



OFFICE OF RAIL REGULATION

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Sir David Higgins

Chief Executive

Network Rail Infrastructure Limited

Kings Place

90 York Way

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Dear David,

Freight performance: amendment to the timescales in the enforcement order.

In my letter of 4 April 2012 I said we were content to give the freight recovery board an additional 4 weeks to develop and agree its plans. I am now sending an amended copy of the enforcement order.

The order now requires the recovery board to agree the reasonably practicable steps and timescales within 10 weeks of the formation of the recovery board, to ensure that compliance is achieved within not more than seven months of the date the order was first made.

I am copying this letter to Paul Plummer, Robin Gisby and Tim Robinson and to the members of the freight recovery board. I am also placing a copy on our website.

*Yours sincerely,
Richard Price*

Richard Price



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RAILWAYS ACT 1993

SECTION 55

FINAL ORDER

- A. In the 2008 periodic review Network Rail Infrastructure Limited (Network Rail) agreed to deliver a trajectory for freight delay minutes (normalised per 100 train km) attributed to Network Rail and delay minutes trajectories for each freight operator. Network Rail is obliged to deliver maximum delay minutes per 100 train km of 3.41 for the year 2010-11 (the 2010-11 target) and 3.18 for the year 2011-12 (the 2011-12 target). Delivery of the 2010-11 target and the 2011-12 target (the outputs) is a reasonable requirement under condition 1 of Network Rail's network licence which means that Network Rail must achieve it to the greatest extent reasonably practicable having regard to all relevant circumstances.
- B. The Office of Rail Regulation (ORR) is satisfied that Network Rail is contravening condition 1 of its network licence in that it is not achieving the purpose set out in condition 1 to the greatest extent reasonably practicable having regard to all the circumstances, specifically by having no adequate plan to meet the outputs on an ongoing basis and having failed to meet the 2010-11 target and being likely to fail to meet the 2011-12 target.
- C. Having had regard to section 55(1) of the Railways Act 1993 (the Act), ORR considers it is requisite for it to make a final order for the purpose of securing Network Rail's compliance with condition 1.
- D. ORR is satisfied that:
- (a) the duties imposed on it by section 4 of the Act do not preclude the making of this order; and
 - (b) the most appropriate way of proceeding is not under the Competition Act 1998.
- E. Having regard to all the circumstances and, in particular, the factors set out in section 55(3) of the Act, it does not appear to ORR that it is requisite that a provisional order be made.
- F. ORR need not consider, under section 55(5B) of the Act, the appropriateness of making this order because:
- (a) ORR is not satisfied that Network Rail has agreed to take, and is taking, all such steps as appear to ORR for the time being to be appropriate for Network Rail to take for the purpose of securing or facilitating compliance with Condition 1; and
 - (b) ORR is not satisfied that the contravention will not adversely affect the interests of users of railway services or lead to an increase in public expenditure.
- G. ORR gave notice under section 56 of the Act of its proposal to make the order and has taken into consideration all representations made in relation to the proposed order.

Therefore:

1. In respect of the contravention, pursuant to section 55 of the Act ORR requires Network Rail to:
 - (a) Within two weeks of the making of this order, invite relevant holders of freight operator licences issued by ORR to participate, either directly or through representatives, in a recovery board. The scope and remit of the recovery board is set out in the annex to this order;
 - (b) Within two weeks of sending out the invitations, make arrangements for the formation and running of a recovery board in accordance with the scope and remit in the annex;
 - (c) Within ten weeks of the formation of the recovery board, agree with it such steps and timescales as are reasonable to bring itself back into compliance with condition 1 of its licence.
 - (d) These steps should be designed to ensure that compliance is achieved within not more than seven months of the original date of this order.
2. A step or timescale proposed by the recovery board shall be agreed by Network Rail unless:
 - (a) it would place Network Rail in breach of contract; or
 - (b) it would place Network Rail in breach of another regulatory or legislative commitment; or
 - (c) the step or timescale is shown by Network Rail, to the satisfaction of ORR, not to be a reasonably practicable step or timescale having regard to all the circumstances.
3. This document constitutes a final order made under section 55 of the Act.
4. This order shall have immediate effect.

Richard Price

Richard Price

19 January 2012

Amended 23 April 2012.

Annex : Scope and remit of the freight recovery board

Scope

The recovery board should be made up of the following holders of freight operator licences issued by ORR under the Railway (Licensing of Railway Undertakings) Regulations 2005 or the Railways Act 1993, or as many as choose to participate:

DB Schenker Rail (UK) Limited

Direct Rail Services Limited

English Welsh & Scottish Railway International Limited

Freightliner Heavy Haul

Freightliner Limited

GB Rail Freight Limited

Colas Rail Limited

The scope of the recovery board is to agree, unanimously, reasonably practicable steps Network Rail should take to remedy the breach.

Remit

The recovery board's remit is to agree reasonably practicable steps Network Rail should take to remedy the breach within the timescales set out in the order.

The recovery board should also review Network Rail's delivery of those steps within the timescales set out in the order. If the recovery board is not satisfied with Network Rail's delivery during this period, it should refer the matter to ORR.