Response to ORR’s further consultation on the PR23 review of Network Rail’s access charges

This pro-forma is available to those that wish to use it to respond to our consultation. Other forms of response (e.g. letter format) are equally welcome.

Please send your response to pr23@orr.gov.uk by **1 July 2022**.

Please contact Will Chivers at ORR with any queries: Will.Chivers@orr.gov.uk.

About you

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**This information will not be published on our website.*

This response is on behalf of owning group and freight members of Rail Partners

Chapter 2: Infrastructure cost charges

Question 2.1: Do you have any views on our proposal to maintain the existing market segmentation of open access services (‘interurban’ and ‘other’), for the purposes of setting the open access ICC?

Rail Partners supports the continued use, and definitions, of the interurban and other market segments in order to calculate infrastructure cost charges for CP7. Given that it is not yet clear how passenger demand will look once footfall has returned to a steady state following the pandemic it is not appropriate at this time to amend the market segmentation – as, for example, long-distance leisure demand has returned more quickly than other service groups which would affect the market segmentation but it is not necessarily a long-term trend. However, when passenger demand across different service groups has stabilised it may be appropriate to review market segmentation again to ensure it is applied to flows with the greatest operating surplus.

We would make a general point that applying ICCs to open access operators ensures a contribution to the fixed costs of the network which nets off the impact to some extent of any initial revenue abstraction resulting from new open access operations. ORR said this should lead to more open access opportunities. The reality is that it has resulted in few open access applications and there have been no new approvals in CP6.

Question 2.2: Do you have any views on the most appropriate approach to setting the open access ICC for the relevant market segment in CP7?

The ICC should reflect that passengers continue to use the railway in a different way to before the pandemic, therefore the services with greater operator surplus are likely to be different to previous analysis, and as such the effect of potential future open access services is likely to be different too.

Question 2.3: Do you have any views on whether or not we should maintain relief from any increase in charges prompted by the open access ICC, for existing operators (as defined in PR18)?

Rail Partners is in principle supportive of the proposal for existing open access operators to retain relief from ICC payments for CP7, noting that their original business cases would have been based on the charging framework that was in place at the time.

Question 2.4: Do you have any views on our proposal to maintain the existing market segmentation of freight services?

Rail Partners supports the ORR's proposal to maintain the existing market segmentation of freight services for CP7. Any further sub-segmentation of the market would increase complexity for customers and create risks for the market. Given the high levels of substitutability across most commodities any further segmentation or geographic charges, could result in modal shift back to road.

Question 2.5: Do you have any views on our proposal to continue to allow Network Rail to levy ICCs on freight services carrying iron ore, spent nuclear fuel and ESI biomass? Do you have any views on our proposal to remove the ICC on services carrying ESI coal, pending a further review later in PR23?

Rail Partners notes the market-can-bear analysis annexed to the consultation document, and recognises the need for Network Rail to recover some of the fixed costs of the network where commodities are more captive to rail.

However, by levying ICCs for freight services, even within markets with relatively low elasticity, modal shift from road to rail and wider freight growth opportunities are reduced. This goes against the strong commitment to freight growth in the Williams-Shapps Plan for Rail. The proportionality of this charge also needs to be considered. The revenue generated from freight ICCs is extremely small and we would encourage ORR to focus more on what can be done within the existing legislation to support the Government's objective to grow rail freight and support environmental and levelling-up objectives. This should include incentives to accelerate the use of low-carbon traction on the rail network (e.g. electric locomotives and biofuels).

As outlined in the consultation document, the proposal to remove the ICC from ESI coal has been made based on the high administrative cost associated with levying the charge against the revenue generated by the ICC for Network Rail – Rail Partners would welcome further information on how the proportionality threshold for ICCs across different commodities is assessed. We recognise that ORR will keep the decision to remove the ESI Coal ICC under review and will consider actual traffic towards the end of the periodic review.

Question 2.6: Do you have any views on the most appropriate approach to setting freight ICCs for relevant market segments in CP7?

Rail Partners freight operating members would support the CP6 approach being retained for CP7, where the overall cost recovery is held at the same level, particularly should ORR continue to pursue the phasing-in of VUC in CP7. This supports predictability and simplicity for customers. Significant increases in freight charges need to be avoided in PR23, as this would be contrary to the Government's objective to grow rail freight and decarbonise the economy. It would affect rail freight's ability to compete with other modes in a highly competitive logistics sector and risks undermining the strong commitment to freight growth outlined in the William-Shapps Plan for Rail, and the growing demand for rail freight services.

Chapter 3: Variable charges

Question 3.1: Do you have any views on how we should take account of new evidence in relation to VTISM, for the purposes of setting the VUC?

Rail Partners freight operating members welcome the work underway to better understand costs associated with track damage. However, as this work is yet to be completed it is much too early to use the outputs to determine the proportion of track-related costs recovered through the VUC. Far more scrutiny and challenge will be required to give confidence in this area for all affected operators.

