



Network Rail

10th January 2018

Dear Sir

Network Rail's consultation on proposed changes to the wording of track access contracts in Control Period 6 (CP6)

In respect on the above consultation issued on the 6th November 2017 please find attached the response on behalf of Arriva plc, its subsidiary Arriva UK Trains Limited and its wholly owned train operating companies (TOCs), Arriva Rail London Limited, Arriva Rail North Limited, Arriva Trains Wales/Trenau Arriva Cymru Limited (ATW), Grand Central Rail Company Limited, The Chiltern Railway Company Limited (CR) and XC Trains Limited (XC). In addition, this response also covers Alliance Rail Holdings Limited and the Great North Western Railway Company Limited. Arriva is a wholly owned subsidiary of Deutsche Bahn AG (DB AG).

We note that the consultation covers proposed changes to:

- Proposed rounding of values in Track Access Contracts (TACs).
- Proposed replacement of references to Train Service Database (TSDB).
- Proposed change to the track access invoicing process.
- Opportunities to reduce the use of paper invoices.
- Proposed updating of references to freight performance statements.

The consultation sets out 12 questions. We have responded to these questions below:

Question 1: Do you consider that any of the proposals set out in this consultation are likely to impact the safety of the network?

No

Question 2: Do you consider that when the formula that is currently in the contract is applied it produces an output figure to an infinite number of decimal places bringing a question as to how it should be treated in terms of rounding?

The rail industry has had track access contracts in place for over 20 years. Train operators and Network Rail deal with indexation and rounding already - this is not an issue for our train companies. We do not support a change to introduce rounding.

Question 3: Do you consider that the rounding rule of three decimal places as proposed is appropriate?

Arriva notes the proposal from Network Rail to round the schedule 7 indexation figures. Arriva are concerned as to what impact this will have on existing Track Access Contracts and the associated impact on charges.

We note that Network Rail has not provided any risk or impact assessment for us to consider. As part of this consultation we would like to see Network Rail justify why it thinks this change is required. In addition Arriva would need to understand the impact and associated risks before we could agree to this proposal. We therefore also look to Network Rail to illustrate the potential impact by way of retrospective analysis.

Although the rounding changes would seem insignificant taken in isolation we believe there could be a significant impact on our charges. In view of this we would ask that Network Rail demonstrate that the impact will be insignificant and cites what it sees are the benefits of this proposal.

Question 4: Do you consider that there are any other places in the contract where a rounding rule is required but is currently absent?

No

Question 5: Do you consider that the drafting shown in Appendix 2.1 would have the intended effect? If not, what changes are required?

The changes proposed by Network Rail are being proposed on the basis of removal of the obsolete term of "TSDB (Train Service Database)". In the consultation document Network Rail states at 1.11:

"TACs make reference to the uploading of data, which might include details of Restrictions of Use and Service Variations, to the TSDB. TSDB is now obsolete and no longer used for this purpose. We propose to replace such references to make them meaningful in respect of current industry processes and systems."

First there is no reference to "TSDB" or "Train Service Database" as a defined term in the Passenger Model Contract. There are references to "train service database" in clauses 9.1 (b) 9.2(b) (i) and of the Passenger Model Contract.

Network Rail also state at 4.4

"The model passenger TAC retains obsolete references to TSDB. In the case of the need to establish whether data has been uploaded to industry systems, the references in the contract to TSDB have no legal meaning."

This is incorrect as the model contract does not refer to the former system of "Train Service Database" (TSDB). It retains references to "train service database"

In paragraph 4.5 Network Rail states:

"While the existing wording refers to Network Rail entering data into a system, the process now in use does not involve Network Rail carrying out a data entry process and it is not possible to merely replace reference to TSDB with a reference to a replacement system."

Network Rail appears to have not examined what happens when an Emergency Timetable is developed. In these circumstances Network Rail control would be responsible for amending and uploading the timetable by 22:00 the day before. Control do enter train schedules directly into the TRUST system if needed.

With regard to the proposal to replace "train service database" "with as reflected in the

Performance Monitoring System”. We are of the view this would be acceptable providing that Network Rail has carried our due diligence in cross checking that this change works throughout all relevant contractual documents.

