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Dear David

Consultation on consolidation and revision of freight general approvals

I am writing to you in response to the ORR's consultation on the proposed revision of freight general approvals. This is the formal response of Freightliner Group Limited ('FL') - representing Freightliner Limited ('FLL') and Freightliner Heavy Haul ('FHH').

FL welcomes this consultation and the overall aspiration to reduce the level of bureaucracy that can be generated by the general approvals process. The current approvals procedure can be a particularly time consuming process for freight operating companies (FOCs) as well as Network Rail and ORR, and consultation over minor changes is often unnecessary in our view.

Similarly, we also support any changes that can be made to provide operators with greater flexibility to work with Network Rail to plan our train services in a more efficient manner for all concerned. Detailed comments on the proposed changes set out in Appendix B of the consultation are provided below.

Appendix B Comments

The main proposal put forward in Section 3 is to allow the approval of Level Two Rights, which don't form part of a Y-Path, without the need for a formal industry consultation. The proposal also sets out that such rights would only be granted for a period of two years from the approval date.

Whilst we understand and agree with the reasoning behind this proposal it does raise several issues that don't appear to have been addressed in the consultation document. Firstly, it is not clear what would happen at the end of the two-year period, should the operator not make any attempt to relinquish the rights or convert them to Level 1 during this timeframe. Would the path be relinquished or would it refer to its status prior to the application (for example if a timing load was the only amendment being made)?

Particularly in the coal market it is often the case that the FOC would wish to retain the right as Level 2 rather than Level 1, but it is not clear as to how this could be facilitated.

If there is no consultation process how does the ORR propose to inform other stakeholders when one operator is granted new rights or makes a revision to their existing rights under this scenario? Without any formal consultation process it is unclear how an application would be approved or rejected, and in particular how the ORR would remain involved in the process should they have any objection to the change being proposed.

Both FHH and FLL will usually submit a Section 22 application as a package of changes to their rights table. Where Level 2 rights are included, that now doesn't require consultation, would these have to be submitted separately or would they be removed from the rights table as part of any consultation? The time taken to prepare a new supplemental is already time consuming and the prospect of having to extract specific sections of the rights table and submit them separately is only going to generate more work for both the FOC and Network Rail.

In light of these comments FL believes that this proposal requires some further consideration before any change can be implemented. FL is concerned that the proposed changes may create more work in submitting applications and cause confusion unless the issues raised are addressed.

FL would also request that any Level 2 applications involving a new location should still necessitate a consultation. The reasoning behind this request pertains to the leasing of land and terminals from Network Rail. When an application is made for a new location that is a Network Rail freehold and a FOC leasehold the presence of an access right for a "Nominated Location" would prevent NR from serving a termination notice on the lease. FL believes that this could lead to 'gaming' with this procedure allowing an operator to retain land or a terminal for their own commercial interests even if they are not actively utilising it. The removal of a consultation would prevent other stakeholders from raising their objections to such an application.

The proposal in Section 7 to extend the length of time permitted to contractualise Train Operator Variation Requests from 6 to 12 months is welcomed by FL. It can often prove challenging to contractualise new rights and existing rights changes in the current 6 month period so it would seem sensible to extend this rather than persevering with an unrealistic timescale.

Other Comments

Under current practice, when revised vehicle rates are agreed between a FOC, Network Rail and ORR a new supplemental agreement is required. FL believes that the additional requirement to produce a new supplemental is excessively bureaucratic, not only for the FOC but also for Network Rail in processing a supplemental to confirm a contractual change that has already been agreed. FL believes that the additional consultation requirements are also unnecessary, adding further time and bureaucracy to the process.

A recent example is of a revision to the vehicle rates set for existing TEAP Wagons operated by FHH. It was deemed that a supplemental would still be required despite the revised rates already being agreed between FL, Network Rail and the ORR. The requirement to undertake a consultation over this change is therefore questionable, given that any other FOC operating with these wagons would have had received this information anyway. To reiterate, it is our belief that the current process is inefficient and overly bureaucratic for Network Rail to administer.

At the very least we would ask that in such situations a consultation could be avoided. As an alternative FL believes that it would be sufficient for revised vehicles rates to be updated on the Network Rail website and then communicated to all FOCs and appropriate stakeholders via a letter or email.

If you wish to discuss any of the issues raised in our response I would be happy to discuss further.

Yours sincerely

Tim Jackson
Rail Industry Manager
Freightliner Group Limited