



1 Waterhouse Square, 138-142 Holborn, London EC1N 2TQ
Switchboard 020 7282 2000 • Fax 020 7282 2040 • Website <http://www.rail-reg.gov.uk>

OFFICE of
RAIL REGULATION

Geoffrey Kitchener Esq
Regulatory Legal & Compliance Manager
Network Rail Infrastructure Limited
40 Melton Street
London
NW1 2EE

11 November 2005

Dear Geoffrey

Network Licence Conditions 12 and 13 - GB Railfreight wagon swap: ORR's Consent.

1. ORR has today consented under Condition 13 of Network Rail's network licence to Network Rail hiring 25 MK II Side Tipping wagons to GB Railfreight (GBRf) for GBRf to use under an existing contract with Metronet.
2. Condition 13 of Network Rail's network licence prohibits Network Rail from being "directly or indirectly involved in the ownership or operation of any railway vehicle in Great Britain" with certain exceptions. These exceptions are when Network Rail is the operator of a train being used on a network for any purpose comprised in the operation of that network and for a purpose preparatory or incidental to, or consequential on that purpose. In hiring out the side tippers, Network Rail will be the owner of vehicles that are being operated by a third party and this arrangement therefore falls outside the exception.
3. In your letter of 21 October 2005, you explained that Network Rail is proposing to hire 25 MK II Side Tipping Wagons to GBRf for a period of 10 years. In return, GBRf will hire Network Rail 50 'Falcon' Type Box wagons. The terms of each lease would mirror the other and each party would be responsible for its own maintenance arrangements. The advantage for Network Rail is that it will provide it with greater flexibility in the utilisation of its wagon fleet.
4. On the basis of the information provided by you and having regard to our section 4 duties, ORR has consented to the proposal for the purposes of paragraph 1 of Condition 13 of Network Rail's network licence. We are content that the proposed arrangements will not raise significant risks to Network Rail as the terms of both leases would mean that *there is no net cost to Network Rail and, as it already owns a fleet of similar box wagons, there will be no significant impact on maintenance costs.* We note your assurances that any other operator seeking a similar arrangement will be treated in a consistent manner, within the criteria set out in your letter of 21 October 2005. We are therefore content that the arrangement is non-discriminatory and not anti-competitive. However, ORR's consent

Abigail Grenfell, Manager, Network Regulation

Telephone 020 7282 2093 • Fax 020 7282 2042
E-mail abigail.grenfell@ORR.gsi.gov.uk

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in this instance should not be taken as an indication of our likely consent in other such schemes.

5. You also raised the possibility that consent may be required under Condition 12 of Network Rail's network licence as the hiring of vehicles is not "Permitted Business" for the purposes of that condition. You suggest that consent may not be required as Network Rail is not seeking to enter into the general business of wagon hire and because the outcome of the arrangement as a whole is of benefit to Network Rail. We consider that the hire of the side tippers is an activity that is not included in the definition of "Permitted Business" in Part II of the network licence and consent is required. However, we concur with your view that this arrangement could be carried on under your *de minimis* facility in paragraph 5.1 of Condition 12, as you state that the terms of each hire agreement will mirror the other so there will be minimal costs involved. We therefore have not considered consent under paragraph 1 of Condition 12.

6. The consent enclosed with this letter will be placed on ORR's public register and a copy will be placed on our website with this letter.

Yours Sincerely,
Abigail

Abigail Grenfell



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The Company Secretary
Network Rail Infrastructure Limited
40 Melton Street
London
NW1 2EE

RAILWAYS ACT 1993

NETWORK LICENCE CONDITION 13 - CONSENT OF THE OFFICE OF RAIL REGULATION

1. On 21 October 2005, the licence holder applied to the Office of Rail Regulation (ORR) for its consent under paragraph 1 of Condition 13 of the network licence to an arrangement under which the licence holder would hire 25 MK II Side Tipping wagons to GB Railfreight (GBRf) and in return would lease 50 'Falcon' Type Box wagons from GBRf. The terms of each lease would mirror the other. The arrangement will commence on 1 August 2006 and last for 10 years. The licence holder's aim in entering into this arrangement is to increase flexibility in the utilisation of its existing wagon fleet.

3. The arrangement entails the licence holder being interested in the ownership of a railway vehicle that it is not operating for the purposes of network operation, in contravention of Condition 13 of its network licence.

4. ORR, having regard to its duties under section 4 of the Railways Act, to the terms of the licence holder's application and to other information supplied by the licence holder, consents for the purposes of paragraph 1 of Condition 13 of the network licence to the licence holder entering into and carrying on the activity required of it under the arrangement as described to ORR before the grant of this consent, such consent to apply up to and including 31 July 2016.





5. In this consent:

"licence holder"	means the holder of the network licence;
"network licence"	means the licence granted to Network Rail Infrastructure Limited (formerly known as Railtrack PLC) by the Secretary of State for Transport on 31 March 1994, as amended from time to time;
"the Railways Act"	means the Railways Act 1993 (as amended).

6. Terms and expressions defined in the Railways Act shall, unless the contrary intention appears, have the same meanings in this consent.

Granted this 11th day of November 2005

Michael Lee

MICHAEL LEE

Director of Industry Monitoring and Analysis, Office of Rail Regulation

For and on behalf of the Office of Rail Regulation