

John Larkinson  
Acting Director, Rail Markets and Economics  
Office of Rail Regulation  
1 Kemble Street  
London

By email

30 September 2013

Dear John,

**Capacity charge for franchise and open access passenger for CP5**

On 24 September 2013 you wrote to Paul Plummer in his capacity as Chair of the Rail Delivery Group (RDG) Working Group on contractual and regulatory reform. The purpose of this letter is to set out the Alliance Rail Holdings (Alliance) response as it is not a direct member of the RDG, although of course Arriva is.

Alliance has considered the various proposals regarding the capacity charge that have been put forward by the RDG and the ORR. We have also carefully considered the basis for a capacity charge.

*Article 7 (4) of Directive 2001/14/EC* requires that: “*The infrastructure charge may include a charge which reflects the scarcity of capacity of the identifiable segment of the infrastructure during periods of congestion.*”

We have concluded that none of the proposals satisfies the basic requirements of *Article 7 (4)*. This is because the capacity charge does not reflect the scarcity of capacity over an identifiable segment. The methodology of using the Capacity Utilisation Index (CUI) to determine the level of congestion-related delay does not measure capacity utilisation of either stations or junctions where much of this type of delay is incurred. It therefore follows that the methodology used to calculate the capacity charge does not represent the true capacity issues over the network at identifiable segments during periods of congestion.

The measure is flawed in its construction and because of this it is our view that the charge is outside the scope of the Directive and can be challenged legally. In view of this we endorse the position put forward by some at the RDG workshop on Friday 27 September 2013 that the capacity charge is scrapped.

If your view is that the use of CUI to calibrate the capacity charge is not open to legal challenge, Alliance would expect that – following the rejection of the RDG proposal – the only option to be taken forward is that of updating the CP4 tariff for inflation, as outlined in your draft determination. Our view is that it is not appropriate to introduce new options so late in the process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Yeowart', written in a cursive style.

Ian Yeowart  
Managing Director