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Paul Stone.
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6th March 2012

Dear Paul,

GB Railfreight Ltd. (GBRf) response to ORR's consultation on Reform of Access Contractual Arrangements (response only to first part of consultation):

It's not an exaggeration to say that the process by which a Freight Operating Company (FOC) gains access to the network, secures a clearly defined, robust, path for its flows, then keeps defined paths through the length of its contracts, is probably the most important issue to face GB Railfreight and other freight companies today. Stability and proper regulation of this process is paramount as, the paths that are offered to FOCs, from one timetable to another and throughout the life of a commercial contract, dictate how a FOC must use its locomotive, wagon and train crew resources.

Quite simply, the timetable and its guaranteed length of stability, directly drives the costs and, therefore, viability of a Freight Operating Company. Between one year and the next, it can directly undermine current rail freight investment decisions and risk losing any future rail freight investment due to the uncertainty of desired access over a given period of time.

Many parts of rail freight are time sensitive and, although current FOC rights are not as prescriptive as those in passenger track access contracts (e.g. TOC +/- 3 mins. or very tight journey time guarantee), the +/- 30 minutes in the current model FOC track access contract already presents a risk to FOCs' resourcing over the course of their track access contracts. In an ideal world, a +/- 15 min. flex would limit a FOC's exposure to procuring additional train crew, locos or wagons for a flow, purely down to a relatively minor change to a pathway.

I must stress, once again, that any proposal to now restrict a FOCs' track access rights, for new or amended services, to Level 1 rights as far as December 2013 but then only Level 2 beyond, would create such uncertainty in a FOC's ability to deliver its freight services, over the period of that contract (typically 5-10 years), both it and the end customer would have real difficulty in committing to any new rail flow at a robust price. The idea that, from December 2013, a new service might have the cost of another set of wagons, an extra locomotive or several train crew inserted into its cost base because a flow's return path might have altered in the timetable by many hours, would shoot down the whole idea of running any new freight on the railways in the UK. Any possible restriction on granting Level 1 Rights to FOCs, for the length of their current contract rather than just to December 2013, needs to be dismissed as being far too damaging to current freight contracts (some already in excess of 2016), any future rail freight growth and future investment in any rail freight terminals.

For the optimum use of capacity on the network, GB Railfreight believes that TOCs' track access contracts should have a greater level of flex (or more relaxed journey time protections) so that a better timetabled combination of passenger and freight services can be properly produced.

GB Railfreight strongly believes that, although contractual protections currently in place mean TOCs do not require the level of Schedule 5 specification they currently enjoy, this is not the case for FOCs. The Level 1 Right detail, in Schedule 5 of the model freight track access contract, is the only real protection a FOC has in trying to secure optimum paths for its traffic. Without it, there are no real protections or guarantees.

In response to ORR's specific questions relating to the specification and prescription of rights in Schedule 5, GBRf can offer the following:

Question 1: GBRf believes that certain of the themes/areas stated in ORR's proposals do need attention but others are not so high priority. For example, the structure and specification of TOCs' access rights needs attention as in many cases, we believe, they are far too prescriptive for getting the optimum use of capacity on the mixed railway. At the opposite end of the scale, FOCs' access rights (+/- 30 minutes at best; +/- 23 hours at worst) are already far less prescriptive therefore relaxing them further is definitely not a priority. The alignment of the track access contract with timetabling processes is important to both customers and Network Rail and is worthy of more attention as are many other points raised by ORR.

Question 2: With regard to Schedule 5 in a freight track access contract, GBRf believes the level of detail is just right. There's enough exact detail for a planner to construct a pathway, with the specified route, times, equipment, gauge, stopping points and permitted flex, without the Schedule 5 table appearing too complicated. Importantly, as stated above, it offers the FOC the only measure of protection in keeping the desired path for its contracted traffic, but with enough flex not to ossify a timetable. The current Schedule 5 table is a FOC's "insurance mechanism" to getting the path it needs to keep its business running effectively and it's that element that GBRf does not want to see diluted in any way.

With regard to a TOC's Schedule 5 specification, GBRf believes that, for ease of understanding, the many tables can be reduced and simplified. A suggestion is that a TOC Schedule 5 is split by service flow and that all contractual arrangements for that flow are contained within two tables. This gives the Network Rail operational planner easy access to all the required information for a particular service group in just two tables rather than several, as at present.

It's GBRf's view that many operational planners don't regularly use Schedule 5 tables (both passenger or freight) for constructing a timetable so anything that improves their use and ease of understanding can only be a good thing. The grouping within service flow, coupled with the combining of tables, ought to achieve this.

