Rail Partners' response to ORR's periodic review of HS1 Ltd 2024 (PR24) draft determination

About Rail Partners

Rail Partners represents private passenger train operating company owning groups and freight operating companies – providing policy and advocacy functions on their behalf. We also provide technical services to train operating companies in both the public and private sectors. This response is on behalf of our owning group and freight operating company members.

Introduction

The periodic review process is fundamental to the operation of a high performing railway that delivers against the expectations of both funders and railway users. We recognise that this periodic review is taking place during a time of significant uncertainty, both in relation to High Speed 1 Ltd (HS1 Ltd) and amidst wider structural changes to the railway.

The impact of Covid-19 across the GB rail network has been profound, affecting traffic volumes and the railway's finances. On HS1, we note that while passenger services continue to recover steadily, in 2023/24 the total number of timetabled passenger services remained 18% below pre-Covid levels. Similarly, the number of timetabled rail freight services has declined significantly over the past decade, with 67% fewer freight services running in 2023/24 compared to 2014/15. This decline in rail freight reflects the ongoing challenge in making the economics of international rail freight work, despite strong recognition of the wider economic and environmental importance of increasing rail freight services, as demonstrated by the introduction of a rail freight growth target by the previous government, and regulated rail freight growth targets for Network Rail in its current control period (CP7).

Against this backdrop, we support the emphasis in the draft determination on resilience, specifically improving HS1 Ltd's ability to manage uncertainty regarding future traffic levels. HS1's size relative to Network Rail Infrastructure Ltd (NRIL) means that it is more vulnerable to changes in traffic volumes as it does not have the same economies of scale. However, as noted in the draft determination, the small size of HS1 also enables it to be more agile with a stronger understanding of its asset base. These factors should support HS1 in responding to continued uncertainty through its management of the network. Rail Partners also recognises that legislative changes resulting from Government's proposals for rail reform are likely to take effect during this HS1 control period (CP4). These changes may affect the regulatory regime on HS1 Ltd, creating further uncertainty.

Rail Partners notes that there is potential for international rail freight growth on HS1 Ltd infrastructure under the right conditions, and that there are a number of parties interested in operating new international open access passenger services which would introduce competition to this market. It is important that the regulatory framework supports the introduction of new services to support the financial sustainability of HS1 Ltd and provide additional options for passengers and freight customers.

Rail Partners is broadly supportive of the PR24 draft determination, and the rest of our response covers some specific elements of the consultation document.

Rail Partners' response

Charges

Rail Partners supports ORR's proposed amendments to the charges paid by train operators for the use of HS1 Ltd infrastructure. In line with existing legal requirements, we acknowledge that charges must be set to cover the costs of maintaining and renewing rail infrastructure and understand that typically the costs of managing high speed infrastructure will be higher relative to the classic network. Critically, charges should also be set to ensure that the infrastructure manager is incentivised to maintain the network efficiently and that charges are borne fairly by all operators. As such, we support the £14.7m adjustment to HS1's route operation and maintenance fund to introduce a stronger efficiency challenge, which will help to improve the affordability of operating services on HS1 Ltd infrastructure.

The proposed 54.7% reduction in freight charges from HS1 Ltd's Five Year Asset Management Statement is also supported by Rail Partners. We note that this is driven by a reallocation of freight specific costs to common infrastructure costs and the introduction of HS1 Ltd's new cost policy. One of the key reasons that the number of international rail freight services using HS1 infrastructure has declined over the past decade has been rising HS1 infrastructure charges which have become unaffordable for freight customers. The freight and logistics sector is highly price-sensitive with customers operating on low margins and rising charges have driven modal shift from freight customers towards more carbon intensive modes – particularly road haulage. Although charges remain at a level that is prohibitive for many freight customers, the proposed reduction in freight charges in this draft determination is a welcome first step that will help to improve the competitiveness of rail freight.

Further, as noted in the draft determination, the contractual arrangements regarding Ripple Lane Sidings are complex. While we support the adjustments to freight specific costs proposed by the ORR in the draft determination, it will result in a 24% increase in the access charges applied to domestic freight services using Ripple Lane Exchange Sidings. The complexities regarding the contractual arrangements at Ripple Lane with HS1 Ltd are well understood, but they continue to present a barrier to rail freight growth both domestically and internationally. The transfer in ownership of Ripple Lane from HS1 Ltd to NRIL would help to drive rail freight growth by lowering charges for all freight services using these sidings.

