

Responses to ORR's proposal to grant a network licence
for the operation of the Core Valley Lines statutory
consultation – Consultation published 25 July
2019

1. Freightliner

2. DB Cargo Limited

6. Network Rail Infrastructure Limited

8. Rail Freight Group

From:
Sent: 22 August 2019 14:31
To: Licensing Enquiries
Cc:
Subject: Proposed network licence for the CVL

Dear Sir/Madam

Proposed network licence for the CVL

Freightliner responded to the initial consultation on 5th July 2019, and we note that our consultation response has been considered and some changes have been incorporated (e.g. those concerning the provision of asset information and interests in railway vehicles).

However, we remain concerned that some of the issues that we raised have not been resolved and that in particular, there are no protections for freight operations in the proposed network licence.

We do not agree with the ORR conclusion to date, that the combination of the status of TFW as a public body and the existence of the Grant Agreement between Welsh Ministers and AKIL's parent Company, Keolis Amey Wales Cymru Limited ("KAWCL") are sufficient to satisfy Freightliner's concerns and provide the necessary network management protections for freight on the CVL. We remain unconvinced that this is sufficient to protect freight operations and strongly believe that appropriate protections must also be included in the network licence.

Freightliner is not a party to the Grant Agreement nor was it consulted on its contents. It is unsatisfactory that we are expected to rely on protections contained in an agreement we are not party to. We do not have any rights to challenge the application of the Grant Agreement, like we do with a Licence Condition.

The only obligation contained in the Grant Agreement, is in the context of KAWCL consulting Freight Operators on any Special Events on the CVL. There does not appear to be any other protections referring to freight services or facilities (e.g. obligations for maintaining freight capability) similar to those contained in Network Rail's network licence e.g. the Core Duties set out in Condition 1 of Network Rail's network licence set out specific network management obligations which are clearly focussed on both passenger and freight services. The infrastructure manager services provided by KAWCL are supposed to be set out in Schedule 3 of the Grant Agreement, but the copy on Tfw's website this schedule is blank.

This is especially important in this case, where there is a passenger operator, who runs the vast majority of services, and where although technically separated from the Infrastructure Manager the operator and the infrastructure manager are, in practice, heavily interlinked and are likely to advertently or inadvertently prioritise their own services over those of freight operators.

Freightliner remains strongly of the view that the network management duties contained in Conditions 1.1 to 1.3 of Network Rail's network licence need to be mirrored as far as possible in the CVL network licence.

Freightliner asks that the ORR takes into account these concerns and provide protections for freight in the network licence, rather than relying the provisions of the Grant Agreement, over which freight operators have no locus for appeal.

Please contact me if you would like to discuss this response further by phone or email.

Regards



Proposed network licence for the CVL

DB Cargo acknowledges that in drafting the proposed network licence contained in Annex B of the consultation document, ORR will have considered the representations raised by DB Cargo in its earlier response (dated 4 July 2019) to the initial consultation on this matter. However, although DB Cargo is pleased that some of the concerns it had raised have been taken account of by ORR in the draft network licence (e.g. those concerning the provision of asset information and interests in railway vehicles), DB Cargo nevertheless remains very worried that the concerns it had raised relating to the network management responsibilities of the licence holder have not been addressed. This is because ORR is convinced that the combination of the status of TfW as a public body and the existence of the Grant Agreement between Welsh Ministers and AKIL's parent Company, Keolis Amey Wales Cymru Limited ("KAWCL") are sufficient to satisfy DB Cargo's concerns and provide the necessary network management protections for freight on the CVL. DB Cargo is unconvinced and continues to believe strongly that appropriate protections must also be included in the network licence.

In forming its view, DB Cargo has taken account of the facts that it is not a party to the Grant Agreement nor was it consulted on its contents. It therefore remains sceptical that any protections contained in such an agreement for the benefit of third parties are robust enough to warrant their exclusion from AKIL's network licence.

Furthermore, having now had an opportunity to examine the Grant Agreement, rather than DB Cargo's concerns being assuaged, they have in fact been exacerbated. Whereas the voluminous agreement specifies many obligations on KAWCL in respect of protecting passenger services and facilities on the CVL, it seems that the word 'freight' appears just once in the Grant Agreement (p178) and only then in the context of KAWCL consulting Freight Operators on any Special Events on the CVL. DB Cargo cannot find any other protections referring to freight services or facilities (e.g. obligations for maintaining freight capability) similar to those contained in Network Rail's network licence. The infrastructure manager services provided by KAWCL are supposed to be set out in Schedule 3 of the Grant Agreement, but the copy on TfW's website unfortunately shows this Schedule as blank.

