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Dear Ms. Whittington,

Response to the Office of Rail and Road's Periodic Review 2018 Schedules 4 and 8 of the Track Access Contract

West Coast Trains Ltd ("Virgin Trains") welcomes this opportunity to respond to the Office of Rail and Roads' (ORR) review of Schedules 4 and 8 of Track Access Contract (TAC) as part its initial stages of the Periodic Review 2018 (PR18).

Our response sets out a combination of high-level and specific observations on the regimes, drawing on our experiences of operating the regimes over a number of years and our input to the Rail Delivery Group (RDG) and ORR review work-streams more recently.

An overarching principle for Virgin Trains is how the regimes underpin the access parties collaboratively working together to ensure the industry 'does the right thing' by customers, other end users and improves industry efficiencies.

1. Schedule 8 - Performance Regime

Virgin Trains broadly agrees with ORR's description of Schedule 8 as detailed in its PR13 Final Determination. It is adequate in so far as it incentivises Parties' to take account of the financial impact on each other, as well as reflecting the impact (where accurately calibrated) on each other's businesses. However, certain components of the performance regime need modifying and/or updating. Virgin Trains would like ORR to focus its attention on: the calculation of benchmarks; the 'Sustained Poor Performance' mechanism; the Access Disputes Resolution Process; and, incentives to ensure we 'do the right thing' by our customers.

1.1. Benchmarks

The calibration period used by Halcrow as part of their Schedule 8 Payment rates recalibration exercise for PR13 reflected “Measures of Historic Performance” from 1 April 2010 to 31 March 2012. For Virgin Trains this was a period of poor Network Rail performance, with PPM MAA at 83.3% PPM at 31 March 2011 (against a plan of 89.8%), and 86.6% at 31 March 2012 (against a plan of 89.9%). This is far from the level of performance expected by our customers and stakeholders.

Whilst the measures of historic performance do not represent the Schedule 8 Performance Minutes benchmarks applied in CP5, they are used as a reference point to create benchmark trajectories by service group (using forecasts of PPM and cancellations). Given that the calibration period reflected a period of poor performance compared with the CP4 plan, the calculated benchmarks for CP5 reflect that poorer performance, with NR benchmarks relaxed and the PPM targets set correspondingly lower than in CP4. As a result of this lower base for CP5, Network Rail to an extent has been rewarded for their poor performance in CP4. With performance having improved since that time, what would have been a payment from NR in CP4 has translated into a bonus to NR in CP5, for the equivalent level of performance.

Virgin Trains believes that the Network Rail benchmark calibration for PR18 should consider this point in order to avoid payments becoming bonuses where performance falls short of customer expectations. Therefore, Virgin Trains expects all Parties to be included at all stages of the Schedule 8 recalibration exercise for PR18.

1.2. Sustained Poor Performance

Virgin Trains expects that the Sustained Poor Performance (SPP) regime to be retained in CP6 but with some fundamental changes. The main modification being an automated mechanism providing additional compensation to train operators where lateness and cancellations reach a level where Schedule 8 under-compensates.

At present, the process for calculating ‘all relevant losses’ and providing supporting evidence is considerable and time-consuming. A considerable amount of management time is wasted, and legal costs generated, in either agreeing a value of SPP compensation, and/or agreeing to a methodology to determine a value of SPP compensation. This is particularly true when claiming revenue loss in particular, which has been difficult to prove in the past.

Virgin Trains strongly suggests the ORR considers whether the ‘mechanised’ liquidated sums nature of Schedule 8 could be applied to SPP for revenue loss when the SPP threshold is triggered; for example, 120 – 150% of the normal formulaic Schedule 8 rate (or whatever best

reflects the additional revenue lost in SPP for individual TOCs) is applied automatically for the SPP period.

This formulaic approach should be industry-agreed (by individual train operator) at each Periodic Review and reset as part of normal Schedule 8 recalibration activity, ensuring that rates are kept as up-to-date as possible. It should also reduce the management time and costs associated with calculating relevant losses, and also reduce the time between actual revenue lost and SPP compensation received.

1.3. Access Disputes Resolution Process

Although the Delay Attribution Guide (DAG) provides better attribution guidance now than it did historically. This is not necessarily the case for incidents directly involving an interface between train & infrastructure – noticeably DAG 4.31.1 ‘Wires Down and other OLE problems. Whilst the process suggests that these types of incidents should normally be coded to Network Rail initially ‘until better information is available’. In practice Virgin Trains still experiences occasions whereby Network Rail codes such incidents to the train operator in the absence of better information being found. The resultant output being the train operator is then ‘guilty until proven innocence’.

Virgin Trains requests an alternative approach, where large (thresholds to be determined) delay incidents that involve an interface between infrastructure and rolling stock are held jointly by the access parties (i.e. use of the joint enquiry code).

In conjunction with this, a ratchet mechanism should be implemented, to encourage access parties to seek dispute resolution in a timely manner; the longer the incident is held jointly and not resolved, the schedule 8 costs increase automatically and/or escalated automatically to Access Disputes Committee.

