Colas Rail response to Network Rail

1. Contract Length

Colas Rail has requested a 10-year Track Access Agreement commencing in 2016 and ending in 2026. The primary reason for this is to provide maximum stability for the rail industry and to facilitate an environment that will encourage investment to develop the sector and promote growth. Colas Rail is pleased to note that Network Rail does not have a particular objection to granting a 10-year contract in principal.

As a growing company, Colas Rail is focussed on making strategic investments whenever it is commercially viable to do so in order to grow the business by acquiring new haulage contracts wherever possible.

In addition to the previous investments stated in the track access application in November which will see full maturity over to next decade, Colas Rail has also made a further investment in excess of ✂on a new fleet of seven Class 70 locos in December 2015. This new heavy haul loco fleet, expected to be delivered ✂, is the most fuel efficient and reliable available and will be used to position the company as a key supplier any major hook and haul contracts that become available.

Since we submitted our track access application in November, we have also made a further investment of over ✂ on a fleet of ✂JPA cement wagons on a ✂contractual commitment, commencing in May 2016. These brand new wagons with low track force and low noise bogies will be used to replace an aging fleet of 35 year old single axle wagons and will cause far less damage to the track. The purchase of these wagons supports a ✂contractual commitment to our client.

Colas Rail contends that the rationale behind Network Rail's request for two hour time slots has not been justified, and the supposed operational and efficiency benefits remain unclear. Colas strongly believes that the existing one hour departure and arrival windows are not restrictive and allow the company to meet contractual obligations to clients.

Imposing two hour arrival and departure windows would be detrimental to Colas Rail's clients and would trigger liquidated damages under key haulage agreements.

2. Completeness of the submitted contract

Network Rail's comments regarding the Model Contract have been noted and a revised contract has been provided with this response.

Definitions

'Expiry Date': 31st December 2026
Longstop Date: 12 months from the date of approval by the Office of Rail Regulation

Schedule 5 paragraph 2.4

Public Holidays: Not Used

3. The Expression of Rights within Schedule 5

Colas Rail have provided a detailed response to the NR comments on this point (NR comments are red italics).

NR notes and does not disagree with the points made on the importance of timber traffic to Colas and the wider criticality of the petrochemical market in the UK, but finds that this is not relevant to whether these services have a one or two hour departure and arrival window. Ideally, NR would like the flexibility to be able to plan all freight services within a two hour window, but it does recognise that the price sensitivity of some commodities such as Intermodal, mean that if timings aren't exactly as end customers want, they may easily become transferred to road haulage rather than rail.

Colas Rail does not agree with Network Rail's assertion that the importance of freight commodities is irrelevant to the length of an arrival or departure window. As we stated in our Section 17 application, both our timber and petrochemical flows are part of a wider supply chain which often relies on 'Just in Time' delivery in order to meet demand. Similarly, the manufacturing output and/or the wider supply of the commodities we transport are often tightly linked to rail schedules. As such, the possibility that our schedules could be flexed by up to two hours could have a significant knock on effect to our customers and ultimately could make rail an unviable option which would be detrimental to Network Rail's stated aim of growing rail freight. Again, as stated in our original application, the potential to flex schedules could also import significant cost to the rail operation which again would likely contribute to rail becoming an unviable option. Finally, we would contend that by attempting to separate various freight commodities via operational windows Network Rail risks creating a class system for rail freight commodities which could deter bulk customers from using rail as part of their logistics solution.

Road haulage is less suitable for petrochemical and timber traffic, and therefore there is less price sensitivity between rail and road, with less risk of this rail traffic transferring to road. Colas suggest that one hour windows would better protect existing and future traffic. NR disagrees, as outlined above, there is low risk of Colas' bulk traffic transferring to road, and moreover, more efficient use of network capacity is required for the growth of Rail freight to be realised. Two hour windows would give the additional flexibility required, to path additional services onto the network in order to realise growth.

Network Rail's assentation that road haulage is less suitable for bulk products such as petrochemical and timber traffic and as such is less at risk from road competition is inaccurate. Both our timber and petrochemical customers currently use road as part of their logistics solution and our prices are constantly measured against road alternatives. In the petrochemical market, we are also in competition with other logistic options such as fuel pipelines too. Network Rail appears to assume that because in some cases road transport isn't competitive with rail freight, that rail freight customers will ultimately accept the risks, costs and potential disruption greater flexibility brings. We contend that Colas Rail as a rail freight haulier has greater visibility of our customers' requirements and ultimately the commodities' susceptibility to alternative transport competition and the likely impact two hour windows would bring.

