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Dear Sam,

ORR's Criteria & Procedures Review

Thank you for providing an opportunity to comment on changes to the C & P process. I found the workshop on 27th April very useful and would endorse most of the industry ideas that emerged from that meeting and which are contained in your notes.

In this response I have addressed the issues in the order they appear in the consultation document.

Scope of the Review

We believe the review covers all the relevant areas

Level of Scrutiny

The level of ORR scrutiny for Schedule 8 changes dealing with monitoring points and weightings can certainly be reduced as these do not impact on third parties. That is except for the DfT, as it will need to be consulted in connection with our franchise agreements and will affect the franchise agreement performance regimes. It can also be reduced in the case of minor Schedule 7 changes where a for instance a supplemental charge is made for increased use of Network Rail resources. For Schedule 5 changes, we agree that the level of scrutiny should be proportionate to complexity and the likely effect on capacity and third parties. As with many issues raised in this consultation the most taxing question is how to gauge proportionality and where to draw lines; potential consultees are bound to have a different view of materiality in many cases. This can be covered to a degree with the help of a criteria document, but inevitably with devolved responsibility there is a risk of an inconsistency of approach. Perhaps any new processes should contain an inbuilt review mechanism, say after six months, as issues are bound to arise after a period of live running.

We agree that it is not the role of ORR to police grammar and other trivial errors, but see no reason why ORR should not notify parties of inconsistencies or anomalies if any are spotted, even if it does not offer a remedy; we are sure that the industry would not wish to see a general deterioration of the hitherto high standards of its regulatory documentation.

General Approvals

The existing general approval mechanism is a useful and time-saving option, and we make regular use of it for spot bids into white space. We are not aware if there have been occasions where its use has been seen by third parties as interfering with its own rights or performance potential. If that is not so there must be a case for expanding the boundaries of the mechanism. However, by extending the time period to 6 months passenger operators could regularly use general approvals to amend the permanent timetable which could be seen by a third party as a creeping change. In such cases we think it crucial that a consultation process is carried out as proposed in para 2.19 of the consultation document. Another option would be to allow certain additional services to operate within the scope of the model clauses, as is provided for in paras 2.8.1 and 2.8.2 of Northern's track access contract. In terms of rolling stock, we believe the model clauses should allow for the short term substitution of vehicles in certain circumstances, as permitted for example in Silverlink's previous contract. We are not in favour of further widening the scope of general approvals as mooted in para 2.20 of your document, and have concerns about the inclusion of additional routes within the scheme as this is more likely to require examination by other parties.

Alignment with other Industry Processes

We believe that consideration should be given to providing an opportunity for third parties to be consulted about timetable changes earlier in the planning process. As things stand this takes place only after the trains are in the timetable.

Consultation

We are content that Network Rail carry out the sole consultation on less complex applications (and more complex general approvals as note above). However the following issues will need clarification.

Decision on whether NR or ORR conduct the consultation – we understand that ORR would issue guidelines on this in the new C & P document, but in borderline cases it will be a matter of judgement. Who will make the decision, NR's route management or its HQ? Clearly some preparation and training will be necessary within Network Rail and we would prefer that the responsibility is given to a central point within NR.

Issues from the consultation – We understand that by their nature most NR-consulted agreements should be uncontroversial. But supposing consultees raise important questions? Are these addressed by NR or are they forwarded to ORR? We would wish that any material issues are handled by ORR.

Timescales – deadlines for submission to ORR would need to take account of whether it or Network Rail will carry out the consultation; clearly if NR carry out the consultation ORR would not need the application as soon before the effective date. Also NR would need time for internal consultation and to make the decision as to which party is to consult. We believe

that the deadline for submission of the completed document to NR should be the same for any particular category of application as at that stage the parties will not be sure who is to conduct the consultation.

Training – TOCs will wish to be satisfied that Network Rail personnel are trained and the necessary department adequately resourced to manage the new processes. We need to avoid a bottleneck situation during for example the critical period before a timetable change. We do not believe there will be any major training requirement for TOCs, but would suggest that ORR consider holding a seminar for train operators to clarify the new processes and ensure a consistency of approach.

Setting Deadlines for Applications

With such a dynamic industry there are occasions when infrastructure considerations and the action of stakeholders result in last minute changes. We are in favour of guidelines for the submission of applications, but not for setting deadlines beyond which an application will not be considered. Historically we have found both Network Rail and ORR sympathetic to late applications and feel that the public interest would not be served if these cease to be admitted.

Restructuring of the C & Ps

We are happy with the proposals as set out in your document.

Transitional Arrangements

We agree that 1st January 2008 would be a suitable date to make a full transfer to the new process, as suggested in the group discussion at the workshop.

I hope you will find these comments useful.

Yours sincerely,

Mike Vila