Responses to PR23 further consultation on open access airport services

[PR23 further consultation on open access airport services]

THE VOICE OF UK AIRPORTS

AOA submission: PR23 – Review of Network Rail's access charges. Further consultation on open access airport services

August 2023

Introduction

About AOA

This response is submitted on behalf of the Airport Operators Association (AOA), the trade association representing the interests of airports across the UK. The AOA represents over 40 airports and is the principal body engaging with the UK Government, Parliamentarians, and regulatory authorities on airport matters.

Airports and Aviation

Airports are facilitators of social and economic activity. In a normal year, UK airports enable almost 300 million passenger movements: UK residents going on highly valued holidays, foreign tourists coming to the UK, people connecting across the UK, and business travel supporting the UK's place in the global economy. Airports are also vital for freight – 40% of the UK's non-EU trade by value travels by air. In a normal year aviation contributes more than £92bn to the economy each year, supports a million jobs and provides more than £8 billion in tax revenues to the Exchequer.

In our response we wish to highlight certain general points and feel it is beneficial to do it via this method than the response form.

AOA response

The AOA believes this consultation misses an opportunity for the Office of Rail and Road (ORR) to support the long-term development of rail use by airport customers. Raising the prospect of placing a charge on open access airport services will only make it less attractive for any operator to develop this type of service. As well as the potential direct impacts today on the Heathrow Express, this offers a negative signal to any airport looking long term to develop rail links as part of a surface access decarbonisation strategy. This includes not just the other named airports, but any that have ambitions for rail. Once this system is created all airports/operators will have to factor in this possibility to long term business planning.

In the consultation it also says that that airport rail links 'may comprise a distinct market segment which can bear some form of mark-up.' Air-rail services are in direct price competition with road-based alternatives (taxis, parking). Most such tickets are already significantly more expensive than alternative car-based options – any further increase in the price of train tickets in relation to road could undermine collective efforts to achieve modal shift to public transport for air passengers.

Airport passengers represent a growth opportunity for the rail network, given that their onward form of travel (the aircraft) should be compatible with a rail journey. However, travel by road still dominates surface access to airports. We wish this to change, but this action by ORR will be a step backwards in this work.

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Service planning
It is important to consider the role of open access operator and the continued protection against any charges to the network. When an airport decides that it will consider operating an open access airport service the liability is with them. They are ensuring that as private investors they are delivering a railway service that not only contributes to passengers using rail but also linking vital infrastructures in a global and interconnected world.

Placing another burden on this type of service will mean that there will be less willingness to take this up and it will be a detriment to ambitions to decarbonise surface access for UK passengers and those visiting from abroad.

The airport sector is still recovering from the pandemic, and airports capital expenditure had been decimated, with the effect that investment can now only be made where there is a high confidence of financial return. Adding risk and cost to the establishment of rail services will be detrimental to the prospects for airports developing such options.

We reiterate that the rail/air market should be a positive segment for development. There should be further thinking given to how Government, GBR and Network Rail can deliver high-quality rail access to airports where there is reasonable prospect of main line services calling at airport stations. If the rail sector works collaboratively with airports these can be developed to the benefit of all.

Other observations

We believe it is important and useful to raise some observations to what is required by an airport from the railways in terms of modal shift, sustainability, and the importance of rail links to airports across the country. These thoughts are highlighted below.

Air-rail links and their future potential
There are several airports that have direct rail links or have a nearby railway station that is linked by a bus service. Rail links have the potential for high-quality, high-volume and sustainable surface access provision for air passengers, if they are operated in a way that matches passenger demand.

In cases where airports are served by direct rail connections, a key factor in preventing a greater uptake of public transport options is a lack of availability of round-the-clock connections. By way of example, the network serving Copenhagen Kastrup Airport provides direct connections to two city centres (Copenhagen and Malmö) with a journey time of 20 minutes or less and provides a 24-hour service to both with frequencies of at least 10 minutes during the day. This contributes to a rail mode-share among airport passengers of nearly 60%, while services at Oslo Gardermoen and Hong Kong International, both of which have high rail passenger mode-shares, enjoy a similarly comprehensive public transport modal share.

To this end, there should be more thinking given to providing a clear criterion for the inclusion of extended-hours services to UK airports and even airports that do not have 24-hour flight operations still see staff arrive for shifts and the first wave of passenger departures many hours before normal rush hour times.

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It is important to bear in mind, in this context, that much of the infrastructure around airports is already reaching capacity. In the Southeast particularly, as the Airports Commission concluded, regardless of decisions on airport expansion, "many key road and rail links in the [South East] are expected to be close to capacity by 2030." There is a need for airports to work in tandem with government, regional and local authorities to address the surface access needs of both current and future airport customers, particularly if modal shift is to be delivered, within the context of wider network development. Given the ORR's dual regulatory role this would also help to deliver on their sustainability goals when it comes to rail and road.

Integrated air – rail services

In continental Europe, rail service provision is increasingly being incorporated alongside integrated air-rail passenger facilities and ticketing arrangements. To deliver seamless intermodal travel, many factors need to be considered including legal elements and detailed collaboration between different transport operators and regional and local Government.

Good rail links will also play a vital role in encouraging passenger to reach destinations beyond the nearest major urban area, similar to how many airports in continental Europe operate. In this context, it is worth drawing attention to the recent membership of Deutsche Bahn (DB) to the Star Alliance of airlines[1], which builds on the Lufthansa Express Rail concept[2] and enables DB to integrate rail services with flight connections and KLM's longstanding work with Dutch national railways NS and the international Thalys service for onward AirRail connections[3].

Airports are well placed to support and encourage multimodal ticketing, but airports have no levers to enforce this type of integrated information and ticketing and can only deliver these goals through commercial negotiation. In this context, airports are an ideal testing ground to develop solutions, given their multimodal nature.

Future surface access needs

It is important for Department for Transport and the Government to outline a coherent plan to what they should expect organisations like Network Rail to work with aviation stakeholders where they are given consideration within future Passenger Service Contracts. Airports are limited to what they can do to secure modal shift but with the right support this can improve access to airports across the UK, reduce journey times, ease congestion, and provide sustainable transport options.

There needs to be greater account of the environmental benefits of improved surface access infrastructure. Funding considerations should be given to schemes which can demonstrate environmental benefits, particularly where there is a demonstrable improvement on air quality in the area around an airport. Surface access, including transport such as rail and highways, needs to provide accessible choices so that passengers continue to benefit from aviation and the economy can benefit from increased passenger numbers and improved connectivity.

[1] https://www.lufthansagroup.com/en/newsroom/releases/db-becomes-the-first-intermodal-partner-of-star-alliance.html
[2] https://www.lufthansa.com/ao/en/lufthansa-express-rail
[3] https://www.globalrailwayreview.com/news/133482/klm-and-thalys-agree-to-continue-developing-airrail-product/

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Airports are the global gateways through which trade and tourism flow in and out of the United Kingdom. Better rail connections to airports will level up all four nations and deliver for regional economies through clean, green public transport and reduced congestion on the roads.

Moreover, setting the right conditions and frameworks to encourage greater private investment into the rail network will ensure these connectivity benefits are delivered much quickly and efficiently. By setting clear timetables on infrastructure projects that link airports to the national railway network, can deliver jobs, deliver growth, and secure private investment.

PR23 charges review: pro forma

This pro forma is available to those that wish to respond to our further consultation on open access airport services, which forms part of our PR23 charges review.

Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [redacted]

Job title: [redacted]

Organisation: British Chambers of Commerce

Email*: [redacted]

Telephone number*: [redacted]

Question 1: Do you have any views on our proposed definition for a market segment capturing open access services to major airports?

The proposed definition only captures Heathrow Express should this operator move onto a model access contract before the start of, or during, CP7. Although we accept the point that any new-entrant open access operator would be captured by the definition, at present the definition is applicable to just one operator, and there is no evidence provided in the consultation around the likelihood of other Open Access operators entering this specific market.

Therefore, although we appreciate that this is the result of analysis rather than a deliberate choice, it gives the impression that ORR is proposing a “Heathrow Express Charge”, which is unfortunate from the perspective of providing a fair charging regime for all TOCs.

Question 2: Do you have any views on our proposed ICC that Network Rail would be permitted to levy on open access services to major airports?

We have a combination of views and questions around the methodology used to support the imposition of the charge. Section 3.6 notes that Heathrow Express was not included in Steer’s PR23 assessment of net revenues. The analysis in the consultation document is based on internal ORR analysis. We would like ORR to test their work with an independent expert third party to test the conclusions.

Section 3.7 states that under a model access contract, access charges payments to Network Rail would be less than the £10m p.a. currently paid to NR. However no evidence is provided to support this point. We ask ORR to release the background analysis to stakeholders in the interests of transparency.

Section 3.11 provides examples of wider rail changes that could affect the Heathrow Express business model, e.g. the opening of Crossrail and potential changes to access rights. The consultation paper says, “there is significant uncertainty over the materiality of any such impact at this stage”. With this level of uncertainty, we question the ORR is in a position to introduce a new ICC, as it does not, by its own admission, fully understand the wider business conditions that the operator will be working in.

We therefore consider that the ORR should publish the full analysis it has carried out; that this should be subject to independent expert review; and that more work should be undertaken to assess the wider market conditions for Heathrow Express given the opening of Crossrail in particular. All this should be done before a decision is made on the introduction of, and level of, a new ICC.

Finally, there is a broader point we wish to raise about the ‘market-can-bear’ test. In rail operations this is typically limited to TOC or FOC revenues. However in the case of Heathrow Express a wider approach should be taken, which includes the financial position of Heathrow Airport itself. Heathrow is currently a loss-making airport, and adding the ICC is likely to lead to additional costs to passengers, could potentially deter travel, and add more financial stress to the organisation.

Question 3: Do you have any views on the proposed phase-in arrangements for this ICC for new operators?

The proposed phase-in would be more beneficial to new entrants than incumbents for the first 5 years. From the consultation document it is not clear whether this phase-in approach is specific to Heathrow Express, or a broader ORR decision. We would question this approach on principle given the competitive advantage it would provide, and are keen to understand the rationale and justification for this approach.

Are there any other comments you would like to make?

Click or tap here to enter text.

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

Consultation: PR23 Further Consultation on Open Access Airport Services
Submitted To: Office of Rail and Road
Submitted On: 31 August 2023
Submitted By: BusinessLDN

1. BusinessLDN wishes to express concerns about the potential impacts of the proposals in the PR23 further consultation on open access airport services and request a full impact assessment be undertaken.

2. BusinessLDN is a business campaigning group with a mission to make London the best city in the world in which to do business, for the benefit of the whole UK. We convene and mobilise business leaders to tackle the key challenges facing our capital. We are made up of 180 leading employers across a wide range of sectors, including strong representation from the transport sector.

3. London's airports serve as the front door to the whole of the UK. They help to attract the trade, tourists, and investment that support the British economy in a globally connected world. They also serve as major sites of employment across the wider region.

4. The combination of travellers and employees generates significant demand for surface transport to and from these airports. In order to both minimise the impact of these journeys on local communities and the environment, it is vital that policy across Government and regulators is designed to incentivise and maximise the use of sustainable transport modes.

5. Increasing the cost of rail journeys will deter air passengers and employees from choosing this sustainable mode of transport for their connections to and from airports. The most likely impact will be to increase the number of car journeys being taken on the roads around airports. This would both degrade the passenger experience – many of whom are taking their first rail journey in the UK having just arrived and forming opinions about their future spending and investment decisions – and represent a significant retrograde step from the perspective of our progress towards net zero. Greater consideration must be given to these wider policy objectives and environmental imperatives.

