
Subject: *Template Framework Freight Track Access Agreement and HS1 Freight Access Terms: Conclusions Document*

Date: *June 2012*

1. Executive Summary

In 2011, HS1 Limited (“**HS1 Ltd**”) held detailed discussions with the Office of Rail Regulation (“**ORR**”) on the access arrangements for freight operation on the HS1 network. In February 2012, we consulted the industry and other interested parties on the proposed template Framework Freight Track Access Agreement and amendments to HS1 Freight Access Terms. The consultation contained the following information:

- the background and considerations which HS1 Ltd has taken into account when developing its proposed access arrangements;
- a description of the catalogue path concept and the assumptions used to generate the paths;
- a description of the proposed template Framework Track Access Agreement; and
- rationale for HS1 Ltd’s proposed amendments to the HS1 Freight Access Terms.

In April 2012, HS1 Ltd and the ORR concluded the freight consultation on the proposed template Framework Freight Track Access Agreement and amendments to HS1 Freight Access Terms. Having carefully considered the comments from the industry, we are now able to publish our conclusions to the freight consultation. In summary, we are encouraged by the positive nature of responses from the industry. We are fully aware of the concerns of the industry on certain elements of the access arrangement for freight operation on HS1 and will continue to work with the affected parties to address these concerns. The periodic review process for Control Period 2 (1 April 15 to 31 March 2012) will begin later in 2012 and we intend to work closely with the industry to develop freight operation on HS1.

This conclusions document provides the following information:

- an overview of the consultation on the proposed template Framework Freight Track Access Agreement and amendments to HS1 Freight Access Terms;
- a summary of the key comments from the industry and the ORR alongside HS1 Ltd responses to each comment; and
- the final version of the template Framework Freight Track Access Agreement and HS1 Freight Access Terms (Edition Date: [June] 2012)

By way of stakeholder management, we intend to hold a workshop with the potential track access applicants in July 2012 to discuss the general access arrangements on HS1.

2. Consultation Overview

Prior to commencing the formal consultation, HS1 Ltd held extensive informal discussions with the freight operators (including representatives from the Rail Freight Group) as well as the ORR on the proposed template Framework Freight Track Access Agreement. HS1 Ltd took into account the comments from the freight operators in our discussions before embarking on the formal consultation process.

On the 14 February 2012, HS1 Ltd formally consulted the industry stakeholders on HS1 Ltd proposed access arrangements. Following the end of the consultation, HS1 Ltd issued the comments from the industry to the ORR and ultimately concluded the consultation process (contained in Section 5).

3. Consultation Responses

We received 5 responses to the consultation:

- Network Rail: 8 March 2012
- ORR: 9 March 2012
- DBS: 16 March 2012
- Rail Freight Group: 19 March 2012
- Europorte Channel SAS: 20 March 2012

Overall, the responses were largely positive. HS1 Ltd has fully considered all comments and have made suitable changes before reaching the version of the final template Framework Freight Track Access Agreement (Annex A) and HS1 Freight Access Terms (Annex B) contained in this conclusions document.

4. Industry Comments and HS1 Ltd Consideration

The key comments received from the industry on the template Framework Freight Track Access Agreement and HS1 Freight Access Terms are summarised below and followed by HS1 Ltd's consideration of each comment.

General

4.1 *Consultee Response – Operation on HS1 & Network Rail Network*

Consultee mentioned that the HS1 consultation does not include existing traffic from NRIL to terminals off the exchange sidings at Ripple Lane e.g. Hansons and Ford.

HS1 Ltd's Consideration

It is correct that consultation does not include traffic operating on Network Rail's infrastructure. The track access agreement is between HS1 Ltd and the freight operator operating only on the HS1 network. The HS1 Freight Access Terms (Section 3, Clause 3.1 (d)) clearly state that operators have to arrange access rights off the HS1 network. In the interest of developing a harmonious railway industry, we understand the need to work with NRIL in relation to access matters off the HS1 network in particular at Ripple Lane.

4.2 *Consultee Response – Capacity at Ripple Lane Exchange Siding*

Consultee mentioned that there is limited terminal and siding capacity at Ripple Lane for continental gauge locomotives and wagons. HS1 Ltd should take this into account when granting access on HS1 and that each train should have the associated terminal or stabling facilities at Ripple Lane.

HS1 Ltd's Consideration

We intend to take into account the limited capacity at Ripple Lane when granting access to operators on the HS1 network. As the freight operation increases on the HS1 network, HS1 Ltd will monitor the capacity at Ripple Lane as it becomes increasingly congested.

