

Margret Child

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Industry Contracts Manager
DB Schenker Rail (UK) Limited
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Iain Dudley
Procurement Manager
Direct Rail Services Limited
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Dear Stewart and Iain

Directions in respect of a facility access contract between DB Cargo International Limited and Direct Rail Services Limited

1. On 5 December 2016 the Office of Rail and Road (ORR) issued directions under section 18 of the Railways Act 1993 (the Act) to DB Cargo International Limited (DBC) to enter into a facility access contract with Direct Rail Services Limited (DRS) as formally submitted on 2 December 2016. This letter is to explain our directions and the reasons for them.

Summary

2. The purpose of this contract is to grant DRS the rights necessary to access Mossend Euroterminal (the Facility) for its intermodal trains and empty coaching stock trains run on behalf of Abellio Scotrail. The rights are to commence on the date of signature of this contract and will expire on 31 March 2019.

Consultation

3. In line with the industry code of practice for track access applications¹, DBC conducted a consultation of potentially affected operators and other interested parties. The consultation ran from 7 September 2016 to 29 September 2016. No objections or substantive comments were declared.

ORR Review

1. We received a submission from DBC on 21 October 2016.
2. The parties wanted the contract to be governed by Scottish Law. However, after further consideration they opted for the governing law to be that of England and Wales (Clause 11).
3. The contract was resubmitted on 2 December 2016 with various consequential changes.

¹ <http://orr.gov.uk/what-and-how-we-regulate/track-access/guidance>

4. The parties also confirmed, under Section 18(7) of the Act, that they have no objection to ORR issuing a direction with a change to the proposed contract as follows:
In Recital (D) on page 3, 'Office of Rail Regulation' to be changed to 'Office of Rail and Road'.

ORR Decision

5. This is an application under section 18 of the Act and therefore an agreed agreement between the parties who are prepared to enter into it as submitted.
6. 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) enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
7. Once the agreement is signed, in accordance with section 72(5) of the Act, you must send a copy to ORR within 28 days and in accordance with section 72(2)(b)(iii), a copy will be placed on our public register and website.
8. In entering any provision on the register, ORR is 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:
 - a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that individual; and
 - b) 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 the ORR, seriously and prejudicially affect the interests of that body.
9. When submitting the copy of the signed agreement would you therefore please identify any matters which you would like the ORR 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.

Yours sincerely,



Margret Child