6. The road infrastructure around London's airports will also struggle to cope with increased demand, as many are already heavily congested. This contributes to poor air quality and reduced quality of life for residents in these areas. Across the

capital it is also estimated to cost over £5bn per annum. This cost represents the time Londoners lose whilst accessing jobs and services, as well as the reduction in the number of customers businesses can serve. Adding to this problem runs counter to local and national policy designed to reduce congestion by incentivising modal shift towards sustainable and efficient transport options.

7. It should also be noted that the London road network is under similar financial pressures as the railway network and shifting the maintenance burden from one mode to another is not a real and sustainable solution. The holistic impacts of siloed decision-making need to be accounted for.

8. Increasing costs could also call the viability of open access services into question. This applies to both existing services and any potential new entrants looking to develop new services on airport routes. The net result is likely to be a reduction in competition on these routes (we remain unconvinced by the argument in 1.16b of the documentation), followed by a decline in service levels, passenger satisfaction, and therefore ridership. This risks contributing to a spiral of decline in airport rail services that will ultimately undermine the financial viability of the railways, and therefore having precisely the opposite of the intended effect.

9. The potential wider impact on private sector investment in UK infrastructure should also be analysed. Government has actively sought private sector proposals to increase rail infrastructure to London airports and this increase in costs could deter such investments. Policy at all levels should be consistent and charges designed to support the conditions that encourage and facilitate greater private investment in UK infrastructure.

10. Finally, it is unclear on what evidence the conclusion has been reached that this market segment can bear additional costs. Given there is only one existing open access airport service, there is a lack of data from which to generate solid supporting evidence and the very fact of there being a lack of services in this market segment suggests that the market incentives are currently set against such operations. An increase in costs would only compound these challenges.

11. Whilst we understand the current financial pressures on the railway industry, we are concerned about the wider impacts and unintended consequences of levying further charges on open access airport services. We therefore firmly believe that a thorough impact assessment must be undertaken.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [redacted]

Job title: [redacted]

Organisation: First Rail Holdings

Email*: [redacted]

Telephone number*: [redacted]

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Despite the apparent satisfaction of the ORR that the constrained funding does not need to result in undue concerns for the safety of assets or performance during CP7, we have not seen the supporting detail, including risk assessment and analysis, which underpin NR's asset management and maintenance plans and we are therefore very concerned about the potential catastrophic impact to safety and operational performance associated with deteriorating asset condition in CP7. We are concerned that substantial risks remain, despite the increased risk provisions in the Draft Determination.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

It is disappointing that a “patch and mend” approach seems to have been adopted. It is fair to say that the Regions have struggled to match their need for funding with the funds available and, given what has occurred in CP6, some of the general maintenance assumptions for CP7 seem to border on the “heroic” side. Where the ORR has determined that the proposed expenditure was inadequate, the increases proposed in the draft determination are very much welcomed. As far as the System Operator is concerned, we are worried about the progress and co-ordination of ITTS and welcome the decision to include projects under the ITTS as a Tier 2 supporting measure for the SO. This is key to improving the long winded SOAR process.

3. Our review of Network Rail’s stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

While NR have engaged positively with our TOCs, there has been some understandable lack of detail as to the individual effects at Route level. This has been further affected by the Draft Determination changes to regional settlements, where, to give one example, it is unclear how the increased spending for Southern, will affect the lines on which SWR run. We would also like to understand in more detail how NR will be managing the direct safety and performance risks through the market-led approach to asset intervention.

4. Our review of Network Rail’s proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

We agree that NR's "On Time" and Passenger Cancellation forecasts are not sufficiently ambitious, and the targets need to reflect more stretching trajectories, in some cases making use of the Performance Improvement Funding to achieve them.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

The continuing commitment to completing the tactile paving programme is welcomed but the lack of progress on "step free" is of concern. Relaying opportunities should be utilised to maximise the normalisation of track/train/platform interfaces with appropriate monitoring of progress.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

No comment

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

No comment

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

This is the most concerning aspect of the draft determination. The statement that NR has not yet demonstrated the shift in risk is extremely worrying. For those who experienced the change in maintenance regime for traction and rolling stock on BR in the late 1980's under the CEM scheme, this feels like a repeat. That scheme led to a marked deterioration in older assets, leading in at least one case to a fatality, and a huge and expensive increase in workload for Level 4 maintenance depots. In any new scheme like this, the need for pro-active examination and timely execution of repairs arising is crucial and the lack of detail as to how this is going to be achieved with the current settlement is concerning. The market led approach and how SFAIRP is going to be applied in a non-discriminatory manner is also awaited with interest, as is how the ORR is intending to pro-actively monitor and enforce in this area.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

FirstGroup supports the decisions on ICC for CP7 and supports the expansion of the qualifying criteria to include airport services. We note the VUC changes have, in part, been driven by lower passenger train forecasts for CP7. That assumption may prove to be pessimistic. We cannot comment on the Station LTC and QX charging except to state that, to date, details for individual increases have been somewhat opaque and we await the final figures with interest.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

We have engaged with the ORR at both TOC and owning group levels on the cross-industry work on methodology for NR payment rates. As is well documented, the originally proposed semi-elasticity approach would have resulted in extraordinary reductions in NR payment rates. We have informed the ORR that these reductions would have resulted in a very significant reduction to the economic incentives on NR to maintain the network to an appropriate degree, and in addition would have created perverse incentives with regard to service regulation during disruption and service planning during engineering works. The scale of the originally proposed reduction was so great that we were concerned with the ongoing orderly operation of the railway. We remain of this view, and welcome the attention that the ORR has paid to our concerns.The ORR has recently proposed an alternative to the originally proposed methodology (see “Schedule 4 & 8 Passenger Recalibration Working Group: 10 August 2023”, copy attached), being a methodology throughout CP7 that is between the originally proposed and the CP6 approach. We agree that this is the safest of the possible approaches considered by the ORR to address this matter. For the avoidance of doubt, we remain of the opinion that the NR payment rate methodology should be closer to that used in CP6 than in the ORR's "50%" proposal, in order to preserve orderly operation of the railway. In any case we absolutely believe that the payment rates must be no lower than those that would result from the 50% methodology.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

We consider that the improved monitoring of financial risk is an area that needs strengthening, both at NR and ORR levels. We look forward to seeing more on this in the final determination. We would also like some assurance that the individual CP7 risk provisions are adequate, especially in relation to weather extremes.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

The proposed threshold seems adequate for the purpose of the policy

Any other comments on managing change.

Although TOCs are not usually affected in the short term by such changes, we still wish to be consulted, where appropriate, to assess any long-term effects.

13. Are there any other comments you would like to make?

None

Thank you for taking the time to respond.

Annex A: Publishing your response

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31 August 2023

Heathrow Express Operating Company Limited

Response to the Office of Rail and Road's (ORR) consultation on the proposal to permit Network Rail to levy an infrastructure cost charge on open access services to major airports in Great Britain during Control Period 7 (CP7)

Overview

Introduction

1. Heathrow Express Operating Company Limited (HEOC) welcomes the opportunity to respond to this consultation. As an important player in the open access market, providing an express connection between central London and the UK's major international hub, we look forward to further contributing with the ORR and the UK Government to develop an efficient and competitive rail sector.
2. This introduction summarises HEOC's views on the proposal to permit Network Rail (NR) to levy an infrastructure cost charge (ICC) on open access services to major airports in Great Britain during Control Period 7 (CP7). At the outset we note that Heathrow Express is the only current operator which will be affected by the proposed charge. Detailed responses to the each of the consultation's questions follow.
3. It should be noted that while HEOC and Heathrow Airport Ltd (HAL) have separate governance structures, HEOC is included in the regulation of HAL by the Civil Aviation Authority (CAA). As such there will be some crossover in the views expressed in the responses submitted by HEOC and HAL.

Proposed Market Segment

4. The new proposal for a market segment for open access services to major airports has been introduced without sufficient and rigorous economic analysis, supporting evidence, or stakeholder consultation, thus departing from good regulatory practice. At no point during the periodic review 2018 (PR18) until the very final stages of periodic review 2023 (PR23), has there been any consideration of an airport specific segment as part of the several market segment alternatives analysed. Further work with the market is required and necessary to allow a more comprehensive assessment of the appropriateness of the new segment and the impacts it could have on current and future operators.
5. As it stands, the parameters for the airport segment subject to the proposed ICC appear to have been decided solely based on ensuring that HEOC is captured within it, which would constitute unbalanced treatment. Any associated mark-up charges will directly affect HEOC negatively by imposing an additional cost to which no other UK operator will be subject.
6. The profile of passengers using the Heathrow Express service (HEx), including price sensitivity of airport services, has not been sufficiently scrutinised by the ORR. The sensitivity of Heathrow Express passengers to changes in fares and service can be seen in the forecast impact of cheaper Elizabeth Line services on mode share and revenues (set out in more detail in our specific response to the consultation questions).
7. The proposal lacks clear criteria to define what constitutes services encompassed by the proposed airport segment. For example, there is no robust explanation as to why the threshold of 5 million average entries / exits at one station (or stations) that directly serve an airport has been defined.
8. The methodology to count HEx passengers and supporting data have important flaws. Further, the proposed use of 2019-20 as a baseline year is not adequate, as it disregards the economic and financial context of Heathrow and the rail operation.

Proposed ICC

9. Without sufficient robust analysis to support it, as it stands, the new ICC involves a high degree of uncertainty around key variables influencing profitability and market ability to bear e.g., future passenger profile or their sensitivity to ticket prices. The ICC proposal overlooks economic, financial, and regulatory factors affecting passenger rail services to Heathrow Airport and the HEx business. As such, the proposed charge will have negative repercussions on the competitiveness of HEx, ultimately harming overall competition in the sector and possibly passengers' interests too, by affecting their range of options and ticket costs.

10. The abrupt introduction of a new charge impacts HEOC's ability to plan the future of its business with a reasonable degree of assurance. Additionally, no consideration has been given to Heathrow Airport's own regulatory process. In March 2023 the Civil Aviation Authority determined the airport's price cap for the regulatory period 2022–2026 (known as H7). The costs and revenues considered in the price review process and the resulting settlement do not include the proposed ICC mark-up charge. Costs and revenues from HEx form part of Heathrow Airport's single till meaning that the price cap set by the CAA for the H7 period assumed a certain level of revenues from Heathrow Express over the period to 2026. Through Heathrow's regulatory framework, Heathrow takes full risk on Opex and Commercial revenues. Implementation of the ICC will reduce the revenues earned by Heathrow Express and therefore the revenues flowing to Heathrow's single till.
11. The introduction of the mark-up charge would impact on the competitiveness of HEOC and, more broadly, on the level of competition in the sector. Rather than facilitating increased on-rail competition between passenger services over the longer-term, the new ICC would be creating additional barriers for new operators.
12. HEx demand and revenue levels have been under significant pressure:
    a. Heathrow Airport is currently a loss-making business and passenger numbers have not fully recovered post-pandemic. Consequently, unlike the other open access operators referenced in ORR publications "PR23 draft determination: Policy position – access charges" (15 June 2023 paragraph 2.23) and "Monitoring open access: 2023 Update" (18 May 2023; Section: Post-pandemic recovery in rail demand), Heathrow Express passenger numbers have not returned to their pre-pandemic levels. Reduced demand from business travellers and the impact of significant new competition, have seen revenue numbers fall while at the same time costs are increasing.
    b. For HEOC specifically, the full opening of the Elizabeth Line has introduced direct rail competition for the first time alongside existing bus, coach, taxi and private hire vehicle competition. The CAA determination for the period 2022-2026 acknowledges the impact of the Elizabeth Line on HEx.[1]
    c. Network Rail's request that HEOC to move to a standard Track Access Contract in CP7, in turn substantially alters key technical and commercial terms of the current agreement. This puts at risk long-standing guarantees that underpin HEOC's business proposition and essential service characteristics. HEOC pays a premium through the current Track Access Contract (approximately 300% of the charges in a regulated agreement) to ensure that key rights underpinning the HEx service receive contractual protection. These key rights will not be replicated in any future Track Access Contract agreement based on the ORR standard model. This also means that it is not reasonable for ORR to have reached some of the conclusions which it claims support its proposal. The proposal does recognise that there is some uncertainty over the commercial and legal circumstances which will apply to HEOC in the future, but then reaches premature conclusions as to what those might be.
13. The ICC proposal lacks a thorough modelling of the ability of HEOC to bear a mark-up, particularly in a way which is consistent with the Steer analysis used to inform the current market segments for the ICC. More broadly, the consultation does not provide stakeholders with essential underpinning data to support ORR's approach in relation to the creation of the ICC or the charge level, thus making any adequate assessment of benefits and impacts very complex, incomplete and illogical.

