THE OFFICE OF RAIL REGULATION'S DECISION ON AN APPEAL BY ENGLISH WELSH & SCOTTISH RAILWAY LIMITED UNDER REGULATION 29 OF THE RAILWAYS INFRASTRUCTURE (ACCESS AND MANAGEMENT) REGULATIONS 2005 REGARDING THE RAIL FREIGHT CHARGING SYSTEM AND LEVEL OF ACCESS CHARGES FOR THE HIGH SPEED 1 RAILWAY

DECISION: The Office of Rail Regulation decides this appeal as set out in paragraph 57.

Introduction

1. This is the decision of the Office of Rail Regulation (“ORR”) regarding an appeal made by English Welsh and Scottish Railway Limited (“EWS”) on 25 March 2008 under Regulation 29 of the Railways Infrastructure (Access and Management) Regulations 2005 (the “Regulations”).

2. In this decision, words and definitions have the same meaning as under the Regulations or under European Directive 2001/14 (the “Directive”), as the case may be, unless the context requires otherwise.

3. EWS has appealed to ORR because it is “aggrieved with the continuing lack of a proper charging scheme and robust level of infrastructure fees pertaining to the High Speed 1 Railway (“HS1”) without which, EWS is unable to continue to plan its business with a reasonable degree of assurance”.1 EWS has requested ORR to investigate these matters with a view to:

   (a) directing those responsible to establish and publish a proper charging scheme and charging system for rail freight services using the HS1 railway in accordance with Part 4 of the Regulations along with a robust level of infrastructure fees that meet the requirements of Part 4 and Schedule 3 of the Regulations;

   (b) determining whether the usage charges for rail freight using the HS1 railway have been set at the cost that is directly incurred as a result of operating such services;

   (c) determining that a ‘mark-up’ on usage charges is inappropriate for rail freight using the HS1 railway. Alternatively, if ORR considers that a ‘mark-up’ is appropriate, it is asked to determine which market segments can afford to bear a ‘mark up’ along with a suitable value for each charge; and

   (d) determining that an ‘investment recovery charge’ is inappropriate for rail freight services using the HS1 railway.

Background

4. EWS explained that it has been developing its plans to facilitate a substantial increase in the operation of Trans-European rail freight services to and from the UK through the Channel Tunnel. The HS1 railway provides a European high-gauge route into the United Kingdom. As a result, before it can operate rail freight services on the HS1 railway, EWS needs to undertake and complete

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5. EWS provided ORR with a chronology of events leading up to its appeal to ORR. According to this chronology, discussions between the parties over charges for rail freight use of the HS1 railway have been taking place since 2006, when the network statement for the HS1 railway (the “Network Statement”) was issued, and have continued to the point at which EWS submitted this appeal to ORR.

**Conduct of the appeal**

6. ORR has published guidance on the approach it intends to adopt when considering appeals made to it under the Regulations3 (“Guidance”). Paragraph 4.5 of the Guidance states that all appeals under the Regulations will be dealt with using the same process as set out for applications made under Sections 17 or 22A of the Railways Act 1993 (the “Act”). Therefore, the process used and the deadlines imposed in the consideration of this appeal have been in accordance with Schedule 4 of the Act.

7. As a first step in the process, ORR considered the basis of this appeal. On 4 April 2008 ORR wrote to EWS requesting it to provide further explanation and clarity in relation to the grounds upon which the appeal was based. In particular, ORR asked EWS to confirm which of the matters set out under Regulation 29(2) of the Regulations the appeal concerned. This letter and all additional correspondence between ORR and the parties to the appeal have been published on ORR’s website.4

8. ORR decided that it had received all relevant information to enable it to make a decision on this appeal on 1 August 2008. Therefore, the two-month deadline under Regulation 29(7) of the Regulations for ORR to make a decision on this appeal commenced on 1 August 2008.

