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Subject: Model Clauses for Track Access Agreements

In relation to the second consultation document concerning model clauses for track access agreements please find enclosed our comments. I apologise for the delay.

On a general note we believe that New Track Access Agreements and Franchise Agreement commitments should be linked wherever possible.

Railtrack should become much more accountable for its actions and should have an overriding obligation to reduce potential delays or costs.

Track Access Agreements should limit the use of the term "reasonable or reasonably" and the term "with due efficiency and economy and in a timely manner " these terms are not strong enough in the industry in which we work.

Specific comments:

1. INTRODUCTION AND PROCESS

Issues which impact on safety should as a minimum be mandatory.

2. COMMERCIAL PURPOSE

The Commercial Purpose clause should not detract from having separate specific contractual obligations which cannot be misinterpreted and clearly define the obligations of the parties. The Commercial Purpose clause should add clarity and support to such provisions and not be an alternative.

3. ACCESS RIGHTS AND CAPACITY CONSUMPTION

This should support Franchise commitments, including the testing and introduction of new trains. Incorporate provisions to enable flexible booking at short notice for testing purposes and appropriate sanctions for failure to provide access for testing purposes.

4. OUTPUT STATEMENTS

Railtrack to have a general obligation to comply with Railway Group Standards, its code and licence.

This should include an obligation on Railtrack to provide infrastructure information necessary for the introduction of new trains on that train operator's network, including nationwide infrastructure information where required.

There should also be a provision for a timetable for the route acceptance process of new trains.

Railtrack should also be under obligation to inform the train operator in relation to the relevant power supply available on any part of its network and the train operator should be under an obligation to provide the relevant power requirements of existing trains (if available) and new trains.

5. NETWORK ENHANCEMENTS

Railtrack should be encouraged to implement uniform changes to the network whenever performing upgrade work. In relation to known tight clearance spots Railtrack should be encouraged to rectify these as such tight spots will have an adverse impact on the gauge of new trains and accordingly the number of seats.

5.26 Alternative could be for the Operator to receive a return on its investment as rebate: from Railtrack for use by other TOC's

6. LIABILITIES AND REMEDIES

6.7 Query whether the ORR could have rights to instruct work to be carried out by a third party if milestones are consistently being missed by Railtrack.

Indemnity for losses suffered where track access not provided for testing purposes.

7. OTHER ISSUES

Incorporate option to assign rights enforceable by third parties, alternatively expressly state that third parties have rights, for example, the manufacturers.

Yours sincerely,

Jean-Pascal Boutin