[1] https://publicapps.caa.co.uk/docs/33/CAP2366H.pdf, Page 37

14. HEOC was established solely to provide an express rail link to Heathrow Airport and is included in the single till of Heathrow's regulatory price control process. It is therefore not comparable to other Open Access Operators in terms of scale, ownership structure or operating model.

Proposed Phase-In Arrangements

15. In addition, it should be noted that Heathrow Airport has, over the past 25 years, invested over a billion pounds into rail infrastructure providing the 0-12 electrification of the Great Western Main Line (GWML) and the Heathrow Tunnels beyond Airport Junction. No other operator within the Rail Industry has made a comparable contribution, which should be factored into any assessment of the ability of HEx to bear an ICC. The fundamental rationale underpinning the introduction of an ICC in other inter-city market segments does not and should not apply to Heathrow.
16. In calculating the recovery of fixed track costs from open access operators, such prior investment in infrastructure should be considered. Given that the stated purpose of the mark-up charge is to recover costs related to infrastructure, Heathrow Airport's prior investment supports excluding, or at least considerably postponing, any charge on HEOC.
17. However, should ORR decide to move forward with its ICC proposal, a phase-in arrangement for both existing and future operators would be the more proportionate and prudent approach. In the case of HEOC this charge should not start before 2027 in any case, as the costs and revenues considered in Heathrow's Airport 2022-2026 regulatory settlement necessarily did not include the ICC. In addition, the commercial impacts of the change to a regulated contract compared to the current arrangement are forecast to be considerable.[2]

Question 1: Do you have any views on our proposed definition for a market segment capturing open access services to major airports?

Definition of the New Market Segment

18. HEOC is especially uncomfortable that the proposal to define an ICC for airport services has been brought in abruptly, with inadequate consultation and review of the impact of the decision. The definition parameters for the sector appear to have been decided solely based on ensuring that HEOC is captured within it. HEOC believes that any associated mark-up charges risk putting HEOC at a disadvantage compared with other train operators.
19. For context, it should be noted that Heathrow Airport is still a loss-making business. Passenger numbers have not fully recovered to pre-pandemic levels and for HEOC specifically, the full opening of the Elizabeth Line has introduced direct rail competition for the first time alongside existing bus, coach, taxi and private hire vehicle competition. In addition, the NR request that HEOC move to a standard Track Access Contract has put at risk several long-standing contractual guarantees that underpin the viability of the HEx service.
20. HEOC's concerns in relation to the current proposal are summarised as follows:

    a. the abrupt introduction of the new segment impacts HEOC's ability to plan the future of its business with a reasonable degree of assurance and generates regulatory instability.
    b. HEOC has concerns around the robustness of the analysis underpinning market segmentation and considers it needs further work. As it stands, the segment definition constitutes an unbalanced treatment with parameters that ultimately mean only HEOC is captured; an example of one of these parameters is the methodology to count passengers.

[2] "Valuing Heathrow Express' Operational Guarantees" Teneo, 18th November 2022

c. The introduction of the mark-up charge impacts on the competitiveness of HEOC and, more broadly, on the level of competition in the sector by imposing entry barriers.
d. The new ICC will likely have a negative environmental impact as any HEx price increase as a consequence of increased regulatory charges would drive a proportion of airport customers who currently/would have used HEx towards private cars/taxis.

21. To reiterate, HEOC has material concerns about the robustness of the analysis underpinning the consultation document and the ORR's conclusions on market segmentation. HEOC considers that not enough objective research has been carried out to justify its implementation.
22. Furthermore, no consideration has been taken of Heathrow Airport's own regulatory process. The Airport has recently had price limits set by the CAA for the period 2022 – 2026 that took account of costs and revenues that do not include the proposed ICC mark-up charge.
23. Further work and sufficient analyses are needed to support the current proposal for a new market segment covering open access passenger services to airports. As it stands, the segment definition constitutes an unbalanced treatment with parameters that ultimately mean only HEOC is captured. This can also have harmful effects for competition in the sector.
24. When introduced by the Periodic Review 2018 (PR18), the ICC for open access operators of passenger services considered two market segments – Interurban and Other. This definition was supported by a rigorous study developed by Systra and CEPA, as well as extensive stakeholder consultation. During PR23 ORR engaged Steer to revise and update the market segment study developed in PR18, and again conducted extensive stakeholder consultation. The conclusion was that the previous definition of two segments remained adequate. There was never, during PR18 or until ORR's 2022 conclusions document for PR23, any consideration of an airport specific segment as part of the several market segment alternatives analysed.
25. The recent idea of establishing a new market segment for major airports does not take the same rigorous approach. The justification advanced by the ORR – mainly paragraph 1.15 of its consultation – denotes that more detailed examination of this proposal is still necessary.

Specific features of the HEx service

26. HEOC notes that the service it provides with Heathrow Express competes against car and bus travel as well as the state-subsidised Elizabeth Line and, as such, there is a limit to the price passengers are willing to pay. Indeed, while HEx's headline ticket price of £25 has remained unchanged since 2016, Heathrow still must work hard to demonstrate how the service offers value for money.
27. The price sensitivity of airport services has not been sufficiently addressed by the ORR. Unregulated fares do not automatically equate to "greater scope for open access operators to run profitable services" as stated in paragraph 2.10 of the Consultation, especially in the face of competition from state-subsidised operators. In addition, paragraph 1.15 of the Consultation references a particular passenger type travelling to major airports and the prices they are willing to pay without developing this line of argument.
28. Paragraph 1.15 also references a distinct requirement for service quality relating to airport services. However, this should not be considered as a differentiating factor for HEx if, as is currently under discussion, Network Rail expects HEx to move from a bespoke to a standard Track Access Agreement.

Definition of the criteria

29. The criteria supporting the definition of what constitutes services encompassed by the proposed airport segment overlook crucial differences between train services to major airports in the UK.
30. Criterion (b) "at least one station (or stations) that directly serve an airport have average entries / exits above 5 million passengers per year" appears to have been selected purely with the purpose of including HEx within the definition.

31. When setting this criterion, the ORR states that a station threshold is important to ensure that an ICC is implemented where passenger numbers are highest and to mitigate the risk of setting an ICC which could potentially deter the development of new links which, due to lower passenger numbers, could not bear an ICC.[3] The ORR's previous approach to ensure that the ICC was not applied to a market segment which could not bear it was to apply a threshold of 10 million station entries or exits. However, in this case, the proposed approach has lowered the threshold to 5 million entries or exits.
32. The document does not set out any analysis to support the decrease in threshold to 5 million or to substantiate that the decrease in threshold would not lead to an ICC being implemented on a market which could not bear it. The ORR states only that the reduced threshold would encompass stations at Gatwick, Heathrow and Birmingham and relies on the observation that these are three of the largest airports in the UK to substantiate that its threshold is correct.[4] On this basis, further analysis is required to understand whether this reduced station threshold is appropriate and meets the objectives stated by the ORR.
33. In addition, HEOC contends that sufficient clarity does not exist on the definition of "entries / exits" as used in the criteria, in particular where this relates to commuters using the HEx service. In its previous analysis, the ORR's market segmentation criteria were crafted to ensure that commuter journeys were not taken into account. [5] However, the criteria set out to define the segment related to airport travel does not ensure that commuters, who are less likely to be able to bear the mark up, are excluded.
34. HEOC contends that, in line with the ORR's previous approach, only HEx full fare-paying passengers should be included in the calculation to meet the test of criterion to ensure that commuters, Heathrow Airport staff, HEx staff and airline staff are excluded. This also ensures the passengers travelling on Elizabeth Line services are excluded.
35. Furthermore, the underlying data used by ORR needs to be reconsidered. Given the impacts of Covid-19 on passenger travel behaviour, historic data cannot be seen to be a good predictor of the future. This is particularly true at Heathrow where we are continuing to see a change in the profile of passengers using the airport. For this reason, on average entries/exits should consider actuals rather than estimates and should relate to the charging year and not historic data.
36. The proposed use of 2019-20 as a baseline year does not consider critical issues that will impact the viability of HEx:
    a. Heathrow passenger number have not returned to pre-pandemic levels and have seen a marked change in reasons for travel, with a clear movement away from business to leisure with a consequent impact on revenue per passenger. HEx has historically been a predominantly business product but, since the pandemic, leisure passengers are now in the majority.
    b. The significant impact of new competition from the Elizabeth Line, which only attained its full schedule to Heathrow in May 2023, with the medium-term impact on HEx being highly uncertain. Indeed, the Elizabeth Line comprises most of the entries and exits at Heathrow.
    c. The unknown and potentially significant impact of possible erosion of the Heathrow Express product (regular clockface timetable, guaranteed availability of Platform 6 & 7 at Paddington Station, reliability, and performance) due to the move away from a bespoke track access arrangement. This, combined with intense competition from the Elizabeth Line, could undermine the viability of HEx; and

[3] https://www.orr.gov.uk/sites/default/files/2023-08/icc-airport-market-segmentation-consultation.pdf, Page
[4] https://www.orr.gov.uk/sites/default/files/2023-08/icc-airport-market-segmentation-consultation.pdf, Page 11, Para 2.5 (b)
[5] https://www.orr.gov.uk/sites/default/files/2023-08/icc-airport-market-segmentation-consultation.pdf, Page 12, Para 2.9

d. The unknown impact of a future possessions regime relating to HS2 work on the GWML which will result in reduced frequencies of service/reliability and a further weakening of the Heathrow Express product.

Impact of ICC on competition and private sector investment in the rail industry

37. HEOC also notes that Paragraph 1.4 of the Consultation states "In PR18, we also introduced an ICC for open access operators for the first time. This policy aimed to facilitate increased on-rail competition between passenger services over the longer-term, by allowing open access operators to benefit from potentially greater access to the network, while requiring that they contribute towards Network Rail's recovery of fixed costs where they can do so". An ICC on HEx does not achieve this aim because (as paragraph 1.13 states) "There has also been little indication of prospective interest in operating such services from potential entrants."
38. HEOC also assesses it to be unlikely that any additional open access service on a comparable scale to HEx would be granted access by ORR, owing to a lack of available paths through key airport stations and where significant existing services exist and the strong likelihood that such services would not meet the ORR's Not Primarily Abstractive test.
39. Rather than helping to address these issues to promote further competition, by introducing the ICC to this segment ORR would be creating additional barriers / deterrents for new operators.

