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Dear Valentina

Periodic Review 2013: Draft Determinations

This letter sets out TfL's response to the consultation on ORR's Draft Determinations. TfL has been involved in the consultation process leading up to this point and has commented on a number of issues. This response focuses on a small number of elements of the Draft Determinations. TfL is content for the response to be published.

Performance

TfL welcomes ORR's focus on improved operation performance and recognises the need to improve performance of the worst performing TOCs. ORR should ensure that there is no reduction in the incentive for Network Rail to continually improve the performance of the better performing TOCs such as London Overground.

TfL requires that Crossrail will operate at a much higher minimum PPM than 92.5%. Network Rail has a licence obligation under the Protocol to deliver 95% PPM. This should be an explicit output commitment of the Periodic Review.

Alliancing

TfL notes once again that there is a risk that alliancing could lead Network Rail to favour TOCs that are part of alliances over other TOCs with competing needs to access the network. ORR must ensure that all operators are treated fairly in all respects.

Route Efficiency Benefit Sharing (REBS)

In its earlier responses, TfL has commented that secondary operators should be protected from changes outside their control especially where there is an alliance in operation on a route. TfL welcomes the opportunity for operators to opt out of REBs at the start of a control period or a franchise or concession. It is clear how this opt out could apply to London Overground but TfL's other concessions will be subject to some remapping within CP5. Some Great Eastern and Great Western services will become the responsibility of the Crossrail CTOC operator. It is important that TfL understands how the opt out provision would be applied, whether from the start of the concession in May 2015 which is when Liverpool Street to Shenfield services would be incorporated, or at the time of subsequent service remapping. For Heathrow Connect services the transfer date would be May 2018.

The Secretary of State has decided in principle to transfer some West Anglia inner suburban services to TfL. The transfer would take place during the control period as services would be probably be incorporated within an existing TfL concession. There should be an opportunity for the operator to use the opt-out provision if required at the time of transfer.

Enhancements

TfL supports ORR's objective of delivering efficiencies at the same time as enabling growth. TfL would welcome more information from ORR on how the industry is progressing against the McNulty targets.

There could be a risk to the delivery of enhancement schemes if Network Rail is unable to deliver the required efficiencies. Network Rail's delivery of efficiencies needs to be closely monitored and its delivery plan reviewed. Since HLOS was announced, other schemes have been announced for funding including Gospel Oak Barking electrification and an enhanced West Anglia route upgrade which will form part of Network Rail's enhancement programme.

Access charges

TfL is pleased that ORR decided not to introduce the full CP5 Capacity Charge. However, it does not see significant advantage in the RFOA approach. The preferred approach needs to take account of other charges and incentives, especially Schedules 4 and 8.

Schedules 4 and 8 rates are still to be determined and these will impact on TfL concessions and on LU. It is important that rates accurately reflect the effects of disruption caused to passengers given the increases in demand that have occurred in recent years. It is also essential that Network Rail has an incentive to reduce disruption from projects that are funded by third parties such as works for LU on the Richmond Branch.

Financial framework

One of ORR's key messages notes that ORR has not provided funding for risks in advance of them occurring. However an increase in the amortisation charge has been applied on the grounds that a reduction in Network Rail's revenue could cause financial sustainability issues. These statements appear inconsistent. The increased amortisation charge also appears to conflict with the statement that since Network Rail is not expected to issue unsupported debt in CP5, it is not necessary for ORR to provide Network Rail with an in year risk buffer for financial sustainability reasons.

Will the ORR please publish the information for each line of table 13.1 that are used to calculate the final proposed cost of capital (reported to be 4.31%). The table currently does not show a column that sets out the assumptions that build up to the 4.31% figure. TfL would like to understand the specific parameters (and in particular the pre-tax cost of Network Rail's debt) as they may be used as reference parameters in future agreements with Network Rail.

The financing charge paid by CRL during the construction of Crossrail will offset part of Network Rail's revenue requirement. It is important that there is no double recovery of this element.

TfL will be paying supplementary access charges to Network Rail following the commencement of full Crossrail services to remunerate Network Rail for its capital expenditure on the Crossrail On Network Works. Likewise there should be no double recovery of this element. TfL understands that the rate of return to be used in the calculation of these supplementary access charges will be determined between the Sponsors, ORR and Network Rail.

Implementing PR13

This response incorporates TfL's comments on implementing PR13 and TfL will not respond separately to that consultation.

Yours faithfully

C A Smales

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