



Michael Beswick
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15 November 2012

Dear Michael

Many thanks for taking the time to meet with us on Tuesday 6 November to discuss ORR's document "Conclusions and Statutory Consultation", issued by ORR on 16 October 2012 (the **Conclusions**) in response to ORR's consultation (the **Consultation**) on the formation and management of the Rail Delivery Group (**RDG**).

Further to our response to the Consultation and the concerns raised in Tuesday's meeting, I would like to confirm in writing that we consider Keolis should be a leadership member of RDG as it meets not only the financial threshold as set out in the RDG articles, but that it also satisfies the "influence and control" test described in the Conclusions.

In our 13 September 2012 response to the Consultation, we reserved our position pending the publication of the RDG articles. The Consultation indicated that appointment of a leadership member would depend upon "transparent and objective criteria" based around the financial thresholds. Further, the Conclusions appear to accept Keolis's view that it exceeds the financial thresholds. As raised in Tuesday's meeting, we consider that the articles that have now been published (which we understand were endorsed by the RDG on 9 October 2012 but are yet to be adopted) represent a material departure from the approach signalled in the Consultation and the Conclusions.

Article 28 of the RDG articles, for example, appears to operate to exclude certain active GB operator owning groups (including Keolis) from qualifying as a "leadership member" even if they meet the transparent and objective financial thresholds. Article 28 instead adopts a subjective and discretionary approach, restricting membership for joint venture partners to "only the body corporate that appears to the directors of the Company to be exercising leadership of that Group's passenger rail activities". We believe that Article 28(c) should reflect the transparent and objective approach detailed in the Consultation and should be amended so that all body corporates who satisfy the financial thresholds should be leadership members. The subjective and discretionary aspects of this article are inappropriate and should be removed.

The Conclusions refer to part of Keolis's response to the Consultation in the paragraph titled "Membership qualification criterion". ORR appears to justify the exclusion of Keolis as a leadership member on the grounds that "the aim of the leadership group is to enable decision makers to drive industry change". ORR's conclusion that minority shareholders are not decision makers, as they do not have "the same level of influence and control" as majority shareholders is incorrect and we disagree strongly with ORR's position on this issue. As we discussed on Tuesday, material changes to our franchises, including any material change to the conditions of

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the licence, are "Reserved Matters" under the terms of our shareholder agreements with both First Group and Go-Ahead, giving Keolis an equal say in all key decisions affecting our franchises. Keolis therefore does have influence and control on its 4 TOCs.

Keolis's leading role in the UK rail industry is not limited to its participation in its operational franchises. Indeed, the industry recognises Keolis's role in key decision making, with Keolis having been appointed to the board of ATOC, putting it in a position to exercise influence and control over the industry as a whole. As such, Keolis is a decision maker, is able to therefore to help in driving industry change and should qualify as a leadership member.

Further and without prejudice to our key concern above, we wish to re-iterate two further concerns on the formation and management of the RDG:

- (a) On our review of the RDG articles, we note that Go-Ahead is to be a Founder Member. Our understanding is that Govia should be the Founder Member as it is the owning group (Go-Ahead currently has no franchises on its own).
- (b) Whilst we recognise RDG's stated intentions to consult and involve the wider railway industry in the decision making process, we have seen little so far to suggest that RDG will consult or involve Keolis in industry change. For example, paragraph 1.14 of the Consultation envisages that the ORR and/or RDG would discuss particular concerns, as raised in the responses to the Consultation, with stakeholders "so that the structure and organisation of RDG reflects as far as possible the wishes of the industry". Neither ORR nor RDG contacted us to discuss the concerns we raised in our consultation response prior to the Conclusions document. Nor have we ever been consulted or received information from RDG directly or through our TOCs.

As we mentioned on Tuesday, we therefore consider that the ORR should not amend the licences as set out in the Conclusions document (which in effect adopts and endorses the RDG articles) until the issues raised in this letter have been addressed.

We note that the ORR is currently undertaking statutory consultation in relation to the licence conditions. As the RDG articles are incorporated by reference into the passenger licences we consider that part of the statutory consultation relates to the format and content of the RDG articles. ORR should therefore treat this letter as our response to that consultation.

Please let me know whether you would like to discuss the content of this letter.

Yours sincerely,



Alistair Gordon

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