Question 2: Do you have any views on our proposed ICC that Network Rail would be permitted to levy on open access services to major airports?

Overview

40. As it stands, the abrupt introduction of the new ICC for a proposed airport segment will generate significant regulatory instability. Potentially having to review business plans, economic models and forecasts in such a short notice severely impacts HEOC's ability to plan the future of its business with a reasonable degree of assurance.
41. It is also necessary to consider the characteristics of the HEx service. Unlike other open access operators which may be subject to an ICC, HEOC (through its parent company Heathrow Airport Limited) has invested over a billion pounds into rail infrastructure both in terms of 0–12-mile electrification and the Heathrow Tunnels beyond Airport Junction. In calculating the recovery of Fixed Track costs from open access operators, such prior investment in infrastructure should be considered. Given that the stated purpose of the mark-up charge is to recover costs related to infrastructure, the fact of Heathrow Airport's prior investment supports excluding, or at least considerably postponing, any charge on HEOC.
42. Additionally, the environmental repercussions of this proposal have not been adequately examined and need to be weighed. Based on the typical passenger profile, increasing the price of HEx journeys to counteract the financial impact of a regulatory mark-up would likely lead to a significant modal shift to private and more polluting alternatives, such as taxis and private cars. The sensitivity of Heathrow Express passengers to changes in fares and service can be seen in the forecast impact of cheaper Elizabeth Line services on mode share and revenues (set out in more detail in the following section).
43. Critically, when it comes to the ICC implementation, there has not been yet a thorough modelling of the ability of HEOC to bear a mark-up, particularly in a way which is consistent with the Steer analysis used to inform the current market segments for the ICC.
44. The levy, as set out, is not proportionate for HEOC in the CAA's H7 regulatory period, especially considering the complexities and uncertainties raised above (in Paragraph 36 a-d).

Underpinning Data

45. HEOC is concerned that the ORR has not:
    a. Provided the underlying data used to inform its conclusion that HEx services can bear the proposed mark up.
    b. Used the most up to date forecasts of the impact of the Elizabeth Line on Heathrow Express' revenues to inform its analysis.
    c. Considered the impact of future changes to the business model caused by potential changes to the Track Access Agreement on Heathrow Express' revenues.
46. While HEOC requires that sensitive commercial information is kept confidential, not sharing the underlying calculations with the Operator means that it is not possible to confirm or challenge the calculation and its assumptions.
47. HEx ridership and revenues have been topics for Heathrow's H7 price control (2022-2026) as the forecast costs and revenues of the service form part of the assumptions used to set the price control for Heathrow Airport Limited. The conclusions of this forecasting work highlighted that:
    a. ***(Redacted)***
    b. ***(Redacted)***
48. **(Redacted)**
49. The CAA's H7 Final Decision accepted that the Elizabeth Line would have an impact on Heathrow Express. The CAA's consultants, CEPA and Taylor Airey, accepted the conclusions on fares and ultimate mode share impact set out by Heathrow and used these as the basis for its H7 revenue forecasts.[6]
50. Given the analysis above and the lack of forward-looking analysis in the ORR's document, HEOC cannot support the ORR's statement that its "assessment is robust to this potential impact for a range of plausible scenarios".
51. This analysis highlights the sensitivity of Heathrow Express ridership and revenues to changes in the competitive environment and shows that Heathrow Express passengers are sensitive to price. However, it is not evident that the ORR has taken this into consideration. This is particularly important, both as the real-world impact of the Elizabeth Line on Heathrow Express continues to develop and as we face the uncertain impact of changes to Heathrow Express' service which could result from the new Track Access Agreement. HEOC believes that both the impact of the Elizabeth Line and any loss of operational guarantees would have a material impact on the HEx business model and therefore should be properly considered and assessed before any mark-up is applied.
52. While noting there has been little notification of this change of charging regime nor any prior engagement to understand its economic position, HEOC would be happy to work through these issues with ORR to further inform its thinking.

Proposed Charge Level

53. The current proposal also lacks sufficient information and data to allow stakeholders to perform a complete analysis of the underpinnings of the proposed charge level, thus again introducing regulatory uncertainty.
54. ORR's policy position on the ICC published with PR23 draft determination indicates that the fully phased-in ICC rate is £4.96 per train mile but proposes to round it "to the nearest 10p to avoid spurious accuracy". This lack of information leaves operators uncertain in relation to the real impacts of the proposed charge and limits their ability to conduct their own analysis to test the proposal. Over the course of the contract, even this minor rounding represents an impact to the HEOC bottom line of over £130,000.
55. The document "Draft Determination consistent price lists FTAC and ICCs - key assumptions" published by Network Rail on 25th August 2023 shows a forecast income to NR from HEx of £3.2m p.a. in 2023/24 prices starting in Year 1 of CP7 (2024/25). Discounting this annual charge

[6] https://publicapps.caa.co.uk/docs/33/CAP2366H.pdf, Page 37

by the latest Consumer Prices Index (CPI) in the 12 months to July 2023 of 6.8% results in a charge of £3.0m in 2022/23 prices. Applying this £3m charge to HEOC's latest published statement of comprehensive income for the year ended 31 December 2022 would increase operating costs by 4.2% and reduce operating profit by 13.5%. Such a large increase in the cost base and impact on profit with less than 6 months' notice from the final determination date to the start of CP7 is untenable for HEx.

56. Control Period 7 from 2024–29 covers the majority of the planned possessions for the Old Oak Common Rail Systems Main Works. This considerable disruption to HEx services over a sustained period of time will lead to a fall in revenues and customer confidence in the service. The financial impact is unlikely to be fully compensated by Schedule 4 compensation (the payment rates of which are currently being recalibrated downwards). HEOC does not believe that it is equitable to introduce a new ICC at a time when its service is being severely disrupted to facilitate the construction of HS2.
57. The consultation also does not provide the calculation of the allocation of the operator's total traffic avoidable fixed cost (which is a key piece of information since the mark-up should not exceed this amount). Rather, the consultation simply adds that ORR does not expect the £5 charge to exceed this amount and that it will be checked once Network Rail has completed its recalibration of its fixed cost model.
58. Another source of uncertainty is that there is no mechanism proposed to limit the increase in ICC in future control periods (for example by index-linking any mark-up), when the ICC may not be set "conservatively". This leaves operators uncertain about future costs and the viability of their business. This is especially pertinent given the opaqueness of the ability to bear calculations.

Question 3: Do you have any views on the proposed phase-in arrangements for this ICC for new operators?

59. As stated above, the proposed ICC should be subject to further scrutiny and more detailed analysis before a decision about its implementation is reached. Moreover, there are strong grounds to suggest that HEOC should be excluded from such an ICC mark-up. Nonetheless, it is also clear that should ORR decide to move forward with this new mark-up, a phase-in arrangement for both existing and future operators would be the more proportionate and prudent approach – in the case of HEOC this is particularly relevant given the uncertainties surrounding the future passenger numbers and profitability of the HEx service.
60. The PR18 Determination of Infrastructure Cost Charge which first brought in an Open Access Operator mark-up, paragraph 3.27 of PR18 states "If existing OAOs continue to operate their current services, they would not see an increase in charges because of the introduction of the ICCs over CP6. More generally, these open-access operators are not likely to see a significant change in their variable charges over CP6, as the increase in variable usage charge is largely offset by the removal of the capacity charge". The Consultation document 1.5 (c) also states "Existing open access operators were given relief from any increases in charges prompted by the introduction of the ICC, for the whole of CP6." In fact, no existing Open Access Operator has yet paid a mark-up despite the policy being introduced for CP6.
61. This is inconsistent with the treatment of HEOC for which it is proposed that the mark-up is imposed immediately and there is not any compensatory relief arising from the removal of existing charges.
62. HEOC recognises that the large track access charge in the current bespoke Track Access Agreement may lead to an overall fall in access charges when moving to a standard TAA. However, the impact of being forced to move to a standard TAA with its dilution of operational guarantees and impact on revenue in combination with an ICC mark-up could lead to an overall

fall in HEOC's net revenue. In these circumstances, HEOC may explore options to retain its existing TAA.

Are there any other comments you would like to make?

63. Overall, the proposal does nothing to support the ORR in its duties to protect users, to promote the use of the railway or to achieve sustainable development. In particular, the proposal is not in line with the ORR's duty to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance[7].
64. The proposal is also inconsistent with the better regulation principles, and conflicts with other regulatory decisions made for Heathrow Express and Heathrow Airport Limited by the CAA.
65. HEOC submit that, in addition to the points above, this close to the start of CP7, the uncertainty surrounding the HEx service (unspecified commercial impacts of new contract; competitive landscape) and the wider industry (HS2 disruption; post Covid ridership patterns) mean that a meaningful assessment of the market's ability to bear a charge cannot be achieved.
66. The risk of rushing the implementation of a level of charge that has not been properly researched and defined will impact both on the viability of the HEx service and that of future market entrants, reducing passenger choice and negatively impacting sustainable travel to airports.
67. As has been mentioned above, once sufficient analysis and consultation has been completed, and it is decided to implement the proposed ICC on the open access airport market, this should be delayed until the start of CP8 or at the very least phased in line with the arrangements for new entrants to the market.

[77] https://www.orr.gov.uk/about/how-we-work/strategy-duties

PR23 Charges Review – Further consultation on open access airport services

Heathrow Southern Railway Ltd response.

Heathrow Southern Railway Ltd (HSRL) is a private sector company promoting construction of a rail link from Heathrow to join the existing Network Rail infrastructure north of Staines on the Windsor – Staines branch and between Egham and Virginia Water. AECOM is an investor partner in HSRL.

The project involves construction of 8 miles of new railway, mostly in tunnel, and will enable through operation of trains from Paddington via Heathrow to Guildford, Basingstoke and Reading via Bracknell, together with services from Heathrow to Waterloo via Richmond and Hounslow. The Guildford/Basingstoke/Reading trains would be operated as extensions to existing Heathrow Express services, both maintaining the financial viability of this important fast link to the airport after abstraction following the opening of the Elizabeth Line, and providing an alternative route to London, together with access to Old Oak Common for interchange with HS2. Whilst the HSRL route would be slower than, for example, Guildford – Waterloo, journey times from Bracknell and Wokingham to London would be significantly faster than the existing Waterloo route.

HSRL has developed this project over a number of years, and has had extensive discussions with Heathrow Airport Ltd, the Department for Transport, Network Rail and key stakeholders. We have also met ORR on a number of occasions. The project has widespread stakeholder support and is the "candidate scheme" in a consultancy study currently being carried out by Arup for the Heathrow Area Transport Forum (HATF); we are confident that HATF will conclude that HSRL is the favoured scheme for southern access to Heathrow, and we expect that HAL will then publicly support the scheme also.

HSRL is currently pursuing two approaches to the project:

1. We have signed a Collaboration Letter with MTR UK who are evaluating financing the new link on the basis of open access operation of the services involved, with the surplus of farebox revenues above operating costs used to service capital investment in the new rail infrastructure.

2. We are also evaluating a model under which the train services are operated as part of standard rail concessions, with capital costs serviced through an Investment Recovery Charge, the level of which would be subject to ORR approval.

It is also possible that a hybrid approach could be adopted, with Paddington – Heathrow – Guildford/Basingstoke/Reading services operated on an open access basis, and Heathrow – Waterloo services incorporated in a future South Western concession.

