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25 May 2010

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Stewart Smith
Industry Contracts Manager
DB Schenker Rail (UK) Limited
c/o Traincrew Offices
Station Approach
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Wiltshire
BA13 4HP

Dear Stephen and Stewart

Appeal under Regulation 29 of the Railways Infrastructure (Access and Management) Regulations 2005 – Access to the Port of Felixstowe where Felixstowe Dock and Railway Company is the service provider

1. Further to our letter dated 21 May 2010, we confirmed we would write separately to clarify the procedure for future conduct of this appeal. This letter sets out the proposed next steps in order that we can progress this matter as quickly as possible.

Particulars of the Appeal made by DB Schenker Rail (UK) Limited (“DBS”)

2. As indicated during the meeting on 13 May 2010, Felixstowe Dock and Railway Company (“FDRC”) believe the scope of DBS’ appeal is unclear and therefore as a matter of certainty we would ask DBS to provide us with a written statement of the specific grounds of its appeal, setting out what it is asking ORR to determine. We will provide this to FDRC in order that it is clear as to the case it is being asked to answer. We would ask DBS to provide this information to us by 5.00 pm on Thursday 3 June 2010.

Outstanding Information from FDRC

3. Notwithstanding that we have asked DBS to particularise its appeal, we stated in our decision letter that we would be revisiting the request for outstanding information from FDRC and therefore we would ask that FDRC provide us with the following information:-



Doc # 381814.01

(a) Copies of FDRC's completed capacity studies at the North and South Rail terminals;

(b) Confirmation whether the reason for DBS being unable to move as many containers per train as other operators, as set out in the Minutes of the meeting between the parties of 19 November 2009, is that gauge restriction to Wakefield requires the use of low-floor vehicles such as FAA, FKA or FLA in order to convey 9'6" containers or whether shorter or partially-loaded trains are the cause;

(c) The process for loading and unloading trains at the Port and the methods used by each of the operators, to assist us in understanding the loading arrangements. Please include details of the approximate number of containers moved by each of the operators on a daily basis;

(d) The principles FDRC applies when setting its charges. For example, whether charges are applied on a per container basis or whether volume discounts are available. Please also explain how FDRC ensures that such charges are applied on a transparent and non-discriminatory basis;

(e) The current charges levied per service supplied for each operator at the Port and the reason or justification (if any) given to each of the operators for charging those fees.

4. The information provided will be posted on our website in accordance with our usual practice, however we can redact specific information on the grounds of commercial sensitivity should you ask us to do so.
5. We would ask FDRC to supply this information to us by 5.00 pm on Thursday 3 June 2010.
6. As discussed at our meeting and as reiterated in our decision letter, should we decide that a confidentiality ring is appropriate once information has been reviewed, we would discuss this with the parties.
7. We would further reiterate that no disclosure of information which is specifically identified as confidential will take place without prior discussion with the parties who will be given the opportunity to make representations on this issue.

Further Representations

8. We stated in our early correspondence that all appeals under the Regulations will be dealt with using the same process as set out for section 17 or 22A applications under the Railways Act 1993 ("the Act"). We have therefore followed the procedure for disclosing information and inviting representations as detailed in paragraphs 3 and 4 of Schedule 4 of the Act.
9. We consider it appropriate that FDRC is given the opportunity to formally respond to the statement to be issued by DBS as per paragraph 2 of this letter. We will stipulate the timescale for such response when we provide FDRC with the statement.

10. Following the issue of the statement from DBS and response from FDRC, there will be no further formal requests for representations. However, as we previously advised, we would be happy to receive and consider any further representations from the parties in response to any information which is disclosed to them or made publicly available via our website.
11. While we are content to allow the parties to have the opportunity to comment on the representations made by each other, we are keen to ensure that this appeal is progressed as quickly as possible. Therefore, while we will allow a reasonable time for responses, we do not propose to grant time extensions as before.
12. Pursuant to Regulation 29(7) of the Railways Infrastructure (Access and Management) Regulations, we will make our decision on the appeal within two months of the date when we are satisfied that we hold all relevant information to make such a decision.

Visit to Port of Felixstowe

13. As mentioned briefly at the meeting on 13 May, we would like to rearrange the site visit to the Port of Felixstowe as soon as possible. We note that the invitation to the Port was made prior to the appeal being made, however we consider that attendance is necessary as part of the information gathering process for the purposes of this appeal. Please let us have a note of convenient dates in order that we can make arrangements as soon as possible.

We look forward to hearing from you.

Yours sincerely

Kara Johnson