

Responses to ORR's proposal to grant a network licence for the operation of the Core Valley Lines statutory consultation – Consultation published 7 June 2019

1. Anonymous response
2. DB Cargo Limited
3. Direct Rail Services Limited
4. First Greater Western Limited
5. Freightliner Limited
6. Network Rail Infrastructure Limited
7. Rail Delivery Group
8. Rail Freight Group
9. Transport Focus

From: redacted
Sent: Wednesday, 26 June, 2019 9:13 PM
To: Licensing Enquiries
Subject: Network licence for the operation of the Core Valley Lines

Sir,

This is my response to the core valley lines network licence consultation. My response is made in a personal capacity; I would prefer to remain anonymous.

I believe that there should be the same conditions applied to any new network operator as applied to Network Rail, including being subject to periodic review, particularly in relation to freight and/or open access operators. The consultation reads as though there **will** in future be only one passenger operator and is based on freight requiring no more access than is used today (preferably less). Any conditions should allow for other operators using the network or requiring greater access than they already use. What if freight use picks up or requires additional sites? What if an open access operator wants to serve a valley route? Unchecked, I believe the proposal could preclude future expansion of the railway in some situations.

Whilst not directly associated with the licence application, I note that the proposed 'split out' increases complexity and may not be best for the railway industry overall.

- The proposal is purely political and serves no benefit to the railway as a whole;
- The proposed infrastructure works are not dependent on ownership and could easily be accomplished with NR still as owner;
- TfW will need to work very closely with NR to fulfil its desires and obligations for the whole of the rest of Wales. Why is direct control of this section necessary? Why not work closely with NR here too, as per all the other stakeholders and funders throughout Great Britain? TfW can still have its desired alterations without this 'split out' proposal.

Thank you for your consideration.

Yours faithfully,

Redacted



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One Kemble Street
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DB Cargo (UK) Limited
Ground Floor McBeath House
310 Goswell Road
London EC1V 7LW

4 July 2019

CONSULTATION ON CVL NETWORK LICENCE

This letter constitutes the response of DB Cargo (UK) Limited ("**DB Cargo**") to the consultation document entitled "*Initial consultation on a network licence for the operator of the Core Valley Lines*" issued on 7 June 2019.

Background

DB Cargo currently holds a Track Access Contract (Freight Services) dated 11 December 2016 with Network Rail that expires in 2026 ("the contract"). Under the contract, DB Cargo has permission to use the entire Network subject to the terms and conditions set out therein. This permission to use includes the Core Valley Lines ("**the CVL**") upon which DB Cargo operates regular freight services.

The intention to permit the transfer of ownership of the CVL from Network Rail to Transport for Wales ("**TfW**") implies that Network Rail would no longer be able to honour the contract in its entirety as the contract will no longer provide DB Cargo with permission to use the CVL. This would prevent DB Cargo's services accessing the CVL including the various adjacent freight terminals (e.g. Cwmbargoed). Consequently, DB Cargo is concerned that it will be materially affected by the proposed transfer of the CVL from Network Rail to TfW.

To address its concerns, DB Cargo will require (and expect) arrangements to be put in place that replicate its current contractual entitlements and protections to ensure it is left neutral because of the transfer. These protections and entitlements include those contained within the conditions of the network licence that will apply to the infrastructure manager of the CVL, which is currently Network Rail and, following the transfer, is intended to be TfW's agents Amey Keolis Infrastructure Limited ("**AKIL**").

Proposed network licence for the CVL

Given the above comments and its requirement to be held neutral in respect of the transfer, DB Cargo is of the view that the principle for the proposed AKIL network licence



should be that it replicates as far as possible and where appropriate, Network Rail's network licence that currently applies to the CVL.

However, DB Cargo notes that instead ORR has adopted the approach of using the model network licence as a starting point with the addition of certain licence conditions (or parts of those conditions) currently found in Network Rail's licence. DB Cargo does not consider that this approach goes far enough in replicating the protections it currently enjoys on the CVL. Whilst it is acknowledged that ORR refers to certain protections in relation to network management that are contained in a 'Grant Agreement' between Welsh Ministers and AKIL's parent Company, Keolis Amey Wales Cymru Limited ("**KAWCL**"), DB Cargo is not a party to that agreement nor was it consulted on its contents.