We object to ORR's proposal to allow Network Rail to levy an Infrastructure Cost Charge (ICC) on open access operators serving Heathrow Airport, as it is clear that this will significantly reduce the prospects of investment. The proposed ICC charge of £5 per train mile will raise the operating cost of the service and reduce the amount of money which can service a capital investment. It will therefore seriously impact on the viability of the investment case and make it less likely that the investment, which is strongly supported in principle by DfT, will proceed.

Further information on the project is available on the HSRL website www.heathrowrail.com . I would be happy to discuss any aspect of this response in more detail.

[redacted]
[redacted]
Heathrow Southern Railway Ltd
E mail: [redacted]
Mobile: [redacted]

PR23 charges review: pro forma

This pro forma is available to those that wish to respond to our further consultation on open access airport services, which forms part of our PR23 charges review.

Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [redacted]

Job title: [redacted]

Organisation: MTR Elizabeth line

Email*: [redacted]

Telephone number*: [redacted]

Question 1: Do you have any views on our proposed definition for a market segment capturing open access services to major airports?

Heathrow should be considered as a segment in itself due to differing nature of market it serves compared to the other airports above the ORR station demand threshold – more long haul flights.

Question 2: Do you have any views on our proposed ICC that Network Rail would be permitted to levy on open access services to major airports?

Heathrow can bear a significantly higher charge as evidenced by what it is paying now (equate to approx. £15 - 16 per train mile after taking account of VUC/EAC charges it would pay under a model clause contract). ORR's own analysis indicates a higher amount can be paid (para 3.10). Airport demand is more or less back to pre-pandemic levels.

The Heathrow Express operating surplus is part of the single till for the aviation regulatory settlement. The Heathrow Express operating surplus projections for the setting of airline charges for the H7 control period (to 31/12/2026) almost certainly assumed a continuation of the current level of access charge. In addition, these projections took account of the pandemic and the Elizabeth line impact on Heathrow Express revenue.

A higher charge would be consistent with the ORR's duties to:

- Have regard to funds available to SoS – lower mark up = more DfT grant.
- Promote efficiency and economy / Promote competition.

Question 3: Do you have any views on the proposed phase-in arrangements for this ICC for new operators?

Click or tap here to enter text.

Are there any other comments you would like to make?

MTR Elizabeth line are concerned that we are not sighted on timescales for the development of the new Heathrow Express ‘model clause’ Track Access Contract or the status of their existing contract.

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

Network Rail’s response to ORR’s further consultation on open access airport services

31 August 2023

Contents

1 Introduction

1.1 This document sets out Network Rail's response to the Office of Rail and Road's (ORR's) further consultation on open access airport services as part of its review of our access charges, published on 01 August 2023. We are also submitting, today, our response to ORR's 2023 periodic review (PR23) draft determination noting that ORR's decisions on charges for open access airport services will have implications for our CP7 plan, which are discussed below.

1.2 Aspects of our response are confidential and have been redacted so that our response can be published. The views expressed in this consultation response should therefore be considered alongside the other draft determination responses we are also providing to ORR on 31 August 2023.

1.3 We agree with ORR's draft decision to allow Network Rail to levy an Infrastructure Cost Charge (ICC) on the new market segment for major airports services as defined in its consultation.

1.4 We are fully supportive of the continued provision of open access services across our network and, in the context of this response, those provided by Heathrow Express (HEx) between Heathrow airport and Paddington station.

1.5 However, we do not agree with the level of the charge for CP7, £5 per train mile (in 2023/24 prices) and uplifted annually for inflation, that ORR has deemed appropriate for the new major airport service market segment for the reasons discussed in this document. We note that the only open access operator this will apply to is HEx, should they transfer from their existing unregulated access contract to a model passenger contract at the start of CP7.

1.6 Our reasoning for disagreeing with the proposed level of the charge for CP7 is that:

a) The proposed market segment is too broad and should be narrowed to reflect the relative uniqueness of the major airports being served and their respective passenger demographics;

b) The £5 per train mile charge (if aggregated up to expected total costs) is substantially lower than HEx's allocation of Network Rail's avoidable fixed costs that we calculated using an early draft of Network Rail's fixed costs allocation model and provided to ORR on 19 July 2023 to inform its consultation[1];

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[1] The fixed cost allocation model has since been updated to facilitate the production of the draft FTAC and ICC price lists and the latest calculations of HEx's fixed cost allocation has reduced but is still substantially more than £5 per train mile. See paragraph 3.2 and 3.3 for more details.

c) ORR's own assessment of HEx's net revenues supports a higher ICC than the charge of £5 per train mile proposed meaning more of Network Rail's avoidable fixed costs need to be covered by public subsidy;

d) HEx currently pays Network Rail equivalent costs through their existing contractual arrangement which are far in excess of the ICC (if aggregated up to expected total costs) proposed by ORR which would suggest that HEx can bear a higher charge;

e) Setting the ICC at £5 per train mile given it will only apply to HEx, could result in an undue competitive advantage on the basis that HEx, paying a lower charge than they could bear, would put them in an advantageous position compared to other train operators (and modes of transport) serving the airport; and

f) More broadly, setting the ICC at a rate whereby Network Rail recovers substantially less than through the existing contractual arrangement will mean that we have an income shortfall in CP7 of c.£29m, adding further pressure to our CP7 plans at a time when we are already facing significant challenges and difficult choices.

1.7 We are interested in the extent to which ORR's proposals have considered the impact on competition between airports, which we note was not covered in the consultation.

1.8 The remainder of this document sets out our reasoning in more detail and answers the questions set in ORR's consultation document.

2 Question 1: Do you have any views on our proposed definition for a market segment capturing open access services to major airports?

2.1 ORR has provisionally set the ICC of £5 per train mile on the basis that both HEx and prospective open access services would be captured by the proposed market segment.

2.2 Rail traffic to Heathrow airport is unique. While the **station** at Gatwick airport is busier in terms of entries / exits, Heathrow **airport** is twice as busy (c60m passenger journeys and c30m passenger journeys per year respectively). Heathrow airport is not directly comparable as historically it has a lower private car usage than Gatwick (and other major UK airports) and is the only airport with an underground connection. Also, the passenger demographic using Heathrow is different. Heathrow has more long-range carriers and lacks the low-cost element of air travel, where Gatwick is seen as the London hub for low-cost operations; this will undoubtedly have an impact on net revenues for passenger services, with long distance, business, and premium travellers more likely to opt for speed over cost on connection into London. This could have a direct impact on HEx's ability to bear an ICC compared to any other potential open access airport operator.

2.3 For the reasons set out above, we believe that a market segment that includes Heathrow and the other major airports (Gatwick, Stansted and Birmingham International) is too broad. We think it would be appropriate for ORR to consider a market segment that only captures Heathrow to Paddington so that an appropriate ICC (one that reflects the services avoidable fixed cost allocation) can be levied and does not need to consider prospective open access services to one of the other major airports.

3 Question 2: Do you have any views on our proposed ICC that Network Rail would be permitted to levy on open access services to major airports?

HEx's traffic-avoidable fixed cost allocation

3.1 The ICC levied on any train operator should not exceed its total traffic-avoidable fixed costs allocation.

3.2 Preliminary results from our fixed costs model, provided to ORR to inform their consultation, suggested that HEx's avoidable fixed costs allocation in £ per train mile, would be between approximately £16 and £19. These values have since been revised following our work to produce the draft FTAC and ICC price Lists, and they have decreased to between approximately £11 and £13 per train mile.

3.3 The £ per train mile allocation of between £11 and £13 suggests that the ICC could be set more than twice that of the provisional rate of £5 per train mile determined by the ORR. We estimate, based on HEx's passenger train miles, that even at the upper level, the annual income would be approximately £7.6m, which is less than the charge HEx pays under its existing contractual arrangement with Network Rail, and indicates that it would have the ability to bear a charge in, or close to, this range.

HEx's ability to bear a higher ICC

3.4 While the definition for the new market segment would capture open access services from major GB rail stations to four major airports: Gatwick; Stansted; Heathrow; and Birmingham International, only services between Paddington and Heathrow, operated by HEx, would currently incur the ICC as the other stations are all served by publicly contracted operators.

3.5 For CP7 and beyond, we are not aware of any prospective open access services that would fall within the major airport service definition.

3.6 On this basis, and notwithstanding our views on the proposed definition of the market segment detailed in section 2, the focus of our response is on the impact and appropriateness of the proposed ICC of £5 per train mile in relation to HEx services only.

3.7 Steer's assessment (for ORR) of net revenues for passenger services, which has been used in the assessment of the existing market segments for PR23, only covered 3 out of the 4 airport stations that fall into the new market segment, noting that Heathrow is the one station not included. As ORR notes in its consultation, Steer's analysis suggests that an open access operator entering this market segment and providing services to these airports can bear an ICC set at or around £5 per train mile.

3.8 ORR have said that existing services (i.e. HEx) would be subject to the full ICC from the start of CP7. We estimate that the annual charge (in 23/24 prices) from levying the ICC on HEx services (for expected service levels), would be c.£3.2m.

3.9 While we are supportive of the decision to allow Network Rail to levy an ICC on this market segment, we are concerned that ORR has not reflected its own analysis of HEx's net revenues in the proposed ICC, which was carried out using a similar approach to that used by Steer for its PR23 analysis. Its analysis seems to support HEx's ability to bear a charge significantly above £5 per train mile.

3.10 Under its current contractual arrangement with Network Rail, as indicated by the ORR, HEx pays c.£10m per annum in charges relating to our avoidable fixed costs. ORR notes in its consultation that the ICC is set on a forward-looking basis and that it has taken increased competition in CP7 and the loss of specific timetabling and platforming rights HEx has at Paddington into account when forming its decision. Both of which could, theoretically, impact its revenues.

3.11 As previously stated at paragraph 2.2, Heathrow airport is twice as busy as Gatwick with a different passenger demographic than the other major airports in the proposed market segment, and as such, so are their transportation needs and the drivers of their decision making when choosing a mode of transport to/from the airport. Business passengers are far more likely to choose the speed and convenience of HEx over lower cost, but slower alternatives. This means that competition from other operators is less likely to have material impact on HEx's net revenues than other cost sensitive airport markets.

3.12 This is evidenced not only by ORR's own assessment of HEx's net revenues in year 1 of CP7, but also by the fact that while there may be more competition for HEx, in the form of the MTR Elizabeth Line, notwithstanding this, we understand that HEx's preference is to continue with its current contractual arrangements and the continuation of its existing, much higher, charging regime.

3.13 ORR notes its concerns that HEx would lose its current platforming and timetabling rights following a transfer to a model passenger contract which might impact HEx's revenues. However, it is not guaranteed that HEx would lose all (or any) of its specified rights at Paddington should it transfer to a model passenger contract. [✂].

3.14 Taking these points into consideration, we believe that this demonstrates that HEx can bear a higher charge, a point acknowledged by ORR through its own analysis of HEx's net revenues detailed in paragraphs 3.8 and 3.10 of its consultation. The ICC should be set accordingly in conjunction with Network Rail's calculation of its fixed costs allocation ceiling to provide a more accurate proxy for an ICC. It should not be based, in part, on the highly unlikely scenario of considering prospective open access services to one of the other major airports running during CP7, when each is already served by existing publicly funded operators.

Setting the ICC at £5 per train mile could result in undue competition advantage

3.15 One of ORR's wider statutory duties, as set out in Section 4 of the Railways Act, is to promote competition in the provision of railway services for the benefit of users of railway services.

