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Dear Colleague,

**Freight Facility (Ports and Terminals) General Approval 2009
(the GA)**

1. I am writing to inform you that we have today issued a new general approval which gives our prior approval to the entering into of new, and amendment of existing, Facility Access Agreements (FAA) at freight facilities. This general approval will expire on 31 December 2009.
2. The GA enables a facility owner of a railway facility and its beneficiary to enter into a new FAA under section 18 of the Railways Act 1993 (the Act), as amended, or amend an existing FAA under section 22 of the Act, without seeking ORR's prior approval, under the following circumstances:
 - (a) a signed copy of any new, or amended, FAA entered into pursuant to the GA must be submitted to ORR within 14 days of the relevant FAA being entered into;
 - (b) any FAA entered into pursuant to the GA must terminate no later than 31 December 2011;
 - (c) the GA cannot be used to gain approval for FAAs entered into before the commencement date of the GA;
 - (d) the Relevant Facility Owner must consult interested parties prior to the entering into, or amendment of, a FAA pursuant to the GA; and
 - (e) the GA only applies to FAAs that are consistent with the requirements of the Railways Infrastructure (Access and Management) Regulations 2005 (the Regulations).
3. Attached to this letter is a copy of the GA.



Review

4. The Railways (Class and Miscellaneous Exemptions) Order 1994 (CMEO), which came into effect on 1 April 1994, exempted certain classes, types and specified railway assets from the access provisions of the Act. Section 20(3) of the Act provides ORR with the power to grant facility owners of railway facilities exemption from the access provisions of the Act. These exemptions may be applied for where exemptions are not already provided by the CMEO.

5. Historically, we have received a limited number of applications for exemption under section 20(3) of the Act, but more recently we received three applications seeking to exempt the network in a number of ports and terminals from the access provisions of the Act. To inform our decisions in such cases, we have decided to undertake work to better understand the ports and terminals freight facility market (which is covered by the GA) and will be consulting the industry on this further later this year. We therefore decided not to make any decision, at this stage, on the access exemption applications.

6. As an interim measure, we have decided to issue the GA, which will provide the freight facilities market with many of the benefits that exemptions would bring (for example reduced regulatory burden and reduced transaction costs), whilst enabling ORR to maintain some regulatory oversight whilst we develop further our exemptions policy in this market. We believe this approach will enable us to focus our regulatory responsibilities where we can add most value to the industry.

Consultation

7. On 22 June 2009 we consulted the industry on the proposed GA. We received one consultation response from DB Schenker Rail (UK) Limited (DBS).

8. In its response, DBS noted that currently, no model clause contract had been issued by ORR to cover freight facilities. As such, DBS was concerned that the issuing of the GA would facilitate the creation of different types of FAAs, containing different terms and conditions at different facilities.

9. It is our intention to allow the freight facilities market greater freedoms to enter in the FAAs of their choice, without the need for prior ORR approval which would add unnecessary delays in the contractual process. This approach is consistent with ORR's commitment to focused and more effective regulation, regulating where we feel we can add the most value. That said, the development of a 'model clause' FAA, as proposed by DBS, is something for ORR to consider further in the future, dependant on our emerging policy on access exemptions in this market. Whilst we recognise DBS' concerns in relation to this point, the Regulations still provide an appeal function to a

beneficiary if it feels it has been unreasonably or unfairly denied access to a facility.

10. DBS further commented that it was concerned that the GA contained no requirement for the Relevant Facility Owner to consult other interested parties before entering into a FAA, with the implication that differences in terms and conditions at each location could go unnoticed by other parties. We accept that it is reasonable to expect the Relevant Facility Owner to inform other interested parties of something that may impact upon them. Accordingly, we have added to the GA a requirement for the Relevant Facility Owner to consult other potentially interested parties prior to entering into, or amending, a FAA pursuant to the GA.

11. Finally, DBS commented that it was concerned that the GA did not explicitly state the requirement for any FAA entered into pursuant to the GA to comply with the Regulations. We did not think it necessary to explicitly state in the GA that all FAAs should comply with the Regulations, although this is referred to in the explanatory note attached to the GA. The onus is on the parties to the FAA to ensure that all documentation is compliant with relevant legislation.

12. Given the substance of the response and our views on it we are content to issue the GA, subject to the addition of the requirement to consult.

Timescales

13. The new Freight Facility (Ports and Terminals) General Approval 2009 comes into force tomorrow, 18 August 2009.

14. If you have any questions about the GA please contact my colleague Neil Leedham at 020 7282 2147 or neil.leedham@orr.gsi.gov.uk.

Yours sincerely



John Thomas