NetworkRail

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10 July 2013

Dear Alan

RE: Possible breach of condition 1 of Network Rail's network licence with regard to Network Rail's operational performance

I am replying to your letter of 28 June.

We will not wish to make any further representations regarding the decision which your Board will need to make about whether Network Rail breached its licence in 2012-13 in both the Long Distance and London and South East (L&SE) sectors. We recognise that we have failed to deliver the relevant Regulatory Targets and we understand the impact this has had on our customers and other stakeholders.

Instead we welcome your decision not to recommend to your Board the imposition of a financial penalty in relation to this past breach. This will enable us to continue to focus all our efforts on doing all we can to improve train performance during the remainder of CP4 as you suggest. In this context we would ask you to note the significant progress we have made more recently in improving our operational performance and the effect this has had on a range of train performance and other KPIs across all sectors. These steps include:

- The benefits of devolving accountability to the Routes from November 2011 which has enabled us to integrate decision making more effectively across our Asset Management, Renewals, Maintenance and Operations activities. We are now seeing our Route teams take more informed decisions more quickly supported by the Centre. There have clearly been some issues from such a significant corporate change but we believe this has generally been beneficial for rail users and we are continuing to adapt the way we do business in the light of ongoing experience.

- Closer working with our customers through a variety of "alliancing" and other collaborative arrangements. Resources are now being targeted much more effectively through such joint working whether it be to solve a detailed local performance issue or to maximise the benefits and minimise the disruption of a major investment scheme. Again, we are reviewing progress with alliancing and how we can build on progress so far, including through the refranchising and franchise extension process.

- Further investment in schemes to improve asset reliability, particularly on the south end of the West Coast Main Line (WCML), and on various weather-related schemes.

- Following devolution, for example, there is an increased focus on the basics of inspection and maintenance together with a recognition of the need to improve the stability of our maintenance and renewal planning processes. There is also a stronger focus in the Centre on reviewing route level asset stewardship, including safety indicators. Between the routes and train operators there is also a wider recognition of the need for improved access to critical sections of track and the need to retimetable some routes to remove conflicts. For the longer term, there is recognition of the need to build on our asset policies to improve system reliability particularly at critical locations.

- Changes to and strengthening of our senior management in both the Routes and the Centre. As you know, we also seconded Chris Gibb to help us understand the challenges associated with the southern end of the WCML and we have implemented the main recommendations as part of a joint Board.

- A detailed analysis of the underlying causes of train performance which we will review at National Task Force (NTF). This will enable us to quantify better the trade offs between capacity, cost and performance and so better inform industry planning and target setting for CP5. There is extensive ongoing work in this area and we will continue to apply the lessons proactively in conjunction with our customers.

- The launch of the Performance Planning Reform workstream will make a radical change to the way train performance is managed in CP5. This ambitious industry wide programme, strongly supported by NTF, is designed to give the industry the framework and tools to enable the development of a right time railway approach nationally. It will define the key monitoring data required to improve train service performance including day to day operations and provide a suite of diagnostic tools to enable targeting of improvement areas; create a process to enable an industry wide five year rolling performance improvement approach to replace the current JPIPs, and deliver a prioritised plan alighned to refranchsing to evaluate train planning rules and train specifications. To be effective and sustainable this programme requires industry wide collaboration and advocacy, and engagement will be key. To that end we will focus heavily on business change as well as process change.

At the end of Period 3 the short run trend in PPM was at record levels, L&SE in particular was at 94.0%, and our delay minutes were ahead of last year and this year's JPIP targets. Clearly, however, this does not change the fact that we have not met our targets and that performance for some operators is inadequate.

Longer term context – weather and traffic growth

Although we acknowledge that we have missed our targets, and that is unacceptable, we were rather surprised that you appear to have given relatively little recognition to the impact of extreme weather conditions and additional traffic growth in CP4. As we believe these issues are even more critical going forward as part of our discussions on CP5 I have therefore commented further on them in this longer term context.

We have provided extensive evidence on the impact of *adverse* weather conditions on train performance and particularly the choices the industry makes in balancing the provision of capacity with meeting train performance targets when the weather can be considered *extreme*. You are also aware of the extensive further work we are doing in this area since we clearly recognise the need for us to manage these risks.

I would however emphasise that in the context of CP5 we believe it is particularly important that we are all clear that the relevant targets should be interpreted as expected values rather than absolute minima. The implication of this is that variations in external factors, such as weather conditions and other issues, could mean that the targets are missed even where we have planned appropriately to meet the targets in what might be regarded as normal circumstances. An obvious example of this issue is when one of our customers asks to run a service in times of severe disruption to maximise capacity irrespective of the consequences for train performance metrics.

