

19 June 2009

Dear Industry Party

### **High Speed 1 Charging Framework**

On 1 September 2008 I wrote to railway industry contacts seeking views on a draft of the Charging Framework which the Secretary of State was proposing to establish in respect of High Speed 1. My letter also explained that the Government was intending to transfer from the Secretary of State to the Office of Rail Regulation (ORR) certain regulatory responsibilities in relation to High Speed 1 and that the principles and practicalities of the changes were being discussed with the ORR.

I am now writing to:

- seek industry's views on a revised draft of the Charging Framework which takes account of comments received during the earlier consultation and discussions between the Department and the ORR; and
- provide more detail of the proposed High Speed 1 regulatory arrangements.

A copy of the revised draft Charging Framework is at Annex A. There are three substantive changes to the Framework on which the Department consulted last September:

- in respect of the costs relating to the operation, maintenance and renewal of High Speed 1, the draft Framework now permits access charges to include both:
  - those costs which are directly incurred as a result of operating train services, which are recovered through the general charging principle (ie in accordance with paragraph 1(4) of Schedule 3 to the Railways Infrastructure (Access and Management) Regulations 2005 (the "Railways Infrastructure Regulations"); and
  - common costs, which are recovered on the basis of the long-term costs of the operational phase of the HS1 project under the exception to the general principle specified in paragraph 3 of Schedule 3 to the Railways Infrastructure Regulations;

- in respect of the investment recovery charge, the draft Framework now makes clear that the specified maximum level of that charge does not include any applicable value added tax; and
- in respect of the mechanism for indexation of the maximum level of the investment recovery charge, changes have been made to Section 2 of the draft Framework to ensure that the maximum level of the charge would be adjusted semi-annually as intended.

Government would welcome industry's views on the revised draft Charging Framework. The detailed application of charges will be the subject of a revised draft Network Statement. This will be one of a number of documents on which HS1 Ltd will be consulting industry concurrently with the Department's Charging Framework consultation. A copy of the draft Network Statement can be found on HS1 Ltd's website - [www.highspeed1.com](http://www.highspeed1.com).

When made, the Railways Infrastructure Regulations provided for a special regulatory regime in relation to rail link facilities such as High Speed 1. Whereas regulatory responsibilities in relation to the rest of the national rail network generally reside with the ORR, the Railways Infrastructure Regulations provided for regulatory responsibilities in relation to rail link facilities to reside in general with the Secretary of State. During the passage through Parliament of the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008, the Government undertook to make the regulatory regime in relation to High Speed 1 closer to the extant regime in relation to the rest of the national rail network.

This is to be achieved by a combination of legislative and contractual provisions. On 30 April, the Secretary of State made the Railways Infrastructure (Access and Management) (Amendment) Regulations 2009 (a copy can be found at [http://www.opsi.gov.uk/si/si2009/uksi\\_20091122\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20091122_en_1)). Among other things, this Instrument provides that, with effect from 1 October 2009, the ORR's functions in relation to High Speed 1 will be extended from simply hearing appeals against decisions adopted by HS1 Ltd on matters such as charging and capacity allocation (regulation 29) and regulating competition in rail services markets to:

- pre-approving framework access agreements (i.e. access agreements which relate to more than one working timetable period) and amendments to such agreements (regulation 18(12));
- ensuring that High Speed 1 access charges comply with the Railways Infrastructure Regulations (regulation 28(2));
- supervising negotiations between an applicant and HS1 Ltd about the level of access charges (regulation 28(3)); and
- exercising its rights and responsibilities under the agreement with the Secretary of State in relation to the concession to design, build, finance, operate, repair and maintain High Speed 1 ("Concession Agreement") in order to ensure that HS1 Ltd is provided with incentives to reduce the cost of provision of infrastructure and the level of access charges (regulation 13(3)).

The ORR's functions in relation to the Concession Agreement - which will replace the current Channel Tunnel Rail Link Development Agreement - will relate principally to the stewardship of High Speed 1 railway infrastructure (other than stations) and to the review of charges for the operation, maintenance and renewal ("OMRC") of such infrastructure. It will also have a role with respect to monitoring the performance of HS1 Ltd and, where appropriate, taking enforcement action.

