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Lindsay Durham
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22 May 2015

Dear Lindsay

ACCESS APPEAL – SOUTHAMPTON MARITIME TERMINAL

Thank you for your letter of 19 May 2015. You made points about the material to be redacted from your representations; our intention to invite the applicant to comment on the scope of your redactions; and Freightliner being given the opportunity to make further representations. I will address each of these points in turn.

Redactions

Thank you for your comments. We note that, following further consideration, you are prepared to allow the disclosure of certain information to the applicant which you had previously requested be redacted. I would be grateful if you could send us a revised version of your representations, with the redactions limited to those set out in your table. We will then pass this on to DB Schenker (DBS) in accordance with the appeal process and to seek its comments on the scope and nature of the redactions.

You have requested, however, that certain information identified in your table, continues to be withheld from disclosure to DBS given its highly confidential nature and the commercial damage you consider would be likely to result if this information were disclosed to DBS. We are currently considering your representations on the remaining information you want redacted. It may be that a meeting is necessary to work through each item. We will be in touch with you about that.

DBS's representations

You state that the Office of Rail and Road (ORR) is not obliged to allow the applicant an opportunity to comment on your request for redactions. However, we will give DBS this opportunity, as set out in my letter to Stewart Smith dated 1 May 2015.

Our intention, as far as practicable, is to be an open and transparent regulator. This is especially the case in novel situations. Our assessment of a case relies heavily upon the information provided by the parties. We must take into account each party's response to the information provided by the other. If the applicant is denied the opportunity to review any of the other party's representations, then they should be told why and be able to comment. DBS has a clear interest in any decisions taken in this regard.

Opportunity for Freightliner to provide additional representations

You have requested that ORR provide Freightliner with the opportunity to make further comment on DBS's secondary representations on the grounds of fairness. As per our guidance, we will follow the procedures established for applications received under section 17 of the Act in respect of a Regulation 29 appeal. As you are aware, under para 3 of Schedule 4 of the Act, ORR is not obliged to invite further comment from the facility owner on the applicant's representations although we may from time to time request or invite further information, clarification or representations from either party. While it is our current intention to allow you to see any further DBS representations in respect of the substantial issues, we will not be making any decision on whether to invite further representations from Freightliner until we have received DBS's representations and given them due consideration.

As regards the scope of redactions, it may be that there will need to be further iterations in respect of what information should be disclosed, once we have received DBS's comments and considered the issue in the round. We will, however, seek your views in relation to this if there are unresolved issues and we consider it appropriate to do so.

Thank you for your continued cooperation. I look forward to hearing from you soon and receiving your revised redactions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Hammill', written in a cursive style.

Bill Hammill