

30 March 2015

1. Direct Rail Services Limited
2. GB Railfreight Limited
3. DB Schenker Rail (UK) Limited
4. Freightliner Heavy Haul Ltd
5. Colas Rail Limited
6. Associated British Ports
7. Geldard Consulting

Dear all,

Associated British Ports (ABP): Supplemental Agreements to Facility Access Contracts

1. On 30 March 2015 the Office of Rail Regulation (ORR) approved the following supplemental agreements (SAs) to various facility access contracts (FACs) that ABP has with freight train operating companies (FOCs), as follows:

FOC	SA	FACs amended
Direct Rail Services	2 nd SA	The Port of Southampton 14 April 2011. The Port of Hull 14 November 2011. The Port of Barrow 14 November 2011.
GB Railfreight	3 rd SA	The Port of Immingham 6 May 2010 The Port of Southampton 17 July 2010. The Port of Hull 11 January 2011. Hams Hall Railfreight Terminal 10 May 2011.
Freightliner Heavy Haul	3 rd SA	The Port of Immingham 22 April 2010. The Port of Hull 12 November 2010. The South Wales Ports of Newport, Cardiff, Barry & Swansea 17 March 2011. The Port of Goole 15 October 2012.
Freightliner Heavy Haul	4 th SA	Port of Ayr 17 March 2011
DB Schenker Rail	3 rd SA	The Port of Southampton 15 September 2010. Hams Hall Railfreight Terminal 15 September 2010. The Port of Hull 31 December 2010 The South Wales Ports of Newport, Cardiff, Barry & Swansea 14 March 2011. The Port of Ipswich 21 July 2011. The Port of Goole 22 March 2012.
DB Schenker Rail	4 th SA	Port of Ayr 15 October 2010.
Colas Rail	2 nd SA	Hams Hall Railfreight Terminal 1 September 2010

2. These agreements were formally submitted to us between 24 and 27 March 2015. This letter sets out the reasons for our decision. We have done a joint decision letter covering all the SAs as the issues involved are the same.

Purpose of the agreements

3. The primary purpose of all these SAs is to amend the expiry dates of the existing FACs. The SAs will take effect from 31 March 2015 and will amend the expiry date of each respective FAC until **31 March 2020**. The FACs were otherwise due to expire before the end of 2015.

ORR review and policy

4. Our initial review of the SAs took place in January 2015. They did not raise any performance or economic issues.

5. The FACs have been specifically approved by ORR in line with our *Duration of Access Contracts Policy*¹. This policy is relevant because by amending the expiry dates to 31 March 2020 each one would then be longer than five years in total duration.

6. In June 2005 we published a conclusions document that outlined our Duration of Access Contract Policy, at the time referred to as Long Term Access Contracts². In the document we explained that FACs are considered to be framework agreements and that:

“framework agreements shall in principle be for a period of five years. The infrastructure manager may agree to a shorter or longer period in specific cases. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks.”

7. We are content to approve the amendment of the FACs because commercial agreements between ABP and the FOCs grant the FOCs entry and exit rights into and out of the terminals in line with the new common FAC expiry dates of 31 March 2020. Additionally, we recognise that:

- Having all the FACs aligned to terminate on the same date allows the parties to manage them more efficiently.
- All the parties support the changes to their FACs.
- There is consistency of treatment.
- We are not aware of any objections and there are no concerns with the current FACs.

¹ Long-term track access contracts: final conclusions June 2005 (http://orr.gov.uk/_data/assets/pdf_file/0004/1678/240.pdf)

² The legislation has changed again since 2005 but this policy remains valid.

ORR's conclusions

8. In considering the application and in reaching our decision, we are required to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We believe that approval of this supplemental agreement is consistent with these duties, in particular our duties to:

- (a) protect the interests of users of rail services;
- (b) promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;
- (c) contribute to the development of an integrated system of transport of passengers and goods;
- (d) promote competition in the provision of railway services; and
- (e) enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

Administration

9. Copies of the approval notices and the SAs will be placed on ORR's public register and website.

10. A copy of this letter and each approval notice will be sent to Chris Geldard of Geldard Consulting who is acting for Associated British Ports. A copy of each relevant approval notice and SA will be sent to each respective FOC (as at annex A), along with a copy of this letter.

Yours sincerely


Gordon Herbert

Annex A: Addressees

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