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Sir David Higgins
Chief Executive
Network Rail Infrastructure Limited
Kings Place
90 York Way
London
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Dear David,

Enforcement order relating to long distance performance in 2013-14.

Thank you for letter of 22 June 2012 in response to our proposal to make an enforcement order in respect of long distance performance in 2013-14. We welcome your commitment to get as close to the regulatory target as possible. Following our consultation, we are now making the order with no amendments. A copy of the order is attached in the annex to this letter. Our reasons for making the order and the explanation of how we calculated the reasonable sum are set out in my letter of 29 May 2012¹.

As you know we take performance seriously and expect you to do everything possible to deliver the commitments that you were funded for. The size of any penalty now depends on how well Network Rail performs against those commitments.

We will be monitoring delivery of the plans carefully. You have asked that the monitoring regime for this order does not become a distraction so that you can concentrate on delivering the plan. We have agreed a suitable level of monitoring with you including delivery of quarterly reports against the plan.

You have also asked if we will take severe weather and the increase in suicides and cable thefts into account in assessing whether Network Rail has met the target to the greatest extent reasonably practicable. We would expect to consider changes in factors outside Network Rail's control in making this assessment, but also the extent to which these could have reasonably been foreseen, and reasonably practicable actions taken to mitigate their effects (either through advance precautions or effective response).

¹ The 29 May 2012 letter can be found on our website at:

<http://www.rail-reg.gov.uk/upload/pdf/290512-performance-breach-letter.pdf>



You suggested that we amend the enforcement order to allow some flexibility to accept 'repairs' in lieu of a penalty if Network Rail does not meet the target. We believe that in many cases repairs are the right approach and so have just consulted on changes to our penalties statement on this. We will be concluding on this shortly. However, we consider in this case that it is necessary to focus on the incentive effect of the sliding scale penalty in the order and it would not be appropriate to consider changing that at the end of the process. As I said at the start of this letter, the amount of the penalty, and therefore the loss to the industry, depends on Network Rail's performance against its commitments.

We note your comment that you do not agree that the maintenance-restructuring and operating costs reductions may have led to cuts being made to soon. We had reached this view from the slides you submitted to us on 31 March this year as well as from several meetings with your team. We are encouraged by your statement that productivity improvement has now accelerated to expected levels.

The order concerns performance in 2013-14. But as we said when we proposed the order, delivery of the joint performance improvement plan commitments in the current year, 2012-13, is essential. There is a varied picture in the first three periods, with an improving picture for many train operators but problems on Virgin Trains and Cross Country Trains. We believe the secondment of Chris Gibb to help you improve performance on the West Coast route is a really good and imaginative step, and we understand it is already beginning to make a difference. Cross Country only signed a JPIP for periods one to four and clearly you will need to agree a plan for the rest of the year as a matter of urgency. Finally, I must emphasise that we will continue to monitor the position across the sector carefully and we will take further action in respect of 2012-13 if we are satisfied you are not complying with your licence obligations.

I am publishing this letter.

Yours sincerely



Richard Price

Annex A –enforcement order

RAILWAYS ACT 1993

SECTION 55

FINAL ORDER

- A. In the 2008 periodic review Network Rail Infrastructure Limited (Network Rail) agreed to deliver annual public performance measures (PPM) in relation to passenger train services classified as the long distance sector. For this sector Network Rail is obliged to deliver a PPM of at least 92% for the year 2013-14 (“the period”). Delivery of the 92% 2013-14 PPM (“the output”) is a reasonable requirement of persons providing railway services and funders under condition 1 of Network Rail’s network licence which means that Network Rail must achieve it to the greatest extent reasonably practicable having regard to all relevant circumstances.
- B. The Office of Rail Regulation (ORR) is satisfied that Network Rail is likely to contravene condition 1 of its network licence (“the likely contravention”) in that it is not likely to deliver the output and is not currently proposing to take all necessary steps to deliver the output to the greatest extent reasonably practicable having regard to all the circumstances in that:
- (a) The long distance plan delivered to ORR in compliance with the order of the 19th January 2012 (“the Long Distance Sector Plan”) shows Network Rail has only a 10% confidence of delivering the output;
 - (b) The initiatives in the plan designed to improve performance for the period are not sufficiently developed to demonstrate that Network Rail is and will be taking all necessary steps to deliver the output to the greatest extent reasonably practicable taking into account all relevant circumstances; and
 - (c) ORR has concluded that further work could be carried out to accelerate delivery of initiatives in the plan designed to improve performance in the period so increasing the chance of Network Rail delivering the output
- C. Having had regard to the matters set out in section 55(1) of the Railways Act 1993 (the Act), ORR considers it is requisite for it to make a final order for the purpose of securing Network Rail's compliance with condition 1.
- D. ORR is satisfied that:

- (a) the duties imposed on it by section 4 of the Act do not preclude the making of this order, and
 - (b) the most appropriate way of proceeding is not under the Competition Act 1998.
- E. Having regard to all the circumstances and, in particular, the factors set out in section 55(3) of the Act, it does not appear to ORR that it is requisite that a provisional order be made.
- F. ORR need not consider, under section 55(5B) of the Act, the appropriateness of making this order because:-
- (a) ORR is not satisfied that Network Rail has agreed to take, and is taking, all such steps as appear to ORR for the time being to be appropriate for Network Rail to take for the purpose of securing or facilitating compliance with condition 1; and
 - (b) ORR is not satisfied that the contravention will not adversely affect the interest of users of railway services or lead to an increase in public expenditure.

Therefore:

1. In respect of the likely contravention, pursuant to section 55 of the Act, ORR requires Network Rail to take all necessary steps to ensure it delivers the output to the greatest extent reasonably practicable having regard to all relevant circumstances. This should include, in particular:
 - a. Continuing to work with industry to further review and develop:
 - i. the initiatives outlined in the Long Distance Sector Plan which relate to delivery of the output and;
 - ii. any additional initiatives which, following consultation with industry, Network Rail reasonably concludes are requisite to enable it to achieve the output to the greatest extent reasonably practicable having regard to all relevant circumstances(together 'the initiatives')
 - b. The delivery of the initiatives.
2. If, at the end of the period, ORR is satisfied that Network Rail has failed to achieve the output, Network Rail shall pay to the Secretary of State within one month of ORR's demand, a monetary penalty of £1.5m for each tenth of a

percentage point by which it fails to achieve the output at the end of the period. This penalty may be reduced to the extent that ORR reasonably considers it was not reasonably practicable to achieve the output having regard to all relevant circumstances

3. For the purposes of the calculation in paragraph 2 above, the PPM Network Rail achieves at the end of the period will be rounded up to the nearest tenth of a percentage point.
4. Network Rail will deliver to ORR, at quarterly intervals within the period and in 2012-13, a report detailing its progress in delivering the initiatives. These reports may include representations regarding the extent to which it was not reasonably practicable to make progress towards achieving the output in that quarter, having regard to all the circumstances.
5. The content of these reports will be considered by an independent reporter appointed in accordance with condition 13 of Network Rail's Network Licence who will be instructed to comment, in particular, on Network Rail's progress in delivering the initiatives against the timetable set out in the Long Distance Sector Plan.
6. Network Rail shall deliver to ORR, within one month of the end of the period, any representations it wishes to make in respect of its delivery of the output and the extent to which it was not reasonably practicable to achieve the output having regard to all the circumstances.
7. Nothing in this order shall be taken to permit Network Rail to breach any licence, contractual or other legal obligation.
8. In this order, 'industry' means any passenger or freight train operating company or any body representing such companies.

This order shall have immediate effect.



Richard Price

Chief Executive