



OFFICE OF RAIL AND ROAD

Richard Price
Chief Executive

Mark Carne
Chief Executive
Network Rail Infrastructure Limited
One Eversholt Street
London NW1 2DN

16 October 2015

Dear Mark,

BREACH OF CONDITION 1 OF NETWORK RAIL'S NETWORK LICENCE WITH REGARD TO ITS PLANNING AND DELIVERY OF ITS ENHANCEMENTS PROGRAMME

We first raised concerns with Network Rail in July 2014 about slipping and / or missing milestones relating to its delivery of its enhancements programme through our normal monitoring channels. We escalated the issues through formal letters between November 2014 and March 2015 when we launched our formal investigation.

This letter sets out the decisions made by the ORR Board on what regulatory action should be taken following its investigation into Network Rail's (NR) delivery of its enhancement programme. In reaching these decisions, the ORR Board had regard to its duties under section 4 of the Railways Act 1993 (the Act)¹ and has considered a range of evidence, including taking account of NR's representations of 1 September 2015.

Having considered all of the evidence, representations, and its regulatory policies and duties, ORR's Board has determined that NR is in current breach of Condition 1 of its network licence with regard to its failure to adequately plan and deliver its enhancements programme to the greatest extent reasonably practicable having regard to all the relevant circumstances, including the ability of NR to fund its licensed activities.

¹ The Board considered its competition primacy duty under the Competition Act 1998 and is satisfied that NR's failure to deliver regulated enhancement outputs could not amount to an infringement of the Competition Act 1998.

ORR's investigation has identified a number of problems in relation to NR's planning and delivery of its enhancements portfolio. In particular, our investigation has found that:

- (i) The issues identified are of a significant and systemic nature;
- (ii) Regulated targets (milestones) have been and continue to be missed;
- (iii) There is evidence of continuing problems with enhancement project delivery.

A more detailed assessment of the evidence ORR has used to reach these decisions has already been provided to NR and will also be published with this letter on ORR's website.

In concluding that the breach is current, ORR has not (taking into account the nature of the breach) determined the precise date on which the breach began but it considers that it has been continuing for some time.

Consideration of enforcement action

Having determined a continuing breach, the Board then considered:

- a) Whether any exceptions applied which would preclude ORR imposing an enforcement order; and
- b) whether a penalty is appropriate

a) Section 55 of the Act – Orders

Section 55(1) of the Act obliges ORR, if it is satisfied that a licence holder is contravening any condition of its licence, to impose an enforcement order containing such provision as is requisite for the purpose of securing compliance with that condition or requirement.

The Board considered that the exception in 55(5) did not apply as its section 4 duties do not preclude the making of an order. In relation to section 55(5B)² the Board considered that it could apply as NR had already taken some steps towards developing an Enhancement Improvement Plan (EIP), however they still had some concerns that a comprehensive plan was not yet in place and that milestones could continue to be missed. ORR's Board therefore sought further information from NR in order to determine whether they could commit to finalising and delivering its EIP, as well as addressing a number of concerns raised by ORR.

Having now considered this information, ORR is satisfied that there is sufficient evidence that NR has agreed to take, and is taking, all such steps as appear appropriate to ORR for the purpose of securing or facilitating compliance with

² Section 55(5B): If the appropriate authority is satisfied—

(a) that the relevant operator has agreed to take, and is taking, all such steps as it appears to the appropriate authority for the time being to be appropriate for the relevant operator to take for the purpose of securing or facilitating compliance with the condition or requirement in question,

condition 1 of its network licence. In particular, NR is committed to finalising its EIP on or before 30 October 2015, and publishing it by mid-November. After finalising the EIP and to ensure integration and oversight of the business changes, reports will be made to Network Rail's Business Change Committee which will ensure there is no duplication of accountabilities and that NR's resources are appropriately optimised across the business. In addition, NR has also considered concerns raised by ORR, providing steps it has taken and will take to address them.

ORR fully supports the approach in your enhancements improvement plan and therefore does not consider that an order would achieve any more than what is already being done by NR to rectify the weaknesses.

In light of the above, ORR considers that the exception in section 55(5B) applies and therefore it is not obligated to impose an order. Attached to this letter is a notice, as required by section 55(6) of the Act, which sets out in more detail this decision, our reasons and the commitments made by NR.

ORR will need to be satisfied that the content of the EIP and other committed improvements are satisfactory. We will be holding NR to account through close monitoring of NR's delivery of all these commitments and will intervene should evidence come to light that NR is not taking all necessary steps to deliver them. In this case ORR may revisit the question of licence compliance.

b) Consideration of a penalty

The Board determined that a penalty was not appropriate in the circumstances of this case as ORR considered it would not further incentivise NR to ensure future compliance. NR is already taking positive steps to identify and address its weaknesses; particularly through the development of its EIP. The steps it is currently taking will focus the company on the necessary improvements which will be underpinned by our continued monitoring of NR. In addition, considering the impact to customers and our duties to funders in this case, we consider NR's funds will be better focused on the improvements which it is committed to undertake under its existing licence.

We acknowledge NR's commitment to finalise the EIP by 30 October and to work collaboratively with ORR in our role to monitor the delivery of this nationally important programme.

This letter will be published on our website.

I am also copying this letter to Bernadette Kelly at the Department for Transport, Aidan Grisewood at Transport Scotland and Mal-Drury Rose at the Welsh Government.

Yours sincerely



Richard Price
Chief Executive