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5 April 2019

Dear James,

HS1 LIMITED: FIVE YEAR ASSET MANAGEMENT STATEMENT FOR CONTROL PERIOD 3 – DRAFT FOR CONSULTATION

This letter constitutes the response of DB Cargo (UK) Limited ("DB Cargo") to the consultation document entitled "*Five Year Asset Management Statement for Control Period 3*" issued by HS1 Limited ("HS1 Ltd") on 28 February 2019 ("5YAMS").

Whilst it is recognised that the consultation document covers a multitude of different issues, DB Cargo's response mainly concentrates on its key concern which relates to the charging framework for freight traffic together with the principles that have been used to derive the proposed freight access charges from the relevant costs.

Introduction

1.1. DB Cargo has been operating overnight freight services on High Speed 1 ("HS1") for around eight years now. It remains firmly of the view that the line presents a unique opportunity of a fast link from the Channel Tunnel to London thereby enabling the transit of international rail freight to/from the UK via the Channel Tunnel to be accelerated, consequently helping to attract further modal shift from road to rail. HS1 also presents the UK's only realistic opportunity to accommodate larger gauge traffic to/from Continental Europe which will also further promote the growth of international rail freight through the Channel Tunnel.

1.2. Although the overall number of freight services has fallen significantly since the start of CP2, this has been caused by factors outside the control of the rail industry; the most significant of which being the migrant crisis in Calais which caused considerable disruption to Channel Tunnel rail freight services. This disruption led to a loss of confidence by end customers as poor levels of reliability and performance were experienced as a result of trains being held up in Calais. These effects were particularly felt by intermodal services which have all but ceased. However, numbers of Channel Tunnel rail freight services have now stabilized in recent years and have now gradually started to grow again.

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Key concern

2.1. In DB Cargo's view, the fundamental issue in ensuring that the regular operation of international rail freight services on HS1 not only continues but grows over time relates to the price of access. The current access charges for HS1 are already significantly higher than the equivalent charges that apply to freight services on the national railway network operated by Network Rail Infrastructure Limited ("the national network"). The fact that these charges are set to increase in CP3 by a further 78% from £7.54 (2018/19 prices) to £13.43 per train km, leads DB Cargo to believe that this will result in access to HS1 becoming unaffordable and will discourage rail freight from using HS1.

2.2 From an examination of the 5YAMS, it is clear to DB Cargo that this dramatic price increase is almost wholly due to the way in which HS1 Limited has proposed to recover its renewal costs over a 40-year period by incorporating them within the OMRCA1 charges leading to an astonishing increase of 205% from £3.11 per train km (2018/19 price) to £9.47 per train km (proposed start of CP3 price). Even in cases elsewhere where there have been material increases in access charges proposed, such proposals have at least been introduced over time to avoid overnight 'price shocks'.

2.3. Given that international rail freight services have no firm rights for access on HS1 and merely utilise spare capacity overnight which is reflected in the short-term nature of the track access contracts offered, the inclusion in access charges of advanced payments towards renewal costs over a 40-year period is an approach not faced by DB Cargo elsewhere, even on infrastructure where it has a higher degree of certainty in respect of access rights and long term access contract.

2.4. DB Cargo understands that the principles of deriving freight access charges for HS1 (as in the case of the national network) must conform to the relevant legislation set out in the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 ("the Regulations").

2.5. Schedule 3 of the Regulations provides the following stipulations:

- *Sub-paragraph 1(4) - The charges for the minimum access package and track access to service facilities referred to in paragraphs 1 and 2 of Schedule 2 shall be set at the cost that is directly incurred as a result of operating the train service.*

- *Sub-paragraph 2(1) - In order to obtain full recovery of the costs incurred the infrastructure manager, with the approval of the Office of Rail Regulation under the access charges review or, in the case of a rail link facility, the Secretary of State, may levy mark-ups on the basis of efficient, transparent and non-discriminatory principles, whilst guaranteeing optimum competitiveness, in particular in respect of rail market segments.*

- *Sub-paragraph 2(2) - The effect of sub-paragraph (1) and (2) must not be to exclude the use of infrastructure by market segments which can pay at least the* *cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.*

- *Sub-paragraph 2(5) – Before approving the levy of a mark-up under sub-paragraph (1) the Office of Rail and Road or, as the case may be, the Secretary of State, must ensure that the infrastructure manager evaluates the relevance of a mark-up for the specific market segments, considering at least the pairs listed in sub-paragraph (10) and retaining the relevant one*

2.6. DB Cargo believes that by increasing the price of OMRCA1 by 205% by adding in advanced renewal costs over a 40-year period is counter to sub-paragraph 2(2) of Schedule 3 of the Regulations as it may well exclude the use of HS1 by international railway services which have shown that they can at least pay their directly incurred costs as a result of operating the railway service (plus a rate of return which the market can bear).