3.16 The decision to set the ICC at £5 per train mile, means that HEx, over the course of CP7, will pay c.£29m less in access charges to Network Rail (based on assumed train service levels). As discussed at 3.12, if HEx remains on its existing contractual arrangements it would continue to incur its existing access charges. It's likely then that most, if not all, of the £29m would, in effect, be a saving and will help bolster HEx's P&L and could be used to either improve their service provision or to fund ticket price reductions to help compete more directly with their competitors. Both scenarios would give HEx an unfair advantage over their publicly funded competitors who are subject to the full FTAC.

3.17 More broadly, we are unclear on the extent to which ORR has considered the impacts of its proposal on competition between airports. Specifically, how a lower ICC than could otherwise be borne could enable an operator to compete more strongly on price / service provision to a particular airport and whether this would in turn flow through to competition between airports.

3.18 We are concerned that setting the ICC at £5 per train mile, could result in undue competition impacts, and are unclear on how this can be reconciled with ORR's statutory duty, in respect of competition specifically.

Impact on Network Rail

3.19 ORR acknowledges that part of its remit is to "ensure that Network Rail recovers the costs of maintaining and renewing the network fairly from different users (and taxpayers)."

3.20 The decision to implement a £5 per train mile ICC on HEx is moving a financial cost / burden away from a private commercial operator to the UK taxpayer. This is because the impact of the charge will mean that in CP7, if HEx moves to a model passenger contract, more of the burden of funding HEx's share of its avoidable fixed costs will need to be met by Network Rail at a time of already significant financial pressure and challenge, as discussed in our response to ORR's PR23 draft determination. As stated at 3.16, the impact to Network Rail of setting the ICC at £5 per train mile means a loss of income of c.£29m over the course of CP7.

4 Question 3: Do you have any views on the proposed phase-in arrangements for this ICC for new operators?

4.1 On the basis that HEx is an existing service and would be subject to the full ICC from the start of CP7, we are content with the proposed phase-in for new services entering this new market segment for major airports which would be subject to the same phasing-in arrangements which exists for the ICC for new interurban services.

End

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [redacted]

Job title: [redacted]

Organisation: Rail Partners

Email*: [redacted]

Telephone number: [redacted]

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Rail Partners is broadly supportive of the draft determination on behalf of its passenger owning group and freight operating company members. We appreciate the continued engagement between ORR and our members during PR23. We also acknowledge that this periodic review has taken place in an uncertain time for the rail industry as it awaits structural change through the reform process, while wider economic challenges affecting the country also persist. Against this backdrop, we understand the need for additional flexibility within the regulatory regime to account for this uncertainty. We also agree with the ORR's approach during PR23 to make limited, proportionate changes to the regulatory regime ahead of CP7 which will help to give further stability.

We welcome the stance ORR has taken with regards to the performance trajectories proposed by Network Rail in its Strategic Business Plans but consider that a further adjustment to Network Rail's performance benchmark is required to account for the projected reduction in network mileage in CP7 so that the methodological approach is consistent with other elements of the performance regime. Performance during CP6 has been unacceptable with both the Passenger Performance Measure and Freight Delivery Metric reaching some of their lowest points since both measures were introduced. We recognise the impact of industrial action on performance and the challenges Network Rail has faced in recovering the engineering backlog post-Covid, but sustained poor network performance is stifling the recovery of passenger demand and suppressing freight growth. Reassuringly, performance has recently turned a corner, coinciding with an increase in regulatory scrutiny from ORR.

We also expect ORR to use the outcomes framework to closely monitor Network Rail's performance across its regions and the system operator during CP7. Rail Partners considers that the Network Rail scorecards approach has not worked effectively in CP6 and a focus on fewer Tier 1 measures using the outcomes framework can help to give greater focus and improve accountability on the metrics that matter most to passengers and freight customers. Where there are signs of underperformance, it is important that ORR acts promptly to challenge Network Rail to establish plans to improve performance making greater use of the regulatory levers at its disposal. This is necessary to provide private sector operators with confidence that a high performing network will be delivered on a long-term basis underpinning investment and supporting rail growth. The performance regime must also support this objective. In our response, we outline some of our concerns with the proposed significant reduction in Network Rail payment rates to TOCs which run the risk of diluting the incentives of the Schedule 8 mechanism on the infrastructure manager resulting in even worse performance and further deterring passengers from using rail. Rail Partners' passenger members therefore support the ORR's decision in August 2023 not to implement the new payment rates in full during CP7. Particularly in light of this new information, our freight members consider that a similar adjustment should be applied to the freight benchmark and cancellations threshold to ensure that the regime is well calibrated and drives the right incentives.

On charging, we have reservations about the methodology ORR has used to calculate charges and are concerned about the impact this will have on the ability of commercial passenger and freight services to compete with other modes. We believe that ORR could be more creative in its thinking around charging to promote rail growth whilst still being consistent with the legislative requirements. The Draft Determination indicates that passenger and freight VUC rates across CP7 will increase by 7% and 18% respectively in real terms compared to CP6, this is despite Network Rail forecasting that service levels will be 88% compared to pre-Covid levels – something which we consider to be unambitious. We would welcome further clarification from ORR as to how these charges have been calculated, especially as Network Rail has become more efficient during CP6. As VUC rates are set to recover the short run marginal costs it appears inconsistent for passenger charges to increase in real terms, in part to account for the projected reduction in traffic. We believe that ORR's approach does not comply with the legislative requirements. On freight, we support the decision not to update the phase in of VUC rates at the PR23 trajectory, but freight charges are still rising significantly which will affect the sector's ability to compete with road freight and is entirely inconsistent with the freight growth target. We consider that a more holistic approach to charging is required to send appropriate price signals to customers about which mode they use.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

We support the ORR's decision to insist on a point target for the performance measures assessed within the Network Rail outcomes framework, rather than accept the range approach that Network Rail had proposed in its Strategic Business Plans. Setting a specific target is important as it gives clarity to industry and makes it easier to hold the infrastructure manager to account. We also agree with the ORR's decision to challenge Network Rail to be more ambitious in the performance trajectories it has set out, which avoids 'baking in' poor performance experienced during CP6 and sends a clear message around the importance of performance to passengers and freight customers.

With the constrained funding available we agree with the recommendations of the ORR that Network Rail regions should prioritise investment to mitigate asset depreciation and improve network resilience. This includes additional renewals expenditure, and additional funding for earthworks and vegetation management to avoid having to close down routes. We agree that additional efficiency challenges and reprioritisation of some activity should be used to fund this work.

On freight, we welcome the £72m within Network Rail's Strategic Business Plan to invest in structures to support heavy axle weights. Within this limited funding it is important that structures at greater risk of having their capability degraded, or routes that support high volumes of freight traffic are prioritised. Our engagement with freight operators has indicated that many of these structures are in the Southern and Eastern regions, so it is important that the funding is allocated in a way that reflects this. As a wider point, we support ORR's concerns that Network Rail is not maintaining the network to the Network Capability it is funded to deliver. This is something which should be addressed to avoid the risk that bulk freight services are unable to operate on certain lines where they have contractual rights to do so.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

In keeping with the ORR's views on Network Rail's stakeholder engagement, we understand that engagement has varied significantly depending on the Network Rail region. Looking ahead, we would welcome a more consistent and joined-up approach to engagement across Network Rail's regions – particularly to benefit national passenger and freight operators whose services cross NR's regional boundaries.

We understand that Network Rail's ability to engage with stakeholders has been limited in part due to the late publication of the high-level output specifications (HLOS) and Statements of Funds Available (SoFAs). The subsequent delay in the publication of their Strategic Business Plans has also made it difficult to engage and seek operator feedback. We recognise that this is largely outside of Network Rail's control and caused by wider economic and political pressures. However, this has undoubtedly compromised the ability of operators, as Network Rail's customers, to influence and challenge Network Rail's plans to deliver for them. Where engagement has been sought it has often occurred at very short notice, placing a high requirement on operators' limited resource. The lack of transparency during the business planning process has led to additional uncertainty during this periodic review compared to previous ones. This is something that must be improved during PR28.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

Rail Partners welcomes the proposed outcomes framework outlined by ORR in the draft determination. We agree with the movement away from the scorecard approach, which train operators do not consider has worked during CP6. We support the use of a select number of Tier 1 success measures and agree with the metrics ORR has selected at this level as they are well aligned with outcomes railway users value most from the railway.

As ORR will publicly report on these success measures, it will give Network Rail a clear incentive to focus on their delivery and it will also help to improve accountability. It is recognised that ORR will continue to monitor a wider range of metrics through its Tier 2 'supporting measures' and Tier 3 'additional assurance' measures as part of its routine monitoring. We do not agree that ORR should not publicly report on these measures. Reputational incentives are the most powerful tool that ORR possesses, and it should use them to the full. It should monitor all measures closely as they may help to highlight the causes underpinning underperformance against some of the Tier 1 metrics. Furthermore, subject to the proposed change process, ORR must be able to elevate measures to higher tiers as it deems necessary should it consider that Network Rail is significantly underperforming in some areas, to ensure that the infrastructure manager is duly focussed on improvements.

The strong focus on performance in the Tier 1 measures is welcome. In particular, the inclusion of cancellations as a Tier 1 measure for both passenger and freight operators is welcome as rail users face greater disruption when their trains are cancelled rather than delayed. Punctuality is a factor passengers and freight customers value highly when using rail, but through CP6 performance has declined – suppressing freight growth opportunities and the return of a financially sustainable passenger railway. It should also be noted that a significant proportion of train operators' fees within their current National Rail Contracts are reliant on good network performance. In addition to ORR's decision to largely reject the performance trajectories set out by Network Rail in its Strategic Business Plan on the basis that they were unambitious and risked baking in the poor performance experienced during CP6, the focus on performance in the outcomes framework sets out a clear message that performance, particularly sustained disruption, must improve and will be closely monitored by ORR during CP7. The Network Rail freight benchmark has not been adjusted to account for the forecast reduction in mileage during CP7, leading to a more lenient benchmark when accounting for CP7 forecast mileages. This runs counter to the strong messaging about performance in the draft determination.

In our response to the PR23 policy framework consultation, Rail Partners proposed that freight growth was included as a 'Tier 1' measure reflecting that it was a government priority. We are pleased to see that the ORR has agreed with this proposition as confirmed in its holding Network Rail to account policy consultation. We also agree with using the freight moved metric which captures both tonnage and distance. Installing freight growth as a success measure will ensure that all Network Rail's regions are focussed on delivering for freight on their infrastructure and will help to achieve a greater level of awareness of freight customers' requirements from the rail network. We do not believe that, overall, ORR's Draft Determination is consistent with achieving the freight growth target, particularly in relation to the access charging proposals. As stated in our response to question 1, ORR needs to be more creative in its approach to access charges.

It is important that ORR monitors the delivery of freight growth closely to ensure that Network Rail and freight operators collectively remain on track. Freight operators will work closely with Network Rail to identify where the opportunities for growth are so that they can provide the capacity to accommodate an increase in freight services and enable existing services to become more productive, building on the successes of longer, heavier, and more direct trains which were possible during the pandemic.

We also support the inclusion of asset sustainability as a Tier 1 measure. The messaging in the draft determination around asset sustainability is concerning as assets are expected to age significantly during CP7, which will affect the performance of passenger and freight services. While the funding available necessitates some asset depreciation, minimising the impact of this must be a core focus of ORR and Network Rail during the next Control Period. This is clearly also important from a safety perspective.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

Accessibility is a priority for the rail industry and must be dealt with through a cross-industry approach to ensure that the railway is accessible to rail passengers. As an industry we must continue to strive towards a service where all passengers can turn up and go. Recent figures from ORR's 2023 annual rail consumer report highlight that demand for passenger assistance continues to increase, and that broadly passengers are satisfied with the service they receive, but train operators must continue to improve the service they provide. There is also a key role for Network Rail as the infrastructure manager to improve the accessibility at stations.

