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OFFICE OF **RAIL REGULATION**

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All operators with liability insurance obligations

Third Party Liability Insurance

In my letter of 7 August 2007[1] I asked for your views on an insurance proposal by Network Rail (NR) that operators should jointly purchase catastrophe level third party liability insurance (TPLI). Thank you for the 16 responses we received from a variety of operators, including contractors, passenger train operators (TOCs) and freight operators (FOCs). Taking into account your views, our conclusions are that:

- **There is insufficient support across the industry to justify working up the NR proposal in further detail at this time.**
- **Operators can assess for themselves the costs and benefits of joining NR's current facility (which can provide cover above £25M). This facility may be particularly attractive to smaller operators, though NR will consider requests from any interested operator able to provide basic underwriting information by 31 December 2007.**
- **Our general insurance approval remains fit for purpose. The default minimum level of TPLI required is £155M per incident. As now, operators are free to ask for a variation from the general approval, where they can demonstrate the risks they face mean a lower level of cover is appropriate for them.**
- **We will update our insurance guidance in early 2008 to include the procedure for applying for variations to the general approval, and the way we monitor compliance. Variations are available now; there is no need to wait for the updated guidance.**

NR's proposal

NR suggested it could buy enhanced catastrophe level TPLI cover (at £100M-£200M) for all operators with a significant saving in whole industry costs. This could benefit all operators through reduced premium payments.

Responses

Many respondents said they understood why we were considering an industry wide scheme and agreed there could be benefits to the rail industry. A common reaction was that operators would need to be convinced there would be significant financial benefits to

[1] http://www.rail-reg.gov.uk/upload/pdf/ins-3rdpty-070807.pdf

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them individually before they would consider joining. These benefits would also have to be sustainable over the longer term. Some firms instinctively prefer to retain responsibility for their own insurance arrangements.

Net Benefits

Possible benefits of the scheme are that there would be better, centralised claims management; improved public protection with higher cover than now; and other economies of scale. Operators generally agreed savings could be made but some were not convinced that they would benefit individually. Some operators were clear there would be no net benefits to them. One was concerned that it might pay more than now. Several needed more information about costs before they could say whether there would be any significant net benefits. Others noted they were already members of NR's existing facility.

One operator noted that the costs of insurance over £100M were only a very small proportion of its total insurance costs. Therefore, any savings from the scheme would be small and not enough to balance the loss of commercial freedom. Others were concerned about loss of flexibility and direct relationships with insurers. Some respondents were large multinational transport businesses. For them, carving out £100M-£200M of GB TPLI rail cover from wider group policies would be difficult without providing meaningful savings. Another concern was that lower risk firms could end up subsidising higher risk firms.

Cost recovery

NR's original proposal was that costs should be recovered through track access charges. This would be easy to collect and an efficient way of making a scheme industry wide. We expressed reservations. Six of you suggested direct invoicing of participants for reasons of fairness, transparency, accountability and control. One preferred the track access charge approach. Several operators noted how shared arrangements would involve a debate about fair, risk-reflective premium allocation.

Compulsion

Ten respondents opposed compulsion (many strongly), only two were in favour (one tentatively). Some respondents expressed an interest in taking the proposals forward and tackling the technical challenges.

Other matters

Operators were concerned about unregulated rail activities and doubted whether the scheme would extend to non-NR networks. If they had to purchase extra cover for these activities, the benefits of the scheme to them would be reduced.

At least one operator noted that while cover would be increased to £200M, total TPLI cover could be reduced compared to a situation where each operator has £155M of cover.

At least one operator was worried that even an optional scheme seemed to suggest the minimum level of cover required was increasing - unnecessarily - to £200M.

Conclusions

There is clearly insufficient support to warrant extensive work to develop the proposal at this time. Operators – especially smaller new entrants – are free to explore the issues with NR, including becoming members of its existing facility (which can provide cover above £25M per incident up to £155M), or indeed to look for other alternatives. Attached is the sort of information NR tell us they would need to assess a request to join in with their arrangements.

The £200M figure mentioned in the NR proposal was to illustrate that the proposal could deliver increased cover at a lower aggregate cost. We suggested in our November 2006 consultation that we might reduce the default minimum level of third party liability insurance required to £100M per incident, as a way of giving operators wider discretion over their arrangements. We summarised the mixed reactions to that proposal in February 2007[2], and we left the £155M figure unchanged in the light of those responses. We have not identified any compelling reasons to revisit that decision.

Any operator who thinks that the £155M requirement is excessive for their particular operations should apply to ORR for a variation to the general approval. The procedures for applying for a variation are in our TPLI guidance[3]. We will improve this guidance and reissue it on our website in early 2008.

One operator noted that the general approval needed backing up by a monitoring and compliance programme. We can ask operators for information about compliance with the general approval. We will do that where we need to. We are introducing a risk based inspection programme and we will outline that in the reissued TPLI guidance.

We are grateful to everyone who has contributed to the discussions on TPLI, including NR. If you have any queries please contact me or my colleague Gordon Herbert (**Gordon.Herbert@orr.gsi.gov.uk**).

Where respondents gave us permission to publish their replies, these are at **http://stagedweb/server/show/ConWebDoc.8945**.

Yours faithfully

Rob Plaskitt

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[2] http://www.rail-reg.gov.uk/upload/pdf/insrev-orr-conc-imp.pdf
[3] http://www.rail-reg.gov.uk/upload/pdf/249.pdf

Train Operation Company/Freight Operating Company Underwriting Information required by Network Rail

- Annual Revenue:
- Annual Track Miles:
- Routing Details:
- Running Times (Off peak, Night Hours, etc.):
- Maximum Speed:
- Rolling Stock:

  Locomotives
  - Number
  - Type
  - Unit Value
  - Ownership (Provide a copy of the Conditions of Hire if applicable)

  - Maintenance Responsibilities

  Passenger Coaches/Wagons
  - Number
  - Type
  - Unit Value
  - Ownership (Provide a copy of the Conditions of Hire if applicable)

  - Maintenance Responsibilities

- Make Up of Individual Trains:

- Length
- Number of Locomotives
- Number of Passenger Coaches/Wagons

- Drivers:

  - Number
  - Experience
  - Employees or Contracted (Provide copy of Contract Conditions for supply of Drivers if applicable)

- Passengers (if applicable):

  - Maximum number per train
  - Total number carried per annum

- Goods Transported (if applicable):

  - Description
  - Maximum Value per Train
  - Conditions of Carriage
  - Period of the Contract for Carriage

- Claims history for past 5 years

Signed... Dated.......................

(For and on behalf of)

For further information speak to Ian Thompson (020 7557 8325) or Martin Davidson (020 7557 8739) at Network Rail.