2.7. DB Cargo considers that the renewal costs calculated by HS1 Limited over the 40-year period will be incurred whether or not international rail freight services operate on HS1 and, therefore, submits that they are not costs that are directly incurred as a result of operating international rail freight services during CP3. Consequently, DB Cargo considers that whatever approach is adopted for international/high-speed passenger services, the access charges for international freight services on HS1 should reflect a shorter term approach to ensure that they remain relatively affordable (perhaps over 5-years in common with the approach adopted for the national network).

2.8. Furthermore, DB Cargo wishes to understand whether HS1 Limited has followed (or intends to follow) the provisions of sub-paragraph 2(5) of Schedule 3 of the Regulations (i.e. evaluate the relevance of a mark-up for the specific market segments) in respect of the proposed incorporation of the advanced payment of renewals costs over the 40-year period.

2.9. In setting freight charges for international rail freight services for CP2, HS1 Limited set out the following objectives:

- "*HS1 Limited's main objectives with respect to the freight charging framework are to:*

  -attract freight traffic which can bear the additional costs incurred by HS1 Limited as a result of freight services running on HS1; and

  -create a flexible charging framework which allows for future adaptation to enable freight services to make a contribution to common costs where possible."

- "*The HS1 Line was built primarily for high speed passenger trains with freight as a potential future additional service. Thus freight access charges should reflect the marginal costs to HS1 Limited of providing for freight services.*"

...

2.10. In proposing to adopt a different policy for the treatment of advanced renewals and consequently increasing access charges for OMRCA1 costs ‘overnight’ by around 200%, it appears that HS1 Limited’s objectives to attract international rail freight services have been set aside. DB Cargo hopes that this is not the case.

2.11. Notwithstanding and without prejudice to the representations made above, DB Cargo would wish to understand further as to whether the advanced 40-year renewal costs have in fact been fairly apportioned to international freight services. For example, the access charges for international rail freight services should not include any apportionment of renewal costs for the northern part of HS1 beyond the chord into Ripple Lane (e.g. the track, signalling equipment, switches and crossings, overhead line and tunnel equipment) through to St Pancras, including the North London connection to the national network.

2.12. DB Cargo is both surprised and disappointed that the proposal that it had raised nearly 5-years ago during the CP2 consultation process concerning the transfer of Ripple Lane Exchange Sidings from HS1 Limited to Network Rail Infrastructure Limited has not been progressed or seemingly even considered any further. This is despite the fact that the proposal received positive support at the time as it would reduce significantly HS1 Limited’s freight specific costs as well as reducing overall railway industry costs as a whole.

2.13. Despite the passage of time, DB Cargo still remains firmly of the view that Ripple Lane Exchange Sidings should be transferred to Network Rail Infrastructure Limited and become part of the national network. The infrastructure is not ‘high-speed’, is used significantly more by domestic freight services than it is by those operating on HS1 and is already maintained and operated by Network Rail Infrastructure Limited in any case. The transfer of ownership of the facility would ensure that such maintenance and operation is subject to the same efficiency targets that Network Rail Infrastructure Limited is expected to achieve for other freight-only infrastructure on the national network.

<u>Other issues</u>

3.1. Other important factors for the continued growth of rail freight services on HS1 include:

- the capability to operate rail freight services at 100 kph as well as 120 kph or higher (*This is a key requirement for rail freight to achieve the original objective for freight on HS1 set by the House of Commons Committee on the Channel Tunnel Rail Link Bill that “the Link should be capable in every way of carrying as much freight as possible*”).
- the availability of suitable and sufficient capacity throughout the day (including capacity availability overnight not being unreasonably constrained by engineering work).
- an affordable performance regime. (*DB Cargo notes that as part of CP3 the current payment rates will be subject to recalibration. DB Cargo would be*

concerned if such recalibration resulted in a significant increase above the current high levels).

- The capability to operate international freight services with trailing loads above the current limits. (This would require a review by HS1 Limited and Network Rail High Speed of the current limits on maximum trailing loads).

<u>Conclusion</u>

4.1. As stated in this response DB Cargo is extremely concerned that the proposed 78% increase in access charges for international freight services will discourage, and may even effectively exclude, rail freight from using HS1. To avoid this unfortunate and unacceptable situation from occurring, DB Cargo hopes that HS1 Limited and other relevant stakeholders will work together with the rail freight industry to seeks ways in which the proposed increase in access charges is reduced or addressed in other ways.

Yours sincerely,

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