



Neil Leedham
Executive, Track Access
Office of Rail Regulation
1 Kemble Street
London WC2B 4AN

8 January 2010

Dear Neil,

DB Schenker Rail (UK) Limited
Planning Department
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NOTICE OF APPEAL TO THE OFFICE OF RAIL REGULATION PURSUANT TO CONDITION J13.3 AND PART M (APPEALS) OF THE NETWORK CODE BY DB SCHENKER RAIL (UK) LIMITED

ACCESS DISPUTES PANEL OF THE ACCESS DISPUTES COMMITTEE DETERMINATION IN RESPECT OF REFERENCES ADP42 AND ADP44

Thank you for your letter dated 24 December 2009 confirming that ORR is currently minded to hear the appeals made by DB Schenker Rail (UK) Limited ('DB Schenker'). DB Schenker notes that should the appeals proceed, ORR is also currently minded to treat [Redacted] as an 'interested party' as [Redacted] has a significant interest in the outcome of this appeal. Accordingly, ORR has asked Network Rail, Direct Rail Services and DB Schenker for their comments on this preliminary view.

The term 'interested party' appears not to be defined in the Network Code or the Access Dispute Resolution Rules. DB Schenker notes, however, that Part M of the Network Code and the Access Dispute Resolution Rules do use the term 'dispute party' to refer to parties that may be materially affected by the outcome of the reference which could be considered as applying to [Redacted]'s position in this case. Nevertheless, to be a dispute party in any dispute, the party concerned must have notified the Secretary to the Access Disputes Committee ('the Secretary') of its wish to participate as a dispute party. DB Schenker understands that whilst Direct Rail Services made such a notice to the Secretary a similar notice was not made by [Redacted]. DB Schenker, therefore, questions whether [Redacted] can become a 'dispute party' at this stage.

In addition, these appeals concern whether or not Network Rail's relevant Third Party Failure to Use Notices were valid in accordance with the relevant provisions of the Network Code. DB Schenker, therefore, considers that the appeals are likely to focus on the contractual interpretation of those provisions, in particular, those found within Part J of the Network Code rather than any commercial issues concerning, for example, reasonable ongoing commercial need. DB Schenker, therefore, questions whether it would be appropriate for [Redacted] to become a dispute party given that it is neither a party to the Network Code nor has been involved in its creation.

Notwithstanding the above, DB Schenker understands that [Redacted] attended the Access Disputes Panel Hearing on 25 November 2009 at the invitation of Direct Rail Services as a witness. DB Schenker, therefore, assumes that [Redacted] will feed any comments or representations in respect of these appeals through Direct Rail Services in any case.



Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nigel Oatway', with a large, sweeping flourish underneath.

Nigel Oatway
Access Manager

cc Bill Hammill ORR
Doug Thompson Network Rail
Sarka Oldham DRS
Tony Skilton Access Disputes Committee