



Response to the Office of Rail Regulation Initial Consultation on Policy Framework for Investment

The CILT(UK) is the professional body for individuals and organisations involved in all aspects of transport and logistics. It has over 21,000 members. This response represents the official position of the CILT(UK).

For further information contact Jonathan Bullock, Director of Policy on 01536 740160, jonathan.bullock@ciltuk.org.uk

The following comments reflect the outcome of a review undertaken by the Institute's Strategic Rail Forum.

In general, we welcomed the clear way that this document dealt with this complex subject and we particularly welcomed the glossary. In this response, the Institute is commenting on specific paragraphs of the initial consultation only, referenced to the original paragraph numbers.

1. Introduction

- 1.5 Whilst we agree that optimal system wide investment decisions may involve trade-offs between infrastructure and rolling stock options, it is not clear what incentive Network Rail has to ensure these trade-offs nor whether it would be in a position to make them given its remoteness from final customers. In our view, it may be difficult enough to get Network Rail to make the right decisions within infrastructure, given its stated mission of engineering excellence and its weak governance arrangements. This means there will be heavy reliance on ORR to ensure that Network Rail has the right incentives and licence requirements to make both the right decisions within infrastructure and the right trade-offs between infrastructure and rolling stock investments.

We note that Network Rail may not always have the opportunity in practice to make such trade-offs as operators will normally exhaust the solutions under their control before engaging in dialogue with Network Rail. We do not believe such trade-offs should be made by Network Rail alone but by cross-industry decision making bodies such as Joint Boards.

2. Network Rail's Role in Investments

In most respects, ORR's proposed approach to securing investment is logical given its duties and those of Network Rail. However, we have some comments and concerns:

At present, Network Rail sometimes delays projects for which a business case exists but to which it attaches a low priority, sometimes citing financial constraints. This can cause difficulties for operators or for local authorities who expect to provide matching funding and may lead to lost opportunities. We suggest that Network Rail be required to discuss with its customers before delaying projects in this way and that operators and local authorities should have a right of reference to the ORR if they are not satisfied with the timetable.

We believe that the process for developing and agreeing schemes should be streamlined.

- First, the current process, whereby the customer (an operator and, where appropriate, a local authority) produces a specification and Network Rail prices it, does not provide the opportunity to iterate the project design and this may be a major factor in unnecessarily increasing costs. We suggest that Network Rail be required to maintain close liaison with its customers during the design process to try to ensure that designs are affordable. This may require changes to the Network Code.
- Second, Network Rail has been reluctant to progress design and development projects until they have a contract for this but the customer will not sign a contract until design is sufficiently far advanced to assess its business case. This is because the process in the Network Code is not working. We suggest that Network Rail be required to develop, with its customers, ways of getting around this problem, possibly by having a reserve of funding to be drawn down at customer request for early scheme development work, to a level sufficient to establish the probability of a business case being made. This may also require changes to the Network Code.

2.3 Network Rail's public service duties and its commercial objectives could come into particular conflict in the area of project appraisal, where it will need to reconcile government appraisal criteria with the criteria used by commercial organisations. Paragraph 2.7 notes that Network Rail should set out its business planning criteria but it is unclear what should guide Network Rail in this task.

2.12 The approach to minor discretionary schemes is logical but Network Rail may be tempted to try to have expenditure for renewal treated as enhancement, for which it will be paid. Preventing this may place a considerable burden on the ORR to ensure this does not occur and this may be an area where the ORR will be obliged to intrude on Network Rail's activities. We believe a mechanism is required to provide for the finance required to cover the bringing forward of renewal schemes to facilitate associated enhancements at time required by customers.

2.23 It is unclear how Network Rail can be incentivised to facilitate and grant access to third parties to implement schemes such as those on stations. Again there may be pressure for ORR to be intrusive in this area.

3. The terms

In most respects, we agree with ORR's proposed approach. However, we have some comments and concerns:

- 3.15 We agree that it is appropriate for Network Rail to offer the customer a fixed price or a target price for delivery of outputs. However, the risks of costs overruns are high in rail and, as noted in the NERA report on other utilities, the high risks of longer, more complex projects are often dealt with by revising the specifications at each stage. Unless Network Rail adopts an interactive and refining approach to design the fixed cost may well be inflated in order to insulate Network Rail from overrun risk.
- 3.16 We consider that complexity, whilst related to size and new technology, may also increase the risk associated with a project, and we consider this should be considered as a separate factor.

The document points out that the provision of design and development services is a core competence of Network Rail but that scheme promoters can go out to competitive tender for such services. However, Network Rail has advantages over its competitors in a number of respects and there may be a need for ORR to carry out light oversight of Network Rail to ensure that it does not abuse its quasi monopoly position in design and development services.

Dated: 25th April 2005