Therefore, DB Cargo is not convinced that those protections, which are contained in an agreement that it is not a party to and cannot enforce, are enough to warrant their exclusion from AKIL's network licence. Whilst DB Cargo recognises that it cannot enforce Network Rail's network licence either, it has been consulted on the contents of that licence and is aware that there are recognised transparent procedures concerning change and complaints involving the ORR, who can, if necessary, enforce the licence.

This concern is exacerbated because, unlike Network Rail who has more independence from train operations, TfW and KAWCL (through its subsidiary Keolis Amey Operations) are 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 strongly considers, therefore, in the interests of certainty that it is imperative that all the relevant network protections that third-party operators (including DB Cargo) rely upon are clearly and transparently published in one document that can be enforced if necessary by the ORR. In DB Cargo's view, the most appropriate way of achieving this is to include them all in the network licence for the CVL.

Therefore, having considered the potential network licence conditions for the CVL listed in Annex B of the consultation document, DB Cargo agrees that they are all appropriate for inclusion but that they should also be supplemented with the following conditions (suitably adapted as necessary) that are currently contained in Network Rail's network licence:

NR Condition 1: Network Management Duty: As stated in its concerns expressed above, DB Cargo considers that the conditions set out in the Grant Agreement in this respect lack enough transparency for third parties and it is uncertain as to the governance under which these conditions could be enforced or changed. DB Cargo is concerned that such governance will exclude consultation with third-party operators (including DB Cargo).

NR Licence Condition 3: Sufficient Resources (condition 3.1): The Licence Holder must ensure it retains enough resources to carry out its licenced activities. Again, this is a crucial requirement for the protection of train operators running on the CVL.

NR Licence Condition 5: In addition to the sections on planning and capacity allocation already proposed by ORR for inclusion, DB Cargo considers that the sections on



Asset Management and Asset Information should also be included. Accurate asset information concerning the network is crucial to enable train operators to plan their businesses with a reasonable degree of assurance.

NR Licence Condition 7: Timetable Planning and Timetable Disputes: It is crucial in DB Cargo's view that the Licence Holder continues to be obliged to produce timetables and have processes in place to resolve relevant disputes.

NR Licence Condition 15: RDG Membership: Irrespective of the fact the CVL will transfer ownership, the network will remain connected to and form an integrated part of the national network as many freight and passenger trains will continue to pass over the new boundary between the CVL and Network Rail network. DB Cargo considers that, as now, the infrastructure manager of the CVL would benefit from membership of the RDG.

NR Licence Condition 16: Restrictions on Activities: Given that AKIL forms part of the same Group Company that also provides railway operations on the CVL (i.e. KAOL), DB Cargo considers that there should be clear and transparent conditions around inter-Company dealings.

NR Licence Condition 17: Land Disposal: Given that the CVL will remain connected to and form an integrated part of the national network, the associated land should remain, as it is now, subject to conditions protecting third parties against disposal for non-rail purposes.

In respect of NR Licence Conditions 16 and 17 above, DB Cargo notes ORR's view that these are unnecessary to be included in the CVL network licence because these are not restrictions placed on other non-Network Rail operators. Nevertheless, DB Cargo considers that they should be considered for inclusion because unlike other non-Network Rail operators who have either inherited historic non-Network Rail networks or developed new networks, the Licence Holder of the CVL has taken over significant assets that currently belong to Network Rail. This, DB Cargo submits, sets the CVL apart from other non-Network Rail networks.

NR Licence Condition 18: Interests in Vehicles: Given that AKIL forms part of the same Group Company that also provides railway operations on the CVL (i.e. KAOL), DB Cargo considers that, as is the case with Network Rail, there should be clear and transparent conditions surrounding AKIL's ability to acquire vehicles for non-network purposes.

