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Mr M Dawson  
Deputy Director, Rail Market, Access & Performance  
Office of the Rail regulator  
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Dear Mr Dawson,

### **Model Freight Track Access Contract : Consultation Document**

Firstly may I express our gratitude for being invited to offer comment in response to your consultation document. For the best part of three years Advenza Freight Ltd. has been weaving its way through the apparent maze that is the legal and operational process of gaining admission to the network, so, as a brand new operator, I hope you will forgive us if our views on your document appear somewhat simplistic.

Before addressing specific questions in turn, may we set out our belief that any provision for track access, whether passenger or freight, should be set within an over-arching economic context. In other words, allocation of a (currently) scarce resource (track paths) should be effected in a way that realises the greatest net economic benefit. We appreciate that this is an issue more for the attention of the SRA than your good selves, but we nonetheless feel that it impacts most heavily on many of the questions you raise.

Advenza Freight is entering the rail freight industry in order to address a specific market need i.e., the provision of trunk haulage for less-than-wagonload customers, who in this case are the small to medium sized road hauliers. We would not be exaggerating when we suggest that the road haulage industry is rapidly approaching a crisis, the effect of which can only be a sharp increase in the everyday cost of living as the haulier is forced to pass on increasing distribution costs. It is in this market sector therefore where the growth potential for rail freight is greatest.

We have struggled to obtain freight paths in order to provide some relief to the above scenario along key corridors. One may be forgiven for wondering why the word "congestion" is applied to key routes when simple observation reveals significant gaps between trains. We have

thus become aware of two key issues which we feel track access contract clauses should address :-

1. Large numbers of passenger services over congested routes are generally poorly loaded. We suggest that franchised operators should be subjected to the same "use it or lose it" clause as freight operators, where the "use it" element is based upon minimum (average) passenger numbers using each service booked. One could call the above economic benefit sharply into question where a two car unit carrying no more than 15 people has been given preference over a freight train which has the potential to remove up to 26 lorries from congested trunk roads.
2. The use of "Q" paths for sporadic traffic needs to be judged on the same net economic benefit terms i.e., a once a week or three times a month bulk freight flow should relinquish its path if another operator can clearly demonstrate greater economic benefit by running a daily liner service for a more needy market.

Advenza Freight does not, we believe, have sufficient knowledge or experience to answer all of the question posed, but we would like to address certain specific questions :-

## **Section 2 : The expression of freight access rights**

**2.41 (a)** : we suggest that level 1/level 2 rights should be retained as specific markets will have specific path characteristics.

**2.41 (b)** : the only issue that we can offer comment on here goes back to the whole question of the economic value of a track path. This in turn would suggest that if any body were to hold the rights to these (level 3) paths, it should be the SRA.

**2.41 (c)** : simplification of the process and a levelling of the playing field can only be to the advantage of those who seek to attract new traffic to rail, therefore a general approval would be preferred over STAGA.

**2.41 (d)** : we believe that permission to use on a network basis subject to route based "high level" operating restrictions is preferable to the administrative and time burden associated with route by route permission to use (based on our own experience). With high visibility of network capabilities and correct management of customer expectations, there is no reason why the freight operators and Network Rail cannot fulfil their respective obligations and business objectives.

**2.41 (f)** : flex should be determined by “what the market will bear”. An obvious comparison may be effected between a coal train moving from a pit to a stock pile and a fast liner service carrying chilled goods. We painted a true picture of a road haulage industry in crisis : one should not ignore that hauliers carrying chilled and frozen products are subject to the same pain, yet these particular segments will need much tighter delivery windows if rail is to make even the smallest inroad into this market segment. We're not necessarily relating to “piggy back” units with their own refrigeration units, but smaller consignments using “cool box” technology.

**2.41 (g)** : an operator may well find himself in a situation where he has a simple (but unenviable choice) – cancel the train due to the unavailability of specific equipment or run the train with “inferior” equipment and risk picking up a substantial performance bill. It is our belief that any operator should be able to plan in such a way that he does not find himself in this position, but on occasions these things happen and Advenza Freight, in such a situation, would be tempted to do whatever necessary (and safely !) to get the consignment through. We accept the case for equipment (minimum) specification, but we are likewise conscious that our market will not readily accept a shrugging of the shoulders as opposed to the road haulage industry's determination to get things through no matter what.