The consultation implies that the result of this exercise will be an increase in costs recovered through the VUC. This is a significant concern for freight members. The consultation notes that there is some relief because VUC rates "*are already capped below fully cost-reflective rates*". This is not the case for many commodities – including the largest commodity (intermodal), where caps have already been unwound. Furthermore, all other caps will be unwound in CP7, if ORR chooses to maintain its phasing-in approach, and therefore there will be no mitigation through the control period from the caps.

While freight operator members welcome ORR's preference not to update the vertical track damage formula at this time and instead wait for the outcome of Serco and RSSB's review and revisit this proposal at the next periodic review, we ask ORR to not seek to change the allocation of costs in PR23, given the timescales will not allow for adequate scrutiny and the implications for the sector could be severe. Our members have previously expressed concern regarding the time available to engage with industry and implement any proposed changes to the VTISM ahead of the new Control Period, particularly as this exercise would have happened concurrently to the wider recalibration of Network Rail charges.

Question 3.2: Do you have any views on our proposal to review the VUC guidance for CP7 to allow a new VUC rate to be calculated for existing vehicle types that are downgraded to lower than HAW RAs, because Network Rail decides to remove HAW access rights?

Rail Partners supports the proposal to introduce a new VUC rate for services on routes which have their Route Availability downgraded during the Control Period. This will avoid freight operators effectively overpaying their VUC contribution if they are notified by Network Rail that they will have to run lighter trains which clearly has a detrimental commercial impact on the viability of the service. Rail Partners agrees that the increased administrative cost of such a rate is outweighed by the benefit to operators and customers.

That being said, it is important that Network Rail is funded so that it can maintain Route Availabilities at a steady state during the next control period. A failure to do this would harm investor confidence across the freight sector and would significantly compromise freight growth opportunities across bulk markets, particularly in the construction sector.

Question 3.3:

Do you have any views on our proposal to remove modelled consumption rates for new train services from the beginning of CP7?

Rail Partners is supportive of incentives to promote the rollout of OTM for EC4T, recognising the benefits of a more accurate approach to monitoring energy usage across the rail industry.

The consultation outlines a proposal to mandate OTM for all ‘new train services’ which will incorporate any service using new vehicles or requiring a new modelled consumption rate. Due consideration must be taken to avoid freight operators being effectively prohibited from utilising non-metered electric freight traction on new services by charging a default rate. Freight operators maintain go-anywhere capability and need to react at short notice to changes in customer demand. Charging a default rate for non-metered traction would effectively result in the use of diesel traction for services where electric traction could be an option. Freight operators ask ORR to consider the environmental implications of such a policy.

As acknowledged in the consultation document, new vehicles are typically fitted with OTM as standard, therefore it is right that such rolling stock is expected to use metering upon introduction. If an operator were to introduce a service that required a new service code they would also be required to introduce OTM even if the vehicle was not fitted with a meter. If, as Network Rail have indicated, the cost of modelling the rate for a new train service is around £12,000 which is equivalent to the cost of retrofitting OTM equipment for an AC-train set, it makes sense to mandate the use of OTM as it is a more effective way of monitoring energy usage providing that the fitment cost is not borne by operators.

To ensure that operators are held financially harmless, a ring-fenced fund to support the implementation of OTM should be provided. This should effectively be selffunding given the costs of modelling consumption rates that Network Rail has provided.

Chapter 4: Station charges

Question 4.1: Do you have any views on our proposed approach to calculating LTCs for CP7, including on our proposed classification of a large / complex station i.e. Option B?

Rail Partners welcomes the commitment from Network Rail to publish additional guidance on the calculation method used to estimate station LTCs. This will improve transparency and understanding within the rail industry about how station costs and charges are calculated while also providing enhanced cost reflectivity.

Of the two options outlined in the consultation document, Rail Partners prefers Option B. This option includes a greater number of the busiest stations on the network ensuring that they are not included in the route-level charges, but appreciates concerns regarding the administrative costs of calculating station specific forecasts for a significant number of stations. To allow for better forecasting of charges, the approach for calculating charges should include all obligations at a particular station.

We also agree that there should be additional room to make further changes to station charging in the future following rail reform, depending on any changes to responsibilities and the allocation of cost and revenue risk.

Question 4.2: Do you have any views on our proposed approach to setting LTCs for new stations in CP7 (and stations that have opened during CP6), such that the operational property element of their LTC is set at 10% of that for existing stations in the same route and station category for a fixed five-year period from the date of opening?

Rail Partners is supportive of this proposal. As per Network Rail's analysis, stations will require lower maintenance costs during the early part of their asset lifespan, therefore LTCs for new stations should be set at a lower level. Operators endorse ORR's proposal to treat stations as new for a five year period from the date of opening as it avoids charging being arbitrarily affected by the date of a new control period.

Are there any other comments you would like to make?

n/a

Thank you for taking the time to respond.

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
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