



OFFICE OF RAIL REGULATION

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15 July 2013

Group Company Secretary  
Network Rail Infrastructure Limited  
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### **ORR consent under network licence condition 5**

1. On 11 July 2013, Network Rail Infrastructure Limited (Network Rail) applied to the Office of Rail Regulation for consent under condition 5.1 of its network licence to an arrangement under which Network Rail would hire a class 57 locomotive to GB Railfreight Limited (GBRf) in July and August 2013, over a total of four days. This would enable GBRf to move railway vehicles between maintenance facilities for its customers. Network Rail's letter of application is at Annex A.
2. The arrangement would entail the licence holder having an interest in the ownership or operation of a railway vehicle in Great Britain, not used in the operation of Network Rail's own network. This would contravene condition 5 of its network licence, the purpose of which is to prevent the network operator from becoming a vertically integrated company.
3. We note that the short-term arrangements proposed by Network Rail do not raise vertical integration issues for us to consider. We also note Network Rail's statement that the proposed vehicle hire would present no risk to Network Rail's activity.
4. On the basis of the application dated 11 July 2013, and having had regard to our duties under section 4 of the Railways Act 1993, we consent for the purposes of condition 5.1 of the network licence to the licence holder entering into the proposed arrangement.
5. The consent applies from 15 July 2013. We may at any time modify or revoke this consent after consulting you if it appears to us to be requisite or expedient to do so, having regard to the duties imposed on us by section 4 of the Railways Act.

**Rob Plaskitt**



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11 July 2013

Dear Les

### **Class 57 vehicle hire to GB Railfreight Limited - consent under licence condition 5**

Further to our earlier telephone conversation, you kindly agreed to consider a licence condition 5 application at short notice. We thank you for your assistance in this matter. The relevant details are set out below.

GB Railfreight Limited (GBRf) has recently approached Network Rail to request the hire of a Class 57 locomotive on the following dates:

- Tuesday 16 July to Wednesday 17 July 2013
- Friday 26 July 2013
- Monday 19 August 2013.

The hire of a Class 57 locomotive will enable GBRf to move vehicles between maintenance facilities for its customers.

Network Rail has six class 57 locomotives (on lease from Porterbrook) that are used as the haulage locomotive on a variety of possession delivery and infrastructure monitoring services through the National Delivery Service (NDS). On the dates in question Network Rail does not have a requirement for all six locomotives. This means that a locomotive could be hired out to GBRf during this period at no risk to Network Rail activity.

It is proposed that the Class 57 locomotive will be hired on normal commercial terms to GBRf who will collect and return it in time to be re-entered into the core Network Rail delivery programme.

Subject to obtaining any regulatory consents as may be required, Network Rail intends to provide one class 57 (vehicle number yet to be allocated) on the dates outlined above to GBRf.

### **Licence Condition 5 implications**



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 will mean Network Rail will have an interest in the ownership of a railway vehicle not being used in the operation of the network. We are therefore seeking a short term consent, for the dates outlined above, which will enable us to hire out the locomotive to GBRf in order for it to carry out its operations.

It should be noted that under the terms of the proposed hire agreement it is envisaged that GBRf will be responsible for collecting and returning the locomotive to and from our depots.

GBRf must, on or before the handover date and until the vehicle is returned to Network Rail, obtain and keep in full force appropriate insurance covering against the physical loss or damage to the locomotive on an all risks basis, including during transit. This will include keeping in full force and effect for the duration of the hiring 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 locomotive and against liabilities for loss of or damage to any property arising out of the use or operation of the locomotive ; and
- b) £5 million in respect of Employers' Liability insurance; and such other insurance cover as shall be necessary to cover any other risks GBRf 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**

As you will be aware LC4 prohibits Network Rail (except with the written consent of ORR) from conducting any business other than the Permitted Business (effectively operating and maintaining the network).

ORR has previously determined in relation to the hiring of wagons for use by a third party when they are not required by Network Rail, that this activity is not included in the definition of Permitted Business although such an activity would be permissible if carried on with consent or within our *de minimis* facility under licence condition 4.

It is our intention that the proposed hire arrangement will be carried out under the *de minimis* facility, and tracked as a 'turnover' activity. For the avoidance of doubt, Network Rail's actual 'investment' costs under the *de minimis* facility will be negligible - the only costs to Network Rail being the staff costs of working up this transaction with GBRf and obtaining the necessary regulatory consent.

I look forward to hearing from you once you have had the opportunity to consider this application. Should you have any questions please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read "K. Johnson". The signature is written in a cursive, flowing style with a large initial "K" and a long, sweeping underline.

Kara Johnson  
Senior Regulatory Specialist