With respect to the ORR's role in setting OMRC, the Concession Agreement will provide for the ORR to carry out a periodic review of OMRC with the outcome of the first such review to take effect on 1 April 2015. Thereafter, periodic reviews will be conducted on a five yearly basis until the expiry of the Concession Agreement on 31 December 2047. The Concession Agreement will set out a mechanism - including consultation with interested parties - intended to result in HS1 Ltd and the ORR agreeing OMRC for the next price control period. Failing such agreement, the ORR will have the power to determine them.

In addition to periodic reviews, the Concession Agreement will provide for the ORR to conduct an interim review of OMRC at the initiative of HS1 Ltd in the event of a material and significant change to the circumstances upon which the then current OMRC were approved or determined provided that such change was due to circumstances outside HS1 Ltd's control.

Following the conclusion of this consultation, the ORR is expecting to publish a Regulatory Statement clarifying its regulatory and policy approach with respect to High Speed 1.

I should be grateful if you would respond to this letter by 17 July 2009 at the latest. Responses should be sent either by email to [john.carr@dft.gsi.gov.uk](mailto:john.carr@dft.gsi.gov.uk), or by post to the address above.

According to the requirements of the Freedom of Information Act (2000), all information contained in your response to this consultation may be subject to publication or disclosure. This may include personal information such as your name and address. If you want your response or your name and address to remain confidential, you should explain why confidentiality is necessary. Your request will be granted only if it is consistent with Freedom of Information obligations. An automatic confidentiality disclaimer generated by your e-mail system will not be regarded as binding on the Department.

Yours sincerely

**John Carr**

## REGULATORY REGIME

### SECTION 1

#### ACCESS CHARGES

#### 1. Definitions

1.1 In this Section 1, unless the context otherwise requires:

**“High Speed 1”** means the Channel Tunnel rail link between St. Pancras and Cheriton;

**“HS1 Co”** means HS1 Limited a private company limited by shares registered in accordance with the laws of England under number 03539665 and having its registered office at 3<sup>rd</sup> Floor, 183 Eversholt Street, London NW1 1AY;

**“HS1 Concession”** means the concession for the design, construction, financing, operation, repair and maintenance of High Speed 1, in respect of which HS1 Co is the concessionaire;

**“Long-Term Construction Costs”** means the costs relating to the initial construction of High Speed 1 after deducting therefrom any investment recovery charge aspects of the track access charges paid by train operators prior to this regime coming into effect;

**“OMR Costs”** means the costs relating to the operation, maintenance and renewal of High Speed 1, including stations, over the life of the HS1 Concession, which costs include long-term costs of the operational phase of the project incurred in order to meet the performance standards, asset condition and handback condition of High Speed 1 required by the HS1 Concession; and

**“Railways Infrastructure Regulations”** means the Railways Infrastructure (Access and Management) Regulations 2005.

#### 2. Introduction

2.1 Any charges levied by HS1 Co on train operators for track access to High Speed 1 and for such other services as are referred to in Schedule 2 of the Railways Infrastructure Regulations, including station access, shall be determined by HS1 Co pursuant to this regime and to the Railways Infrastructure Regulations and in particular the provisions of Schedule 3 of those Regulations.

2.2 HS1 Co shall ensure that any track access or station access agreement entered into with a train operator relating to access to High Speed 1 contains provisions to give effect to the principles set out in the Railways Infrastructure Regulations to which each of HS1 Co and the other parties to such agreements shall be contractually bound.

2.3 The Secretary of State and HS1 Co acknowledge that this regime is intended to operate in a manner consistent with the Railways Infrastructure Regulations.

### **3. Access charges**

#### 3.1 Access charges may include:-

- 3.1.1 an investment recovery charge pursuant to paragraph 3 of Schedule 3 of the Railways Infrastructure Regulations and in accordance with paragraphs 4.1, 4.2 and 4.3 of this Section 1;
- 3.1.2 an additional investment recovery charge pursuant to paragraph 3 of Schedule 3 of the Railways Infrastructure Regulations and in accordance with paragraph 4.4 of this Section 1; and
- 3.1.3 charges relating to OMR Costs on the basis of long-term project costs pursuant to paragraph 3 of Schedule 3 of the Railways Infrastructure Regulations and in accordance with paragraph 4.5 of this Section 1.

3.2 HS1 Co may subject to the terms of the HS1 Concession apply discounts in accordance with paragraph 6 of Schedule 3 of the Railways Infrastructure Regulations.