**The role(s) of the parties to the appeal under the Regulations**

9. This appeal has highlighted the complexity of the regulatory framework for the HS1 railway. Regulation of the HS1 railway involves a number of different parties, each of which has different functions under the Regulations. Set out below is a summary of the role(s) of the key players associated with the HS1 railway under the Regulations.

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Infrastructure manager

10. Regulation 3(1) of the Regulations defines the Infrastructure Manager as:

“…any body or undertaking that is responsible in particular for –

(a) the establishment and maintenance of railway infrastructure; and

(b) the provision with respect to that infrastructure of network services as defined in section 82 of the Act,

but, notwithstanding that some or all of the functions of the infrastructure manager on a network or part of a network may be allocated to different bodies or undertakings, the obligations in respect of those functions remain with the infrastructure manager except where the functions and obligations pass to an allocation or charging body by virtue of regulations 16(3) and 12(7) respectively."

11. The Network Statement dated 27 November 2006 states that for the purposes of the Regulations, CTRL (UK) Ltd is the Infrastructure Manager of Section 1 of the Channel Tunnel Rail Link and Union Railways (North) Ltd, now renamed HS1 Ltd, is the Infrastructure Manager of Section 2 of the Channel Tunnel Rail Link. Network Rail (CTRL) Ltd ("NR (CTRL)"), Department for Transport ("DfT") and the Infrastructure Manager confirmed this in their responses to ORR’s letter dated 22 July 2008. For the purposes of this decision, ORR refers to CTRL (UK) Ltd and HS1 Ltd collectively as the "Infrastructure Manager". Both Sections 1 and 2 of the Channel Tunnel Rail Link are now called HS1.

12. Under the Regulations, the Infrastructure Manager has the following responsibilities which are relevant to this appeal:

(a) Network statement:

- the Infrastructure Manager must, following consultation with all interested parties, develop and publish a network statement containing certain prescribed information (Regulation 11(1));

- the network statement must include a description of the charging principles and tariffs, including details of the charging methodology, exceptions to the charging principles and discounts (Regulation 11(4)); and

- the Infrastructure Manager must keep the network statement up to date and modify it as necessary (Regulation 11(5)).

(b) Charging rules:

- The Infrastructure Manager must: establish the specific charging rules governing the determination of fees to be charged; determine the fees to be charged for use of the infrastructure in accordance with the charging framework, the specific charging rules and the principles and exceptions set out in Schedule 3 to the Regulations; and collect those fees (Regulation 12(4)). However where the Infrastructure Manager is not independent of a railway undertaking, it must ensure that the obligations to establish charging rules and to determine the fees to be charged...
are performed by a charging body that is so independent (Regulation 12(7)).

**Charging body**

13. Regulation 3(1) defines the “charging body” as: “...a body or undertaking, other than the infrastructure manager, which is responsible, by virtue of regulation 12(7) for the functions and obligations of the infrastructure manager under Part 4 and Schedule 3”.

14. The Network Statement dated 27 November 2006 states that NR (CTRL), which is a subsidiary of Network Rail Infrastructure Limited, is the allocation and charging body for the HS1 railway. NR (CTRL) confirmed this in its letter to ORR dated 29 July 2008 in which it stated that it had: “…been appointed by [HS1 Ltd and CTRL (UK) Ltd] under an operations agreement, entered into in 2002, to perform certain operations, management, and maintenance services, including charging and allocations functions, in relation to High Speed One on a sub-contracted basis”.

15. Under the Regulations, the charging body has the following responsibilities which are relevant to this appeal:

   (a) Network statement:

   - The charging body must provide the Infrastructure Manager with such information as is necessary to enable that Infrastructure Manager to:

     (i) include in the network statement the information prescribed under the Regulations, including information relating to charging principles and tariffs; and

     (ii) to keep the network statement up to date in accordance with Regulation 11(5) (Regulation 11(2)).

