

it is right to also comment on both consultations and note commonalities where changes and improvements could be made to both the freight model contract and the passenger model contract. This is because both proposed changes to the model contracts are driven by the desire of the ORR and Network Rail to have more flexible access rights in order to optimise the timetable. It is this common purpose which requires a joined up response to both the ORR's consultations. The RDG work streams that examined freight and passenger rights did not examine the possibility of standardising the model contracts. The current ORR consultations provide a valuable opportunity to embed a consistent approach where possible.

Schedule 5 - "Quantum only" rights

3. We note that the proposed changes to schedule 5 give significantly more protection for freight operators paths when compared with the move to "quantum rights" for passenger operators.
4. There appears no presumption for "quantum only" and we also note that rights above quantum only need not be justified by the freight operator. We also note that Network Rail's Access Rights Policy also supports multiple protections for freight operators when compared to passenger operators.
5. We would therefore ask that the freight access rights policy is broadly similar to the position taken on passenger access rights. We would like to see the following in respect of the schedule 5 rights:

(a) *"Quantum only"*

We would like to see a base level of access rights that cover the

equivalent of the passenger operators “quantum only” rights. We suggest the freight quantum only rights are:

Days per week
Origin (From)
Destination (To)
Routing (Via)
Intermediate points
Timing Load
Maximum length of train
Route availability
Loading Gauge

(b) “Additional rights” -

In addition to the above rights we would be supportive of the following additional rights by exception providing that the freight operator provides commercial justification to Network Rail and the ORR. These rights are:

- Minimum Turnaround Times
- Departure Window
- Arrival Window
- Minimum Dwell time at Intermediate Point
- Special Terms

Schedule 5 - Multiple constraints

6. The RDG review of passenger rights led to a proposal from Network Rail that it needed to restrict an operator's ability to have multiple protections. Network Rail states in its Track Access Right Policy in relation to passenger operators:

"Any additional specification in addition to quantum rights must be justified, and based on demonstrable need. The customer may wish to seek rights to additional characteristics to provide greater certainty that future timetables will not require its trains to be flexed in a manner which might be considered sub-optimal. We require justification to be presented by the operator if this is the case as it is recognised that the agreement of such additional specification could constrain timetable solutions that could be offered. This could be detrimental to the optimisation of timetables offered to other operators and raise questions regarding consistency between operators. "

Network Rail continues ...

"Rights relating to interval and journey time protection may have the effect of shaping the timetable to a high degree when used individually and to an even greater when used in combination with each other. The use of such rights in combination with each other may severely restrict the scope to develop the timetable. In view of this, we have a strong presumption that we will usually offer only one of journey time or interval protection, at Service Group level, but not both"

7. It is a fact that where an operator has multiple rights such as Minimum Turnaround Times, Departure Windows, Arrival Windows and Minimum Dwell time at Intermediate Point that it will be relatively easy to significantly constrain Network Rail's ability to optimise the timetable or even hardwire it. We would therefore ask that the "Additional rights" identified in Para 2 (b) above are subject to the same justification that passenger operators must provide to Network Rail.

Schedule 5 - Window sizes

8. We note that in effect this is the same as a Departure or Arrival time range in the passenger contract. We suggest that the window size should allow Network Rail to be able to optimise the timetable in each hour and as such the window should normally be +/- 30 minutes.

Schedule 5 - Consistency

9. It is a fact that many of the passenger and freight contractual rights provide the same level of protection. However, we note that despite this there is a lack of consistency between some of the terms applied to the same contractual protection. Given that one of the main purposes of the RDG review is to make it easier for comparison of access rights, we would argue that there is merit to standardise the access rights names between passenger and freight contracts where the same level of protection exists. We note and welcome the fact that the freight review has already dropped the term "Level" in favour of "Firm" or "Contingent" rights.
10. We have reviewed the passenger and freight contracts and suggest the following consistent terms are applied to the same level of protection.

Table 1 Proposed labels

Freight right	Passenger right	Proposed consistent term
Departure Window	Departure Time Range	Departure Time Range
Arrival Window	Arrival Time Range	Arrival Time Range
Origin	From	From
Destination	To	To
Routing	Via	Via
Intermediate Points	Calling Pattern	Calling points

Schedule 5 - Implementing the changes

11. We note that it was the ORR who remitted the RDG to undertake its contractual review. The ORR stated in its May 2012 Review of Schedule 5:

"Our conclusions, which are consistent with our statutory duties and published policies, should be seen as the first stage in a more sweeping and radical change process over the next year or so aimed at meeting the challenging recommendations set by the RVfM Study. We expect the industry, under the leadership of RDG, to pick up the baton and look for these further changes."¹

12. The ORR also stated its "Reform of access contractual arrangements Schedule 5 conclusions May 2012" document:

¹ Para 1.9 - Reform of access contractual arrangements Schedule 5 conclusions May 2012

“1.3 We believe that less prescriptive rights and a move towards a quantum-only rights system remains the correct way to proceed, and we will continue to look at opportunities, in consultation with the industry, to move in this direction. However, we acknowledge that there are reasons why now may not be the right time to introduce significant changes, for example:

(a) on-going industry concerns with Network Rail’s management of the timetabling process – Network Rail recognises that considerable improvement is required before train operator confidence is at a level where it would be prepared to accept any change;

(b) on-going uncertainty over the future form of franchises; and

(c) the need for greater alignment with franchise specification.”

13. We would contend that despite the industry concerns raised in 2012, there has been a significant worsenment in Network Rail’s ability regarding its management of the timetabling process.

14. In view of what we believe to be a significant worsenment in Network Rail’s ability to manage its timetabling process we do not support the Track Access Rights Policy implemented in September by Network Rail.

15. In addition, Network Rail still has a number of outstanding actions items from the RDG sub groups before acceptance of a move to more flexible access rights by train operators was agreed. The changes that the ORR has progressed do

represent agreement by the RDG but subject to Network Rail demonstrating it can manage the timetabling process. Unfortunately, Network Rail has not yet demonstrated its ability to manage the timetabling process in order to meet its contractual licence obligations or the Network Code.

16. In respect of these proposed changes to the model contract we are content with the changes but subject to the ORR adopting a consistent approach between the freight and passenger contracts where possible.

Yours sincerely,



Head of contracts