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Dear Tim

Use of Rail Delivery Train on Manchester Metrolink - consent under licence condition 5

Network Rail has very recently been approached by Manchester Metrolink and its contractor Stobart Rail who have requested use of Network Rail's, Rail Delivery Train (RDT) to undertake track renewals on Manchester Metrolink. Use of the RDT will enable the timely delivery of long sections of steel track and enable the Metrolink network renewal project to remain on target. The only alternative is to order short rails, transport them by road and weld them on site which is considered costly and an inefficient use of time and resources.

Network Rail has been asked by Manchester Metrolink whether it can identify an opportunity to use the RDT in early March 2013 and at further times throughout the duration of the Metrolink network renewal project when the vehicle is not required for Network Rail purposes. It is proposed that the RDT will be hired on normal commercial terms to DB Schenker Rail (UK) Limited ("DB Schenker"), who will collect it from and return it to Bescot sidings in time to be re-entered into the core Network Rail delivery programme. The RDT will travel from Bescot to Bury via Castleton and the East Lancashire Railway, where there is a connection onto the Metrolink network. The first available time in the delivery programme is on Sunday 3 March which would meet the timetable needs of the Metrolink network renewal project.

Licence Condition 5 implications

Licence condition 5 of our Network Licence 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 that is not being used in the operation of the network whilst it is engaged in the proposed activity.



Network Rail will be responsible for the insurance of its vehicles whilst it is being used for the proposed purpose and will keep in full force insurance of not less than £2m covering against the physical loss or damage to the locomotive on an all risks basis. 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 DB Schenker 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.

Given the likelihood that we will be asked to make the RDT available on more than one occasion, we are seeking consent to use the RDT in accordance with the above proposal from Sunday 3 March 2013 until completion of the Metrolink network renewal project. We recognise that the recent approach by Manchester Metrolink means that we are subsequently in the position where we are asking ORR to consider this matter before 1 March 2013. This is a shorter timescale than we would like to give but we are responding to a short notice request from a third party.

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 DB Schenker and obtaining the necessary regulatory consent. These costs will also be tracked.

We would be grateful for your early consideration of this matter in this instance. Should you have any questions or require any further clarification, please do not hesitate to get in touch.

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'.

Kara Johnson
Regulatory Specialist