   (b) Charging rules:

   - As mentioned above, where the Infrastructure Manager is not independent of a railway undertaking, the Infrastructure Manager must ensure that a charging body that is so independent performs the function of establishing charging rules and determining the fees to be charged (Regulation 12(7)).

**Secretary of State**

16. The Secretary of State has certain responsibilities under the Regulations where the infrastructure in question is a rail link facility. In particular and for the purposes of this appeal:
the Secretary of State is responsible for establishing the charging framework through the development agreement\(^5\) (Regulation 12(4)); and

- negotiations between an applicant and the Infrastructure Manager about the level of infrastructure charges are only permitted if these are carried out under the supervision of the Secretary of State, and if such negotiations are likely to contravene the requirements of the Regulations, it is the duty of the Secretary of State to intervene (Regulations 28(3) and 28(4)).

**ORR**

17. Regulation 29 provides that an applicant has a right of appeal to ORR if it believes it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the Infrastructure Manager, an allocation body, a charging body, a service provider or, as the case may be, a railway undertaking, concerning certain matters set out in Regulation 29(2). EWS’ appeal is made under Regulation 29 and concerns the following matters in particular:

- the charging scheme and charging system established in accordance with Regulation 12 (Regulation 29(2)(d)); and

- the level or structure of infrastructure fees, the principles of which are prescribed in Part 5 and Schedule 3, which it is, or may be, required to pay (Regulation 29(2)(e)).

**Representations**

**Charging framework and charging scheme**

18. ORR notes that the terminology used in Regulation 29 of the Regulations differs from that used in Regulation 12. Regulation 29 refers to a “charging scheme” and a “charging system”, whereas Regulation 12 refers to a “charging framework” and to “charging rules”. For example, EWS has used the terminology contained in Regulation 29. The parties to the appeal have not made any representations in this regard. ORR does not consider that these inconsistencies impact on the substance of this appeal.

19. EWS submits that there is no proper charging system in place for rail freight using the HS1 railway that meets the requirements of Part 4 and Schedule 3 to the Regulations. It has requested ORR to direct those responsible to establish and publish a proper charging scheme and charging system for rail freight services using the HS1 railway in accordance with Part 4 of the Regulations along with a

\(^5\) This is defined in the Channel Tunnel Rail Link Act 1996 (as amended by the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008) and means an agreement (including one entered into before the passing of this Act) to which the Secretary of State is a party and under which another party has responsibilities in relation to the design, construction, financing, maintenance or operation of the rail link.

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robust level of infrastructure fees that meet the requirements of Part 4 and Schedule 3 of the Regulations.

20. The Infrastructure Manager submitted that it would not be appropriate for ORR to agree to intervene in the process which is in progress for setting charging rules for freight services seeking to use the HS1 railway. It considers that the Regulations clearly envisage that any supervisory function in that process is to be performed by the Secretary of State, not the ORR. ORR’s function in relation to the rules is intended to be an *ex post facto* appeal function only – i.e. once those rules have actually been set. It submitted that the appeals mechanism in Regulation 29 is intended to provide applicants with a right to seek review of actions under Regulation 12 – establishment of charging rules, determination of actual fees etc. – only once those actions have actually been taken.

21. In addition, the Infrastructure Manager submitted that: “*the ability of HS1 to discharge its obligations under Regulation 12 to establish charging rules (and, subsequently, actual infrastructure usage fees) is effectively contingent on the Secretary of State first establishing a charging framework pursuant to Regulation 12(3)*”. The Infrastructure Manager further submitted that: “…both DfT and HS1 agree that it is necessary for the Secretary of State now to develop a fully detailed charging framework and that HS1 can only sensibly adopt charging rules once that full framework is in place*”.

22. NR (CTRL) considered that this appeal relates to the high level aspects of the charging framework, which it is for the Secretary of State to establish under Regulation 12(4) of the Regulations.