In terms of growth in traffic volumes, we clearly recognise that in some cases it is possible to deliver more traffic without compromising performance and that it is for us to manage this. But we also believe that there is now a wider consensus that this is not always possible – that there are increasingly choices to be made on parts of a congested network about whether to deliver better performance, improve journey times or run more trains. We were therefore surprised that your letter makes little mention of the unanticipated additional growth in volumes in CP4. In our view, this is fundamental to a full understanding of how the railway is performing and we are disappointed that this does not form a larger part of the ORR's core "narrative". At a simple level, for example, the unanticipated growth in demand has meant that there are more people arriving on time than was assumed at the last review even if we have fallen short on some train performance metrics.

We would also caution against an assumption that much of the current enhancement expenditure will directly help train performance. Not only is the delivery of some of our investment programme detrimental to running the service while it is happening but quite a lot of it is directed towards providing more seats through additional carriages rather than expanding the operational infrastructure. Longer trains will clearly compound the congestion issues on some of the already densely used parts of the network and we will need to work with operators to manage these issues effectively.

Given the recent experience, it is even more critical that a proper understanding of these issues is reflected in the CP5 settlement and the way in which this settlement works in practice. In this context, we welcome the proposed CP5 change control mechanism related to refranchising and the inclusion of volume metrics as part of the system operation capability indicators. But we are concerned that this does not yet go far enough and that that the current proposals would not necessarily enable us to deliver the best possible outcomes for taxpayers and rail users.

We also recognise the need for us to be clear and explicit about the growth assumptions underpinning our performance projections and to integrate these more effectively with the refranchising process. But beyond this, we want to focus our people on helping operators by delivering additional train paths even if this is at the expense of modest reductions in some train performance metrics wherever this offers a net benefit to users and taxpayers. This requires that we are able to work with the rest of the industry, locally with operators and at a national level through NTF, to identify where different tradeoffs would offer better value. The JPIP process naturally provides for this flexibility at a local level. But the proposed approach means that we could be in breach of our licence in CP5 for missing national targets as a result of doing the right thing with our customers locally. There are similar difficulties with the refranchising process where we have discussed the need for improved alignment of incentives.

While we welcome elements of the draft determinations, we are keen to discuss these longer term issues more with you and the wider industry well in advance of our response on 4 September. Paul Plummer is arranging for this as part of our normal engagement with ORR. I will discuss with Chris Burchell how we can best do this at NTF.

Conclusion

We recognise that our performance targets were missed and that this cannot be explained entirely by extreme weather or additional traffic. We have however taken action across the business and are beginning to see some substantial and sustained improvement. We will therefore accept the conclusion from your forthcoming Board

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meeting and we hope that this can be positioned in a way which helps us to focus the business on improving performance in the remainder of this control period. It is also critical that, between us, we take the opportunity now to make sure that the arrangements for CP5 will enable us to work effectively with operators to deliver the best possible outcomes for taxpayers and rail users.

I am copying this letter, as you did yours, to Norman Baker and officials at DfT, Keith Brown and officials at Transport Scotland, David Higgins and Paul Plummer at Network Rail, Train Operating Company MDs, Owner Group MDs, Transport for London, Welsh Government, ATOC, Passenger Focus, London Travel Watch and Rail Delivery Group.

Yours sincerely

Robin Gisby

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28 June 2013

Dear Robin

Possible breach of condition 1 of Network Rail's network licence with regard to Network Rail's operational performance

I wrote to you on 29 April to advise Network Rail that ORR were investigating Network Rail's performance in 2012-2013 and for 2013-14. Thank you for your co-operation and the information you provided to ORR.

Our investigation has focused on Network Rail's Long Distance and London and the South East sector performance in 2012-13 and an assessment of whether it did everything reasonably practicable to achieve its regulated outputs. We have also considered the prospects for Network Rail delivering its regulated outputs in 2013-14. We have taken account of a range of issues affecting performance and we have noted the recent good progress you have made in reducing external delays from suicides and cable thefts. We also commissioned an independent reporter to provide us with an assessment of the delivery and impact of some of the actions in the Long Distance recovery plan (LDRP) and the London and South East plan (LSEP). We have also spoken to relevant train operating company managing directors to hear their views on Network Rail's performance.

Having carried out this work, we remain unconvinced that Network Rail did everything reasonably practicable to comply with condition 1 of its network licence in the Long Distance and London and South East sectors in 2012-13. **Condition 1** requires you to secure:

(a) the operation and maintenance of the network;

(b) the renewal and replacement of the network; and

(c) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, efficient and economical manner so as to satisfy the reasonable requirements of persons providing services relating to railways and funders, including potential providers or potential funders, in respect of:

(i) the quality and capability of the network; and

(ii) the facilitation of railway service performance in respect of services for the carriage of passengers and goods by railway operating on the network.

You must do this to the greatest extent reasonably practicable having regard to all relevant circumstances including your ability to finance your licensed activities.