Finally, DB Cargo also supports ORR's intention to also include a licence condition regarding cooperation with other infrastructure managers to ensure that there is no negative impact on operators (such as DB Cargo) who will run trains over both the CVL and Network Rail's network. However, DB Cargo considers that this potential licence condition should be supplemented with an obligation for AKIL to maintain a connection(s) between the CVL and Network Rail's network.

DB Cargo hopes that its representations made above are helpful and it looks forward to



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receiving any further consultation documents ORR may decide to issue as the proposed network licence for the CVL is developed further.

Yours sincerely,

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WC2B 4AN

Direct Rail Services Limited
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Carlisle, Cumbria, CA6 4SJ

Web: www.directrailservices.com


05th July 2019

Dear Sir,

Re: Consultation on CVL network licence

Direct Rail Services, Engineering Standards Manager has reviewed the content of the initial consultation on the network licence for the operator of the Core Valley Lines transfer to AKIL and have no proposed amendments to the conditions and obligations being included.

Yours Sincerely



From: GWR
Sent: 11 June 2019 11:26
To: Licensing Enquiries
Subject: RE: ORR initial consultation on a network licence for the Core Valley Lines network

Dear Licensing Enquires,

Thank you for Les Water's letter re the above contained in your email below.

GWR supports this proposal.

Many thanks.

| **Great Western Railway** 1 Milford Street | Swindon | SN1 1HL

First Greater Western Limited | Registered in England and Wales number 05113733
Registered office: Milford House, 1 Milford Street, Swindon SN1 1HL.

From: Licensing Enquiries
Sent: 07 June 2019 13:57
Cc: Licensing Enquiries
Subject: ORR initial consultation on a network licence for the Core Valley Lines network

Dear all,

Attached is our initial consultation regarding the scope of a proposed network licence for Amey Keolis Infrastructure Limited's operation of the Core Valley Lines.

At this point, before taking any responses into account, we would expect to launch a formal 28-day statutory consultation on the drafting of a proposed network licence in late July.

Please send any written responses to this initial consultation **by 5 July 2019**.

Kind regards,

Licensing Team

Initial consultation on a network licence for the operator of the Core Valley Lines

Freightliner welcomes the opportunity to respond to the ORR's initial consultation on a network licence for the operator of the Core Valley Lines.

Freightliner is the second largest rail freight operator and operates nationally throughout Great Britain. It operates circa 100 daily intermodal train services, moving over 770,000 containers per year. Up to 200 bulk trains per week are also operated, moving over 12 million tonnes of bulk freight annually. Through its Track Access Contract with Network Rail, Freightliner Heavy Haul currently holds access rights to run services on the Core Valley Lines.

1.0 Background

The transfer of the Core Valley Lines (CVL) from Network Rail to Transport for Wales (TfW) has raised a significant number of contractual issues between the freight operators, Network Rail and TfW's appointed infrastructure manager Amey Keolis Infrastructure Limited (AKIL). Freightliner currently holds a freight Track Access Contract enabling the use of the entire network, however following the proposed transfer Freightliner will require a new separate Track Access Contract with AKIL to continue to operate services on the CVL.

Freightliner Heavy Haul, in Schedule 5 of its contract with Network Rail, holds 16 access rights for services on the CVL, all of which will span the proposed new boundary between the two separate networks. In future these access rights will need to be administered over two Track Access Contracts, which will increase the contractual complexity to be able to continue to use the CVL after the transfer. In discussions with AKIL, and understanding the very special case for separation of the Valley Lines from the rest of the UK network, the freight operators including Freightliner, have said that they are prepared to manage this complexity themselves, however there remain a number of key issues where agreement is still to be reached.

The principle matters that still need to be resolved are in areas where the changed contractual framework due to the transfer of the CVL also moves the financial risk from infrastructure manager to freight operator. The freight operators have been clear that they must be held financially neutral in the resolution of these contractual matters that have been created.

Freightliner expects that the existing contractual protections are maintained following the transfer of the CVL to TfW. This includes the protections provided by the network licence.

