
Subject: *Proposal for Change to Part D of the HS1 Network Code: Conclusions Document*

Date: *December 2012*

1. Background & Context

In late 2011, HS1 Limited (“**HS1 Ltd**”) held detailed discussions with the Office of Rail Regulation (“**ORR**”) on the proposed changes to Part D of the HS1 Network Code. The reason for the proposed changes is to align (to the extent practicable) the timetabling processes set out in Part D of the HS1 Network Code with those set out in the new Part D of Network Rail Infrastructure Limited (“**NRIL**”)’s Network Code (Edition Date: 16 March 2012). In addition, the proposed changes to Part D of the HS1 Network Code aim to better align the HS1 timetabling timescales with the European timetables (RailNetEurope) to the extent possible.

In July 2012, HS1 Ltd formally consulted with the relevant parties in the rail industry and other interested parties on the proposed changes to Part D of the HS1 Network Code and the ancillary changes that would be required to other contractual documentation (including the other Parts of the HS1 Network Code, HS1 Passenger Access Terms, HS1 Freight Access Terms and the relevant Framework Track Access Agreements) (the “**Proposal for Change**”). The Proposal for Change was carried out in accordance with Part C of the HS1 Network Code. The Proposal for Change highlighted the following key changes to Part D of the HS1 Network Code and other contractual documents:

- changes to terminologies and definitions;
- introduced the RNE concept of “One Stop Shop”;
- aligned the development timescales with the new Part D of the NRIL Network Code (to the extent possible) as well as better aligning with the European timetabling development timescales;
- aligned Part D of the HS1 Network Code with the new decision criteria in NRIL’s Network Code whilst retaining certain existing criterion (applicable in the context of HS1); and
- addressed consequential changes required to other HS1 regulatory documents in the Proposal for Change

Following the end of the consultation period, in October 2012, HS1 Ltd and the ORR concluded discussions on the proposed Part D of the HS1 Network Code having considered the responses from the ORR and industry stakeholders. On 16 October 2012, the ORR confirmed that they had no further comments on the proposed changes to Part D of the HS1 Network Code.

Taking full account of each response, we are now in a position to publish our conclusions regarding the proposed changes to Part D of the HS1 Network Code, the rest of the HS1 Network Code and the Access Terms. In summary, we are encouraged by the positive and helpful comments from the ORR and the industry stakeholders who welcomed our proposal to align the timetable processes set out in Part D of the HS1 Network Code with the new Part D of the NRIL Network Code. We believe that there is value in making Part D of the HS1 Network Code as consistent as possible with Part D of NRIL’s Network Code, whilst at the same time recognising that there are factors which mean that there are occasions where it is justifiable to depart from the contents of Part D of NRIL’s Network Code.

This conclusions document provides the following information:

- an overview of the consultation responses to the Proposal for Change;
- a summary of the key comments from the industry stakeholders and the ORR, together with a HS1 Ltd response to each comment; and
- the final version of the HS1 Network Code (Edition Date: December 2012) , HS1 Passenger Access Terms (Edition Date: December 2012) and HS1 Freight Access Terms (Edition Date: December 2012) as a result of discussions post consultation.

Important note: As mentioned above, as a result of the changes to Part D of the HS1 Network Code, there are consequential changes to the existing Framework Track Access Agreements between HS1 and the train operators (London & South Eastern Railways Limited and Eurostar International Limited respectively). We will discuss the final version of the Framework Track Access Agreements with London & South Eastern Railway Limited and Eurostar International Limited independently.

2. Consultation Responses

There were 5 responses received during the consultation on the Proposal for Change. Responses were received from the following organisations:

- DB Schenker (on behalf of Deutsche Bahn ICE project): 17th August 2012
- ORR: 1st August 2012
- Eurostar International Limited: 24th August 2012
- London & South Eastern Railway Ltd: 28th August 2012
- NRIL: 30th August 2012

Having fully considered all the comments in each response, we have made suitable changes in the appropriate areas before reaching the December 2012 HS1 Network Code (Annex A), HS1 Passenger Access Terms (Annex B) and HS1 Freight Access Terms (Annex C) published as part of this conclusions document. We have indicated in Section 3 of this conclusions document where there have been changes as a result of the responses received to certain provisions contained in the version sent out with the Proposal for Change.

