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Dear Phillip,

ORR's Approach to Transparency – a Consultation.

This letter contains the response by DB Schenker Rail (UK) Limited ("DB Schenker") to the consultation document entitled "ORR's Approach to Transparency – a Consultation" issued by Office of Rail Regulation ("ORR") in July 2012.

Introduction

1.1. DB Schenker understands the increasingly important role played by transparency in delivering Government's objectives and strategy for rail and why Government and the ORR see transparency as important. It is clear from the Consultation that both Government and the ORR see the primary role of transparency as relating to the Passenger Franchises and Network Rail owing to the substantial flows of public money within the industry.

1.2. The position with respect to rail freight is somewhat different and this is implicitly (rather than explicitly) acknowledged by the Consultation. Rail freight is essentially a private sector activity in the UK, operating under open access principles on rail and strong competition both within the rail sector and between rail and other modes, primarily road-based logistics. As such the dynamics and considerations are very different to the passenger railway and to monopoly suppliers such as Network Rail.

1.3. Rail freight customers, therefore, have choices; if they are not satisfied with their suppliers' prices or service, they have the ability to (and do) switch with relative ease. The mechanisms of the market therefore drive behaviour and service and there is no need for more artificial incentives and mechanisms such as transparency of costs.

1.4. Indeed the application of unnecessary requirements (for example on internal cost structures) might have the unintended consequence of undermining the commercial position of rail freight operators and hence their ability to invest in the future. The ORR is aware that the margins generated within the rail freight sector are thin and fragile; it would be of great concern to DB Schenker if proposals resulting from this consultation made this position worse.

1.5. In this respect, DB Schenker would remind the ORR of the Guidance given by the Secretary of State in July 2012 which stated *inter alia* that “*The Government recognises the important role that rail freight plays in the nation’s logistics and in the achievement of the Government’s sustainable distribution objectives. The Government wishes to facilitate the continuing development of a competitive, efficient and dynamic private sector rail freight industry and is committed to ensuring that policies and regulations should work to this end and should not create unnecessary transactional costs or other obstacles to the achievement of these objectives and future growth.*”

1.6. In summary therefore, DB Schenker acknowledges that most of the issues raised by the Consultation are not intended to apply to rail freight, but it would welcome this being explicitly acknowledged by ORR. It is very important that no additional administrative (and cost) burden is imposed on the rail freight sector as a result of proposals for greater transparency aimed at other rail sectors.

Responses to specific Consultation questions.

National Rail Trends Portal

Q1: *We would like to hear consultees’ views on the content and functionality of the NRT Portal. For example:*

- *Is our strategy of publishing official statistics and other key performance metrics while encouraging the industry to publish everything else, the right approach?*
- *Is the NRT Portal an appropriate dissemination method for rail statistics?*
- *Does the current content and functionality meet users’ needs, and if not, how can it be improved?*
- *What role should other industry bodies and third parties (for example application developers, passenger bodies and rail companies) play in the dissemination of rail statistics?*
- *Are the reasons set out in chapter 2 for us having a continuing role in the publication of data and information the right ones?*

2.1. In general, DB Schenker supports ORR’s strategy of publishing a minimum of key statistics via a Portal and then encouraging the industry to publish everything else that is agreed to be necessary. It is important that a proper balance is struck between the cost and administrative burden of collecting and publishing statistics against the value that customers and others might derive.

2.2. It is also important that any information that has a commercial value is recognised and treated accordingly – either to realise that value for the industry or to protect parties legitimate commercial interests.

ORR's own processes

Q2: We are interested to hear views on what other areas of our work consultees believe should be published and why

2.3. DB Schenker is content with the information regarding ORR that is made available and would be concerned if ORR costs were increased significantly in an attempt to make further information publicly available unless there was clamant public benefit from so doing.

Safety

Q3: We would be interested to hear consultees' views on our proposals around the publication of the results from our safety inspections and reports on the comparative performance of duty holders from our audit and inspection activities.

Q4: We would also be interested to hear views on the benefits and otherwise of duty holders reporting on best practice by the publication of specific KPIs.

2.4. DB Schenker is not convinced that ORR's proposals around safety will add value without also adding significant additional cost. DB Schenker's view is that the current process of collating and publishing industry safety information via RSSB remains appropriate.

Network Rail initiatives

Q5: We would be interested to hear consultees' views as to the potential use that could be made of Network Rail historic performance data. In particular the extent to which this data provides a means by which the market, via third party developers, could meet consumer demand for real time train information products and services and/or information about performance at even more disaggregation than the current route sector publication.

Q6: In what areas of its business could Network Rail, in your view, become more open, and what information or data would you like to see made available as a result?

2.5. DB Schenker is concerned that any publication of historic Network Rail freight performance data might have negative commercial implications both for rail freight operators and their customers. Performance is a competitive differentiator in the rail freight sector and DB Schenker expects ORR to understand and reflect this.

2.6. DB Schenker would welcome Network Rail being more open about the cost of enhancement and other infrastructure projects - and in particular the associated transaction costs of each project.

The sector – our and industry initiatives

Q7: We are interested in hearing views on the scope of our and industry activities; whether the sector is moving in the right direction; whether the pace is right; and whether there are other areas that consultees believe would benefit from greater transparency and why.

2.7. As set out in the introduction, DB Schenker sees this section as applying to the passenger sector and not to rail freight. DB Schenker would urge ORR to reflect on the balance between the cost/administrative burden and perceived advantages of greater transparency initiatives.

The legal framework

Q8: We are interested in consultees' views on the use of our statutory powers and how they believe they could be applied in the context of transparency.

2.8. DB Schenker's view is that reliance on statutory powers has to be a less attractive and sustainable route for the industry to proceed rather than by agreement. DB Schenker's view is that ORR has to work with the industry to focus on what transparency measures will drive real passenger and stakeholder benefit at reasonable cost. With respect to rail freight, DB Schenker would welcome ORR explicitly recognising that market disciplines will drive the desired behaviours and outcomes and that rail freight does not need to be subject to the measures ORR might decide are appropriate for the passenger businesses and Network Rail.

Accessibility and data integrity

Q9: Presentation of the data or information is key and we would like to hear views as to the likely risks and pitfalls and how best to address them.

2.10. DB Schenker would concur with the points made by ORR and would simply remark that keeping the information and data simple is likely to minimise the issues here.

Appraising the costs and benefits

Q10: We would be interested to hear of any other initiatives in the sector or elsewhere where transparency has resulted in positive change.

Q11: We are also interested in hearing about the risks and any unintended consequences.


Q12: Consultees views are sought on how we should go about evaluating the risks and benefits of more transparency and what factors we should take into account, including how we should measure whether our objectives for transparency are being achieved.

2.11. As set out in the introduction, DB Schenker sees this section as applying to the passenger sector and not to rail freight. DB Schenker would urge ORR to reflect on the balance between the cost/administrative burden and perceived advantages of greater transparency initiatives.

2.12. With respect to rail freight, DB Schenker would urge ORR to always bear in mind the competitive nature of rail freight and that any requirement to publish data risks impinging on one or more parties competitive position.

If you have any queries, or would like clarification or amplification of any of this, please contact me.

Yours sincerely,



Nigel Jones
Head of Planning & Strategy