2.0 Network licence

As detailed in the consultation document, *"the purpose of a network licence is to help protect users of railway services from any abusive monopolistic or discriminatory behaviour by a monopoly operator"*. As Network Rail's current licence conditions currently protects users on the entire network, currently including the CVL, Freightliner would expect that the CVL network licence would seek to replicate these protections.

Although we understand the desire to avoid regulatory burden, the CVL is currently, and will remain, a mixed use railway and it contains a number of rail-connected freight sites. While the number of freight services is small, we do expect a suitable regulatory framework to continue to exist. This is particularly important in the context of the CVL because unlike Network Rail, TfW and Amey Keolis are involved in specifying, providing and operating the passenger services on the CVL in addition to managing the infrastructure through AKIL.

2.1 Proposed approach to network licence

Given that the CVL is currently part of the national rail network, Freightliner would expect that the protections afforded in the Network Rail network licence are replicated. Therefore the starting point for the CVL licence should be to work back from the current Network Rail licence and to remove any licence conditions that are not appropriate given the relatively discrete nature of the CVL network.

The ORR consultation suggests that the starting point for the CVL licence will instead be the ORR model licence with a number of other conditions added in. The key justification for reducing the number of conditions in the CVL licence is the Grant Agreement between Welsh Ministers and Keolis Amey. The freight operators are not a party to that agreement, were not consulted on the contents of the agreement and do not have any rights to challenge it through the ORR. Therefore we do not consider this Grant Agreement can be considered as sufficient justification to reduce the conditions contained within the CVL network licence. To do so would likely reduce the regulatory protection for operators – including the freight operators that currently use the network.

In the consultation, the ORR has aligned the proposed CVL licence conditions with those placed on other non-Network Rail infrastructure managers. Freightliner believes that it would be more appropriate to consider the CVL in the context that the Licence Holder has taken over significant assets that currently belong to Network Rail. This provides a clear distinction between other non-Network Rail infrastructure managers who have inherited historic non-Network Rail networks or developed new networks and what is in this case, currently a part of Network Rail's network.

2.2 Conditions in the network licence

Freightliner considers that there are a number of clauses in Network Rail's licence which need to be included in the CVL licence and adapted as necessary.

Cooperation with other infrastructure managers

We support ORR's intention to also include a licence condition to ensure that AKIL cooperates with Network Rail. This should be supplemented further with an obligation to maintain a connection between the CVL and Network Rail's network and also requiring coordination between the two infrastructure managers in relation to matters of access, pathing, timetabling and performance management, in order to ensure alignment and a network-wide approach is maintained. We also propose that amendments are made to Network Rail's licence to include obligations on co-operation and co-ordination on matters of access, pathing, timetabling and performance management with other adjoining Infrastructure Managers.

Other

Freightliner also considers the following Network Rail conditions as necessary for the CVL licence.

Network Rail condition	Rational for inclusion
Network Management Duty	While the provisions that are likely in Grant Agreement, adding them into the CVL licence conditions will provide additional transparency and protection for third parties.
Sufficient Resources	NR condition that it is sufficiently resourced, so that it can properly and efficiently carry on the Permitted Business provides protection to other parties.

General network management	NR licence compelling infrastructure manager to maintain appropriate information about the Relevant Assets and make this accessible is an important requirement.
Timetable Planning and Timetable Disputes	Obligation to produce timetables and have a dispute resolution process is important.
Restrictions on Activities	This is important, as AKIL forms the same Group Company that also provides railway operations on the CVL
Land Disposal	Licence condition provides important protection. Freightliner strongly suggest it is replicated in the CVL licence. It acts to protect third parties against disposal for non-rail purposes.
Interests in Vehicles	As AKIL forms part of the same Group Company that also provides railway operations on the CVL this is an important licence condition.



Les Waters
Manager, Licensing
Railway Markets and Economics
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CF10 5ZA



1st July 2019

Dear Les

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

Thank you for your letter of 7 June 2019 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 the consultation, no part of our response is confidential, and we are content for it to be published in full.

We note that it is ORR's intention to license AKIL as a network operator in respect of the CVL network only, due to the unique nature of the contractual arrangements for this network. We agree that this is an appropriate way to license AKIL.