23. DfT submitted that insofar as EWS’ appeal concerns charges for immediate access to the HS1 railway, the Secretary of State for Transport established a charging framework for the railway, as set out in Schedule 19 to the development agreement made between the Secretary of State and London and Continental Railways Limited (“LCR”)⁶. In substance, any charges must comply with the charging requirements under the Regulations.

24. In addition, DfT noted that: “NR (CTRL) produced for consultation a Network Statement under the 2005 Regulations, valid from 27 November 2006…It stated that individual applicants should approach NR (CTRL) for a quotation for the charges that would apply for an access package to HS1”. DfT further stated that it: “…is concerned…that HS1 has neither completed this assessment [of what the level (or levels) of charge should be] nor published rates which are a necessary precursor to EWS gaining access to operate freight services on the fixed link”. DfT considered that under the Regulations, “HS1 has a duty to maintain an up to date network statement which, inter alia, describes the charging principles and tariffs”. DfT expects that to happen “*without further delay*”.

25. In its response to the representations received from the parties to the appeal, EWS made the following submissions (amongst others):

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⁶ LCR was selected by the UK Government in 1996 to build and operate HS1 between London and the Channel Tunnel and to own and operate the UK arm of the Eurostar International train service. LCR is also the parent company of CTRL (UK) Ltd and HS1 Ltd.
- “DfT has confirmed that a charging framework currently exists for HS1” and “whilst DfT is currently considering revisions to that charging framework tied in with LCR’s restructuring, the current framework remains valid”;

- The view that EWS’ appeal should be dismissed on the basis that ORR only has an ex post facto appeal function is rejected by EWS on the grounds that Regulation 29(1) of the Regulations is cast in wide terms; and

- “The timing of the obligations in Regulation 12 of the Regulations is not subject to the restructuring of the infrastructure owner… The infrastructure manager should establish the specific charging rules and determine fees to be charged under the current charging framework in accordance with Regulation 12(4) of the Regulations and, accordingly, publish the relevant details in the network statement without delay”.

Charges

26. EWS submits that there are proposed to be three elements to the charging system for rail freight on the HS1 railway for the use of infrastructure. These comprise a usage charge, a ‘mark-up’ on the usage charge and an investment recovery charge. EWS has queried whether the usage charges have been set at the cost that is directly incurred as a result of operating such services. In addition, it is concerned that a 10 per cent mark-up is proposed for usage charges for rail freight on the HS1 railway, which it does not consider to be affordable. EWS is further concerned that rail freight may be subject to a further charge designed to recover investment. It does not consider that such a charge would be consistent with the Regulations.

27. DfT submitted that the Government is currently in the process of restructuring LCR into its component interests. In this regard, the Government is in the process of establishing a future charging framework for the HS1 railway in tandem with the associated restructuring of LCR. DfT submitted that insofar as any part of EWS’ appeal concerns the position that could arise under the proposed new charging framework, ORR should regard these as improper or inappropriate for its deliberation. DfT considered that no decision on charges, which would otherwise be subject to the Secretary of State’s regulatory supervision, has been taken in that sense in respect of any of the matters mentioned in Regulation 29(2) of the Regulations.

28. The Infrastructure Manager submitted that it would be premature for ORR to seek to make any direction under Regulation 29 of the Regulations concerning the substance of any charging rules or fees to be set until those rules and fees have been established or determined.

29. In its response to the representations received from the parties to the appeal, EWS submitted that NR (CTRL) has issued indicative usage charges for rail freight services using the HS1 railway. NR (CTRL) has also stated that a 10 per cent ‘mark-up’ on those usage charges will apply until December 2009. EWS assumes that NR (CTRL)’s proposals are to remain in place until any further charging regime has been agreed in accordance with the Regulations and published in the Network Statement.
ORR's assessment

ORR's appeal function

30. This appeal has raised some questions in relation to ORR's function as an appeal body under the Regulations. The Infrastructure Manager submitted that ORR has an *ex post facto* appellate function only under Regulation 29 of the Regulations. In this context, the Infrastructure Manager also noted the supervisory role of the Secretary of State under the Regulations.

