

David Robertson  
Track Access Policy Manager  
Office of Rail Regulation  
1 Waterhouse Square  
138-142 Holborn  
London EC1N 2TQ

18th August 2005

Dear Mr Robertson

**Re: Reform of the Network Code Phase 2: Update and Emerging Conclusions**

Thank you for inviting HSBC Rail (UK) Limited to respond to the Consultation Document regarding the above.

We believe that the issues covered by the Consultation Document could have significant impact on our business. I will respond to each of the Consultation Document questions in turn:

2.27 We do not wish to put forward any additional areas at present.

3.12 We support the inclusion of an express purpose to set out what Parts F and G are there for but believe greater emphasis is needed on this being “the most efficient and economic way for the whole industry”. Previous paragraphs which refer to parties to access contracts having the right to object/propose change or to seek compensation suggest too narrow an approach which fails to balance appropriately the interests of Network Rail, train operators and rolling stock owners. See further below.

3.24 Agreed.

3.30 &

3.31 These proposals could have significant impact on rolling stock owners such as ourselves. If Network Rail is to be able to force through a vehicle change there would need, first of all, to be a robust process of consultation and taking account of views of all those affected and, in particular, the vehicle owners. Any expert opinions developed or commissioned by the vehicle owners as to the best way to make the vehicle change (including its design and proposed supplier) should carry great weight. There then needs to be a true, balanced, whole industry evaluation of the proposed vehicle change to ensure that any long-term implications on the value of the rolling stock and the costs of maintaining it are

also taken into account together with any impact on infrastructure and short-term operational costs. The balancing of all these different interests would suggest that there would indeed be merit in providing for an arbitration process and/or a right of appeal. Again, these processes would need to confer rights on rolling stock owners, not just Network Rail and train operators. In general, a more robust process could well achieve greater whole industry efficiencies. However, there is no reason why, with the correct mindset, interested parties could not achieve the same improvements through voluntarily negotiating the appropriate contractual arrangements with each other. Possibly, relevant licences could be strengthened to create the appropriate incentives without needing to go so far as to give Network Rail the power to make a change mandatory. It may be that Network Rail's general facilitation obligations as mentioned earlier in the Consultation Document could be sufficient. An appropriate arbitration and/or appeal process may avoid the need for a formal right for any person to block a change.

- 3.34 We believe that F and G should be kept separate.
- 3.42 We are very concerned about these provisions, which we feel are far too narrow and seem to contemplate only the relationship between Network Rail and the train operators. If Network Rail is to have a right to require any vehicle change it is essential that the rolling stock owner has a contractual right to be consulted, to challenge Network Rail's final decision in any respect (see above) and to obtain compensation which caters not only for the capital costs of the change but also the resulting short and long-term costs of maintenance, operation and residual value impact. This could be conferred on a rolling stock owner through the Network Code under the Contracts (Rights of Third Parties) Act 1999. Alternatively, Network Rail could enter into a specific contract with the rolling stock owner each time a vehicle change is required. Some attention will have to be paid as to how to quantify such compensation particularly in respect of costs which are long-term and unknown. We do not believe it is appropriate to address such compensation via the leases we have with our train operators whose interest in the rolling stock will necessarily be for a different period than our own. In any case, we could not in practice re-open existing leases.
- 3.45 Similar considerations apply to the extent that any interest of a rolling stock owner was affected, particularly any long-term implications for the value of rolling stock.
- 3.49 This sounds sensible.
- 3.52 We believe that the approach set out in (b) of 3.51 is preferable in order to achieve a quick and effective result following consultation.
- 4.10 See above. The interests and potential involvement of a third party should, we believe, be looked at more broadly. There is a difference between changes being made at the inception of operation as opposed to during the course of an access

contract/rolling stock lease. There is room for greater flexibility where other contracts are being negotiated in any case. Where they are not, and third

parties such as a rolling stock owner may be affected by matters the subject of discussion between Network Rail and a train operator, the need for robust third party rights is especially evident.

- 4.17 Although a code of practice may be very useful, we believe that third parties such as ourselves need contractual rights, including regarding consultation. Where changes to vehicles are concerned we, as the vehicle owner, may well have the best view of what change should be made and how it should be carried out. This may well be different from Network Rail's view which is likely to be concerned primarily with costs related to its infrastructure. It will not necessarily be the best result if infrastructure costs are reduced at the expense of vehicle changes which will make the vehicles affected too expensive for others to operate and maintain over the long term. A robust process for challenging each other's views is therefore essential in order to obtain the optimum solution.
- 5.12 We have responded previously regarding the provision of information by Network Rail and welcome greater accessibility to, and visibility of, relevant information. We have no comment on information flows between Network Rail and the train operators to which we would not have direct access.

We hope that the responses set out above will be useful and look forward to hearing from you further regarding the important issues that are raised.

Yours sincerely

Karin Kilbey  
Head of Business Standards  
Direct Line 020 7380 5802