When considering the form of network licence to be granted, we note the legal protections that are available to users through the Grant Agreement and the Railways (Access Management and Licensing of Railway Undertakings) Regulations 2016. We agree that in addition to referring to ORR's model network licence, it is sensible to consider the provisions of our own Network Licence, given the interface between our network and the CVL network.

We welcome the proposal to include a licence condition which would oblige AKIL to cooperate with other infrastructure managers. Delivering a safe, reliable, efficient and growing railway for our customers and end users is at the heart of our strategy so it is fundamental to ensure that there is no adverse impact on our stakeholders. In addition, we welcome such alignment between the CVL licence and our own licence so as to support our compliance with our own obligations.

While we recognise that ORR does not typically place land disposal restrictions on other network operators, we would welcome ORR having such oversight so as to give consistent protection to land (including our retained land at interfacing points) that may be required for future development of the railway network.

We look forward to receiving the formal statutory consultation document which we note that ORR will issue later this month.

Yours sincerely



RDG welcome the opportunity to respond to this consultation relating to the network license for the operator of the Core Valley Lines (CVL).

To make the transfer acceptable it is important that the framework outlined within the license works for freight operators and does not put them at a financial or commercial disadvantage vis-à-vis their existing contract with Network Rail. We note that as part of the transfer track access charges for use of the CVL will be set by AKIL (Amey Keolis Infrastructure) and will not be subject to periodic reviews by ORR. It is important that future access charges are closely aligned with those in the existing charging regime set by Network Rail and therefore do not negatively impact freight operators or their customers.

We would encourage ORR to consider a commitment within the license which stipulates that freight operators will be left cost neutral by the transfer of the CVL, and further detail on how this will be achieved.

As rail freight services will routinely cross boundaries between the CVL network and Network Rail's network we welcome the inclusion of a requirement for co-operation between different infrastructure managers.

We understand that Keolis Amey have been in regular dialogue with our freight members and would welcome further engagement on this matter to ensure that industry arrives at a pragmatic solution which works for all users of the network.

Initial Consultation on a Network Licence for the Operator of the Core Valley Lines

Response from Rail Freight Group

5th July 2019

1. Rail Freight Group (RFG) is pleased to respond to the initial consultation on Network Licence for the operator of the Core Valley Lines.
2. RFG is the representative body for rail freight in the UK, and we campaign for a greater use of rail freight, to deliver environmental and economic benefits for the UK. We have around 120 member companies including train operators, end customers, ports and terminal operators, suppliers including locomotive and wagon companies and support services.

General Comments

3. RFG, along with its members, understands the desire of Welsh Government to take direct control of the Core Valley Lines (CVL). The rail freight industry does not wish to prevent such a transfer occurring and has been pleased with the collaborative and open approach from Keolis Amey to developing a suitable framework for accommodating the freight which operates today and could operate in future. Nonetheless, the transfer raises important matters of principle, which need to be fully considered.
4. We recognise that the CVL represent only a small, and fairly discrete part of the national rail network. Nonetheless, it is part of the national network today, and are regulated as such. The commercial frameworks which exist are based on the well understood framework which applies to Network Rail, the levels of risk it incorporates and the protections it provides. So far as possible, RFG expects that the resultant framework post transfer will not significantly change this position for the FOCs and their customers.
5. This is particularly important because the transfer of CVL has been seen as some as a precedent for the potential transfer of other parts of the NR infrastructure, as well as a format for other new infrastructure managers such as East – West. Although freight operators are prepared to be pragmatic in some elements of the CVL proposal, we are clear that any wider attempts to divest parts of the network cannot be treated in the same way. This includes the framework for licencing and regulation.
6. In particular, we do not expect the transfer of CVL to create risk transfer from Government (be that Network Rail or Welsh Government) to the private sector. This includes financial risk (for example in elements of the track access contract) but also in regulatory and legal risk, for example if relevant parts of the current framework for freight are less rigorous in future.