4.3 *Consultee Response – HS1 Freight Train Paths: Capacity Analysis*

Consultee noted that the capacity analysis study undertaken by NRIL for HS1 Ltd has been included in this consultation. For absolute clarity, the inclusion in the consultation of the capacity analysis in this form should not be regarded as any commitment by NRIL to provide associated paths on its network.

HS1 Ltd's Consideration

We agree that the catalogue paths used in the consultation should not be regarded as the final committed paths which are to be offered to freight operators. Instead the catalogue paths were merely intended to be used for illustration purposes only. The catalogue paths for Dec 2013 timetable will be published on the HS1 website.

4.4 *Consultee Response – UK Freight Corridor*

Consultee noted that the catalogue paths approach reflects various European Infrastructure Management processes, and indeed would be required in any freight corridor from the UK to mainland Europe as per EU Legislation (EC 913/2010). HS1 Ltd has been actively engaged in discussions over the creation of such a corridor. Consultee expects decisions here to be consistent with any likely corridor approach and to enable capacity management cooperation either within or alongside this corridor in the future.

HS1 Ltd's Consideration

We are engaged in discussions with NRIL to introduce a UK strategic freight corridor as per EU Legislation (EC 913/2010). As the work stream on the freight corridor develops, HS1 Ltd will use reasonable endeavors to ensure that the catalogue paths are aligned.

4.5 *Consultee Response – Declaration of Specialised Infrastructure*

Consultee noted the statement in the consultation document that a Declaration of Specialised Infrastructure (the “**Declaration**”) exists in respect of HS1 which sets out certain priorities concerning the allocation of capacity. Consultee set out a number of reasons (around the Regulation) why it considered that the proposals as drafted for the Declaration were not appropriate. The view of the consultee is that the Declaration instead of designating particular sections of the network as contemplated by Regulation 22, HS1 Ltd has declared the entirety of HS1 as specialised infrastructure. In addition, instead of specifying the types of rail services that it may give priority to over all others when allocating infrastructure capacity, HS1 Ltd has created a hierarchy of priorities for all types of services.

HS1 Ltd's Consideration

We note consultee's request for a response to their comments on the 2006 Declaration and intend to respond when we have reviewed the letter issued in 2006. By way of summary, the Declaration sets out the priorities in the allocation of capacity on HS1 and gives first priority to high speed international passenger train services. As HS1 was designed to be primarily a passenger train services corridor, such services should have priority in accordance with the Declaration. In the context of freight operation, this priority has not been changed to reflect different priorities during the day and at night.

4.6 *Consultee Response – ‘Day Time’ Freight Paths*

Consultee mentioned that, whilst it is difficult to accommodate conventional speed freight trains during the day amongst the high speed passenger services, the possibility that some capacity could be used for conventional freight may become available (e.g. at weekends) should not be discounted entirely. Consultee considers that this should go further and allow

for the operation of conventional rail freight services at any time if suitable capacity is available.

HS1 Ltd's Consideration

We appreciate that there could be available capacity on either side of the period of night and agree that the margins should not be limited to just 45 minutes. It is worth noting that we consulted on a 'generic template' and larger margins may be added to specific framework agreements with freight operators (subject to maintenance/engineering regime and operation of passenger services).

4.7 *Consultees Response – Maintenance Regime*

Consultees questioned the use of the phrase 'viable' in relation to a review of the maintenance regime on HS1 to possibly achieve an additional (6th) week-night where freight operations could take place.

HS1 Ltd's Consideration

Maintaining the safety of the railway is HS1 Ltd's paramount objective. It is important that safety is not compromised to achieve a 6th week night. The use of the phrase 'whether it is viable' is important as HS1 Ltd and Network Rail CTRL are at an early stage in investigating whether a 6th night can be achieved without compromising the safety of the railway. We intend to keep the freight operators fully informed on progress.

Template Framework Freight Track Access Agreement

4.8 *Consultee Response – North London Line Connection*

Consultee noted that the template Framework Freight Track Access Agreement excludes the route from the Eurotunnel boundary to Camden Road Incline Junction that connects HS1 to the North London Line and suggested that this route should be added to Schedule 2 once the connection between HS1 and the North London Line is commissioned.

HS1 Ltd's Consideration

We agree that when the York Way access point is made operational/commissioned it should be added to the Specified Route in Schedule 2 of the template Framework Freight Track Access Agreement. We are in discussions with Network Rail to understand the scope of commissioning the access point and intend to keep the freight operators informed on progress.