We note ORR's view that a safety success measure is not required within Network Rail's outcomes framework. This is because there is already a range of legal obligations on Network Rail to provide accessible infrastructure. ORR already has a duty to ensure Network Rail is meeting its regulatory requirements in this regard. We encourage ORR to monitor and enforce the industry's obligations in relation to accessibility.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

Rail Partners welcomes the funding made available in the SoFA allocation, which represents a real terms increase, despite the challenging economic environment, and significant additional funding made available by government during CP6 to support the continuation of rail services during Covid. We recognise that despite this real term increase, there will be significant cost pressures facing Network Rail which will require it to act efficiently and prioritise its activities to deliver for passengers, freight customers and funders. It will also restrict Network Rail's ability to take a whole-life cost approach to its asset maintenance and renewal activity, leading to additional cost challenges in future control periods.

It is important that the final determination accounts for the uncertainty of future inflation and the impact it could have on the ability of Network Rail to deliver renewals activities. Rail Partners therefore agrees with the ORR's view that the risk provision outlined in Network Rail's SBP was insufficient in this regard. The risk adjusted provisions appears more sensible in order to account for this economic uncertainty.

The impacts of climate change have had a significant impact on network performance during CP6, and improved network resilience must be a priority to restore train operator confidence in the performance of the network. We agree with ORR's decision that additional structures at risk should be renewed with reallocated funding from a reprioritisation of activity and efficiency challenge. This includes core asset funding for earthworks across some of the Network Rail regions, which is welcome as earthworks have been a long-standing issue affecting network performance. The approach to prioritise available funding towards higher income routes also appears logical to prevent disruption to services which make a significant contribution to farebox revenue. This approach must also consider routes which have a high volume of freight traffic.

We note that given the funding available for renewals and maintenance, Network Rail might have to make use of operational measures such as speed restrictions to mitigate potential safety impacts of lower than required renewals expenditure. This is not in the interests of passengers or freight customers and will affect the ability of rail to compete with other modes. ORR must ensure, as far as possible, that this measure is used sparingly through its monitoring of asset sustainability to ensure that further reprioritisation of renewals occurs during the control period if necessary. Regarding asset sustainability, Network Rail notes that it does not expect to recover asset condition and performance to CP6 exit levels until CP11 in England and Wales, and CP12 in Scotland. This is deeply concerning for rail users and is a significant risk that network performance could continue to decline. There is a pressing need for a longer-term approach to asset management to avoid further decline and maintain asset performance levels over the longer-term.

Rail Partners supports the Performance Innovation and Improvement Fund (PIIF) which will help to improve the performance of passenger and freight services. In our response to the financial framework consultation, we highlighted the value our members have found from the Performance Improvement Fund during CP6. The improved governance for CP7 is welcome and will ensure that the funding is allocated as efficiently as possible to maximise the improvements realised from the PIIF.

To address the cost challenges facing Network Rail in CP7, the infrastructure manager should be encouraged to identify opportunities to increase other income streams. This includes maximising the value from Network Rail owned properties.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

Rail Partners recognises that the regulatory approach to Network Rail's National Functions must be proportionate given that the focus of ORR's regulation via the outcomes framework will be on Network Rail's regions and system operator where most of its funding is allocated. That said, with constrained levels of funding in CP7 it is important that all units of Network Rail are challenged to deliver efficiently so that the envelope of funding made available in the SoFA extends as far as possible.

We welcome ORR's challenge to Route Services on the costs outlined in the SBPs. We agree with the decision to apply an additional efficiency challenge so that its funding is more consistent with that allocated during CP6. This will create additional funding for renewals that are much needed to deliver a high-performing rail network for passenger and freight operators.

As a wider point, the National Functions will be able to deliver more efficiently if there is regular engagement with Network Rail's regional functions. We note ORR's view that this has improved, and we encourage Network Rail to ensure this continues during CP7.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

Despite the constrained funding available in CP7, it is critical that safety on the rail network is not compromised. Rail Partners is therefore reassured that Network Rail considers that its approach to asset management in CP7 will not result in a reduction in safety for customers and staff. We recognise that Network Rail intends to use a Market-Led approach to prioritise expenditure on high value routes. While this appears logical, the approach must continue to closely monitor risk on other lines too so that safety is not compromised.

Network Rail's management of earthworks and drainage in CP6 has been suboptimal and we agree with the ORR's view that the recommendations of the Weather Risk Task Force must be integrated within Network Rail's plans for CP7. With the growing impacts of climate change likely to present further challenges to rail infrastructure, and consequently safety in CP7, this must be a priority area for Network Rail. It is important that the infrastructure manager takes a more proactive approach to mitigating these risks during the Control Period to minimise disruption to services and ensure that safety levels are maintained. This should include clear lines of accountability between Network Rail's routes and regions. We note Network Rail's intention to use operational controls during the CP7 to mitigate these risks. As noted in response to question 6, we are concerned that this approach is not in the interest of passengers and freight customers, so such measures should be minimised where possible. While such measures can help to prevent safety risks, it should be noted that the introduction of operational controls such as speed restrictions will introduce new safety risks for Network Rail to manage.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

As Rail Partners has communicated to ORR through bilateral engagements following the publication of the draft determination, we have reservations with the approach to charging used by ORR in the periodic review. We do not believe that it is consistent with the legislative requirements.

The draft determination indicates that VUC rates will increase in real terms for passenger operators by 7% on average during CP7 – though the actual increase will depend on vehicle type. Such a steep increase, which is meant to represent the short-run marginal cost of changes in traffic levels (the EU's definition of costs directly incurred) is inconsistent with Network Rail's SBPs which assume a substantial reduction in network traffic largely due to the modelled reduction in passenger services – which may not materialise should passenger operators be given the contractual freedoms and incentives to recover passenger numbers. ORR notes that this reduction in passenger traffic is a factor leading to an increase in VUC rates. This is illogical and does not satisfy the costs directly incurred legal requirement, which determines that variable charges are set to recover the short run marginal cost from the operation of each service. This indicates that the ORR's methodology, which we note has been used during previous control periods, is flawed. We would like to understand this methodology in greater detail and would welcome further engagement on this matter. As noted in the policy position paper, engagement with industry on the recalibrated rates has been limited which is concerning given the importance of the charging regime to any commercial operator.

Rail freight operates within a highly competitive freight and logistics sector, and the track access charges paid by rail freight companies determine rail's ability to compete with other more carbon-intensive modes such as road where charges including road fuel duty have remained unchanged in over a decade. Against this backdrop, we welcome the ORR's decision not to increase variable usage charges applied to freight services by the recalibrated PR23 trajectories, and instead continue to use the phase-in trajectory outlined during PR18. A £77m increase in VUC, as indicated by the PR23 recalibration methodology, would have been significantly detrimental to the commercial viability of rail freight services and suppressed freight growth that government is committed to. Even under the PR18 trajectory, VUC freight rates will increase by 18% on average in real terms, which represents a £41m increase over the course of the control period. We would like to understand from ORR how this is consistent with delivering the rail freight growth target. Setting charges on the basis of long-run efficient costs for Network Rail would be more in line with supporting the freight growth target and is something ORR has done in the past.

We note that the ORR still intends for freight VUC caps to be unwound through CP8, which creates a major cliff edge for the rail freight industry. It is therefore important that there is early engagement with the ORR and funders during CP7 ahead of PR28 to identify a long-term solution to rail freight charges which satisfy regulatory and legal requirements while supporting the growth of rail freight services and the government's decarbonisation agenda. This would include taking a cross-modal view of freight charges, so that pricing better captures the externalities of different freight services. Rail Partners has previously called for the charging regime to incentivise operators to operate using low-carbon traction (e.g. electric or sustainable fuels) through discounts in track access charges.

We note the proposal to keep Infrastructure Cost Charges (ICC) broadly constant in real terms (£5 per train mile), for interurban open access services. Open access passenger services play an important role within the GB rail market, by creating competition and therefore customer choice with existing DfT contracted operators. Open access train operators have improved service quality within the markets they serve, grown passenger demand and improved connectivity. As such, it is important that the regulatory settlement supports an enhanced role for open access services, while recognising the ORR's duty to have consideration for the funds available to the Secretary of State. While imposing ICCs on open access services clearly affects the commercial viability of these services, in CP6 it has not stopped the successful introduction of a new open access service, Lumo. Rail Partners also notes that additional open access services between London and Wales are due to start shortly, with a further application to run services between London and Stirling also submitted for ORR's consideration. Therefore, it seems appropriate to continue to impose an ICC on open access services in CP7 where the criteria are satisfied, subject to the same phase-in arrangements which acknowledge the significant start-up costs associated with commencing a new service (e.g. procurement of rolling stock). We also note that ORR is consulting on imposing an ICC for airport services at the same rate as interurban services. As there is currently only one open access service providing direct links to airports, and there has not been any recent applications to introduce new services, it is unclear whether this market could bear the additional cost and this proposal would instead deter investment and further limit the prospect of competition in these markets despite the aforementioned benefits to passengers.

We note that freight ICCs will fall, except for biomass services, and this is to account for the increase in VUCs and EAUCs paid by freight operators to ensure that the overall level of cost recovery is set at the right level and reflect each market's ability to bear the additional cost. While the reduction in ICCs is of course welcome, due to the rise in VUC rates, overall charges paid by freight operators will increase and will make rail freight less attractive to prospective customers, running counter to the government's strong commitment to rail freight growth and the decarbonisation agenda.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

While Rail Partners understands the rationale for providing the option for operators to opt out of Schedule 4 for the duration of CP7, both pre-empting future reform, and to reflect current contractual arrangements where many operators do not hold revenue risk, we are concerned about the impact his may have on the incentive properties of the possessions regime.

The principles of Schedule 4 are that it should incentivise Network Rail to provide operators reasonable notice ahead of engineering work and encourage them to undertake this work as efficiently as possible. This enables operators to inform customers such that they can make their travel plans in advance and helps to minimise disruption caused to passenger and freight services. A Schedule 4 opt out would mean that operators are no longer compensated for restrictions of use on the network, and it therefore seems unlikely that any commercial operator is likely to opt out of the regime in its entirety – noting that in CP6 open access passenger operators chose not to pay the Access Charge Supplement and therefore were only compensated in cases of severe disruption. Should a significant number of operators choose to opt out of Schedule 4, both for the entirety of CP7, or subject to the creation of GBR, Rail Partners is concerned that this will dilute the incentive properties of the regime on Network Rail – leading to more late notice possessions and overrunning engineering works. We would like to understand from ORR how the incentive properties of Schedule 4 will be replaced.

Already during CP6, with DfT operators no longer holding revenue risk, passenger and freight operators have reported an increase in the number of late notice possessions called by Network Rail. While initially this was understood to be necessary to address the backlog in engineering works following Covid, this behaviour has not subsided. Such disruption has a significant impact on passenger and freight operations and has also undermined customer confidence in rail services. Rail Partners has highlighted this in its response to the Informed Traveller Timeline consultation, which proposed moving the deadline formally from twelve to eight weeks – something which passenger owning groups and freight operators were strongly opposed to. We are pleased that ORR has decided not to pursue this proposal. This is a behaviour that must be deterred during CP7, and it is unclear how the introduction of an opt-out mechanism will promote this if Network Rail no longer needs to compensate some operators.