Question 6: Do you consider that reference to the observation of data in the Performance Monitoring System is an appropriate approach in the absence of TSDB?

With regard to the proposal to replace “train service database” “with as reflected in the Performance Monitoring System”. We are of the view this would be acceptable providing that Network Rail has carried our due diligence in cross checking that this change works throughout all relevant contractual documents.

Question 7: Do you consider that the drafting shown in Appendices 3.1 and 3.2 would have the intended effect? If not, what changes are required?

We are of the view this would be acceptable providing that Network Rail has carried our due diligence in cross checking that this change works throughout all relevant contractual documents.

Question 8: Do you consider that the time period available to Network Rail for amending default consist data should be amended to 21 days?

Network Rail should align with other period end process timescales. We believe that 14 days should be adopted as this would ensure that the period end process could be completed by both Network Rail and Train Operators. Arriva support 14 days rather than the proposed 21 days.

Question 9: Do you consider that the format of the drafting shown in Appendices 3.1 and 3.2 is appropriate?

Yes

Question 10: Do you consider that future proposals should be developed to provide for the transmission of invoices for track access charges solely by electronic means? If so, what are your views on an opt-in mechanism?

Arriva is supportive to remove paper billing. However, we would like to see this carried out in a managed and informed manner.

We have concerns if access to billing information was dependent upon on accessing Network Rail's portal. Our preference is to have the invoices sent by email.

Question 11: Do you consider that the process currently described in the model freight contract does not reflect the process that is actually followed?

Not relevant to Arriva

Question 12: Do you consider that the drafting shown in Appendix 4.1 would have the intended effect? If not, what changes are required?

Not relevant to Arriva

If you have any questions please contact me.

Yours faithfully

For Arriva

Subject: Network Rail's consultation on proposed changes to the wording of track access contracts in Control Period 6.

Dear Sir,

Merseytravel's response to your consultation on proposed changes to the wording of track access contracts follows:

Q1. Merseytravel does not consider that these proposals will impact adversely on the safety of the network.

Q2-4. Merseytravel is content with the proposals for rounding to three decimal places.

Q5/6. Merseytravel is content with the use of the Performance Monitoring System.

Q7-9. Merseytravel is content with the drafting proposed in Appendices 3.1 and 3.2.

Merseytravel agrees with the move towards electronic invoicing and is happy with provision to opt into electronic billing.

Q11/12. Merseytravel has no comments on the changes to freight track access contracts.

I hope this is helpful to you.

Rail Development Officer | Merseytravel |

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DB Cargo (UK) Limited

Planning & Regulation
Network Rail Infrastructure Limited

AccessManager

22 January 2018

NETWORK RAIL'S CONSULTATION ON PROPOSED CHANGES TO THE WORDING OF TRACK ACCESS CONTRACTS IN CONTROL PERIOD 6

This letter contains the responses of DB Cargo (UK) Limited ("**DB Cargo**") to the questions posed by Network Rail in its consultation document entitled "*Network Rail's consultation on proposed changes to the wording of track access contracts in Control Period 6*" issued on 6 November 2017 ("**the consultation**").

Question 1: Do you consider that any of the proposals set out in this consultation are likely to impact the safety of the network?

DB Cargo does not consider any of the proposals set out in the consultation are likely to impact the safety of the network.

Question 2: Do you consider that when the formula that is currently in the contract is applied it produces an output figure to an infinite number of decimal places bringing a question as to how it should be treated in terms of rounding?

DB Cargo agrees that the price variation formula that is currently in the freight, passenger and charter passenger model contracts can produce a result with a large number of decimal places.

Question 3: Do you consider that the rounding rule of three decimal places as proposed is appropriate?

Whilst DB Cargo agrees that the various factors in the price variation formulae should be rounded to three decimal places to avoid results which can extend to a large number of decimal places, it considers that it is too early in the periodic review process for Control Period 6 to apply this principle to draft proposals for contractual wording. For example, the proposals contained in Appendix 1.2 of the consultation concern amendments to the wording of the "*Phased in Charges Indexation Adjustment*" formula currently contained in paragraph 2.7.3 of Schedule 7 of the freight model contract. However, it is not yet clear whether there will be any "Phased in Charges" for CP6 let alone what form they would



take if any were to be included. The same would apply to the Initial Indexation Factor and any other factors ORR may propose which are not yet known.