31. ORR believes it is important to consider the purpose of the Regulations and the Directive that they are intended to implement. The Directive is aimed at ensuring transparent and non-discriminatory access to rail infrastructure for all railway undertakings. In particular, the Directive is aimed at opening up the market for international freight services. Recital 46 of the Directive states that: “the efficient management and fair and non-discriminatory use of rail infrastructure require the establishment of a regulatory body that oversees the application of these Community rules and acts as an appeal body, notwithstanding the possibility of judicial review.” ORR has considered its role as an appeal body under the Regulations in light of the purposes of this Directive.

32. Regulation 28(3) of the Regulations provides that in relation to a rail link facility, it is the Secretary of State (and not ORR) that is responsible for supervising negotiations relating to the level of infrastructure charges. In this case, DfT has been liaising with the parties to the appeal. For example, DfT has noted that it convened a meeting between the parties in January 2008 in its supervisory capacity.

33. Regulation 29 of the Regulations gives an applicant a right of appeal if it has been *unfairly treated, discriminated against or is in any other way aggrieved*…* Although Regulation 29(2) of the Regulations sets out specific matters which an applicant can appeal against, this is a non-exhaustive list.

34. ORR considers that where an applicant feels *in any way aggrieved*, including in the context of charging, the final protection built into the regulatory framework is an applicant’s ability to appeal to ORR. In this case, ORR considers that DfT’s role in supervising negotiations between the Infrastructure Manager/NR (CTRL) and EWS does not affect EWS’ ability to appeal to ORR under Regulation 29 of the Regulations on the grounds that there is a lack of a proper charging scheme and robust level of infrastructure fees.

35. The Infrastructure Manager submitted that the list of matters set out in Regulation 29(2) of the Regulations are all *ex post facto* matters and ORR’s function in relation to the rules is intended to be an *ex post facto* appeal function only. However, on this basis an applicant would be prevented from appealing to ORR against a party that had failed to comply with its obligations in the first place. For example, on this interpretation, Regulation 29(2)(d) of the Regulations would not apply in circumstances where a charging scheme was never established at all. ORR considers that it would be contrary to the intention of the Directive and the Regulations to interpret Regulation 29 in this manner and to exclude appeals concerned with inaction or unreasonable delay on this basis.

36. ORR therefore considers that this appeal falls within the scope of Regulation 29 of the Regulations.
Charging framework

37. Regulation 12(4) of the Regulations provides that the Secretary of State must establish a charging framework through the development agreement. DfT submitted that this framework has been established and is set out in Schedule 19 to the development agreement.

38. The Regulations do not define the term “charging framework”, nor do they prescribe what such a framework should contain. ORR has therefore applied the common meaning of this term, consistent with the spirit of the Directive. On this basis, ORR considers that a charging framework should contain, as a minimum, a list of charging principles/objectives which can be used to underpin more detailed rules. Since the Regulations do not prescribe the level of detail required in such a framework, ORR considers that the Secretary of State has some discretion to establish a framework in as much detail as is considered appropriate.

39. The charging framework in the development agreement states, in essence, that any charges must comply with the charging principles set out in the Regulations. ORR considers that the principles contained in the Regulations are sufficiently detailed to enable charging rules to be established on this basis.

40. The Infrastructure Manager submitted that it was necessary for the Secretary of State to develop a fully detailed charging framework and that they could only sensibly adopt charging rules once that full framework is in place. However as stated above, ORR considers that the charging framework currently in existence is sufficient to enable charging rules to be established. Therefore, ORR concludes that the Secretary of State’s obligation under Regulation 12(4) of the Regulations has been discharged.