**2.41 (h)** : feedback from our markets reveals that the rail freight industry invariably falls down on either its inability or unwillingness (or both) to communicate with its customers when things go wrong. We believe that a process must be in place whereby Network rail must endeavour to ensure that alternative slots are made available if possible, which suggests, on the one hand, that specific provision for this in the model contract would be useful : given that additional services can be covered by spot bids suggests otherwise. Advenza Freight is therefore of the opinion that to include would provide better “protection” for operators.

**2.41 (i)** : it is in the operators' interests to ensure that he has suitable access to and from terminals. To run a train having failed in this obligation would render the operator liable to substantial cost penalties.

### **Section 3 : Transfer of rights & extinguishing of unused rights**

Much of this is addressed earlier in this letter. We would however like to venture some thought on the issue of rights and paths transfer.

Our perception is that a good proportion of transfer has occurred where one operator has won traffic from another for whatever reason of the customer. In most of these cases the path serves a specific location, even though the same customer may contract with the incumbent operator from a different location. In this respect, it may be easily argued that the path is intrinsically linked to the flow and is therefore flow, not operator, specific. Why should the path not move with the operator ?

The real issue arises when a train is not customer specific, such as the EWS wagonload network or the proposed Advenza Freight *FreightBus* services which are both run on a shared user basis. In such a situation we foresee the same process being applied as to that which we believe should be applied to lightly loaded passenger services i.e. UIOLI being based on a minimum volume carried. We accept that this could give rise to conflict, but if the sample size (i.e. trains surveyed and survey duration) were deemed as being fair and truly representative of economic need, then problems should be easier to resolve. Arbitration by the Regulator, if required, should therefore be an integral part of this process.

**3.45 (g)** : we suggest that an independent rights holder could only be effective if that holder based their judgement on the relative economic merits of individual path allocation. We foresee political pressure being brought to bear to favour allocation to passenger services at the expense of more economically beneficial freight trains, so it is essential that such a holder was given a specific remit i.e., to maximise general economic use of the railway network.

**3.45 (i)** : a path cancellation fee or reservation charge (if applied at a reasonable rate) could do much to cut out wasted applications and path validation activities if the operator is not sure of his customer. However, this should equally apply to contractual rights which are claimed and then not used !

#### **Section 4 : Performance & restriction of use regimes**

Advenza Freight has had cause to take issue with the freight performance (Network Rail bonus) regime suggested for its track access contract. In this instance, owing to the fact that Advenza Freight is a new operator with no operational data to derive a benchmark from, comparative data was used. Unfortunately this data was skewed by infrequent events and it has taken a huge amount of haggling to arrive at a benchmark figure which, we were told, would

satisfy the ORR. The end result therefore is that Advenza Freight will effectively pay Network Rail a bonus for every train that arrives at its destination less than ten minutes late. Not what we would call an incentive for anybody !

Our views on the performance regime are somewhat simplistic. We accept the need to incentivise all parties to manage their operations efficiently and to improve their performance on a year by year basis, but we believe that three considerations should enter the argument :-

1. Rail freight can only expand if it taps into the significant market that is FMCG. This segment is highly demanding in terms of reliability of delivery and flexibility in terms of volumes and collection/delivery times. Many third party hauliers working for the larger retailers will testify to the penalties which are levied when performance is low. It is highly unlikely, unless compensation and bonuses are set at very high levels, that rail freight operators will be able to recoup penalties levied on them from their customers. It is however likely that a performance regime which does permit such levels of compensation will require access charges or other financial premiums at such a high level which make rail freight uncompetitive anyway.
2. The freight performance and bonus regime should be negotiated on a contract by contract basis as opposed to blanket rates. This would enable the parties involved to assess the price sensitivity of the flows / market segment and set the regime according to the expectations of the operator, their customers and Network Rail.
3. It also has to be said that rail freight operators should engage in better management of their customers' expectations. Advenza Freight has adopted a philosophy of reliability as opposed to break-neck speed, believing (rightly as it turns out) that each type of service will attract specific segments of the target market. 125 mph may well attract the 'day one for day one' traffic, whereas 75 mph will attract 'day one for day three' traffic. This has a significant impact upon the performance regime : in Advenza Freight's case we clearly have no need for compensation as our path has been timed with healthy recovery and our customers will have a published collection time starting at two hours after the train has arrived at its destination.
4. New operators, particularly those entering new markets, should be given a "honeymoon" period with respect to the Network Rail bonus scheme, and subjected to a general performance regime which reflects the cash flow and market sector sensitivities. The performance regime should include X,000 minutes of "free"

