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Clare Kingswood, London & Southeastern Railway Ltd
Nigel Oatway, DB Schenker Rail (UK) Ltd
Lee Armstrong, GB Railfreight
Maggie Simpson, Rail Freight Group
Philippa Edmunds, Freight on Rail
Martin Llewellyn, NR (HS) Ltd
Alan Smart, Transport for London
Peter Swatridge, Network Rail

Dear colleague,

PR14 – ORR's approach and timetable beyond submission of HS1 Ltd 5YAMS

1. In our response to HS1 Ltd's Five Year Asset Management Statement (5YAMS) consultation, dated 29 November 2013, we confirmed that we would set out our approach to implementation for PR14 in due course. The purpose of this letter is to inform stakeholders of our expected timetable and process following submission by HS1 Ltd of their 5YAMS.
2. In adopting this approach, we have taken into consideration the requirements of Section 2 of Schedule 10 the Concession Agreement and those set out in Part 3 of Section 7 (Track Charges) of the Passenger and Freight Access Terms.
3. The processes for approval of the 5YAMS have been set out below in two sections, listing the various permutations dependent on the stage at which ORR approval or determination occurs.
4. Attached as annexes to this letter are two process maps, Annex A details our planned internal processes given approval at the initial stage, and Annex B sets out a high level overview of the overall process.

Concession Agreement requirements

Process following ORR approval at initial stage

5. Paragraph 8.2 of Schedule 10 to the Concession Agreement provides
“*Within 90 business days (or such longer period as the ORR may reasonably specify) of receipt of the 5YAMS...if, in the reasonable opinion of the ORR, the 5YAMS is consistent with HS1 Co’s General Duty, the ORR shall approve the 5YAMS and HS1 Co shall thereafter comply with its terms.*”
6. HS1 Ltd must submit the 5YAMS by 31 December 2013. Indicative timings in this letter and its annexes are based on a submission date of 31 December 2013. Submission will trigger the 90 business days’ time limit for approval of the 5YAMS and provide an initial deadline of 9 May 2014.

Process following ORR non-approval at initial stage

7. In the event that the 5YAMS is not approved on its first submission, the Concession Agreement contains an iterative process to reach an approved 5YAMS.
8. Where ORR reasonably determines that the 5YAMS is not consistent with HS1 Ltd’s General Duty (and is therefore unable to approve the 5YAMS), ORR must give reasons to HS1 Ltd explaining its decision and detailing the deficiencies in the 5YAMS. The intention of paragraph 8.3 appears to be that this notification will take place within the timescale set out in paragraph 8.2 (i.e. within 90 Business Days of receiving the 5YAMS).
9. Where ORR determines that the 5YAMS is not consistent with HS1 Ltd’s General Duty, and is therefore unable to approve in accordance with paragraph 8.2, paragraphs 8.3 and 8.4 of Schedule 10 to the Concession Agreement set out the process (including time limits) for HS1 Ltd to remedy any deficiencies and resubmit the 5YAMS (and thereafter the possibility under paragraph 8.5 for ORR to impose a determination if the 5YAMS remains inconsistent with the General Duty and HS1 Ltd to challenge that determination).
10. Annex B sets out in more detail the process in the Concession Agreement for approving the 5YAMS. In the event that the process set out in Annex B is used, we will inform you of the specific timescales involved.

Implementation

Passenger and freight access terms

11. Paragraph 2 of Part 3 of Section 7 (Track Charges) of the [Passenger](#) and [Freight](#) Access Terms provides that the conclusions of the periodic review are given effect by ORR issuing a notice detailing amendments to each track access contract.

12. This notice must:

- (a) state ORR's conclusions on the access review and the reasons why it reached those conclusions;
- (b) specify the changes made to the Review Provisions¹;
- (c) state, in relation to each of the relevant changes, the date on which it comes into operation.

