



Bill Hammill
Manager Track Access
Office of Rail and Road
One Kemble Street
London WC2B 4AN

DB Schenker Rail (UK) Ltd
Ground Floor McBeath House
310 Goswell Road
London EC1V 7LW

Nigel Oatway
Access Manager

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Dear Bill,

IMPROVING SCHEDULE 5 OF THE MODEL FREIGHT TRACK ACCESS CONTRACT

This letter constitutes the response of DB Schenker Rail (UK) Limited ("DB Schenker") to the consultation document issued by ORR on 6 November 2015 entitled "Improving Schedule 5 of the Model Freight Track Access Contract"

Through its involvement in the Freight Sub-Group of the Rail Delivery Group's Contractual and Regulatory Reform Working Group, DB Schenker has participated in the industry discussions to review and amend Schedule 5 of the Freight Model Track Access Contract. Consequently, DB Schenker has already had visibility of the majority of the changes being consulted upon and, subject to the representations made in this letter, reaffirms its support for the proposals.

Detailed comments on the proposals

2.1. DB Schenker acknowledges ORR's reasons behind its proposal to move relevant definitions from paragraph 1.1 of Schedule 5 into the Rights Table. However, it is clear that the aim of having all of the Rights Table definitions incorporated within the Rights Table itself cannot be fully achieved. This is because not all of the necessary definitions can be included in the Rights Table (e.g. "Y Path" and "Y Path Option") whilst others have been expressed partly in one place and partly in another (e.g. "Days", "Origin", "Destination" and "Contract Miles"). In addition, other defined terms used within the definitions proposed to be moved to the Rights Table are also expressed elsewhere in the track access contract (e.g. "Planned" and "Service"). Given this, the proposal will, therefore, increase the number of places that definitions are expressed in the Freight Modal Track Access Contract which could lead to the unintended consequences of increasing complexity and leading to less clarity.

2.2. Notwithstanding this, DB Schenker considers that the majority of the terms in the Rights Table are comparatively self-explanatory in any case and should be able to be easily interpreted in sufficient detail by Train Planning staff without the contractual wording having to be expressed in the Rights Table also. For these reasons, DB Schenker, therefore, considers that all of the definitions for terms used in Schedule 5

should remain in one place (i.e. in paragraph 1.1 of Schedule 5) and not be split with some in one place, some in another and some in two places.

2.3. Definition of "*Days*" – The current definitions of "*Day*" and "*Days per Week*" have been replaced with a new definition of "*Days*" which has been split into two with one part of the definition appearing in paragraph 1.1 of Schedule 5 and the other part in Column 2 of the Rights Table. Without prejudice to DB Schenker's position expressed in paragraphs 2.1 & 2.2 above, should the definition remain as proposed, for clarity DB Schenker believes the wording "*in paragraph 1.1.*" should be added to the end of the part of the definition included in the Rights Table. In addition, and for the sake of completeness, DB Schenker believes that an entry for "*Day*" should appear in Annex A to the consultation document.

2.4. Definition of "*Exercised*" – DB Schenker considers that for clarity and consistency, the wording "*Part D of*" should be inserted between the words "*in*" and "*the*".

2.5. Definition of "*Firm Right*" – DB Schenker considers that for clarity and consistency, the wording "*Part D of*" should be inserted between the words "*in*" and "*the*".

2.6. Definition of "*Intermediate Points*" – Annex A suggests that that this proposal includes a reference to clause 1.1 in the Rights Table. However, the relevant wording in the Rights Table does not refer to clause 1.1 and instead sets out its own definition. DB Schenker believes that this inconsistency needs to be addressed.

2.7. Definition of "*Minimum Dwell Times at Intermediate Points*" – DB Schenker considers that the word "*any*" should be replaced with either the word "*a*" or "*the*" as the Minimum Dwell Times are likely to be different in each case.

2.8. Definition of "*Timing Load*" – DB Schenker considers that for clarity and consistency, the wording "*Part D of*" should be inserted between the words "*in*" and "*the*".

2.9. Definition of "*Y Path*" – DB Schenker considers that the term "*Days per Week*" should be replaced with the term "*Days*". In addition should the wording in square brackets remain, DB Schenker believes that a definition of "*Train Reporting Number*" may be required.

2.10. Paragraph 2.1(b) – This sub-paragraph refers to a column entitled "*Specific Terms*". However, DB Schenker believes it should instead refer to "*Special Terms*". In addition, a full stop is required at the end of the sub-paragraph and the closing speech marks have been omitted from the term "*Specific [Special] Terms*".

2.11. Paragraph 4.1(a) – DB Schenker considers that the term "*services*" in this sub-paragraph should read "*Services*".

2.12. Paragraph 5.2(a) – To improve the readability of this sub-paragraph, DB Schenker believes that the wording "*provided that*" should be inserted at the end between the word "*effect*" and the colon.

2.13. Rights Table – DB Schenker considers that in order to improve the manageability and ease of compilation of the Rights Table, the Arrival Window and Departure Window columns should both be split in half down the middle to enable the start time and finishing time of each window to be inserted into its own separate sub-column.

DB Schenker hopes that these comments are helpful. If you wish to discuss them further please do not hesitate to contact me.

Yours sincerely,



Nigel Oatway
Access Manager