delay time (paid for by the SRA as entry into new markets is assisting the SRA to meet its targets for growth set by the government), with penalties set at a minimum level for a period not exceeding six months.

5. This time period will permit the establishment of KPI's which can then be agreed by the operator, Network Rail and ORR as a means for moving the individual performance regime forward. This again would reflect Advenza Freight's own experience in that, as a new, small, operator (i.e., not bankrolled by a multi-million pound parent) it is forced to lease equipment that is well past its sell by date and therefore riskier to operate in terms of performance.
6. When considering the elements of passenger train performance to be included in the freight performance regime, we tend to question whether the element of "captive market" has been considered. We accept there is a small element of market captivity for rail freight i.e., certain coal and aggregate flows and certain passenger commuter flows, but passengers ultimately have a better choice even considering that they too would be faced with the same problems associated with the road alternative should they choose to abandon the train.
7. Benchmarks set on the basis of average minutes delay (adjusted for volume) are probably as good a means as any at this present time. We would however question whether this would be an adequate reflection of economic value if all operators had KPIs which were geared to highly accurate cost models. In this latter respect, the true value of delay becomes immediately apparent, and an automatic volume adjustment would not therefore be particularly meaningful on a train by train / market segment by market segment basis.

## **Section 5 : Other issues**

Advenza Freight has not necessarily faced difficulty in obtaining information, merely the time that it takes for the information to work its highly convoluted path through Network Rail. We are uncertain if this is indeed a matter for the Regulator, but, for example, an ability to secure a train path in less than two months would clearly be a bonus for any aspiring operator. We perceive the problem as being one of fragmentation : we cannot understand why a head office train planner needs to send his train plan to the regions for validation when all relevant information should be at the fingertips of the planner in the first place.

It would indeed be helpful for freight bidding (both in terms of paths and customer negotiations) if a web or CD-ROM based interactive route map could be developed. There is currently a route directory which gives gauge details, and there are the rules of the route/plan etc. Freight operators need instant information on a line by line basis on what capabilities and capacities can meet the requirements of their potential customers' traffic. There is no reason why rail freight operators should not aspire to, and eventually match, the road haulier's ability to offer a quote within the initial telephone conversation with a potential customer.

On the subject of **incremental improvements**, our immediate thought is that these are likely to be (growth) market specific and are therefore strategic in nature. One may well argue therefore whether it is appropriate for an operator to pay for the costs of improving the network when the ultimate benefit rests with the country as a whole. We also question how costs should be apportioned should another operator secure benefits from the improvement at a later date. The only mechanism we see for this is one whereby the improvements are the subject of a cost-benefit exercise, paid for by the SRA if approved and recovered through the track access charges of those using the benefit. This of course assumes that, strategically, the SRA should not meet the cost anyway.

In the normal course of business where one makes a purchase and an invoice received is incorrect, one has the right to challenge the supplier and demand that a correct invoice is sent. The supplier has to suffer the cost of investigating and correcting the error, along with the impact on cash flow. This, we believe, should be the case in any commercial transaction. Where a freight operator is in possession of a **disputed invoice** we suggest that Network Rail are obliged to investigate and offer a correct invoice within a defined time-scale. It is in their own interests to do this, and as operators we see no reason why our cash flow should suffer due to someone else's incompetence.

We hope that the above will be of use to you in finalising the model freight track access contract. If we can be of further service please do not hesitate to contact us.