

29 March 2021

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Dear Stakeholder

DB CARGO UK LIMITED (DBC UK) DISPOSALS POLICY

This open letter is a call for evidence about DBC UK's Disposals Policy ("the **Policy**").

This Policy, which is published on DBC UK's website¹ was created in 1998 as a means of addressing competition concerns identified at the time about potential new entrants to the UK rail freight sector having fair access to locomotives. The Policy sets of a series of assurances, volunteered by DBC UK, about how it disposes of its surplus locomotives. Pertinently it includes obligations about:

- How surplus locomotives will be marketed (including a number of obligations to proactively advertise surplus stock);
- How tenders for surplus rolling stock will be run; and
- How environmental considerations will be taken into account.

Compliance with the Policy has always been *technically* voluntary. However in practical terms its existence and DBC UK's continued adherence to it has had the

¹ <https://uk.dbcargo.com/rail-uk-en/services/disposals>

effect of ensuring that ORR has not had to take any formal regulatory action to address the competition concerns identified in 1998 about new entrants having fair access to locomotives and the broader availability of viable locomotives to competitors.

DBC UK has now written to us outlining a proposed intention to discontinue the Policy and asked us to set out any concerns we have.

DBC UK highlight the significant passage of time since the Policy was put in place. They submit that the competition landscape in the rail freight market has changed materially such that the concerns about new entrants having access to locomotives no longer apply.

We consider it is appropriate for us to review ORR's position on the Policy, in particular whether it remains necessary and proportionate for DBC UK to be expected to continue to comply with it in light of developments in the market. We note that DBC UK would continue to be required to comply with general competition law, and other regulatory requirements, albeit without the additional obligations prescribed in the Policy.

We consider it is good practice to remove additional regulatory burdens on companies where the regulation is no longer proportionate to address the concerns it was intended to address.

To this end, we seek views and evidence from market participants on any potential risks (or benefits) to competition in the GB rail freight sector that might arise as a result of DBC UK discontinuing the Policy. In particular, we are interested in the following questions, with reference to both the sector as it is now and any key ways in which it has changed since 1998:

- To what extent does DBC UK hold a fleet of usable freight locomotives that is larger to that of its competitors in the GB rail sector?
- To what extent do any such advantages that DBC UK holds arise from its historic incumbent position, including rolling stock that it 'inherited' at privatisation?
- Does the availability of surplus freight locomotives from DBC UK currently or prospectively present a significant barrier to entry or expansion by actual or potential competitors in the rail freight sector?
- How, if at all, does the Policy currently act to mitigate any such barriers?



- Does DBC UK continue to enjoy market strength, as a result of the above or any other factors, such that additional obligations placed on them in terms of how they dispose of their locomotives are justified?

We would be grateful for input from those affected by this issue to be provided by **5pm on 26 April 2021**. Responses should be sent to me at tom.cole@orr.gov.uk, or my colleague Steve Armitage at steve.armitage@orr.gov.uk.

If you would prefer to meet with us to discuss this matter, please feel free to contact us so that we can arrange a teleconference.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'T. Cole', with a stylized flourish extending to the right.

Thomas Cole
Head of Competition