



OFFICE OF RAIL REGULATION

Geoffrey Kitchener Esq
Regulatory Legal & Compliance Manager
Network Rail Infrastructure Limited
40 Melton Street
London NW1 2EE

30 October 2006

Dear Geoffrey,

Network Licence Conditions 12 and 13 - Pilot locomotives for the European Rail Traffic Management System (ERTMS) Trial: ORR's Consent.

1. In your letter of 15 August 2006, you outlined Network Rail's scheme to provide locomotives (locos) on the Cambrian Lines, where ERTMS would be fitted, to haul irregular traffic that had not been fitted with the relevant equipment before it was rolled out across the network.
2. We have today consented to Network Rail Infrastructure Limited (Network Rail) under Condition 13 (Restriction of Interests in Train Operating and Rolling Stock Companies) of its network licence to a proposed arrangement whereby Network Rail will own/hire the pilot locomotives and contract the operation service to a third party. Consent has also been granted under Conditions 12 (Ring-fencing and Accounting Records) and 13 of the network licence for Network Rail to hire the locomotives to third party for other purposes when it is not being used for the pilot scheme.

Consent to own/hire the pilot locomotives and to contract the operation of the service to third party

3. Network Rail's network licence (Part 1 - Scope of the Licence) provides specific circumstances under which Network Rail can be the operator of a train. Condition 13 of the network licence provides that the licence holder shall not, without ORR's consent, be directly or indirectly interested in the ownership or operation of any railway vehicle in Great Britain other than for any purpose comprised in the operation of that network. In this case consent is needed because, although the locomotives will be used for a purpose comprised in the operation of the network or incidental to operations of the network, Network Rail will not be operating the locomotives itself as set out in the scope of the licence.



INVESTOR IN PEOPLE

Abigail Grenfell, Manager, Network Regulation

Telephone 020 7282 2093 • Fax 020 7282 2042
E-mail abigail.grenfell@ORR.gsi.gov.uk

Doc # 253430.03

4. On the basis of the information provided by you and having regard to our section 4 duties, ORR has consented to the proposal for the purposes of Condition 13 of Network Rail's network licence. We are content that the proposed arrangements are the most practical and cost effective whole industry solution to ensure that the ERTMS trial has minimal disruption to operators. We also think that the pilot services are consistent with Network Rail's obligations to secure the improvement, enhancement and development of the network in accordance with best practice and in a timely, efficient and economical manner. The project Service Level Agreement (SLA) will allow for the piloting locos to form the traction unit of a train which will provide a more beneficial method of operation so as reduce loading on Cambrian Lines infrastructure.

Consent to hire the locomotives to third party for other party for other purposes when they are not in use for the pilot service

5. Condition 12 of the network licence provides that, except with the written consent of ORR, the licence holder shall not conduct any business or carry out any activity other than the Permitted Business (which is defined in Part II of the network licence). There is a provision for the licence holder to conduct business which is not for a permitted business, provided that it is *de minimis* business and does not infringe any condition of any consent given by ORR under the licence. In your letter of 15 August 2006, you informed us that Network Rail did not wish exercise this provision and therefore requested consent under Condition 12. Network Rail's involvement in the proposed arrangements goes beyond Permitted Business by giving Network Rail a financial interest in the hiring of the locomotives to the third party when they are not being used for the ERTMS pilot scheme.

6. Consent is needed under Condition 13 for Network Rail to hire out the locos to a third party when they are not in use for the ERTMS pilot scheme.

7. We are satisfied that it is sensible for Network Rail to make maximum use and value of the locos when they are not in use for the ERTMS pilot scheme as long as the arrangements with a third party do not interfere with the primary purpose of the piloting services. In light of these reasons, consent we have given under Conditions 12 and 13.

8. We note your assurances that all interested parties will be treated in a consistent manner, within the criteria set out in your letter of 15 August 2006. ORR's consent in this instance should not be taken as an indication of our likely consent in other such schemes.

9. The consent enclosed with this letter will be placed on ORR's public register and a copy will be placed on our website with this letter.

Yours Sincerely,



Abigail Grenfell



OFFICE OF RAIL REGULATION

The Company Secretary
Network Rail Infrastructure Limited
40 Melton Street
London NW1 2EE

RAILWAYS ACT 1993

NETWORK LICENCE CONDITIONS 12 AND 13 - CONSENT OF THE OFFICE OF RAIL REGULATION

1. On 15 August 2006, the licence holder applied to the Office of Rail Regulation (ORR) for its consent under paragraph 1 of Condition 12 and paragraph 1 of Condition 13 of the network licence to an arrangement under which the licence holder would fit a set of Class 31 or Class 37 locomotives with European Rail Traffic Management System (ERTMS) on the Cambrian Lines to conduct a trial of the system before it is rolled out across the network and would lease the locomotives for other purposes to third parties when they were not required for ERTMS trains. All the interested parties would be given the same opportunity to bid and would not be discriminated against unduly. The terms of each lease would mirror the other.

3. The arrangement entails the licence holder being interested in:

- (a) the ownership or hiring of a railway vehicle that it is not operating for the purposes of network operation because it is contracting the operation of the service to a third party, in contravention of Condition 13 of its network licence unless consent is granted;
- (b) the ownership and operation of the locomotives for the purpose of hiring or leasing these locomotives to third parties for other purposes when they are not in use for the ERTMS pilot scheme in contravention of Condition 13 of its network licence unless consent is granted; and





(c) conducting the business or carrying on the activity described in 3(b) which does not fall within the definition of permitted business in contravention of Condition 12 of its network licence unless consent is granted.

4. ORR, having regard to its duties under section 4 of the Railways Act, to the terms of the licence holder's application and to other information supplied by the licence holder, consents for the purposes of paragraph 1 of Condition 12 and paragraph 1 of Condition 13 of the network licence to the licence holder entering into and carrying on the activity required of it under the arrangement as described to ORR in the application, such consent to apply up to and including 31st December 2018.

5. In this consent:

"licence holder"	means the holder of the network licence;
"network licence"	means the licence granted to Network Rail Infrastructure Limited (formerly known as Railtrack PLC) by the Secretary of State for Transport on 31 March 1994, as amended from time to time;
"Permitted business"	Has the meaning in Part II of the network licence as at the date of this consent;
"the Railways Act"	means the Railways Act 1993 (as amended).

6. Terms and expressions defined in the Railways Act shall, unless the contrary intention appears, have the same meanings in this consent.

Granted this 30th day of October 2006

Michael Lee

A horizontal line drawn below the handwritten signature, indicating the signature's extent.

MICHAEL LEE

Director of Industry Monitoring and Analysis, Office of Rail Regulation

For and on behalf of the Office of Rail Regulation