

13 May 2021

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Office of Rail and Road  
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Dear Stakeholder

## **DB CARGO UK LIMITED (DBC UK) DISPOSALS POLICY – CALL FOR EVIDENCE OUTCOME**

This open letter provides our response to the call for evidence about DBC UK's disposals policy ("**the Policy**").

This Policy, which is published on DBC UK's website<sup>1</sup> was created in 1998 as a means of addressing competition concerns identified at that time about potential new entrants to the UK rail freight sector having fair access to locomotives.

On 29 March 2021, we opened a Call for Evidence on the proposal by DBC UK to discontinue its Disposals Policy. The Call for Evidence closed on 26 April 2021 and four responses were received from industry stakeholders.

We have since considered the submissions and we have now determined our position on this matter.

Only one other Freight Operating Company (FOC) contributed to the Call for Evidence, with the remaining responses originating from DBC UK, a trade body, and, an independent consultant. The responses offered contrasting views on the proposal. Although respondents recognised the general shortage of locomotives in the UK market, there was not a clear consensus that the Policy should remain in place.

Two of the four respondents outlined that the Policy should remain in place, respectively setting out that the Policy should be retained to ensure that competition law is adhered

<sup>1</sup> <https://uk.dbcargo.com/rail-uk-en/services/disposals>

to and raising concerns that DBC UK could seek to restrict the entry or expansion of other firms by scrapping surplus locomotives instead of offering them to market.

The following criteria were considered to determine whether objecting to the proposal by DBC UK to discontinue the Policy was justified:

- A. Whether there has been a significant change in DBC UK's market position;
- B. If there is sufficient evidence of reliance on the Policy to maintain free and fair competition in rail freight markets; and
- C. Does competition law, to which DBC UK will still be bound, offer sufficient protection, such that holding DBC UK to a higher standard is no longer necessary.

Firstly, on the question of the DBC UK's market position, we looked at the change in the structure of the freight market, including financial data, over time. The Policy was first conceived soon after privatisation when the forerunner of DBC UK inherited state-owned assets. Since privatisation, the rail freight market has evolved significantly, with the entry and expansion of new entrants, many of whom have acquired significant fleets of locomotives.

Secondly, in considering whether there is sufficient evidence of reliance on the Policy to maintain free and fair competition, a survey of the locomotive market was conducted. We concluded that although there is pressure in the supply of locomotives, other FOCs have established sizeable fleets, having procured new, used and reconditioned locomotives from a number of sources (including from abroad).

DB Cargo UK has over the years sold surplus traction. Whilst locomotives under the Policy have been sold to other FOCs, at least an equal number have been disposed of to other customers, including scrap merchants, heritage railways and specialist operators. The size of DBC UK's locomotive fleet today, in relation to its principal competitors, is not in our view sufficiently large to justify the imposition of an additional Policy.

Thirdly, to address concerns on ensuring compliance with competition law, it is our view that provisions under the Chapter I of the Competition Act (1998) provide adequate protection against any conduct which has as their object or effect the prevention, restriction or distortion of competition. Should the Policy be discontinued, any attempt to foreclose a competitor from the market by refusing to sell surplus locomotives, when in receipt of a genuine and reasonable offer, may be contrary to competition law. We therefore consider competition law to be a sufficient protection against anti-competitive conduct, and it is no longer necessary to hold DBC UK to a higher standard than its competitors.

Adherence to the Policy by DBC UK is technically voluntary. Should DBC UK decide to discontinue with the Policy, we do not, at this stage, intend to take any further action. We remind DBC UK (and all other operators in the rail freight market) of their obligations under competition law. In the case of any suspected abuse or possible market foreclosure by any party, we will not hesitate to intervene.

We would like to thank all respondents to the Call for Evidence for taking the time to express their views on this matter.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'T. Cole', with a stylized flourish at the end.

**Tom Cole**  
**Head of Competition**