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Dear Stewart,

Connection contract between DB Cargo International Limited (DBC) and Rail for London Limited (RfL) at Wembley EFOC “C” Sidings LMD

1. On 4 April 2017 the Office of Rail and Road (**ORR**) approved the connection contract between DBC and RfL, which was first submitted to us on 29 March 2017 and then resubmitted on 3 April 2017 under section 18 of the Railways Act 1993 (**the Act**). This letter sets out the reasons for our decision.

Background

2. In 2014, DBC sold its interest in part of Wembley Yard to RfL, which allowed RfL to construct stabling sidings for its electric multiple units. The new depot comprises of three sidings which connect at either end with DBC’s infrastructure, before continuing onto Network Rail’s network. The parties therefore want a connection contract to cover the points where their networks connect.
3. We first were contacted by RfL about the connection contract in January 2015, at which time we provided advice on our model connection contract. We also made some general comments on an early draft of the contract in May 2015. We noted that departures from the model would need to be justified, a plan of the connection points would be needed and that the proposed nominal £1 annual charge should be reconsidered. These issues were addressed in the final connection contract we received.

Consultation

4. A full industry consultation for the connection contract has been carried out by DBC, running from 31 October 2016 to 28 November 2016. DBC confirmed that no consultees asked any questions or raised objections in the consultation.

ORR Review

5. We received the first formal submission of the application from DBC on 29 March 2017, and the second submission on 3 April 2017 to correct the Liability Cap being left out of Schedule 5.
6. The proposed connection contract is based on our model connection contract, with modifications made by the parties to reflect that DBC is the facility owner and not Network Rail, including the removal of references to ORR's price reviews. Clause 15.4 has been adjusted to cover all renewals instead of just emergency renewals. As DBC is a facility owner and not an infrastructure manager with a rolling programme of renewals, this seems reasonable and none of the protections provided by a dispute over renewals being considered a Relevant Dispute have been removed.
7. The Liability Cap in Schedule 5 was not completed in the first formal submission. The parties confirmed this was in error as it was included in the consultation version and resubmitted the contract with it included. We had no further comments.

ORR Decision

8. This application is under section 18 of the Act and therefore is agreed between the parties, who are prepared to enter into the agreement as submitted. Therefore we are content to approve this agreement.
9. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
 - (i) to protect the interests of users of railway assets;
 - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
 - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
 - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
10. Once the agreement is signed, in accordance with section 72(5) of the Act, you must send a copy to us within 28 days and in accordance with section 72(2)(b)(iii), a copy will be placed on our public register and website.
11. In entering any provision on the register, we are required to have regard to the need to exclude, as far as is practicable, the matters specified in section 71(2)(a) and (b) of the Act. These sections refer to:

- (i) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of ORR, seriously and prejudicially affect the interests of that individual; and
 - (ii) any matter which relates to the affairs of a particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in the opinion of ORR, seriously and prejudicially affect the interests of that body.
12. When submitting the copy of the signed agreement would you therefore please identify any matters which you would like us to consider redacting before publication. You will need to give reasons for each request explaining why you consider that publication would seriously and prejudicially affect your interests.
13. This letter and the associated directions are copied to Michael Bray of Burges-Salmon.

Yours sincerely,

Katherine Goulding