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By Email and Post
Date: 13 August 2015

Dear Sirs

APPEAL UNDER PART M OF THE NETWORK CODE

Thank you for your letter dated 30 July 2015. We note that the ORR is now considering the appeal, and that you will let us know of your determination in due course.

We write with particular reference to the Letter of Response from DB Schenker Rail (UK) Limited (DBS) dated 22 July 2015. We note that DBS opposes our appeal.

We do not propose to repeat the contents of the Notice of Appeal, but we would like to make some brief new points which respond to the points raised by DBS in its Letter of Response. We respectfully ask the ORR to take these points into account in considering the appeal.

1 No link between Parts D and G of the Network Code

The main point made by DBS is a claim in paragraphs 2.1 to 2.7 that there is a link between Parts D and G through the shared definition of "Network" in Part A, so that if the Network has not been changed by Part G, then Part D cannot operate on it, so the Part G change needs to be decided and implemented first.

This misinterprets the relevant provisions of the Network Code. We point out the following:

1.1 Although the definition is shared, that does not constitute an actual link. Had the Code been drafted with the intention of a specific link between Parts D and G, the link would be clearly set out and obvious.

1.2 The "Network" is not described as a single fixed structure. It is defined in Part A as "...the network of which Network Rail is the facility owner and which is situated in England, Wales and Scotland". This Network can be changed. Part A states that a "Network Change" has "the meaning ascribed to it in Part G". Part G, as recited by DBS, contains a long definition of "Network Change" but the essence of it is that the change will affect the operation of the Network itself or the trains on it, so the change could affect the Network only, the trains only, or both. By contrast, Part D refers to the "Network", and makes no reference to Network Change. It is therefore very clear that references to "the Network" includes whatever changes are being undertaken, at whatever stage those changes have reached. There is no risk of "two Networks", as DBS claim in paragraph 2.6.

2 Other matters

DBS raises certain other matters, to which we respond:

2.1 In paragraph 2.8 DBS claims that our use of the words "in conjunction with" at paragraph 3.6 of the Notice of Appeal means that the Appellant accepts there is a link. This is wholly incorrect. "In conjunction with", simply meant that the Part G change and Part D change were designed to run in parallel. The words do not imply an express link and should not be read as such.

2.2 In paragraph 2.9 DBS claims that two "Timetabling Panels...have come to broadly the same conclusions in respect of these matters". That is a misleading statement. The first of those Panel decisions has been overturned by the ORR on appeal. The second, the subject of this appeal, was based on the first decision before it was overturned.

All other arguments put forward by DBS are already dealt with in our Notice of Appeal.

Please let us know if any further comment or explanation is required.

Yours faithfully

Sian Williams

Legal Counsel

Cc
GB Railfreight Ltd
Freightliner Ltd
Freightliner Heavy Haul Ltd
DB Schenker Rail (UK) Ltd
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