Charging scheme

41. Regulation 12 of the Regulations provides that the Infrastructure Manager must establish the specific charging rules governing the determination of fees to be charged for use of railway infrastructure. Although not expressly stated in the Regulations, ORR considers that it is implicit that these charging rules must be established in accordance with the charging framework established by the Secretary of State. Where the Infrastructure Manager is not independent of a railway undertaking, it must ensure that a charging body that is so independent performs the function of establishing charging rules.

42. As noted in paragraph 17 above, the terminology used in Regulation 29 differs from that used in Regulation 12. In addition, there are a number of different terms used in relation to charging in the context of the network statement. For example, Regulation 11(4)(c) of the Regulations states that the network statement must include a description of the charging principles and tariffs, including details of the charging methodology, exceptions to the charging principles, and discounts. Although charging ‘rules’ are not expressly included in this list of requirements, it is clear from the definition of “network statement” contained in the Directive (and incorporated into the Regulations by virtue of Regulation 3(2)) that these are also covered. Under the Directive, “network statement” is defined as: “the statement which sets out in detail the general rules, deadlines, procedures and criteria concerning the charging and capacity allocation schemes. It shall also contain such other information as is required to enable application for infrastructure capacity”.

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43. As mentioned above, the Directive aims at ensuring transparent and non-discriminatory access to rail infrastructure for all railway undertakings. In this way, one of the purposes of the Directive is to promote greater competition. In order to achieve these aims, ORR considers that it is essential that the network statement provides sufficient information on charging to enable a prospective operator to calculate the cost of operating services on the network in question. Moreover, it is important that this information is contained in the network statement to ensure transparency and a level playing field for operators. The network statement ensures that all operators are equally aware of the costs of operating on the network and enables them to plan their businesses with a reasonable degree of assurance.

44. Therefore, ORR considers that the Network Statement must contain such information in relation to charging principles, tariffs, methodology and rules as is sufficient to enable an operator to calculate the cost of operating services on the HS1 railway.

45. The Infrastructure Manager submitted that NR (CTRL) has been appointed under contract to provide services for the Infrastructure Manager, including responsibility for publishing the Network Statement and consulting the industry on its provisions. Although the Infrastructure Manager may have contracted out the responsibilities relating to the Network Statement to NR (CTRL), under Regulation 11(5) of the Regulations, the ultimate responsibility for developing, publishing, keeping up to date and modifying the Network Statement lies with the Infrastructure Manager.

46. The Network Statement was published on 27 November 2006 and on the basis of the information received by ORR, has not been updated or modified since this date. Section 6 of the Network Statement contains information on charges. Section 6.1.2 states that: “Section 2 of the HS1 is still under construction and until the costs of its construction, maintenance and operation have emerged, it will not be possible to predict accurately the track access charges”. Section 6.3.1 states that in relation to a minimum access package: “the scale of charges to [train operators] will be calculated upon receipt of an application enclosing sufficient details for the charges to be assessed…As the charges will depend on the nature of the services and rights sought, it is not practicable to publish them in this document”.

47. On this basis, ORR does not consider that the Network Statement contains sufficient details of the charges, pursuant to Regulation 11(4) of the Regulations, which apply to freight operators wishing to use the HS1 railway. ORR does not consider that a prospective operator would be able calculate the cost of operating services on the HS1 railway based on the information currently contained in the Network Statement. In addition, ORR considers that it is contrary to the principle of transparency to assess charges based on individual applications that are received, without any further explanatory information in the Network Statement itself. In addition, it is clear that the current Network Statement is out of date and requires modification as Section 2 of the HS1 railway has now been constructed and is in operation.

48. Therefore, based on the evidence received during the course of its investigation, ORR concludes that the Infrastructure Manager has not discharged its obligations to ensure that: (i) the Network Statement contains sufficient information on charging (to enable an operator to calculate the cost of operating services on the
HS1 railway); and (ii) the Network Statement is kept up to date and is modified as necessary.