As a wider point, the access and charging framework, currently underpinned by the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 will be reviewed as part of the Railways Bill proposed by the Government to support the creation of Great British Railways (GBR). As these amendments are likely to apply to all infrastructure managers, including HS1 Ltd, it is important that any future framework is suitable for the entire GB rail network. We note that most of the current HS1 access beneficiaries (Eurostar and freight operating companies) will continue to operate outside the commercial framework of GBR and as such the regulatory protections relating to access and charging will continue to be important to provide certainty and enable private investment. Rail Partners supports amendments to the charging framework that would enable a more creative approach to charging including incentivising low-carbon traction, productivity improvements, and the introduction of new traffic. On HS1, this approach could help to drive rail freight growth through the Channel Tunnel and support the introduction of new open access passenger services.

Renewals

As a smaller and more modern network, the requirement for renewals on the HS1 Ltd network continues to be limited. Rail Partners is pleased that ORR considers that HS1 Ltd governance and management of renewals has improved by taking on board feedback in the periodic review 2019, noting that HS1 Ltd is planning its largest renewal to date in CP4 – the mid-life ballast replacement. We note that ORR has reservations about the deliverability of this project under the timelines proposed. It is important that HS1 Ltd and Network Rail High Speed (NRHS) reflect on this feedback and consider whether an alternative timeframe should be implemented. Once approved by ORR, it is important that the regulator monitors the delivery of this renewal to ensure that it is delivered cost effectively and on time to minimise disruption to passengers and freight customers – recognising the disruptive impact that any further reprofiling would have on access to the network.

Regarding HS1 Ltd's cost policy for CP4, we note that ORR considers this policy is a significant improvement on previous control periods. The draft determination highlights that improved base cost data would give HS1 Ltd more accurate estimates of future renewal work, but recognises that this is challenging as most infrastructure on the network is yet to be renewed and therefore making cost assumptions is challenging. As the volume of renewals will increase in future control periods, we support ORR's recommendation that HS1 Ltd seeks to improve its understanding of base costs during CP4 and agree with the proposed efficiency challenge for renewals in CP5 and beyond while these improvements take place.

We also support the efficiency challenge introduced for the delivery of stations renewals during CP4 and support greater collaboration and improved governance between HS1 Ltd and NRIL at St Pancras International station.

Performance

Noting that there has been some high profile performance incidents during CP3, the focus on the recovery of services after infrastructure failures as part of PR24 is welcomed. We support the proposed changes to NRHS operational processes in order to improve the management of incidents to restore services more efficiently, minimising disruption to passengers and freight customers.

The proposed improvements to NRHS asset management maturity are also supported by Rail Partners. The proposals will not only help to reduce operation and maintenance costs, but will also help NRHS to reduce asset faults and the delays associated with them. Further, in line with Rail Partners comments during the most recent periodic review of Network Rail, we support a greater focus on preventing and responding to network incidents caused by extreme weather events as these are now occurring more frequently.

We understand the rationale for deferring the recalibration of the HS1 performance regime to commence in 2025 due to a lack of availability of representative data as a result of Covid-19, Brexit and industrial action. Rail Partners notes that changes are required to the Passenger and Freight Access Terms to enable a mid-control period performance recalibration, although we have no specific comments on the proposed wording. We expect that HS1 Ltd will share further details on its proposed methodological approach to the recalibration in due course, given the importance of a robust and accurate performance incentive regime for any commercial train operator.

Managing uncertainty

Rail Partners supports the improved definition of the Volume Reopener (VRO). This balances the need for HS1 Ltd to cover its costs in relation to a material change in volumes or wider changes to the regulatory regime, with the importance of maintaining a stable regime for train operators while reducing administrative costs for all parties. In recognition of the continued uncertainty of HS1 traffic, Rail Partners support the annual wash up of fixed charges, which will ensure operators' fixed charges are proportionate to the number of services they operated rather than forecast traffic levels. We note that ORR agrees that this is useful, and expect that HS1 Ltd, and passenger and freight operators will work together to agree how a wash up should be implemented to reduce additional administrative burden.