While ORR has issued assurance that the Schedule 8 performance regime will not be switched off for future GBR operators until GBR is established and they are satisfied that there is an alternative incentive arrangement in place, it is not clear how this regime will function. Further detail may arise when the GBRTT Commission recommendations are published or as more detail on the performance elements of future Passenger Service Contracts is shared. Rail Partners notes the joint GBRTT/Network Rail position that it would be beyond the ORR's regulatory role for it to have visibility of the financial incentives that GBR places on its operators. This appears to be important in order for the ORR to be satisfied that the future performance regime does encourage all parties to contribute to a high performing railway. It is understood that Schedule 8 will continue to apply to all non-GBR operators, which is welcome as any commercial operator will continue to value the incentives and protections provided by the regime, but there are concerns that the incentive properties will be heavily diluted if Schedule 8 does not apply to operators responsible for running most traffic on the network.

Regarding the ORR's decision to enable a mid-Control Period recalibration of Schedule 8, Rail Partners recognises the rationale for creating this option, particularly after the experiences of Covid on train services during CP6. The need for greater flexibility to respond to material changes in traffic levels or funding must be balanced against the benefits of a stable regime. It is therefore important that the threshold for a recalibration exercise to take place is set high to avoid uncertainty and deterring investment from commercial operators in assets and initiatives that improve performance. Rail Partners continues to see value in ORR also retaining the option for a time-limited recalibration to be undertaken which provides ORR with the option to return to the payment rates agreed prior to the beginning of the control period should it become apparent that the figures from the updated recalibration no longer reflect traffic on the network.

Rail Partners, on behalf of its passenger members, had significant reservations about the proposed new payment rates from Network Rail to TOCs, and the impact on the incentive properties of the regime. As noted in the PR23 consultation documents, and through our involvement in the passenger and freight recalibration working groups, it was proposed that Network Rail payment rates would be heavily reduced, by c.75% on average, due to the adoption of a new methodology modelling the impact of disruption to passenger services on revenue. Whilst passenger operators had previously agreed to the recalibration methodology, their owning groups have disagreed with the outcomes for reasons detailed below. We understand that ORR has now reconsidered this approach following engagement with both Rail Partners and its owning group members. While Rail Partners owning group members welcome the decision not to implement the new payment rate methodology in full, and instead use a blend of the PR18 and PR23 methodologies, we have outlined the rationale for our initial concerns below.

Through the recalibration working group, ORR will be aware that the freight operators' preference was for the new methodology for TOC payment rates to be implemented in full. This was on the basis that the change in methodology had previously been agreed by the passenger working group and any manual adjustment to the payment rates would affect the freight element of the regime. ORR's decision to use a balance between the PR18 and PR23 methodologies has been made to address concerns on the weaking of incentives on Network Rail and to avoid a large change in the payment rates in one step. While Rail Partners understands that ORR has made this compromise to avoid harming the performance incentives of the passenger performance regime, it raises the question why ORR was willing to diverge from the methodology on this matter while sticking rigidly to the methodology for freight elements in the Schedule 8 regime, despite similar concerns about the dilution of incentives on Network Rail and the impact of significant swings in regime being expressed.

The rationale for Rail Partners' passenger members views on the Network Rail payment rates are as follows. Firstly, such a significant reduction in the payment rates was inconsistent with the ORR's position to make limited, proportional changes during PR23. Secondly, as passenger traffic makes up the majority of the traffic on the network, a sizeable reduction in the payment rates would heavily dilute the incentives on Network Rail to limit the disruption it causes to train operators and is therefore inconsistent with the performance targets set out by ORR in the draft determination. This is particularly concerning as the current periodic review is taking place in the context of levels of poor network performance, affecting both passenger and freight services.

We know that passengers and freight customers value performance highly when deciding how they travel or move their goods. Diluting the incentives on Network Rail would likely worsen performance, making the railway less attractive to passengers and harming the recovery of passenger services. Delivering a high performing railway is key to delivering government's ambition to grow the rail freight market, and the efforts of industry to recover passenger numbers and achieve a financially sustainable rail industry. Diluting incentives on Network Rail risks undermining these ambitions. Furthermore, given the link between the performance and possessions regime, a reduction in the Schedule 8 payment rates would affect compensation TOCs receive when possessions and undertaken, which would not incentivise Network Rail to make efficient use of possessions. We also note that the semi-elasticities determined through the approach are only estimates and therefore are not necessarily reflective of the true relationship between disruption and revenue. Rail Partners' passenger members consider that it would be prudent to conduct a more thorough review of the new methodology before it is implemented. While not explicitly referenced within the Schedule 8 mechanism, there is also a link between the payment rates received by TOCs and the compensation paid to passengers via the delay repay mechanism. It is unclear how operators would have been able to cover the delay repayments for disruption outside of their control should Network Rail payment rates have fallen steeply as initially proposed.

Based on the above, Rail Partners' passenger members did not consider that it was appropriate to implement the new methodology in full in CP7. It was simply not credible to suggest that passenger behaviour to poor punctuality is 75% less than previously predicted. Therefore, ORR's decision to choose a payment rate that balances both the current and new methodologies and is constant throughout CP7 seems appropriate, avoiding a significant reduction in the payment rates for CP7 and therefore maintaining strong incentives on Network Rail. This will enable a more detailed review of the new methodology ahead of CP8 such that industry has greater confidence in its representativeness, particularly as the impacts of disruption on passenger demand post-Covid are likely to become much clearer.

Freight members understand that part of the rationale for setting the rates higher than the rates implied by the PR23 payment rate methodology was to minimise the swing and avoid diluting the incentives on Network Rail. However, a similar approach has not been adopted in the freight regime where similar concerns have been expressed. For instance, the 23% reduction in the FOC Benchmark and 40% increase to the cancellation threshold are both planned to be implemented in full for CP7. It is important that an adjustment is made to freight parts of the regime to minimise what would otherwise be a significant financial swing and avoid a dilution of the incentives on Network Rail to minimise cancellations to freight services – something which customers value highly.

Regarding FOC performance benchmarks, Rail Partners has outlined to the ORR through the recalibration working group that it considers it necessary to make an adjustment to the benchmark to account for two things. Firstly, recent FOC performance levels have been significantly worse than the proposed CP7 proposed benchmark, which is a consequence of the relatively historic period used for the recalibration exercise to avoid Covid-impacted years. Secondly, data provided by Network Rail to the recalibration working group has indicated that there has been an 18% rise in FOC-on-FOC interactions during 2022/23, compared to the 5-year recalibration period and this shows no signs of changing during CP7 given the increased diversification within the market. Rail Partners recognise that ORR has been clear that the threshold for making any adjustments to the recalibrated numbers in PR23 has been set high, but the threshold has never been articulated and there is now a precedence for adjusting following the ORR’s decision to change its approach to the TOC payment rates in the Schedule 8 regime. Rail Partners would like to understand why the ORR deemed that the evidence presented by FOCs did not meet the threshold for an adjustment and would urge you to reconsider this view following new information concerning Network Rail payment rates.

It is right that the FOC benchmark is set at a level that incentivises operators to invest and innovate in order to limit the impact of their services on network performance. However, by setting a benchmark at a level that does not sufficiently account for current performance levels, which show no signs of subsiding in CP7, and the dynamics of the rail freight market, freight operators are unlikely to achieve their benchmark in many periods during the control period. This will have a significant financial impact and risks damaging the commercial viability of freight services, in turn affecting rail freight growth. Again, ORR needs to take a holistic view of all of the parameters of the regime in its final determination in order to support the freight growth target. It is crucial that decisions around Schedule 8 are taken holistically and consistent with other decisions on unwinding of caps on charges and consistent with policy objectives to avoid aspects of the periodic review pulling in opposite directions.

As a wider point, we are concerned that discussions about both the freight and Network Rail benchmarks have not occurred concurrently. Instead, ORR has indicated its intention not to adjust the freight operators’ benchmark while discussions concerning the Network Rail benchmark remain ongoing with operators having limited visibility of these discussions. Such an approach does not allow freight operators to consider the Schedule 8 regime in CP7 in its totality.

Rail Partners would also note that the Network Rail freight benchmark has not been adjusted for a reduction in traffic whereas other elements of the regime have been. The proposed target based on 5% Freight Cancellations and Lateness (FCaL) compares against an equivalent FCaL target of 5.23% in CP6. If the CP6 FCaL target was to be adjusted by forecasted mileage changes in CP7, then the Network Rail Benchmark would be the equivalent of 4.89% FCaL. The effective softening of the Network Rail Benchmark in CP7 is again inconsistent with industry ambitions for a high-performing and reliable railway and we ask that there is more ambition applied. To ensure that the approach to benchmarking is conducted consistently, we believe it is necessary for the Network Rail benchmark to be adjusted accordingly.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

Consistent with Rail Partners' response to the financial framework consultation, we agree that the CP6 financial framework remains largely fit for purpose and limited changes are required. This is because the CP6 framework reflects that Network Rail is a publicly funded body and this has not changed. We recognise that overall decisions on the financial framework are subject to the approval from the Department for Transport and Transport Scotland as the funders of Network Rail's settlement.

The periodic review is taking place within a challenging economic environment and these pressures, particularly regarding inflation, are unlikely to subside by the time that CP7 commences. As such, it is key that ORR monitors Network Rail's finances closely to ensure that it is operating efficiently and will be able to deliver on the commitments set out within its Strategic Business Plans (subject to amendments proposed in the draft determination). Where wider economic circumstances mean that Network Rail is unable to deliver on any of its commitments, this should be communicated promptly to train operators as their primary customers.

Owing to the uncertainty described above, we agree that it is appropriate that ORR continues to monitor the capital costs ahead of the final determination to ensure that it remains appropriate within a volatile environment. We support ORR's approach to compare the proposed cost of capital outlined in Network Rail's SBPs with the values used by other regulated sectors in the UK. We support the adjustments to the *Total Market Return* and *Risk-free rate,* to ensure compliance with the guidance set out by the UK Regulators Network. ORR should closely monitor Network Rail's cost efficiency and require recovery plans if it is falling short.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

Rail Partners is broadly supportive of the of the proposed managing change policy and recognises that it has not changed substantively from the CP6 policy. As private sector businesses, the owning groups of passenger operators and FOCs will continue to value a stable regime which enables them to invest with certainty, therefore it is important that changes are limited and, if material, subject to an industry consultation process.

We understand that it is necessary to have a mechanism which provides flexibility for ORR to allow adjustments to Network Rail's plans and how they are regulated during the Control Period in order to reflect changes to the industry or the wider economic environment that are clearly outside of Network Rail's control. It is important that ORR is satisfied that changes are based on exogenous factors, and we welcome the requirement on Network Rail to demonstrate this. The proposal to reduce the number of 'levels' of change to three from four in this control period appears logical.

As addressed in response to question 4, Rail Partners supports the outcomes framework and the success measures proposed to monitor Network Rail's performance. We note that through the managing change policy, changes could be made to the baseline trajectories or methodologies used to calculate these headline measures. Such changes should not be made lightly as it risks undermining the effectiveness of the framework in holding Network Rail to account. It is critical that this mechanism is not used to 'bake in' underperformance. Although there Is merit to having a limited number of success measures to ensure focus and accountability on delivering, should it become clear during the control period that Network Rail is falling significantly short on some of the supporting measures within the framework and this is affecting the delivery of passenger and freight services, ORR must be able to use the managing change policy to escalate these measures.

13. Are there any other comments you would like to make?

None.

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.