Charges

49. It is clear that there has been on-going correspondence between EWS and NR (CTRL) over charges for freight use of the HS1 railway since the Network Statement was published in November 2006. For example, in March 2007 NR (CTRL) provided information on indicative tariffs for the marginal costs of freight movements on the HS1 railway.\(^7\) NR (CTRL) also put forward a proposal for the application of a nominal 10 per cent 'mark-up' on the marginal costs for night time freight operations on the HS1 railway until December 2009.\(^8\) EWS subsequently responded to these proposals, and discussions continued up until and also after the consultation documents that were issued by the Infrastructure Manager and DfT in October 2007.

50. On 25 October 2007, the Infrastructure Manager issued a consultation letter regarding prospective levels and principles of access charging which would apply once LCR has been restructured and a single legal entity owning the HS1 railway has been established. The letter states that after consulting on the prospective statement of the principles and levels of access charging, CTRL (UK) Ltd and URN propose to issue a more detailed statement for consultation dealing with ancillary features of access charging, that would be expected to feature in the ultimate Network Statement for HS1. The letter notes that until Sections 1 and 2 have been consolidated into HS1 Co, "…there is no legal entity on behalf of which Network Rail (CTRL) can issue a Network Statement for the unified HS1 railway…".

51. On 26 October 2007, DfT issued a consultation letter regarding a proposal for the Infrastructure Manager to levy an investment recovery charge in the context of a new charging framework it is currently developing for HS1.

52. Although the discussions between NR (CTRL) and EWS over charges for freight use of the HS1 railway demonstrate that some progress had been made in determining the type and level of charges for use of the HS1 railway, ORR does not consider that such charges were ever established/determined. There has been on-going correspondence up until EWS submitted this appeal to ORR and in ORR’s view no final decisions appeared to have been taken in respect of the charges that apply for freight use of the HS1 railway.

53. In relation to the investment recovery charge, ORR considers that this is a prospective charge that is intended to apply once LCR has been restructured and the HS1 railway is owned by a single entity. This restructuring has not yet occurred, and the consultation process is on going.

54. Therefore, ORR does not consider that it can properly assess whether the usage charges, mark-up on usage charges or investment recovery charge are compliant with the Regulations until the charges have actually been established/determined.


55. ORR considers that since the HS1 railway has already been constructed and is currently in operation, there are existing obligations under the Regulations to establish charging rules and to keep the Network Statement up to date, which the restructuring described above does not affect. As has been discussed above, ORR considers that a charging framework is currently in existence for the HS1 railway and therefore a charging scheme can and should be established on this basis. Importantly, this must be reflected in the Network Statement.

56. ORR is aware that, in light of the restructuring of LCR and the new charging framework that DfT is currently developing, this may be regarded as providing operators with certainty over the charges for use of the HS1 railway only in the short term. Given the considerable length of time it has already taken to find a long lasting solution to this issue, ORR would encourage DfT, in its supervisory capacity, to ensure that a charging scheme that would apply under a new charging framework is established as soon as possible to enable operators to plan their businesses in the long term with a reasonable degree of assurance.

**ORR's decision**

57. Therefore, in accordance with Regulation 29(11) of the Regulations:

(a) ORR directs CTRL (UK) Ltd and HS1 Ltd to make arrangements for the publication of an up to date Network Statement for the HS1 railway, which complies with the requirements of Regulation 11(4) of the Regulations (and therefore includes sufficient information to enable an operator to calculate how much it costs to operate services on the HS1 railway), by 17 November 2008; and

(b) ORR directs NR (CTRL) Ltd to provide CTRL (UK) Ltd and HS1 Ltd with such information, and in such timescales, as is necessary to enable them to include the information prescribed under Regulation 11(4) of the Regulations in the Network Statement and to update the Network Statement in accordance with Regulation 11(5) of the Regulations by 17 November 2008.

Brian Kogan
Deputy Director, Access, Planning and Performance
Duly Authorised by the Office of Rail Regulation            22 September 2008