

17 August 2005

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Dear Mr Robertson

Network Code Reform Phase 2: Update and emerging conclusions

1.1 Thank you for inviting Angel Trains to participate in this consultation and for you and your colleagues taking the time to meet with Peter Alridge, Tim Gilbert, Peter Loosley and me on 3 August. The meeting was very helpful in identifying the main strategic issues raised by the consultation.

1.2 RIA has prepared a short summary of its members' views on the main strategic issues. I would like to take this opportunity to endorse the RIA response. The RIA delegation agreed that each ROSCO would submit a more detailed individual response dealing with the specific questions raised in the consultation document and I set out below this response on behalf of Angel Trains.

Chapter 2 paragraph 2.27

2.1 There are no areas where Angel Trains considers further reform is required other than those discussed in the consultation document.

Chapter 3 paragraph 3.12

3.1 We agree generally with the objective set out in paragraph 3.11. However, any changes under the Parts F & G processes must be fair to all parties and we believe it is important that no one party should be the sole judge of whether an infrastructure or a vehicle modification should be chosen to solve a particular problem or issue. We would therefore like to see a robust mechanism for challenging proposed changes under Parts F or G. There should also be a dispute resolution process to deal with circumstances where agreement is not reached.

Chapter 3 paragraph 3.24

3.2 We would welcome such a statement from Network Rail and would like to see such statement deal, in particular, with the resources, skills, planning and timely implementation required to fulfil these obligations. We would also like to see Network Rail committed to the specification of vehicles such that it cannot subsequently require vehicle change having previously agreed a specification. In particular, in relation to introduction of new vehicles, we would like to see Network Rail (i) unable to oppose the introduction of new vehicles that meet a pre-agreed specification; and

(ii) unable to seek to recover costs relating to work required to meet a pre-agreed infrastructure specification which has not been delivered.

3.3 If project specific facilitation contracts are to be adopted they must be very robust and include a penalty regime for parties who fail to deliver.

3.4 If 3.2 and 3.3 above are implemented in a sufficiently robust manner then we agree that ORR does not require model clauses for bi-lateral VRACs.

Chapter 3 paragraph 3.30 and 3.31

3.5 The proposals set out in this section will inevitably have cost implications which will be ultimately borne by the operator. The rolling stock leases generally provide that some or all of the costs of modification are borne by the operator, notwithstanding that the Lessor may at its discretion offer to rentalise such costs. Changes to vehicle design are also of great importance to the owners of rolling stock as they impact on the long term value of the stock and its re-leasing potential. In any event, as owners of the rolling stock, changes to vehicles would require Angel Trains' consent. Therefore if Part F of the Network Code is to be changed, as contemplated by the consultation, Angel Trains would like to see:

- (a) A direct contractual relationship with Network Rail giving Angel Trains the necessary rights to negotiate any proposed vehicle changes. There is a particular concern that Network Rail has all the infrastructure information and is therefore in an inherently stronger position;
- (b) Mechanisms to ensure that the proposed changes were adequately researched and agreed by all relevant parties to be the best industry solution;
- (c) Effective arbitration/dispute arrangements;
- (d) A compensation regime to ensure that Angel Trains would be effectively compensated not just in relation to capital costs, but also ongoing maintenance and operational costs; and
- (e) A mechanism for dealing with unexpected costs.

3.6 Even in cases where Network Rail pays for the costs of the initial vehicle modification this compensation might not be sufficient to cover long term costs such as operating and replacement costs, both of which could easily outstrip the original capital cost and would result in a reduction in the residual value of vehicles. Such costs might emerge over several franchises and there would need to be a mechanism to compensate the rolling stock owner for such long term costs.

3.7 We do not agree with the proposal to extend the definition of vehicle change to include vehicle operation. We would rather see operational restrictions/changes formalised through the Track Access Contracts.

Chapter 3 paragraph 3.34

3.8 Angel Trains supports the view that separate Parts F & G processes should be retained. However, it believes they should be better aligned and enhanced to meet the proposed objective (as set out in paragraph 3.11) and to ensure that all relevant parties are involved in consultation for each change.

Chapter 3 paragraph 3.42

3.9 Angel Trains generally agrees with the key principals set out in paragraph 3.36. However, we do not agree with the basis for compensation proposed. Vehicle owners need to be compensated for any increased costs incurred as a result of a vehicle change. Compensation for loss of quiet enjoyment rights is not sufficient. It is also not clear to us how Angel Trains would access the compensation regime and we would welcome further discussion on this point.

3.10 We do not agree with the criteria set out in paragraph 3.38 for the right to seek to block a change. The criteria do not reflect that future operational limits on rolling stock brought about by vehicle change could affect the residual value of the rolling stock. This may extend beyond the end of a current operator's franchise, so wider consultation, including with the owners of the rolling stock, is required.

3.11 We have no comments on the proposal not to change the existing compensation agreements for changes in law provided that the current arrangements regarding Railway Group Standards are not changed.

Chapter 3 paragraph 3.45

3.12 The proposal set out in this paragraph does not reflect the reality that the exercise by Network Rail of such a right would have a potential impact on the use of rolling stock. Either, operators would end up with higher running costs as a result of leasing trains they no longer require, or the risk profile and analysis carried out to determine the level of rentals charged at the outset of a new lease of rolling stock would change.

Chapter 3 paragraph 3.52

3.13 Angel Trains would favour the proposal set out in paragraph 3.51(a) subject to it being suitably represented on the industry steering group.

Chapter 4 paragraph 4.10 and 4.11

4.1 Angel Trains is of the opinion that the question of the appropriate mechanism for involving third parties in the general consultation arrangements and the rights and obligations which should be enjoyed by and imposed on such third parties requires a more detailed discussion and consultation with, inter alia, rolling stock owners.

Chapter 4 paragraph 4.17

4.2 Angel Trains welcomes the proposal that Network Rail and train operators develop a Code of Practice setting out how they will consult interested third parties in respect of industry processes in the Network Code as it views the major failing of the existing system to be identifying and consulting with interested third parties.

Chapter 5 paragraph 5.12

5.1 Angel Trains does not have a view on the accelerated implementation of part K as the key information required by Angel Trains is the data relating to the condition of the network and we understand that the network asset database is currently being finalised by Network Rail.

Yours sincerely

(p.p.) LOUISE ODDY

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