Network Rail's assertion that greater flexibility is key to growing rail freight is somewhat at odds with their belief that certain freight commodities such as bulk products should be more flexible than other commodities such as intermodal. Given the future growth predictions for both intermodal and bulk rail freight, there is a risk that an uneven playing field for growth will be created amongst the commodities. For example, if intermodal customers have greater confidence in a rail solution owing to one hour windows, then traffic will likely increase in turn consuming some of the capacity Network Rail aspires to create via more flexible operational windows for other commodities. Conversely, bulk rail freight customers looking to either grow existing traffic or enter the market may be dissuaded from doing so by the mandated greater flexibility of a two hour window or by the potential increase in costs. It may also be the case that any capacity that had existed to support the growth of bulk rail freight has been taken by other commodities with less flexible windows.

Colas Rail also makes reference to 'Off Network capacity' and the wider slot plan and occupation plans. NR agrees this is a productive and collaborative process that it would like to see continue. The flexibility of this process though, conversely means that when coal slots are amended between Operators in this way, if those slots are associated with Level 1 rights, the contract is almost always out of date. Many of the paths associated with coal slots do not have contractual rights, which make the process of trading slots much easier. NR's view is that a two hour window, whilst not totally flexible, would reduce the number of occasions that contracts would need to be updated to reflect changing slot plans, compared to a contract bound by one hour windows.

Colas Rail notes Network Rail's point regarding coal slot plans and the contractual implications highlighted. However, in our application we did not specifically reference coal slot plans, which by nature tend to be different to the occupational plan required for a non-coal related Port or Terminal. We maintain that the ability for Network Rail to flex certain paths within a two hour window could very easily render such occupational plans unworkable. This would be particularly realised at multi commodity terminals such as Daventry International Rail freight Terminal which sees a mixture of both intermodal and bulk traffic.

The impact of unworkable plans are far reaching but inevitably include damage to the reputation of Rail and the risk that in some cases, road transport may become a more convenient and viable option. It is also highly likely that unworkable Off Network occupation plans would also result in performance issues on Network Rail infrastructure as they do today. As such, there is a risk that any Network capacity generated via greater flexibility could be consumed by poor performance, which is unlikely to generate rail freight growth.

4. Schedule 8 Appendix 1 Train Operator Cap

Colas Rail notes the comments by Network Rail and also the emailed response to those comments from the ORR on 22nd December 2015.

Colas Rail contend that the✂Train Operator Cap has been calculated correctly but remain willing to recalculate if required by ORR.

5. Contract Miles

Colas Rail have provided a detailed response to the NR comments on this point (NR comments are red italics).

NR notes that some contract mileage values listed in Schedule 5 differs from actual mileage highlighted in train schedules NR considers that these mileages should be updated.

We are confident that our contract mileage values are up to date and accurate. However, we would welcome Network Rail to highlight any specific discrepancies it believes exist.

Further, NR considers that contract mileage provides for FOCs to be overcompensated as follows: If trains are diverted, and if the diversionary mileage is greater than the contract miles listed for that service, then the FOC will get charged the contract miles rather than the longer diversionary mileage. However the FOC will also receive compensation for that diversion via either Schedule 4 or Schedule 8, which is intended to cover their diversionary costs such as additional mileage. As a result, the FOC is receiving compensation twice for the same thing. NR considers that Contract Miles should therefore be removed. If however the decision is that Contract Miles are to remain, NR would seek that all Contract Miles in this Colas Rail Schedule 5 are fully updated to reflect WTT schedule mileage. NR would be content to discuss the removal of contract miles as part of the Periodic Review process.

We disagree with Network Rails aspiration for contract miles to be removed from Schedule 5. Contract miles are essential to calculate costs when trains are diverted to longer routes. As an example, 6J37, our Carlisle – Chirk timber service requires additional mileage above our contract miles owing to Network Rail's plain lining of key infrastructure at Shrewsbury. Without stated contract miles, Colas Rail would not be able to accurately claim for additional mileage and the additional costs that result from it.

6. Schedule 7

Paragraph 2.1.2 was not drafted by Colas Rail. It was an existing clause in the draft Model Contract supplied by the ORR. Colas Rail notes that the Clause is included within the current Track Access Agreement in its current form but would be prepared to discuss a reworded clause if required.

7. Clause 16.1.2 Delivery of Invoices

Colas Rail supports the suggestion by Network Rail for invoices to be sent via electronic means in addition to the methods already outlined.