13. In order to implement an access review ORR must consult the parties (to the access contract(s)), and any other interested persons, on:

- (i) the process for conducting the periodic review
- (ii) any decision to approve the 5YAMS pursuant to Para 8.2 of Schedule 10 to the CA
- (iii) any determination pursuant to Para 8.5.2 of Schedule 10 to the CA;
- (iv) our draft conclusions, including the details of any proposed changes to the Review Provisions.

Any objections or representations made by the parties are required to be taken into account by ORR.

14. ORR's conclusions on the consultation on the process for conducting the periodic review (i.e. paragraph 13(i) above) were [published](#) in June 2013.

15. Where ORR approves the 5YAMS following its initial submission, we will carry out a consultation in accordance with paragraph 13(ii) above. In the event we are unable to approve in the first instance, this requirement will not be triggered.

16. If ORR is required to make a determination in accordance with paragraph 8.5.2, the consultation requirement at paragraph 10(iii) above will be triggered. This will occur only in the event that (a) ORR is unable to approve the 5YAMS on its first submission to ORR under paragraph 8.2 and (b) HS1 Ltd has failed in its amended 5YAMS (see paragraph 8.4) to address the deficiencies identified by ORR in its decision on that first submission. If the resubmitted 5YAMS is consistent with HS1 Ltd's General Duty, ORR shall approve it and therefore the consultation requirement at paragraph 13(iii) above will not be triggered.

17. We note that even if the consultation obligations set out at paragraph 13(ii) and (iii) above are not triggered, ORR is required to consult interested parties on our draft conclusions (and take into account any objections or representations made), as set out at paragraph 13(iv) above. We consider that it is possible to consult on both ORR's decision to approve the 5YAMS, or our determination on the 5YAMS, and the draft conclusions (including changes to the contracts) at the same time.

¹ The Review Provisions are defined in paragraph 1 of Part 3 of the Access Terms.

18. Paragraph 8.1 of Schedule 10 to the Concession Agreement, requires the 5YAMS to include details of proposed changes to the access terms. Although the Concession Agreement does not prescribe the format in which HS1 Ltd must identify these changes, ORR noted in paragraph 69 of its 5YAMS consultation response that 'we would expect HS1 Ltd to submit the proposed drafting amendments to the Passenger Access Terms, Freight Access Terms, passenger and freight framework agreements and template agreements, the HS1 network statement, the HS1 network code and any other documentation modified as a result of the proposed 5YAMS'. However, following discussions with HS1 Ltd, we recognise that this may not now be feasible given the limited time before the 5YAMS submission deadline. Nevertheless, we expect the 5YAMS to contain a sufficient level of detail to enable us to assess the proposed contract changes. We are in discussions with HS1 Ltd to agree revised timescales for the provision of the actual draft contract amendments but would expect to receive the drafting prior to issuing our consultation.

19. As part of the notice giving effect to the periodic review, ORR has to include reasons reaching its conclusions. We intend to use this notice to explain how we have taken into account any objections or representations arising from the consultation process. ORR intends to serve the notice at the same time as, or shortly after, we issue our determination.

Consequential effect

20. Paragraph 8.1.4 of the Concession Agreement requires HS1 Ltd to provide a proposal with respect to the level of OMRC in its 5YAMS submission. Under paragraph 7.2 of Part 3 of Section 7 of the Freight Access Terms and paragraphs 7.2 and 7.3 of Part 3 of Section 7 of the Passenger Access Terms, following the periodic review process, HS1 Ltd must then determine the apportionment of the directly incurred costs and the long term project costs for each operator.