3.3 HS1 Co may when determining any charges pursuant to paragraph 2.1 of this Section 1 levy mark-ups and The Secretary of State hereby approves the levying of such mark ups provided that HS1 Co levies them in accordance with the requirements of Schedule 3 of the Railways Infrastructure Regulations.

### **4. Long-term Project Costs**

4.1 Subject to paragraphs 4.2 and 4.3 of this Section 1, the Long-Term Construction Costs shall be the costs taken into account in calculating any investment recovery charge of the type permitted in paragraph 3.1.1 of this Section 1.

4.2 Any investment recovery charge of the type permitted under paragraph 3.1.1 of this Section 1 shall be no more than £69.57 (plus any applicable value added tax) per minute per train service. In the case of trains scheduled to stop at any one or more of Stratford, Ebbsfleet and Ashford stations the number of scheduled minutes for which any investment recovery charge of the type permitted under paragraph 3.1.1 or 3.1.2 of this Section 1 shall be levied will be reduced by the additional time taken to enable trains to stop at such stations.

4.3 The sum specified in paragraph 4.2 of this Section 1 shall be adjusted semi-annually in accordance with the provisions of Section 2.

4.4 It is recognised that, over the life of the HS1 Concession and subject to the terms of that concession, further investment in relation to High Speed 1 or any related facilities may be approved or required. In the event of such further investment, HS1 Co shall, subject to the terms of the HS1 Concession and the Railways Infrastructure Regulations, also be entitled to take into account the long-term costs associated with that additional investment in calculating any investment recovery charge of the type permitted in paragraph 3.1.2 of this Section 1.

4.5 Any charge for long-term project costs of the type permitted under paragraph 3.1.3 shall be subject to the terms of the HS1 Concession and the Railways Infrastructure Regulations.

### **5. Compliance with Railways Infrastructure Regulations**

5.1 HS1 Co shall comply with the Railways Infrastructure Regulations. In particular, HS1 Co shall:

- 5.1.1 comply with Regulation 9 of the Railways Infrastructure Regulations;

- 5.1.2 comply with Regulation 12(5) of the Railways Infrastructure Regulations;
- 5.1.3 prepare and maintain such accounts and estimates as are necessary to calculate and justify the amounts mentioned in Regulation 13(1) and paragraph 3 of Schedule 3 of the Railways Infrastructure Regulations, such accounts and estimates to be subject to such more specific requirements as The Secretary of State may reasonably require or agree;
- 5.1.4 send copies of the accounts required under paragraph 5.1.1 to The Secretary of State at such times and for such periods as The Secretary of State shall, acting reasonably, require and allow such inspection and auditing of such accounts as The Secretary of State shall require.

**SECTION 2**  
**INDEXATION**

**1. Definitions**

1.1 Words and expressions defined in Section 1 shall, unless the context otherwise requires, have the same meaning in this Section 2.

1.2 In this Section 2, unless the context otherwise requires:

**“Indexation Base Month”** means the month in which the HS1 Concession is entered into;

**“Indexable Element”** or **“IE”** means the sum specified in paragraph 4.2 of Section 1;

**“Indexation Formula”** means  $IE_m = (IE_{m-1} \times b/a)$  where:

**“ $IE_{m-1}$ ”** means the Indexable Element applicable immediately before the relevant Indexation Review Date; and

**“a”** means the value of RPI for the Index Observation Month that is six (6) months prior to that used in the calculation of “b” (save in the case of the first Indexation Review Date when it shall be the value of RPI for the Index Observation Month immediately preceding the Indexation Base Month); and

**“b”** means the value of RPI for the Index Observation Month immediately preceding the relevant Indexation Review Date,

**“Index Observation Months”** shall be February and August each year;

**“Indexation Review Date”** shall be the date six (6) months immediately following the Indexation Base Month, and every six (6) months thereafter; and

**“RPI”** means the UK All Items Retail Prices Index as published by the United Kingdom Office for National Statistics (January 1987 = 100) contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefor) or failing such publication, such other index which replicates RPI as closely as possible (with the intention of putting HS1 Co in no better nor worse position than it would have been had the index not ceased to be published).

**2. Indexation**

2.1 On each Indexation Review Date, the Indexable Element shall be adjusted by applying to it the Indexation Formula, the first such Indexable Element being  $IE_0$ .

2.2 On each occasion that the Indexable Element is to be adjusted in accordance with this paragraph, the Indexation Formula shall be applied to the Indexable Element applicable immediately before the relevant Indexation Review Date.