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Dear Tim

National rail recovery scheme - consent under licence condition 5

I write to you in relation to a proposal that has been developed between Network Rail, DB Schenker (DBS) and ATOC with regard to a national re-railing recovery scheme and the inclusion of Network Rail's crane fleet.

Background

As infrastructure manager Network Rail is required to secure the operation of the network so as to satisfy the reasonable requirements of customers in respect of the facilitation of railway service performance. In order to discharge this obligation Network Rail needs to have the necessary resources and equipment that is to re-rail any railway vehicle that for whatever reason has derailed on our network (and which therefore could cause wider disruption to the operation of train services). These resources and equipment include road and road/rail vehicles, lifting jacks and equipment, specialist resources and rail cranes. Network Rail has for some years contracted the majority of these services from DBS (which inherited the majority of this type of equipment at privatisation). Network Rail owns a fleet of four 75 tonne telescopic rail breakdown cranes and associated coaches which DBS also maintain and operate on our behalf.

In addition, the majority of passenger and freight operators have historically had separate agreements with DBS for re-railing services where derailments occurred within a depot or at stabling points.

As you may be aware DBS gave notice to these train operators approximately two years ago that it intended to terminate its re-railing service as it could no longer sustain its provision in the current operational model. As a result, passenger train operators have raised concerns with both ATOC and Network Rail about their lack of ability to re-rail vehicles at depots and stabling points. Consequently, Network Rail has brokered a conversation between ATOC, their members and DBS regarding the possibility of having a 'national rail' dedicated re-railing service that would cover all parties on any members network and facilities.



The details of the scheme have been in discussion for around 18 months and are about to be finalised. Currently, seven passenger train operators, Network Rail and DBS have indicated that they wish to participate in this national rail recovery scheme.

National rail recovery scheme

The scheme will be centred on the provision of three dedicated hubs; Millerhill Yard (near Edinburgh), Bescot (West Midlands) and Didcot (Oxfordshire). Each hub will be staffed twenty four hours a day, seven days a week and will be equipped with relevant road and road/rail vehicles, lifting equipment and a Network Rail owned rail crane with associated coaches.

The scheme will be operated by DBS (who already own and operate the hubs) on behalf of its members. Subject to obtaining any such regulatory consents as may be required (which is discussed in more detail below) Network Rail intends to provide our four telescopic rail breakdown cranes and associated coaches to the scheme and DBS will continue to maintain and operate them on our behalf as part of our contract with them.

The scheme will be funded by each member paying fees based on 5 'call out' segments. Network Rail will be buying 90 'call outs' – a figure based on the average number of call outs to DBS over the past two years. The total number of call outs sold across all members is 180.

The immediate benefit of the scheme is that dedicated resources will be available to attend a call out to any of members' infrastructure and be ready for departure from the relevant hub within 20 minutes of receiving a call. Currently for Network Rail, service provision to a derailment on the network is much slower.

Any passenger or freight operator can join the scheme. Any operator which chooses not to join the scheme may still request a call out to the scene of a derailment and charged accordingly. The charging arrangements will ensure that members are not subsidising service provision to non members. DBS will levy this charge as the operator of the service.

The rail recovery scheme is scheduled to commence on 1 April 2013 and be in operation for a minimum of 5 years.

Licence Condition 5 implications

As ORR will be aware, licence condition 5 does not permit Network Rail, without ORR's consent, to be directly or indirectly interested in the ownership or operation of any railway vehicle unless it is used in the operation of the network.

We recognise that the above proposal could mean that Network Rail will have an interest in the ownership of a railway vehicle not being used in the operation of the network. This would occur where a Network Rail owned rail crane and associated coaches (operated by DBS) is utilised on a call out to non Network Rail infrastructure. In practice, there are likely to be few

instances where a rail crane is used in connection with a third party owned network, given that Network Rail owns the majority of depots on the network. However, we recognise that there are LC5 implications were this situation to arise. We are therefore seeking consent to provide our rail crane fleet in to the new national re-railing scheme when used in connection with a third party owned network.

Our Network Operations function has confirmed that its derailment recovery strategy requires three of the four cranes to be available at any one time. The likelihood of numerous derailments occurring at the same time across all rail infrastructure is extremely low and we are satisfied that there is minimal risk to Network Rail's own operations through utilising the rail cranes in such a scheme. Indeed, the majority of derailments are likely to occur on our network. We also consider that using our assets in this way is extremely beneficial to the wider industry. An additional benefit to Network Rail is the expected improvement in response times to derailment incidents as a result of an organised, funded scheme – which in turn will minimise disruption to the operational network when such incidents occur.

The maintenance costs of the rail cranes, currently 100 per cent of which are incurred by Network Rail, will be included in the overall scheme costs and reflected in the fee paid by each member. This will result in a decrease in maintenance costs for Network Rail.

Network Rail shall be responsible for the insurance of the vehicles whilst on any members infrastructure and shall keep in full force insurance of not less than £2m covering against the physical loss or damage to the vehicles on an all risks basis. This will include keeping in full force and effect for the duration of the agreement, insurance of not less than:

- a) £10 million or any higher amount required to comply with applicable local regulatory insurance requirements against liabilities for death or personal injury to any persons arising out of the use or operation of the vehicle and against liabilities for loss of or damage to any property arising out of the use or operation of the vehicle ; and
- b) £5 million in respect of Employers' Liability insurance; and such other insurance cover as shall be necessary to cover any other risks DBS is accepting under the terms of the proposed agreement.

Accordingly, and on the basis as outlined above, Network Rail believes that it has taken all such steps as are appropriate to protect its legal interest in the vehicle.

Licence Condition 4 implications

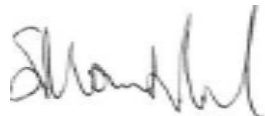
We have considered the LC4 implications in relation to the arrangement. We believe that the utilisation of the rail cranes within the recovery scheme is a permitted business activity (or is at least ancillary to the permitted business). This is because the use of our rail cranes will centre on assisting derailments across Network Rail's network, including within Network Rail owned depots and sidings and occasionally at locations that are at least physically connected to the network. If ORR does not agree with this conclusion, then we believe that this involvement could be classed as a de minimis activity.

It should be noted that no income will be generated by the inclusion of the rail cranes in the scheme. However maintenance costs associated with the rail cranes will reduce as a result of the costs being part of the total scheme costs. A clear benefit will be the reduction in response times for a re-railing call out service and the subsequent benefits this will bring to Schedule 8 payments.

We are satisfied that the inclusion of these assets in the rail recovery scheme poses minimal risk to Network Rail's ability to deliver its core operational requirements on the network and indeed is consistent with our wider stewardship obligations.

The proposed scheme is currently scheduled to commence on 1 April 2013 and accordingly we would be grateful if you consider this matter before that date.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sarah Mountford', written in a cursive style.

Sarah Mountford
Senior Regulatory Specialist