3. Industry Comments and HS1 Ltd Consideration

The key comments received from the organisations listed in Section 2 are summarised below. In each case the comment is followed by HS1 Ltd's consideration.

General

3.1 *Consultee Response – Domestic to European Timescales*

Consultee would like to understand HS1 Ltd's justification for why it is more appropriate to align with Europe rather than UK rail industry. Consultee has concerns that whilst the proposed timescales would allow more time for Long Term Plan delivery of the timetable it would put pressure on Short Term Plan (STP) deadlines. How would short term bidding be affected?

HS1 Ltd's Consideration

We note the concerns of the consultee on HS1 aligning with the European development timescales in the version of Part D of the HS1 Network Code contained in the consultation. HS1 is primarily an international railway (noting particularly the Declaration of Specialised Infrastructure which relates to HS1 Ltd and sets out the relative priorities of various service types) and therefore HS1 is constrained, to an extent, by the dates upon which certain events occur in the European timetabling processes (noting that the Declaration of Specialised Infrastructure affords the highest priority to international passenger services). For international train operators it is essential for contiguous train paths to be formed from origin to destination. Accordingly, we need to recognise and follow the timescales for developing timetables which are used in Europe.

We would also like to note that another consultee recognises that a greater alignment with European timetable development timescales is sensible as many services on HS1 are international and have noted that the difference in timescales will have little impact on the development in reality. In relation to impact on STP, any service operating on HS1 which also runs on the NRIL infrastructure would be offered at the NRIL offer date. Due to the interactions with international services this will mean a complete offer and will require all services to be offered on the NRIL date.

3.2 *Consultee Response – Index*

Consultee wishes to understand whether HS1 Ltd is also planning to include an index at the beginning of its proposed Part D similar to Part D of the NRIL Network Code.

HS1 Ltd's Consideration

We note the consultee's request. Having considered this point, we do not propose to add an index to Part D of the HS1 Network Code. It is important that we maintain the same style throughout the HS1 Network Code. Therefore at this stage, we have elected not to do so in the December 2012 HS1 Network Code issued as part of this conclusions document.

3.3 *Consultee Response – Major Timetable Change*

Consultee believes that references to the London Olympics and Paralympics 2012 games should be removed from the existing definition of Major Timetable Change.

HS1 Ltd's Consideration

We note the comment from the consultee and have no objection with their suggestion. We have omitted references to London Olympics & Paralympics 2012 games in the December 2012 HS1 Network Code and the other associated documents annexed to the consultation document.

3.4 *Consultee Response – One Stop Shop Service*

Consultee wanted details on the One Stop Shop Service and how HS1 Ltd will manage this as part of RailNetEurope (RNE).

HS1 Ltd's Consideration

We note the consultee's request for further details on the One Stop Shop concept that has been introduced in the HS1 Network Code as part of the Proposal for Change. The One Stop Shop is a RailNetEurope process for applying to an infrastructure manager for access across a number of networks of one or more infrastructure managers belonging to RNE. From a practical perspective, the bids for international train slots will be made via Path Coordination System (RNE tool). This provides a forum to understand available train paths across other infrastructure managers in Europe. NRIL's operational planners (on behalf of HS1 Ltd) do work closely with adjacent infrastructure managers (i.e. Eurotunnel) to coordinate train paths during the timetable development process.

3.5 *Consultee Response – Timetable Change Dates*

Consultee did not agree with Condition D2.1.3 that states that HS1 Ltd may vary the change implementation dates from time to time, provided that all Timetable Participants have been informed of, and have not objected to, the change. Consultee suggested that this condition should recognise that the change of the annual working timetable shall take place at 'midnight on the second Saturday in December' as per EU Directive 2001/14.

HS1 Ltd's Consideration

We note the consultee's comments. We do agree to alter this condition to make certain that the change of the annual working timetable shall take place at midnight on the second Saturday in December as per the EU Directive 2001/14. This is statement that is clearly recognised in the existing Part D of the HS1 Network Code. At the same time, we have acknowledged that the implementation dates may be revised subject to consultation and the approval from the train operators in the December 2012 HS1 Network Code.