1.4. Incentives to ensure we ‘do the right thing’ by our customers

Virgin Trains believe that the performance regime should support access parties to ‘do the right thing’ by its end users, as noted in the Rail Delivery Group’s response to this consultation. For example, in periods where it is desirable to operate more trains on the network (to cater for either a short- or long-term increase in demand, e.g. responding to a lack of flights during the Ash Cloud incident in 2010) then the regime should be flexible enough to accommodate this, and should ensure that end-users are put first rather than acting as a barrier to ‘doing the right thing’.

2. Schedule 4, the Possessions Regime

Similar to Schedule 8 above, Virgin Trains broadly agrees with the ORR’s view that the current compensation mechanism generally aligns with the incentives of the Train Operator and Network Rail for achieving the best outcome for the customer and funder. However, there still appears to be an ongoing Network Rail requirement to reduce train operating ability, particularly at weekends

and Bank Holiday weekends. Specific to intercity type operators, this impacts the ability to run normal weekend timetables and offer attractive journey times compared to alternative competing transport modes.

Again, certain components of the possessions regime need modifying and/or updating. Virgin Trains would like ORR to focus its attention on: the cancellation of 'Restrictions of Use' (RoUs), the Access Charge Supplement (ACS), and incentives for access parties to 'do the right thing' by customers.

2.1. ROU Cancellations

Under the current possessions regime Network Rail can cancel a RoU at short notice (24hrs before) and only compensate Operators for costs committed or spent. We suggest there should be a fourth Notification Factor that incentivises Network Rail not to cancel possessions under 7 working days' notice (i.e. increased penalty payments if there are short notice RoU cancellations).

Similarly the threatened national rail strike in 2015 (Network Rail operations teams) uncovered a 'fundamental gap' in the possessions compensation regime: for interCity type operators there is revenue loss from the point at which a strike is announced given the twelve week booking horizons (even if the strike is later cancelled). In the current regime, if a RoU for strike action is called by Network Rail but subsequently cancelled, Train Operators can only claim for costs committed or spent and not for revenue loss – which understates the total loss to a train operator for such an event.

Therefore, there needs to be a mechanism in Schedule 4 to compensate train operators for 'all relevant losses' as a result of either a cancelled RoU or delayed NR strike action. Specific to strike action, this needs to start from the point at which the strike is called.

Section 1.3 above makes reference to the difficulty in collating and exertion invested to assemble claims for 'all relevant losses' under the SPP performance regime. Whilst Virgin Trains believes it should be compensated for 'all relevant losses' in a Network Rail strike scenario, the mechanism for compensation should be simple rather than complex, perhaps by using a 'liquidated sums' approach for revenue loss. This should reduce the management time and costs associated with calculating relevant losses, and also reduce the time between actual revenue lost and compensation received.

2.2. The Access Charges Supplement

Network Rail is funded for the possessions that it says it needs to take, in order to deliver its committed outputs (in terms of renewal and maintenance volumes). Part of this funding is made up from 'income' from the Access Charges Supplement. In the current regime, should Network

Rail reduce or fail to deliver maintenance/renewal volume, they save on costs associated with the possession and profit from reduced Schedule 4 liability.

Virgin Trains is of the view that Network Rail should not over-recover the financial impact of planned disruption to train operators, providing that possessions are undertaken efficiently. There should be a mechanism in place within the possessions regime that allows for the recovery back to train operators. Explicitly the 'unused' portion of the Access Charges Supplement if there is such a variance between planned and actual maintenance and renewal volumes, this should be applicable in any control period.

2.3. Incentives to ensure we 'do the right thing' by our customers

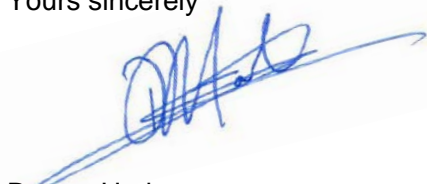
Virgin Trains believe that the possessions regime needs to better reflect the needs of end-users in terms of notice periods, length (in time) of RoUs, the number of end-users impacted, and alternative service options. This is consistent with the views expressed by the Rail Delivery Group, in their response to this consultation.

Virgin Trains is aware of an experience on Network Rail's LNE Route whereby, Network Rail funding contingency rail replacement road transport over and above the requirements of the Track Access Agreement – which was the right thing to do given the potential impacts on our customers. The regime should encourage Access Parties to 'do the right thing' by end-users and be funded accordingly.

3. General Comments – Indexation of payment rates

Schedule 4 and 8 payment rates are only indexed for inflation. Virgin Trains has historically, and continues to, experience levels of increased demand and healthy revenue yield. Virgin Trains would like the ORR to consider a mechanism whereby the indexation rate for both regimes could be modified to more accurately match the growth in revenue.

Yours sincerely



Darren Horley

Commercial & Operations Strategy Manager

West Coast Trains Limited