In contrast, the Core Duties set out in Condition 1 of Network Rail's network licence set out specific network management obligations which are clearly focussed on both passenger and freight services. As mentioned above, there appears to be nothing remotely similar in the Grant Agreement which provides the same level of assurance. This is particularly concerning because unlike Network Rail who has more independence from train operations, and despite TfW being a public body, the fact remains that both TfW and KAWCL (through its subsidiary Keolis Amey Operations) are heavily involved in specifying, providing and operating the passenger services on the CVL, as well as carrying out the infrastructure manager role through AKIL. DB Cargo therefore, remains strongly of the view that it is imperative that at the very least the network management duties contained in Conditions 1.1 to 1.3 of Network Rail's network licence are replicated as far as possible in the network licence for the CVL.



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Considering the above representations, DB Cargo urges ORR to reconsider its current thinking that the provisions of the Grant Agreement are sufficient to provide protections for freight that would otherwise be specified in a network licence.

Yours sincerely,

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Les Waters
Manager, Licensing
Railway Markets and Economics
Office of Rail and Road
One Kemble Street

St Patrick's House
Penarth Road
Cardiff
CF10 5ZA

21st August 2019

Dear Les

Statutory consultation on a network licence for the operator of the Core Valley Lines (CVL)

Thank you for your letter of 25 July 2019 in which we note the summary of responses to your 7 June initial consultation inviting views on the proposed Network Licence to be granted to Amey Keolis Infrastructure/Seilwaith Amey Keolis Limited ("AKIL"). We welcome the opportunity to respond to this statutory consultation, no part of our response is confidential, and we are content for it to be published in full.

Delivering a safe, reliable, efficient and growing railway for our customers and end users is at the heart of our business strategy. We agree with AKIL and Transport for Wales that the new interface being created by the divestment of the CVL network should cause only minimal disruption to our stakeholders.

We therefore welcome the cooperation obligations that are being proposed for inclusion within both the Core Duties and Network Management obligations of AKIL's network licence. We believe it is critical that the CVL licence and our own licence are aligned, supporting compliance with both of our respective licence obligations. As the two networks will remain closely integrated, we believe it would be beneficial to maintain parity of licence conditions to keep the boundary as efficient and seamless to customers as possible.

We remain of the view that ORR's intention to license AKIL as a network operator in respect of the CVL network only is appropriate due to the unique nature of the contractual arrangements between Welsh Government and AKIL. We support the form of licence that is being proposed as part of this statutory consultation. We also note that Network Rail will be supporting AKIL through the provision of a number of services, but that AKIL will remain accountable for its licence obligations.

We acknowledge that there remain a number of issues to resolve in order to respond to stakeholder concerns and ensure that the two Networks interface with each other as smoothly as possible. We will continue to support TfW and industry stakeholders to resolve these issues.

Yours sincerely

From:
Sent: 23 August 2019 10:05
To: Licensing Enquiries
Cc:
Subject: RE: Statutory consultation - Amey Keolis Infrastructure Limited

RFG Consultation Response

Many thanks for the opportunity to comment on the draft licence. I apologise for the late response, and hence only by email. Please consider this as our formal response, and no part is confidential.

We note that the ORR has made some changes to the draft licence based on the previous comments made. We welcome these changes, but note that in many other areas, freight continues to be expected to rely on the grant agreement, a contract to which freight operators are not party to. We also welcome the assurance in the section marked Context that this disposal and licence does not set a precedent for any future disposal. We note the proposed work with Network Rail to scope future requirements, and expect full and wide industry participation in any such project. Amongst the many roles and purposes of regulation is the need to provide protection for private sector businesses from monopoly providers of infrastructure, be that Railtrack, Network Rail, HS1, TfW or any other infrastructure manager in future. We would therefore urge the ORR to ensure that any future structures provides a robust framework for so doing, to protect against the eventuality of monopolistic or biased behaviour. Whilst Government(s), and Network Rail, are today generally benevolent, this does not mean that regulatory protection should be weak or removed – there have been many examples over the last two decades where regulatory action has been important in protecting the interests of private sector operators. This has included ensuring that the network is maintained to the defined standard, including freight capability.

In terms of the proposed licence for Amey Keolis, ORR have relied on the Grant Agreement between TfW and AKIL for many elements of regulatory protection. In many areas for the passenger service this may be appropriate. However, reviewing the published grant agreement, we cannot find any reference to maintaining the network in a suitable condition for freight, including on the freight only line section. As Schedules 3A and 3B appear to be redacted we are unable to verify whether this is included. ORR should therefore take the necessary steps to ensure that suitable regulatory protection for freight is included in the licence.

Yours sincerely,

JOIN US
Because getting
rail freight right
is no kid's game.