3.6 *Consultee Response – Timetable Participant*

Consultee suggested that 'Timetable Participant' should be changed to 'Timetable Applicant' in line with RNE procedures.

HS1 Ltd's Consideration

We note the consultee's response with regard to using the RNE terminology. However it is worth noting that the primary purpose of the proposed changes to Part D of the HS1 Network Code is to align with NRIL's Part D of the Network Code (with particular focus on terminologies and definitions) and European timescales. On this basis, we believe it is appropriate to maintain alignment with the terminologies used by NRIL. This is reflected in the final version the HS1 Network Code annexed to this conclusions document.

Part D of the HS1 Network Code

3.7 *Various Consultee Responses – Condition D2.1.8: Timetable Revision Process*

Mixed responses were received on the Condition D2.1.8 contained in the version of the HS1 Network Code as part of the Proposal for Change. Various consultees considered that HS1 Ltd's proposed Condition D2.1.8 was incompatible with the Regulations with particular reference to Regulations 16(4), 16(10) and 16(11) on the basis that the condition is discriminatory towards those train operators who do not have an Access Agreement (as defined in the HS1 Network Code). A consultee recognised that a framework agreement should be put in place as soon as possible, preferably before the Working Timetable commences and ideally before the New Working Timetable, however the consultee noted that it should not be a mandatory requirement and it should still be possible for Train Slots to

remain in the New Working Timetable without a framework agreement. The same consultee agrees that by the commencement date of the Working Timetable the relevant train slots should be removed from the Working Timetable (D-0). Another consultee wanted to understand the intended meaning of this condition.

HS1 Ltd's Consideration

We note the responses from the consultees on Condition D2.1.8. By way of explanation, the proposed Condition D2.1.8 is intended to clarify the existing Condition D1.6.2 in the current Part D of the HS1 Network Code. It was intended to ensure that there is a point in the timetable development process when a Timetable Participant has to have access rights (i.e. under an Access Agreement) in order to be included in the New Working Timetable (formerly known as the First Working Timetable). The appropriate point is deemed, by HS1 Ltd, to be at D-22, which is the date 22 weeks from the New Working Timetable becoming effective (also known as the "Change Date"). This was reflected in the proposed Condition D2.1.8 contained in the Proposal for Change.

In consideration of the responses on this condition, we have not retained the proposed Condition D2.1.8 in the December 2012 HS1 Network Code. We fully intend to continue to monitor the timetable development process to ensure this risk is alleviated and capacity of HS1 is allocated in a fair manner avoiding any discrimination against Timetable Participants.

3.8 *Consultee Response – Condition D2.4.6: Submission of Access Proposals*

Consultee wanted clarity on this condition. Consultee believes that HS1 should notify the Timetable Participant of any Access Proposal that cannot be accommodated in the New Working Timetable and give the Timetable Participant an opportunity to appeal before requesting a resubmission.

HS1 Ltd's Consideration

We note the comment from the consultee. Under this condition, we must notify the Timetable Participant when we cannot accommodate the Access Proposal in the New Working Timetable for the reasons set out in Condition D2.4.6. From a practical perspective, a notification to the Timetable Participant to inform them that HS1 cannot accommodate their Access Proposal should contain reasons why the Timetable Participant has to submit a further Access Proposal. In such an event, if the Timetable Participant is not satisfied with reasons provided, there should be reasonable dialogue between the operational planners and the Timetable Participant to resolve any issues. If the issue remains unresolved the appeal process will take effect as described in Condition D5. On this basis, we believe an amendment to this condition is not required in this condition from the version of the HS1 Network Code in the Proposal for Change.

3.9 *Consultee Response – Condition D4.2.3: Decisions by HS1*

Consultee noted that Condition D4.2.3 does not cover receipt by HS1 Ltd via email and believe this is an accepted method of transmitting Access Proposals.

