
**CONSULTATION ON THE MODEL CONNECTION CONTRACT
AND
GENERAL APPROVAL
27TH JANUARY 2014**

1. INTRODUCTION

- 1.1 Geldard Consulting is an independent consultancy specialising in the development of rail freight facilities and services for a wide range of clients from the railfreight supplier and customer markets.
- 1.2 The consultancy has worked closely with the ORR to develop improved regulations and processes for the access to rail freight facilities, particularly at many UK ports.
- 1.3 This response to ORR's consultation is based on a close awareness of the rail freight market and the detailed involvement in securing a significant number of Connection Contracts over recent years.
- 1.4 The response follows the format of ORR's set of consultation questions.

2. THE QUESTIONS

2.1 Question 1

Is the default interest rate set at an appropriate level? If not, what should it be and why?

Comment:

- What is the purpose of the default interest rate?
- It is not set to align with the base rate but to create an incentive for prompt payment of valid MCC charges to Network Rail.
- It is only charged when the Adjacent Facility Owner fails to conform to his contractual obligations.
- Slow payment of Network Rail charges adds to Network Rail costs both in terms of administration and funding.
- It is believed that slow payment is common practice in many cases.
- It is recommended that the default interest rate is not reduced and is maintained at the current level.

2.2 Question 2

Does the definition of initial condition statement need to be improved? If so, how and why?

Comment:

- Agree the definition needs no change.
- It is recommended that photographs should be attached to the Initial Condition Statement as contained in Schedule 1.

2.3 Question 3

Do you agree with Network Rail's proposed standard formula for use in schedule 3?

Comment:

- The adjustment factor is based on the standard formula as used in Facility Access Contracts other than the reduction of 0.01.
- This variation is significant and for the FAC calculation for 2014 would have reduced the adjustment factor from 1.030 to 1.020.
- If this element is to provide for Network Rail's annual improvement in "efficiencies" it is justifiable and the proposed formula should be used.
- However please note comments to Question 4.

2.4 Question 4

Do you have any comments on the proposed new clauses and schedules?

Comment:

- Agree with the proposals for renewals and emergency renewals.
- It is important to note that the "variation of amount" is a review at five yearly intervals and is in addition to the RPI adjustment as covered under Question 3.
- The significant point here is that the element of Network Rail "efficiencies" which is being applied annually to the RPI increase is not double counted and also applied when calculating the five yearly "variation of amount".
- If this scenario cannot be incorporated into the MCC, it is for Network Rail to ensure that it does not occur.
- The use of email is agreed for the service of a notice.
- It is agreed that the Plan should be attached to the contract.
- The use of photographs to supplement the plan is recommended as indicated in Question 1.

2.5 Question 5

Is the range for which the liability cap can be generally approved between £500,000 and £1,000,000 still appropriate? If not, please comment on what changes should be made and why?

Comment:

- Recognising that the cap was set in 2005 it is time that this was increased to 2014 levels.
- As the MCCs will be agreed between the parties under general approval it is suggested that a range of values is continued to be used.
- An increase of say 30% for the period in question seems appropriate to give a range of £650,000 to £1,300,000.

2.6 Question 6

Is the general approval ceiling of £20,000 still appropriate? If not, what should it be and why?

Comment:

- The charges matrix applied to determine charging levels is fair and transparent.

- Under general approval the parties must agree these levels but it seems unnecessary to place a low cap on the level before specific approval is required.
- It is recommended that the level is increased by inflation since 2005, say 30%, and that the new level is also increased by inflation at the five yearly “variation of amount” review.

2.7 Question 7

Do you have any comments on the proposed new connection contract application form (Form C)?

Comment:

- No comment.

2.8 Question 8

Are there any other issues you would like to comment on?

Comment:

- No further comments.

2.9 Question 9

Impact assessment how will these proposals affect you?

Comment:

- N/A.

3. FURTHER MATTERS

The responses contained above are not confidential

Names do not require to be withheld.

C J Geldard
27th January 2014

GELDARD CONSULTING LTD

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From: Christopher Geldard (Geldard Consulting)
Sent: 29 January 2014 8:11 PM
To: Gordon Herbert (ORR)
Subject: Re: Connection Contract consultation

Gordon,

Further to my response sent to you on 27th January, could the following point please be added. I regret I am currently out of the office and am unable to send this to you in Word format:

“Changes to the network - Geldard Consulting understands that Adjacent Facility Owners, particularly those who are not also operators of trains, have no formal recourse or right of participation in Network Rail’s Network Change process as set out in Part G of the Network Code. This is the case even if a particular Network Change proposal on the network may directly or indirectly materially affect the operation of trains to/from the Adjacent Facility or that facility’s operation.

Whilst relevant train operators will be consulted about the proposals under the Network Change process, the Adjacent Facility Owner will not, even though a connection contract constitutes an access contract under the

Whilst it could be argued that Network Rail’s obligations under Clause 5.2.1(b) and Clause 5.2.3(c) of the MCC are intended to take this issue into account, it is far from clear as the term *“impede access at the Connection Point”* (emphasis added) in Clause 5.2.3(c) could be interpreted as being related to changes that are happening adjacent to and in the vicinity of the connection itself and not remote changes that could be equally as detrimental. In any event there is no formal process that covers such consultation, equivalent to that set out in the Network Change process.

Geldard Consulting, therefore, believes that consideration should be given to how Adjacent Facility Owners can be given proper consultation of and afforded adequate protection from Network Change proposals on Network Rail’s network that may have a material effect on the relevant Adjacent Facility."

With kind regards

Chris

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