With regard to the level of prescription of a TOC Schedule 5, GBRf believes that these are currently far too prescriptive in that they almost exactly specify the compliant path to be entered into the timetable. GBRf knows there are very strong commercial and operational reasons why TOCs and their funders will want this protection but this is the very same efficiency and security that GBRf and other freight companies require for their businesses to operate. The difference in the degrees of contractual flex, between TOC and FOC, need to be brought closer together if our multiple-use railway is to be shared in the most effective manner.

Is there really a necessity for every service flow to have a maximum journey time specification? For example, should a rural stopping passenger service, competing for a similar path with a long distance Intermodal service, sensibly take priority? Is a very restricted passenger flexing right justified in this and other similar instances? GBRf believes not. GBRf also believes that there are mechanisms already in place (e.g. regular use of the new Decision Criteria) that, if used properly by Network Rail planners, at the point the timetable is beginning to be produced, will also help in using capacity effectively and efficiently.

Question 3: GB Railfreight strongly believes that Network Rail should remain fully responsible for conducting the timetable process, from beginning to end. As the rail industry is now immersed and dealing with a devolved Network Rail structure, there is an absolute requirement for infrastructure capacity to be allocated by a central Network Rail timetabling function in a transparent way and on a fair and non-discriminatory basis. This is clear in The Railway Infrastructure (Access and Management) Regulations 2005 and GBRf wants these regulations to remain but be properly implemented.

There have been very few previous examples of other bodies developing a timetable that has been complete, compliant and done on a fair and non-discriminatory basis.

Examples of difficulties experienced during the timetabling process include the following:

- i) Freight services not timetabled as per details and flexing in Schedule 5 rights tables, either because Network Rail operational planners have little knowledge of them or think they're relevant to their job, or because they believe passenger trains come first and freight fits in where it can (or not), irrespective of rights. Solution: NR Operational planners must be properly taught about passenger and freight track access rights and how their Schedule 5 rights tables underpin the very beginning of the timetable process. There, therefore, needs to be a change in timescales for rights applications so that all necessary approved rights are in TOCs'/FOCs' contracts by the start date of the timetabling process, at the latest.
- ii) Freight paths that use network capacity ineffectively are regularly being produced and offered as there's often a lack of foresight in how to alter other services to get the best velocity for freight paths and best use of available capacity. It's often down to the FOC concerned to suggest more useful and effective alternatives. Solution: NR Operational planners need better educating in the *best* way to put a timetable together.
- iii) There have been several timetable re-writes and approved supplemental agreements over the last 5 years whereby, once completed, no network capacity has been left for any additional ad-hoc passenger and freight traffic. This is often done due to the poor creation of a timetable where, with a little thought and not much adjustment, clearly defined and regular freight paths could be produced.

Section 21 of The Railway Infrastructure (Access and Management) Regulations 2005 states that the infrastructure manager must undertake an evaluation of the need for reserve capacity to be kept available within a final working timetable to respond rapidly to ad hoc requests for infrastructure capacity. In almost all cases on the country's main lines and many others elsewhere, there is an obvious need for ad-hoc freight capacity seen by the level of traffic using it at the moment. GBRf wants to see Network Rail produce these evaluations for all routes and, where necessary and by good timetabling, include capacity in the final working timetable for ad-hoc requests. Solution: The Railway Infrastructure (Access and Management) Regulations 2005 need to be widely publicised within Network Rail and strictly adhered to by all concerned.

To ensure these basic points work, Network Rail needs to be adequately staffed with competent and well trained individuals who are able to construct a timetable, with spare capacity, and understand more about the NR / customer interface and contractual obligations.

Question 4: Although it may be useful in some specific cases, GBRf doesn't believe a commercial purpose clause, for each working in a Schedule 5 table, is an easy thing to incorporate into a freight track access contract. Indeed, it can lead to the complicating of the information used to construct a timetable. There can be some quite complex associations which can't adequately be described in one or two lines and I think this comes under the "too complicated" heading.

Question 5: The detail in GBRf's answer to Question 2 is very relevant to this question. Details in the freight Schedule 5 table are, in my view, at the right level to give enough information to construct a compliant path, albeit with some permitted flexing. For freight, intermediate calling points, turnaround times and specified equipment are all important features in our contract and need to be kept. In fact, apart from the flow number, GBRf would like the model Schedule 5 to remain as present.

For TOC Schedule 5s, as described above, there needs to be some merging of tables, perhaps down to 2 tables for each service group.

Yours sincerely,

Ian Kapur.
National Access Manager.