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Performance and Development
Manager
GB Railfreight Limited
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Nigel Oatway
Access Manager
DB Schenker Rail (UK)
Limited
310 Goswell Road Limited
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NW10 0RP

Doug Thompson
Customer Rail Executive
Network Rail Infrastructure
Limited
Kings Place
90 York Way
London
N1 9AG

Dear Steve, Nigel and Doug

Appeals of GB Railfreight Limited and DB Schenker Rail (UK) Limited against Determination ADA05 of the Adjudication Panel under the Network Code

1. As you are aware, GB Railfreight Limited (“GBRf”) served a Notice of Appeal of determination ADA05 of the Adjudication Panel on the Office of Rail Regulation (“ORR”) on 26 April 2011 and DB Schenker Rail (UK) Limited (“DBS”) served a Notice of Appeal of determination ADA05 of the Adjudication Panel on ORR on 27 April 2011.

2. I am the case officer, appointed by ORR, in relation to these appeals. Under Part M (Appeals) of the Network Code and Brian Kogan is the Director appointed to determine this matter. Our first task is to decide whether or not we should hear the appeals. Condition M4.1 sets out the (non-exhaustive) grounds on which we might decide that the reference to appeal should not proceed and provides that we must reach our decision within 14 working days of receipt of service of Notice of Appeal(s). Following our initial review of the documents served on ORR, we are currently minded to hear both appeals. We propose to deal with the two appeals together. If any party wishes to make representations on whether or not ORR should hear the appeals then they should do so in writing to my email address above, as a matter of urgency, and certainly **no later than 3pm on Monday, 16 May 2011.**

3. Could you also please confirm that you are the relevant contacts for your respective organisations regarding these appeals.

Interim Order

4. In its submission of 26 April 2011, GBRf referred to the ability of Network Rail and DBS to re-time service 4O26 Trafford Park to Southampton and release the slot to enable GBRf to operate the 4A10 Trafford Park to Wembley EFOC service. Freightliner Limited has agreed to alter one of its services to facilitate this re-timed service. GBRf has requested that ORR make an interim order under condition M7(c) to enable the re-timing of the 4O26 Trafford Park to Southampton slot and operation of the 4A10 Trafford Park to Wembley EFOC service, pending our final determination of this matter.

5. On the information available to us at present, we do not believe that we are able to make the interim order requested. At this stage, it is not clear to us whether or not the departure time for the re-timed service would be within DBS's contractual access rights. If it is not and DBS does not agree, we could not order Network Rail to breach contractual rights. Further, our powers under Condition M7(c) only enable us to "make an interim order as to the conduct or positions of the parties..." As Freightliner Limited is not a party to this matter, we can not order it to take any action.

6. We believe the usual timetabling processes under Part D of the Network Code would provide a mechanism for dealing with this matter, including the issues referred to in paragraph 5, and we would expect the parties to pursue it.

7. For these reasons, we are not currently minded to consider making an interim order. However, we will consider any reasoned explanations provided by the parties as to why we should do so. Any representations on this matter should be sent to us, with copies to the other parties, by **no later than Thursday 19 May 2011**.

Expedition of Timescales

8. We will write to you no later than **Tuesday 17 May 2011** to confirm whether or not we will hear the appeals. If we hear the appeals, we are minded to expedite them. This is because of the nature and circumstances of the appeals and the impact of any Determination(s) we make on the operators' commercial contracts. There is also of course a more general desire across the industry to speed up the appeal handling process. The proposed timetable for the appeals is set out below. If you wish to comment on the proposed timetable, please do so in your correspondence referred to at paragraph 2 above which is due on **Monday 16 May 2011**.

GBRf Appeal



9. DBS and Network Rail Infrastructure Limited (“Network Rail”) to submit their notice in response to GBRf’s notice of appeal in accordance with Condition M5 by **no later than Thursday 26 May 2011** with copies to GBRf. We are aware that GBRf has provided DBS and Network Rail with copies of the appeal documentation for consideration.

DBS Appeal

10. GBRf and Network Rail Infrastructure Limited (“Network Rail”) to submit their notice in response to DBS’s notice of appeal in accordance with Condition M5 by **no later than Thursday 26 May 2011** with copies to DBS. We are aware that DBS has provided GBRf and Network Rail with copies of the appeal documentation for consideration.

Yours sincerely

Kara Johnson