In addition, the drafting in Appendix 1.1 of the consultation is intended to apply to both the freight and passenger model contracts, showing the existing drafting of the definition of the “Initial Indexation Factor” (“IIF”) in black with changes proposed in red. However, the existing drafting only applies to the current freight model contract and not the passenger one. This is because whilst the freight model contract IIF is based on an average RPI over 12 months, the passenger (and charter passenger model contracts) include an IIF based on RPI for November only.

Question 4: Do you consider that there are any other places in the contract where a rounding rule is required but is currently absent?

DB Cargo considers that there are other formulae in the freight model contract that might benefit from a rounding rule. These include the definition of “Liability Cap” in Schedule 9 and the calculation of the indexation of the “Indemnity Incident Cap” in clause 11.6.5.

DB Cargo notes that the consultation does not include any proposals for rounding rules to be applied to the formulae contained in the passenger charter model contract.

Question 5: Do you consider that the drafting shown in Appendix 2.1 would have the intended effect? If not, what changes are required?

As a freight operator, DB Cargo does not have a track access contract based on the passenger model contract. Consequently, it considers that it is not best placed to comment on the proposals set out in Appendix 2.1 of the consultation. It does note, however, that it appears something has gone awry with the lettering/numbering of paragraph 9.2 of Schedule 4 as set out in Appendix 2.1 of the consultation.

Question 6: Do you consider that reference to the observation of data in the Performance Monitoring System is an appropriate approach in the absence of TSDB?

As a freight operator, DB Cargo does not have a track access contract based on the passenger model contract. Consequently, it considers that it is not best placed to comment on the proposals set out in Appendix 2.1 of the consultation.

Question 7: Do you consider that the drafting shown in Appendices 3.1 and 3.2 would have the intended effect? If not, what changes are required?

As a freight operator, DB Cargo does not have a track access contract based on the passenger model contract. Consequently, it considers that it is not best placed to comment on the proposal set out in Appendix 3.1 of the consultation. However, DB Cargo’s sister company, Rail Express Systems, does have a track access agreement based on the charter passenger model contract. Therefore, in respect of the proposals set

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out in Appendix 3.2 of the consultation, DB Cargo wishes to raise the following representations:

- The wording set out in Appendix 3.2 of the consultation does not mirror the current charter passenger model contract in all respects. For example, sub-paragraph 11.3(a) of Schedule 7 is shown as “Not used” in the charter passenger model contract, whereas in Appendix 3.2 of the consultation this sub-paragraph has been populated with wording extracted from the passenger model contract. The same applies to sub-paragraphs 11.3(b)(ii) and (iii). In addition, sub-paragraph 11.3 (c) also contains wording that does not appear in the charter passenger model contract.
- Although DB Cargo supports the use of a consistent format for Charter Passenger Operators to use to supply corrected Train Consist Data to Network Rail, the use of the wording “Actual consist unit number(s)” in the last column of the proposed table in paragraph 11.3(c) of Schedule 7 as set out in Appendix 3.2 of the consultation is confusing. For example, is it intended that the number of units used in the formation of the train is entered here or is the actual identification number(s) of each individual unit to be included? Notwithstanding this, given the variety of train formations used in charter passenger services (the vast majority of which do not include “units”), DB Cargo suggests that this column should instead read “Train Consist (actual): Specified Equipment used”

Question 8: Do you consider that the time period available to Network Rail for amending default consist data should be amended to 21 days?

DB Cargo understands that Network Rail is proposing to amend the timescale specified in the first sentence of sub-paragraph 11.3(e) of Schedule 7 of the charter passenger model contract (and similarly, in sub-paragraph 10.3(e) of Schedule 7 of the passenger model contract) from “seven days” to “twenty one days”. The justification given in paragraph 5.8 of the consultation for extending this timescale by a factor of 3 is that “*it is believed that this is a realistic and achievable timescale which will be benefits to both parties through greater accuracy in billing.*”

For DB Cargo to be satisfied that twenty one days is indeed “*a realistic and achievable timescale*” it would need to see some analysis that shows the current average response time to actual relevant requested financial adjustments, both in terms of passenger and charter passenger requests. Without such analysis, DB Cargo is not able to signify its support for the proposed amendment.