HS1 Ltd's Consideration

We note the comment from the consultee. In consideration of this point, we have amended the condition to allow submission of Access Proposals to HS1 via email in the December 2012 HS1 Network Code.

3.10 *Various Consultee Responses – Condition D4.6.1: The Decision Criteria (now termed 'Considerations')*

Comment 1: Consultee wanted the criteria in Condition D8(ii) of the existing Part D of the HS1 Network Code, "enabling a bidder to comply with any contract to which it is a party where HS1 has been informed of this contract", to be retained as it may be necessary to enable international passenger and freight operators to align with European timetable commitments and contracts.

Comment 2: Consultee disagreed with the references to funders as being part of the decision criteria on the basis that funders should not be permitted to influence any decision over the allocation of capacity.

Comment 3: Consultee wanted clarity on who would fall into the category of a prospective user.

Comment 4: Consultee requested that the application of the decision criteria may be the subject of an appeal.

HS1 Ltd's Consideration

Comment 1: We note the comment from the consultee. We originally proposed to omit this criterion on the grounds that contracts with third parties should not necessarily give one Timetable Participant priority over another who does not have, or has a less onerous, third party contract. This allows us to consider bids in a fair manner for all Timetable Participants. On this basis, we have concluded that it is not appropriate to retain this criterion in the December HS1 Network Code.

Comment 2: We note the consultee's concern. The concept of "funder" is used in Part D of the NRIL Network Code; given that NRIL's operational planners will manage the HS1 timetable development process, it is appropriate to align the decision criteria to the extent possible. We retained reference to funders in the December 2012 HS1 Network Code.

Comment 3: We note the request from the consultee to clarify the term prospective users. Prospective users are train operators who are certain to operate services on the HS1 network with no more rights or priority above or beyond other Timetable Participants. The use of the term prospective users was taken from Part D of the NRIL Network Code.

Comment 4: We believe Condition D5.1 in the Proposal for Change allows a Timetable Participant to appeal against any decision within the timetable development process. Condition D5.1.2 details the grounds of appeal if any Timetable Participant is dissatisfied with any decision of HS1 Ltd made under this Part D of the Network Code which includes application by HS1 of the decision criteria.

3.11 Consultee Response – Condition D4.6.1 (b): The Decision Criteria (now termed 'Considerations')

Consultee opposes the removal of Consideration (j) "enabling operators of trains to utilise their assets efficiently" in the Proposal for Change. This consideration is contained in NRIL's Part D of the Network Code. Consultee expressed the opinion that this is of vital importance to freight operators who are in direct competition not only between themselves but also with other modes of transport. Such competition often results in profit margins which are very tightly balanced. Consequently, any increase in railway assets which are required as a result of the timetabling process can have a damaging effect on the balance, which could lead to the traffic flows concerned becoming unprofitable. This would have a wider consequence on the freight industry as a whole.

HS1 Ltd's Consideration

We note the comment from the consultee. We have replicated the Consideration (j) of Condition D4.6.2 of NRIL's Network Code. This is reflected in Condition 4.6.1(b)(x) of the December 2012 HS1 Network Code.

3.12 Various Consultee Responses – Condition D4.6.1 (b) (ix): The Decision Criteria 'New Consideration'

Comment 1: Consultee suggested that the Condition 4.6.1 (b) (ix) should be reworded for clarity to read " And affording priority to contiguous train paths by reference to the number of networks other than HS1 that they cross and taking account of any relevant operational complexities".

Comment 2: Consultee mentioned that a complex train path includes a range of criteria relating to the service concerned, including items such as conditions associated with

operations on other network other than HS1 and frequency of services and train paths available.

HS1 Ltd's Consideration

We note the comments from the consultees. As this is a new 'Consideration', we agree that this 'Consideration' should be expanded to make explicit that a complex train path includes a range of criteria. On this basis, we have drafted the final 'Consideration' to take full account of the suggested amendments from the consultees in the December 2012 HS1 Network Code.

3.13 *Consultees Response – Condition D4.6.3: The Decision Criteria*

Consultee made reference to Condition D4.6.3 and believes that the decision criteria are also intended to include the prioritisation in Condition 4.6.1(a).