4.9 *Consultee Response – Indemnity Provision*

Consultee acknowledged that this indemnity (contained in Clause 3 of the template Framework Freight Track Access Agreement) is already included in their short term track access contract with HS1 Ltd, but expressed that they would not accept this provision in the framework agreement. Consultee considers that as currently drafted, the indemnity is too wide and open and provides no certainty or assurance for the freight operators.

HS1 Ltd's Consideration

We note the consultee's point. We consider that this indemnity should be included because it is within the control of the freight operator whether it takes additional steps to ensure that the Specified Equipment is fully compliant with the relevant HS1 Standards. If it chooses not to do

so, then the risk should be with the freight operator. This is a view that is supported by majority of the industry.

4.10 *Consultee Response – Freight Track Access Charges*

Consultee stated that the current discounted rate set at £4.00 per train kilometre is unaffordable for conventional freight traffic.

HS1 Ltd's Consideration

In the conclusions document to the HS1 Freight Access Terms (Edition Date: April 2011) (<http://highspeed1.co.uk/regulatory/track-freight>) we have set out our justification for setting the charges at their current rate. In summary, the charges have been set on the basis of efficient freight direct costs (avoidable and variable) and we are currently offering a substantial discount for freight operating at night to make the operation more affordable to the freight operators (funded by the Department of Transport). In addition, a fuller explanation has been provided in the freight avoidable cost consultation (<http://highspeed1.co.uk/regulatory/consultation>) which we are still discussing with the industry.

4.11 *Consultees Response – Freight Discount in Control Period*

Consultees mentioned that the discount factor is not guaranteed beyond 31 March 2015 and stated that if the OMRC was to rise that this could result in most conventional rail freight traffic flows becoming unaffordable. As such consultees would like to see how HS1 Ltd and ORR indicate how future freight charges, and any discount, will be assessed.

HS1 Ltd's Consideration

We note the concerns of the freight community. The review of the discount factor on OMRC will take place under the Period Review for Control Period 2 as described in Section 7, Part 3 of the HS1 Freight Access Terms. During the periodic review process, HS1 Ltd will discuss with DfT on the possibility of an extension to the discount arrangement. By way of timescales, the ORR will be consulting the industry on high level matters relating to the HS1 Periodic Review process towards the end of 2012.

4.12 *Consultee Response – Definition of Night*

Consultee provided their support for the proposed definition of 'night' which allows a margin before and after the current night time limits. This should facilitate the identification of additional freight capacity without impacting adversely on passenger services.

HS1 Ltd's Consideration

We note the support of the freight operator on the definition of night and the flexibility this definition provides in utilising available capacity outside the standard night period.

4.13 *Consultees Response – Catalogue Path Rights*

Despite their support for the catalogue path system, consultees have concerns that the Firm Rights are expressed only as to the quantum of catalogue paths rather than to specific catalogue paths. This framework does not provide sufficient certainty to the freight operators. As a solution, the consultees suggested the introduction of a contractual mechanism that would, for freight operators using a particular catalogue path in the timetable, operate to grant priority to corresponding catalogue paths in subsequent timetables.

HS1 Ltd's Consideration

We note consultees' concern. We are unable to offer access rights to specific paths (catalogue paths) pursuant to the Access Management Regulations 2005 (as amended - see Regulation 16(9)). Regarding the need for certainty, it is worth pointing out that Decision Criteria currently exist in Part D of the HS1 Network Code which may offer a level of comfort to freight operators in this respect (see, in particular, Conditions D8 (vii), (xii) and (xiv)). Capacity will be allocated in accordance of Part D of the HS1 Network Code. In 2012, we will consult the industry on the changes to Part D of the HS1 Network Code to bring it in line with Part D of the Network Rail Network Code. It is worth noting that the proposed changes to the Decision Criteria will retain elements of the existing Decision Criteria.

4.14 *Consultees Response – Freight Load*

Consultees suggested that the wording in the consultation that the trailing load of each service will be 1600 tonnes of container is unclear.

HS1 Ltd's Consideration

We would like to clarify that, based on the current assumptions; the *maximum* trailing load of each train will be 1600 tonnes.

4.15 *Consultee Response – Non Catalogue Path Bids*

Consultee believes that there should be a contractual mechanism which enables any path established and validated by HS1 Ltd and granted to a freight operator to become a catalogue path with effect from the following timetable, even if this path falls outside of the definition of night.