In addition, if Network Rail is considering amending the “seven days” to “twenty one days” (or indeed any other value over ten), for consistency, it should use a numerical reference (for example, “21 days”) as is used in the second sentence of sub-paragraph 11.3(e) of Schedule 7 of the charter passenger model contract (and similarly, in sub-paragraph 10.3(e) of Schedule 7 of the passenger model contract).

...



Question 9: Do you consider that the format of the drafting shown in Appendices 3.1 and 3.2 is appropriate?

For the reasons given in its answer to question 7 above, DB Cargo does not consider that the format of the drafting shown in Appendix 3.2 is appropriate, particularly as the current wording on which the proposals are based does not reflect in all cases the relevant wording contained in the current charter passenger model contract.

Question 10: Do you consider that future proposals should be developed to provide for the transmission of invoices for track access charges solely by electronic means? If so, what are your views on an opt-in mechanism?

DB Cargo considers that both the passenger and freight model contracts already allow for invoices to be sent electronically and that no further amendments or “opt in” mechanisms need to be added. For example, the wording of clause 16.1.2 of the freight model contract shown below provides a mechanism for the parties to elect to receive invoices by e-mail (an electronic means) by deleting the relevant square brackets. Indeed, DB Cargo already receives its invoices by e-mail and would have no objection to this option being extended to charter passenger operators through the charter passenger model contract.

“16.1.2 Delivery of invoices

All invoices or statements of amounts payable issued under any provision of this contract shall be delivered by hand at, or sent by prepaid first class post [or by facsimile transmission] (with confirmation copy by prepaid first class post), [or by email], to the address for service for the recipient specified in Schedule 1 and shall be deemed to have been received by the addressee in accordance with Clause 18.4.3.”

Question 11: Do you consider that the process currently described in the model freight contract does not reflect the process that is actually followed?

DB Cargo concurs that the process set out in Appendix 3 of Schedule 8 to the freight model contract does not fully reflect the actual process currently adopted by the parties in practice.

Question 12: Do you consider that the drafting shown in Appendix 4.1 would have the intended effect? If not, what changes are required?

DB Cargo considers that the proposed drafting would not have the intended effect unless its following concerns are addressed:

- To aid clarity, DB Cargo considers that paragraph 1 of Appendix 3 to Schedule 8 of the freight model contract should instead read:

“Using all reasonable endeavours, Network Rail shall provide to the Train Operator an interim statement listing all incidents which are in connection with

...



Services which were planned to depart from their Origin during each day. Such interim statements shall be issued on the eighth day after the end of each particular day (or, if the eighth day is not a Working Day, on the next Working Day thereafter) indicating:

(i). which incidents are Attributable to the Train Operator, and in respect of such incidents the amount of MDTO (as calculated in accordance with paragraph 4.2.1 of this Schedule 8);

(ii). which incidents are Attributable to Network Rail, and in respect of such incidents the amount of MDNR (as calculated in accordance with paragraph 6.2.1 of this Schedule 8);

(iii). which incidents are Attributable to both the Train Operator and Network Rail, and in respect of such incidents indicating (a) the amount of MDTO (as calculated in accordance with paragraph 4.2.1 of this Schedule 8) and; (b) the amount of MDNR (as calculated in accordance with paragraph 6.2.1 of this Schedule 8)

(iv). which incidents in categories (i) to (iii) above remain, at the time of issue of the interim statement, under further investigation following a referral by the Train Operator under Condition B2.3.2 of the Network Code."