In particular our evidence identified that:

- Even with adjustments to accommodate extreme weather days, neither the Long Distance nor London and South East sectors would have achieved their targets for 2012-13. Whilst we accept weather had an impact on performance, evidence suggested that preparation and recovery was not as good as it should have been and did not meet the standards we would expect of a best practice network operator. Analysis of the daily logs showed a number of issues that were exacerbated by failing to maintain the infrastructure appropriately (e.g. blocked culverts). ORR also heard from many train operating companies (TOCs) that they lacked confidence that Network Rail had adequately managed drainage assets and told us that a lack of knowledge on the condition of drainage capability over the routes had directly contributed to flooding delays being worse than they would have normally expected.

- The volumes of renewals delivered by Network Rail in 2012-13 were below plan in most areas, (overall by about 20%) although expenditure was close to budget. The main aim of a renewals programme is to replace worn-out, degraded or life-expired assets, in order to bring asset performance back to as-new. As a result of slippage in the 2012-13 renewals programme, assets in poor condition will have been retained in operation for longer than planned, which is likely to have had a direct adverse effect on performance.

- Network Rail's day to day maintenance of the network in 2012-13 fell below what we would expect of a best practice operator. This included instances where delays arising from infrastructure problems could have been avoided had preventative measures been taken. The Infrastructure Condition Report for period 13 identified several reporting measures within the sectors which were behind target, which suggested inadequate maintenance and/or renewals activities. The sheer number of Overhead

Line Equipment (OLE) defects identified ahead of the Olympics on the Great Eastern and subsequently by a more thorough inspection of West Coast South was not acceptable and raise serious concerns around what a similar inspection of the older East Coast assets will reveal. Evidence suggested that a percentage of the high impact OLE delays that occurred in 2012-13 could have been prevented by the appropriate application of inspection and maintenance.

- Network Rail did not complete all the deliverables or deliver the delay minute savings and PPM benefits committed to for 2012-13 in the Long Distance Recovery Plan (LDRP) and the London and South East plan (LSEP). The LDRP saved 40,000 minutes less than what was expected, and Public Performance Measure (PPM) was also 0.12pp behind plan. The LSEP saved 105,000 minutes less than what was expected and PPM was also 0.15pp behind plan. This was partly due to initiatives not being delivered and initiatives that were delivered having less than the forecasted effect. There was also evidence that some benefits were overestimated. Previous decisions of our Board in relation to performance emphasised the importance of delivering these plans effectively.

- Some instances of disruption over Christmas and the New Year period could have been avoided if Network Rail had applied more thorough planning and validation of its plans. Examples of failures we identified included:
  - ***Balham* (LSE)** – Schedule errors relating to a speed restriction that accompanied engineering work caused significant delays;
  - ***LNW(S)* (LD)** – An electrical isolation at Cheddington when electric trains were timetabled to run requiring that section of track;
  - ***LNW (LD) – Birmingham*** – A reduction is station capacity for engineering access for the gateway project was combined with some issues regarding knowledge of platform length to cause major delays; and.
  - ***First TransPennine Express (LD)*** – A contingency timetable was not fit for purpose following a landslip.

Next steps

ORR's primary objective is to ensure that NR remains incentivised to exit CP4 as close to its regulatory targets as possible. I propose to recommend to our Board in July 2013 that Network Rail breached its licence in 2012-13 in both the Long Distance and London and South East sectors. As this is a past breach, the Board will then go on to consider whether to impose a penalty. I further propose to recommend that, on this occasion, the Board finds that the imposition of a penalty would not be appropriate in respect of either breach because:

a) In the case of the Long Distance sector, the order that the Board made on the 23 July 2012 contains provision for a reasonable sum payable if Network Rail fails to meet the end of CP4 PPM target. This reasonable sum may be discounted to the extent that ORR is satisfied Network Rail did everything reasonably practicable to achieve the targets. My recommendation to the Board will be that this provides sufficient incentive to Network Rail to improve performance before the end of the control period and a penalty at this stage would not therefore be appropriate.

b) In the case of the London and South East sector, the recent management changes appear to be producing improvements in performance so that to impose a penalty at this stage would not incentivise further improvements and may, in fact, prove counter-productive. We will continue to monitor performance in the London and South East sector during 2013-14 and we may take further enforcement action either during or at the end of the control period if we are satisfied NR is not doing everything reasonably practicable to achieve the regulatory targets.

If you would like to make any representations on these points before I make these recommendations to our Board, please do so by Friday 5 July 2013.

I am copying this letter to Norman Baker and officials at the DfT, Keith Brown and officials at Transport Scotland, David Higgins and Paul Plummer at Network Rail and to the other parties listed below. A copy will also be placed on our website.

Yours sincerely

A. Price

Alan Price

cc:
Train Operating Company MDs
Owner Group MDs
Transport for London
Welsh Government
ATOC
Passenger Focus
London TravelWatch
Rail Delivery Group