Further information

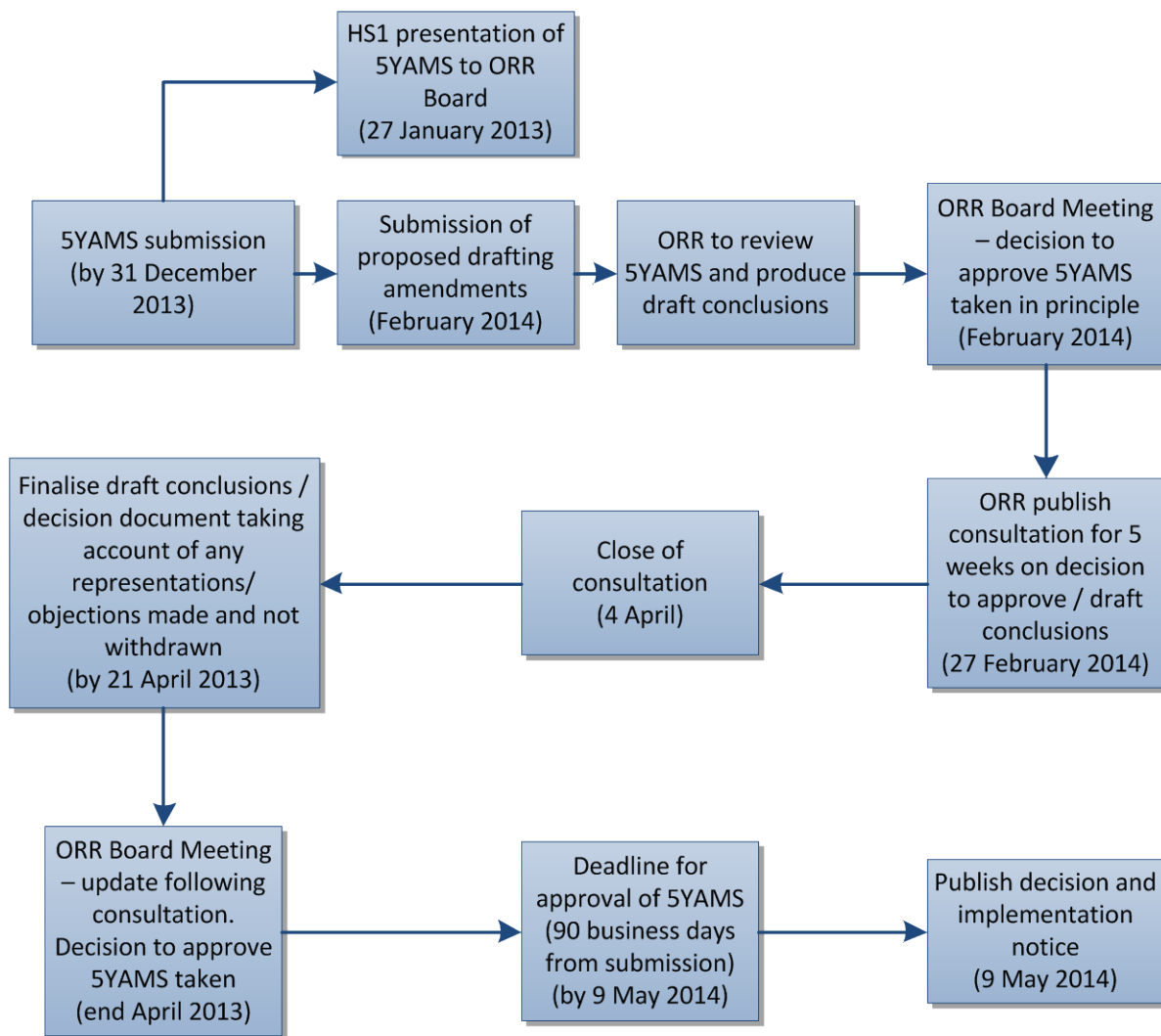
I hope that this provides you with sufficient clarity on the process between now and the conclusion of PR14. If you do have any further queries, please do not hesitate to get in touch with me using the details at the top of this letter.

Yours sincerely,



David Reed

Annex A – ORR planned internal process given approval at the initial stage



Annex B – overview of process following ORR non-approval at initial stage