- DB Cargo objects to the proposed amendment to paragraph 7 of Appendix 3 to Schedule 8 of the freight model contract (proposed paragraph 9 in Appendix 4.1 of the consultation) by amending "five Working Days" to "ten Working Days". Ten Working Days would take such notifications beyond "Day 8" and, therefore, make it difficult for the Train Operator to investigate such incidents.
- In the proposed paragraph 11 as set out in Appendix 4.1 of the consultation, DB Cargo believes that the reference to "paragraph 1(d)" should read "sub-paragraph 1(iv)".
- DB Cargo believes that sub-paragraph 11(iii) as set out in Appendix 4.1 should read:

"the total Service Variations and the aggregate of the Service Variation Sums payable under Schedule 4;"

- To prevent repetition, DB Cargo considers that the proposed amendments and additions to paragraph 9.2 of Schedule 8 to the freight model contract (paragraphs 9.2.2 to 9.2.4 as set out in Appendix 4.1 of the consultation) could be combined and simplified to read:

"In the event that (i) any of the period final statements referred to in sub-paragraphs 9.2.1(a) and 9.2.1(b) have not been provided within 28 days after the end of the Charging Period to which they relate or (ii) agreement

...



referred to in sub-paragraph 9.2.1(c) has not been reached within those same 28 days, in both cases Network Rail may agree with the Train Operator for an interim payment be made. If such agreement is reached, then the invoice or credit note (as appropriate) issued shall detail which of the relevant sums are thus settled and which remain outstanding; and any subsequent invoice or credit note (as appropriate) issued in respect of the same Charging Period under sub-paragraphs 9.2.1(a), 9.2.1(b) or 9.2.1(c) shall take account of any interim payments as well as remaining subject to paragraph 9.1.”

If you wish to discuss any of DB Cargo's representations above, or require any further relevant information, please let me know.

Yours sincerely,

AccessManager



18th January 2018

Consultation on proposed changes to the wording of track access contracts in Control Period 6

This letter sets out TfL's response to the questions posed in Network Rail's consultation on proposed changes to the wording of track access contracts in Control Period 6. TfL is content for its response to be published and shared with Third Parties.

Question 1:

Do you consider that any of the proposals set out in this consultation are likely to impact the safety of the network?

TfL considers that the proposals set out in the consultation documentation will have no impact on the safety of the network.

Question 2:

Do you consider that when the formula that is currently in the contract is applied it produces an output figure to an infinite number of decimal places bringing a question as to how it should be treated in terms of rounding?

TfL agrees with this statement.

Question 3:

Do you consider that the rounding rule of three decimal places as proposed is appropriate?

TfL agrees that this approach is appropriate, as it reflects existing practice.

Question 4:

Do you consider that there are any other places in the contract where a rounding rule is required but is currently absent?

TfL knows of no other such instances where a rounding rule is required.

Question 5:

Do you consider that the drafting shown in Appendix 2.1 would have the intended effect? If not, what changes are required?

TfL considers that the drafting shown in Appendix 2.1 would have the intended effect.

Question 6:

Do you consider that reference to the observation of data in the Performance Monitoring System is an appropriate approach in the absence of TSDB?

TfL considers that this approach is appropriate. The defined meaning of the term Performance Monitoring System in the TACs is appropriate in this context.

Question 7:

Do you consider that the drafting shown in Appendices 3.1 and 3.2 would have the intended effect? If not, what changes are required?

The proposed drafting appears appropriate to TfL, including the format for the consist data.

Question 8:

Do you consider that the time period available to Network Rail for amending default consist data should be amended to 21 days?

TfL agrees with this proposal to ensure greater accuracy in the billing process.

Question 9:

Do you consider that the format of the drafting shown in Appendices 3.1 and 3.2 is appropriate?

The proposed drafting appears appropriate to TfL, including the format for the consist data.

Question 10:

Do you consider that future proposals should be developed to provide for the transmission of invoices for track access charges solely by electronic means? If so, what are your views on an opt-in mechanism?

This would be a useful innovation, making the invoicing process more efficient and environmentally friendly. An opt in mechanism would be a good way of introducing this system, ensuring that operators could adopt it when it is aligned with their own processes.

Question 11:

Do you consider that the process currently described in the model freight contract does not reflect the process that is actually followed?

TfL has no comment to make in response to this question.

Question 12:

Do you consider that the drafting shown in Appendix 4.1 would have the intended effect? If not, what changes are required?

TfL has no comment to make in response to this question.

Yours sincerely,

**Principal Planner - Rail Development,
Public Transport Service Planning,
Transport for London.**