HS1 Ltd's Consideration

We note the consultee's comment. The Catalogue Paths will be reviewed, updated and consulted on an annual basis through the Rules of the Route/Plan process as captured in Part D of the HS1 Network Code. If an available path is identified during the period of night and that path would be available for the foreseeable future the train path could become a catalogue path. We believe it would be bad practice to add a train path to the catalogue without certainty that the path will be available for the foreseeable future. This would be misleading and would cause issues with the freight operator's business.

4.16 *Consultee Response – Catalogue Path Information*

Consultee believes that the formal mechanism for the establishment, amendment and allocation of Catalogue Paths should be included in either Schedule 5 or Part D of the HS1 Network Code.

HS1 Ltd's Consideration

We believe that the current information in Schedule 5, Part D of the HS1 Network Code and the HS1 Network Statement will set out the process clearly. The Catalogue Path will be consulted on as part of the Rules of the Route/Plan process as described in Part D of the HS1 Network Code. As the catalogue path is a new system to allocate capacity to freight operators on the HS1 network, we intend to establish a workshop with the freight operators in July 2012 to discuss how the first catalogue path will be generated going forward.

4.17 *Consultee Response – Utilisation of Train Path Information*

Consultee made reference to Clause 2.3 in Schedule 5 of the Framework Track Access Agreement which states that the freight operator bidding for HS1 timetable slots should supply 'reasonable supporting evidence' of its intention to operate a service. Their concern is that there are no defined criteria on what evidence HS1 Ltd requires in this regard.

HS1 Ltd's Consideration

In previous informal discussions with the freight operators we have suggested that a note demonstrating demand or interest from the freight operators' customers will be sufficient. We have not defined the criteria on what evidence is required as we do not want to impose an unreasonable administrative burden on the freight operators. We would accept any document that demonstrates that a path will be utilised. Our proposals are in line with the process adapted by NRIL.

4.18 *Consultees Response – Freight Wagons*

Consultees noted that even though the proposed Schedule 5 contemplates only operation of intermodal type wagons, this should not preclude freight operators from requesting to operate other types of wagons.

HS1 Ltd's Consideration

We fully agree that wagon types should not be limited to intermodal wagons. The template Framework Freight Track Access Agreement is a generic document and will be amended accordingly in negotiations to reflect the type of freight operation on the network. The acceptance of wider range of freight wagons will be subject to normal operational acceptance process. Taking this into account, we have added a square bracket around the 'Intermodal Wagons' provisions in the template. It is worth noting that intermodal wagons were introduced to the template agreement as an alternative to creating complicated sand spillage provisions as per previous discussions with the ORR. The use of intermodal wagons in the template agreement is to ensure that the freight operators use sealed wagons which will avoid spillage on the HS1 network.

HS1 Freight Access Terms

4.19 *Consultees Responses – Freight Olympic Games 2012*

Consultee have stated that they expect to be allocated paths during the period of the Olympic Games.

HS1 Ltd's Consideration

During the consultation we have not made further changes to Section 3, Part 4 of the HS1 Freight Access Terms (Dated April 2012) from the version that was introduced in April 2011. During the Olympic Games there will be a significant increase in the level of operation on the HS1 network. A consequence of this is that the levels of maintenance required will significantly increase (such maintenance to take place at night). As freight operators operate services during the period of night those operations may be impacted as a result of the need to maintain a safe railway. We have provided a comprehensive explanation in Section 5.3.

4.20 *Consultees Response – Capacity Reservation Charge*

Consultees mentioned that HS1 Ltd is proposing to introduce a Capacity Reservation Charge for freight services and expressed their concerns in light of the current Part J (Use it or Lose it provisions) of the HS1 Network Code.

HS1 Ltd's Consideration

We recognise the freight operator's comments on the Capacity Reservation Charge (**CRC**). We have previously undertaken extensive industry consultation and have outlined the reasoning behind the decision to levy a CRC. We consider it appropriate to levy a CRC on all freight operations to mitigate the risk that freight operators could block-book capacity and preclude other freight operators from using HS1. The CRC operates to disincentivise such behaviour and as such performs a beneficial function for train operators. The CRC will work in tandem with the Use it or Lose It provisions to incentivise the efficient use of the available freight capacity, particularly in light of possible capacity issues around Ripple Lane. In addition, we consider that the proposed CRC meets the requirements of the Railways Infrastructure (Access and Management) Regulations 2005 on the basis that CRC is for capacity requested but not used –the CRC is set at zero unless a Reserved Capacity Right is not utilised.