7. ORR's approach to the regulation of CVL (including this consultation) appears to be particularly light touch. We understand the desire to avoid regulatory burden, but we are concerned that in this case the regulatory approach has been designed for the passenger operations without regard for the needs of other users. Although the number of freight services is small, we do expect a suitable framework to continue to exist. We note that CVL remains an open access network available on which any operator (passenger or freight) can bid for access.
8. In particular this means that reliance on the Grant Agreement between Welsh Government and Keolis Amey to provide regulatory protection may not be appropriate. Freight operators are not party to this contract, nor do they have any right through ORR to challenge it (as they do with Network Rail's licence today). There is no format of oversight for contract changes and modifications which could well be expected to happen over time. As such, freight operators could be disadvantaged by this approach.
9. As such, we consider that there are a number of clauses in Network Rail's licence which need to be included in the CVL licence, adapted as necessary. These are;
10. *NR Condition 1: Network Management Duty*: As above the conditions set out in the Grant Agreement in this respect lack sufficient transparency for third parties and it is uncertain as to the governance under which these conditions could be changed without consultation with third party operators.
11. *NR Licence Condition 3: Sufficient Resources (condition 3.1)*: The Licence Holder must ensure it retains sufficient resources to carry out its licenced activities. Again, this is a crucial requirement for the protection of third party operators.
12. *NR Licence Condition 5*: In addition to the sections on planning and capacity allocation already proposed by ORR for inclusion, we consider that the sections on Asset Management and Asset Information should also be included.
13. *NR Licence Condition 7: Timetable Planning and Timetable Disputes*: It is crucial that the Licence Holder continues to be obliged to produce timetables and have processes in place to resolve disputes.
14. *NR Licence Condition 16: Restrictions on Activities*: Given that AKIL forms part of the same Group Company that also provides railway operations on the CVL (i.e. KAOL"), we consider that there should be clear and transparent conditions around inter-Company dealings.
15. *NR Licence Condition 17: Land Disposal*: Given that the CVL will remain connected to and form part of the national network, the associated land should remain, as it is now, subject to conditions protecting third parties against disposal for non-rail purposes.
16. In respect of NR Licence Conditions 16 and 17 above, we note ORR's view that these are unnecessary to be included in the CVL network licence because these are not restrictions placed on other non-Network Rail operators. Nevertheless, we

consider that they should be considered for inclusion because unlike other non-Network Rail operators who have inherited historic non-Network Rail networks or developed new networks, the Licence Holder of the CVL has taken over significant assets that currently belong to Network Rail.

17. *NR Licence Condition 18: Interests in Vehicles:* Given that AKIL forms part of the same Group Company that also provides railway operations on the CVL (i.e. KAOL”), we consider that, as is the case with Network Rail there should be clear and transparent conditions preventing AKIL acquiring vehicles for non-network purposes.
18. We support ORR’s intention to also include a licence condition regarding cooperation with other infrastructure managers to ensure that there is no negative impact on operators who will run trains over both the CVL and Network Rail’s network. This should be supplemented with an obligation to maintain a connection(s) between the CVL and Network Rail’s network.

From: Transport Focus
Sent: 04 July 2019 16:23
To: Licensing Enquiries
Cc: Transport Focus
Subject: Consultation on CVL network Licence

Thank you for inviting initial comments on the network licence for the operator of the Core Valley Lines (CVL).

I am responding on behalf of Transport Focus, the independent body representing the interests of rail users in Great Britain.

One of the key elements for us will be to ensure that passengers do not notice the 'join' when travelling between the CVL network and the rest of the network. To this end we particularly welcome the inclusion of the conditions relating to the provision of passenger information. It will be important that there is consistency between network providers.

We also welcome the inclusion of the clause relating to the provision of information to ORR. Transport Focus supports transparency of information – the more information that passengers have the better they can hold the service provider to account. Comparative benchmarking can also be a powerful motivation. Hence it is good that ORR will still be able to collect and publish key performance data.

Naturally we are also keen that the industry engages with passengers and their representatives. However, we note that most of the passenger facing provisions (including the requirement to engage /consult /cooperate with Transport Focus) are in the Grant agreement – so we will not address these here.

We have no other comments to make at this stage.

Regards

Transport Focus (London office)

The independent transport user watchdog