HS1 Ltd's Consideration

We note the consultee comments. In applying the decision criteria the Declaration of Specialised Infrastructure contained in Condition 4.6.1(a) is the first 'Consideration' in allocating capacity. The 'Objectives' and 'Consideration' contained in Condition 4.6.1(b) are then applied to allocate capacity on the network. We have provided appropriate words to clarify Condition D4.6.3 in the December 2012 HS1 Network Code.

3.14 *Consultee Response – Condition D5: Appeals*

Consultee wanted reinstatement of Condition D7.1 in the current Part D of the HS1 Network Code which states the grounds for making an appeal in the timetabling development process.

HS1 Ltd's Consideration

We note the consultee's comment. For absolute clarity, we have included clear grounds for appeal (taken from Condition 7.1 in the current Part D of the HS1 Network Code) in Condition D5 in the December 2012 HS1 Network Code.

3.15 *Consultee Response – Condition D7.2: Confidentiality*

Consultee asked how HS1 Ltd will manage any information that a Timetable Participant may provide in the course of a process that a Timetable Participant would consider confidential and would not wish to be made public. Consultee suggested that HS1 Ltd add the wording "except that HS1 shall keep confidential information that contains business secrets or has otherwise been identified as confidential or commercially sensitive".

HS1 Ltd's Consideration

We note the consultee's suggestion. Taking into account the importance of avoiding the disclosure of business sensitive materials, we have amended the condition to ensure that confidential information identified by the Timetable Participant will not be publically disclosed. This is reflected in the December 2012 HS1 Network Code.

3.16 *Consultee Response – Condition D7.4.1: Removal of Train Slots from Working Timetable*

Consultee considers that the wording contained in Part D of the NRIL Network Code should be included in light of the position on Condition D2.1.8 (see Section 3.7).

HS1 Ltd's Consideration

Condition D8.4.1 in NRIL's Network Code states that if an operator does not have access rights (an access agreement) before 22:00 hours on the day before a Timetable Change Date, then NRIL may remove the Train Slot(s) for the movement of those trains from the Working Timetable due to commence the following day. In light of our final position on Condition D2.1.8 as captured in Section 3.7, we have included this condition in the December 2012 HS1 Network Code.

Rest of HS1 Network Code

3.17 Consultees Response – Part H, Condition H3.2 - Contingency Objective

Consultee made clear that the addition of European Freight Timetable to the Operational Disruption is not required. Consultee believes that it is clearly covered in Condition H3.1 (Definition) where the 'Contingency Objective' is the minimisation of the inconvenience and delay of passengers following the occurrence of Operational Disruption, having due regard to the interest of non-passenger trains.

HS1 Ltd's Consideration

We note the consultee's comments. We have added European Freight Timetable to Condition H3.2(a) to explicitly recognise future freight operation on the HS1 network in the event of operational disruption. On this basis, we have not amended this condition in the December 2012 HS1 Network Code.

HS1 Passenger Access Terms & HS1 Freight Access Terms

3.18 Various Consultee Responses – Definition of "Games"

Consultees questioned the relevance of the definition of "Games" given that the London Olympic and Paralympic Games 2012 will have ended before the proposed changes to Part D of the HS1 Network Code take effect.

HS1 Ltd's Consideration

We note the comments from the consultees and have omitted reference to the London Olympics and Paralympic Games 2012 period in its entirety from the final access terms annexed to this conclusions document.

Annex A – HS1 Network Code (December 2012)

A copy of the HS1 Network Code (Edition Date: December 2012) is available to download from www.highspeed1.com, in particular: <http://highspeed1.co.uk/regulatory/consultation>

Annex B – HS1 Passenger Access Terms (December 2012)

A copy of the HS1 Passenger Access Terms (Edition Date: December 2012) is available to download from www.highspeed1.com, in particular: <http://highspeed1.co.uk/regulatory/track-passenger>

Annex C – HS1 Freight Access Terms December 2012

A copy of the HS1 Freight Access Terms (Edition Date: December 2012) is available to download from www.highspeed1.com, in particular: <http://highspeed1.co.uk/regulatory/track-freight>