4.21 Consultee Response – Performance Regime

Consultee stated that the operators continue to have concerns over the performance regime. A consultee stated that the consultation does not provide options to mitigate the major disincentive to the development of commercial rail freight services from the HS1 Freight Performance Regime.

HS1 Ltd's Consideration

We note the comments of the industry on the performance regime. We have set out our rationale for the current performance regime framework in both HS1 Freight Access Terms Conclusions Documents (<http://highspeed1.co.uk/regulatory/track-freight>) and in the consultation document (<http://highspeed1.co.uk/regulatory/consultation>). In summary, the principles of the performance regime are: to incentive efficient performance on the network; and compensate customers (both passenger and freight operators) appropriately for the impact of delays on the network. Being a high speed railway network which provides high economic value to its customers (who pay a premium rate to operate on the HS1 network), the performance regime must provide sufficient incentive for all customers to perform efficiently on HS1. HS1 Ltd must therefore ensure that the performance values are set at a level that recognises the impact of delay on all customers.

We would also like to reiterate the purpose of this consultation is to consult on the template Framework Freight Track Access Agreement, the catalogue paths system and amendments to the HS1 Freight Access Terms. We have not changed any commercial principles in relation to the performance regime in this consultation.

5. ORR's Comments & HS1 Ltd's Response

On 4 April 2012, HS1 Ltd issued to the ORR the comments from the industry on the freight consultation and HS1 Ltd's view on each of the key comment. On 17 April 2012 the ORR issued to HS1 Ltd a list of points for HS1 Ltd to consider based on their review of the industry comments and HS1 Ltd's view on each comment. The ORR's points are listed below alongside HS1 Ltd's concluding response to each point.

5.1 ORR Comment - Declaration of Specialised Infrastructure

The ORR noted that HS1 Ltd will be providing a response to DBS regarding its concerns over the Declaration of Specialised Infrastructure. We would be grateful if you could send us a copy of this response.

HS1 Ltd's Consideration

We note the ORR's comment and intend to provide the ORR with a copy of the response to DBS on this matter when it has been issued to DBS.

5.2 *ORR Comment - Intermodal Wagons*

The ORR noted that HS1 Ltd does not intend to exclude other types of vehicles, subject to SRP approval. Given that this is a template document, it may be worth placing square brackets around "Intermodal Wagons".

HS1 Ltd's Consideration

We have captured our response in Paragraph 4.18.

5.3 *ORR Comment – Olympics 2012*

The ORR noted that DBS raised a concern with HS1 Ltd's arrangement not to permit freight operation on the network during the period of the Olympics. Obviously, priority has been designated to domestic then international high speed passenger services during the Olympic period and we are aware that HS1 Ltd's arrangements take into account an increased level of services and safety implications. However, taking into account the Access & Management Regulations (Reg 22) has HS1 Ltd investigated whether there would be any capacity available as is suggested by DBS?

HS1 Ltd's Consideration

We note the ORR's comments in particular reference to the Access Management Regulations (Reg 22). We firmly believe that we are in compliance with the Regulations on the basis that:

- HS1 Ltd is an "infrastructure manager", and as such is responsible for the maintenance of the network;
- the Regulations contemplate infrastructure capacity being reserved for maintenance through the provisions in Regulations 16(4) and 19(5);
- in Network Rail's consultation (on behalf of HS1 Ltd) on the establishment of the Rules of the Route and the Rules of the Plan for the period of the Olympic Games there are explicit references to a non-standard possession regime during the Games to allow maximum flexibility to maintain the HS1 infrastructure in consideration of the significant increase in operation on the HS1 network.

We would like to reiterate that it is important that HS1 Ltd continue to maintain a high level of operational performance on the HS1 network. This is even more important during the period of the Olympic Games when the volume of traffic will be transformed on the network and the domestic operator's mileage on HS1 will increase by approximately 90%. Our maintenance regime during this period needs to take into account the increased traffic. This was the consideration that led to the approach not to allow freight to operate during the Olympic period being included in the HS1 Freight Access Terms (April 2011). By way of stakeholder management, Network Rail (on behalf of HS1 Ltd) has previously been in dialogue with DBS on freight operation during the period of the Olympic Games.

Annex A – Template Framework Freight Track Access Agreement

A copy of the template Framework Freight Track Access Agreement is available to download from www.highspeed1.com, in particular: <http://highspeed1.co.uk/regulatory/consultation>

Annex B – HS1 Freight Access Terms

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