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Dear Ekta,

The Department for Transport has the following comments in response to the Office of Rail Regulation's consultation, dated 1 July, on the high level review of track access charges.

Our comments respond to the questions set out in paragraph 23 of the letter.

**Can track access charges be used to incentivise train operators, Network Rail and others to make decisions for the better use and development of capacity?**

They can have a use for this purpose - particularly as far as open access passenger and freight operators are concerned - but their impact in influencing the behaviour of franchised operators is limited for the reasons noted in paragraph 16 of ORR's letter of 1 July and in the CEPA presentation and report.

Any access regime which gives rise to incentives for operators would have to be mindful of the Secretary of State's obligation to negate the effects of a charging review under the terms of the franchise agreements. Whilst we recognise that the Schedule 9 and Clause 18.1 regimes may negate any incentives introduced at a charging review, at least for the remainder of the incumbent franchise, the Schedule 9 and Clause 18.1 provisions are there to provide comfort for any potential significant change in regulatory charges, (including the Fixed Track Access Charge, which is the largest regulatory charge, with historically the greatest swings, and which is only payable by franchised passenger operators).

As we have seen from the change from CP3 to CP4, access charges have decreased significantly (due to a corresponding increase in direct grant to Network Rail) which would have resulted in huge financial savings to franchise operators, and a corresponding increase in cost to the Secretary of State, should the Secretary of State not have made use of the Clause 18.1 and Schedule 9 provisions.

Whilst the Department is not against operators acting commercially, any change to the regulatory framework would have to be mindful of the fact that it is likely that it can only incentivise operators for the marginal (and more variable) costs, as franchise operators pay the largest part of regulatory costs. Therefore, more consideration needs to be given

to incentives for open access operators, freight operators and franchise operators on a level footing.

**Are track access charges too complex, and / or too uniform?**

The existing system was the subject of extensive consultation and deliberation during PR08. We supported the resulting structure and are not convinced that the evidence presented to date makes a clear economic or other case for changing it.

**Can track access charges be structured to promote competition better?**

For passenger operators it is difficult to see how such a restructuring would have an effect bearing in mind the fact that variable track access charges make up a small proportion of the total charges incurred by operators. Other charges and potential revenue streams may be more influential in the promotion of competition.

For freight there is already significant competition between operators. Use it or lose it and other arrangements for managing capacity should be capable of being used more effectively in preference to introducing a pricing mechanism that would add complexity, regulatory burden and transaction costs without necessarily resolving the problems of localised network congestion

**Should open access passenger and freight operators be dealt with differently?**

Yes, because they operate in different markets.

We consider that the approach for open access passenger operators should be more aligned to that of the franchised operators with whom they compete for passengers providing such a change can be made within the framework of the existing European rail directives.

Yours sincerely,

**DENISE ROSE**