

*Proposed Acquisition of
DB Schenker Rail (UK) Ltd/English Welsh & Scottish Railway International Ltd Freight Sites
A Consultation*



November 2012

Introduction

This consultation paper has been produced by Network Rail Infrastructure Limited (“Network Rail”) and seeks stakeholder views on the proposed acquisition of a number of property interests of DB Schenker Rail (UK) Limited and English Welsh & Scottish Railway International Limited (together “DBS”) (“the Project”).

This paper sets out the rationale and objectives of the Project, summarises the different categorisations of freight sites and explains the proposed operational and legal mechanisms to be used to change DBS’s property interests.

1. Background

1.1 In the early to mid 1990s during the preparation for the privatisation of the British Railways Board (“BR”), its freight assets were vested in six companies:

(a) Former Trainload Freight (“TLF”) companies:

- Loadhaul
- Mainline Freight
- Transrail

(b) Other freight companies:

- Freightliner Limited
- Rail Express Systems (“RES”)
- Railfreight Distribution (“RFD”)

1.2 These assets included freehold and leasehold interests in freight sites. Freightliner Limited generally acquired the intermodal terminals with the TLF companies (which were subsequently purchased by the owners of English Welsh & Scottish Railway Limited (“EWS”) (now DBS)) acquiring the majority of the remainder. The owners of EWS also purchased RES and RFD thereby also adding the small number of sites allocated to those companies.

1.3 The allocation of BR assets across the original six companies was therefore reduced to effectively two (i.e. the EWS companies and Freightliner Limited). Together with new entrants to the market these entities are often called Freight Operating Companies (“**FOCs**”).

1.4 On privatisation, some depots and terminals were transferred to Railtrack plc (now Network Rail) ownership to avoid sale of the land outside the industry when it could be used by the rail sector in the future. These sites are known as ‘Strategic Freight Sites’ (“SFS”). In order to preserve those sites for freight use, a regime for their management was set out in a Deed of Agreement dated 1 April 1994 (“the 1994 Supplemental Agreement”) between British Railways Board and Railtrack plc as a supplemental agreement to the Railtrack Transfer Scheme made under section 85 of the Railways Act 1993.

1.5 Typically, privatisation leases are for a 125 year term from 1 April 1994 at a peppercorn rent. There were a number of types of template lease:

- (a)** Let Sidings Complex. Open storage yards and sidings, buildings and equipment for loading and unloading of trains to the serviced site. Largely these sites will be sublet in whole or part to an End User Tenant for rail served purposes;
- (b)** Freight Terminal Leases. Leases of sidings, equipment and buildings used in connection with freight terminal activity which could include a single use (e.g. a steel terminal) or inter-modal use;
- (c)** Yard and Sidings Complex Leases. Leases of open yards and sidings where the major operation consisted at privatisation of the storage, stabling and marshalling of rolling stock;
- (d)** Traction Maintenance Depots and Wagon Repair Depots. Open yards or sheds where the maintenance of locomotives or wagons is carried out; and
- (e)** Engineers Sidings Leases. Used for marshalling, stabling and storage of railway rolling stock, and loading and unloading materials and equipment in connection with railway works. 7 year lease term.

1.6 The majority of sites were leased to EWS and it remains the case that DBS hold the majority of these leases.

1.7 In the 1994 Supplemental Agreement it was agreed that the SFS transferred to Railtrack plc which could potentially be used by the freight industry would be set aside for this purpose.

1.8 When a FOC has a tenant for a SFS and an associated haulage contract with that tenant, Network Rail will lease the site to that FOC on terms of the appropriate template. Such leases are expressed to be terminable by Network Rail if they cease to be used by the FOC tenant for the intended purpose. In addition, the Freight Terminal and Let Sidings leases contain provisions entitling the site to be transferred to another FOC in cases where that other FOC takes over the relevant haulage contracts from the incumbent FOC.

1.9 The 1994 Supplemental Agreement also set out the framework for the list of Supplementary Strategic Freight Sites (SSFS). If the lease of a Freight Terminal or Let Sidings is surrendered or otherwise terminated, the site is placed on a SSFS list. These sites are dealt with in a similar way to SFS but are leased at a commercial rent once drawn down from the SSFS list by a FOC for an agreed term, rather than 125 years at a peppercorn.

1.10 A site will no longer be an SFS or an SSFS where Network Rail and FOCs agree that there is no foreseeable rail freight use for the site, a suitable alternative site can be provided or where the site is the subject of a compulsory purchase order.

1.11 ORR has commenced a Freight Sites Market Study ¹ on the premise of certain concerns that the control of certain key sites by FOCs who compete in the downstream market might create an incumbent advantage which could be used to strategically delay competitive process and thereby affect customer decisions as to their choice of haulier. Some of the key issues arising from the study are:

- The SFS and SSFS lists and the “10% club”: that only those non-passenger licenced operators with 10% or more gross volume of railway freight business can participate in reviewing SFS and SSFS lists (There is now an informal agreement in place that all non-passenger licensed operators may participate in the review).
- Effectiveness of alienation and termination provisions.
- Access: (a) a lack of transparency around capacity and FOCs expressing a preference for using independently controlled sites as opposed to those controlled by competitors; and (b) arrangements that give beneficiary FOCs the opportunity to levy access charges on competitors whose business cause them to pass over so-called “ransom strips”.

2. Project Rationale

2.1 In parallel to the ORR study and in light of industry concerns, Network Rail and DBS have considered how a significant change to ownership and control could address key industry concerns.

2.2 The key objective of this transaction is to unlock the significant operational potential which can be realised through a change in DBS’ property rights.

2.3 Network Rail has made and will continue to make significant investment within railfreight. This proposed transaction aligns with the strategic aims of growing railfreight volumes, reducing railfreight costs and increasing railfreight capacity.

2.4 From a legal perspective, the transaction relates to Network Rail’s acquisition of some (or all) of DBS’ interest in c.250 leasehold sites and a small number of freeholds. In relation to leasehold sites, this is primarily accomplished via (a) the surrender (or variation) of leases and (b) the variation of leases to an area just comprising operable track for End User sites.

3. Project Objectives

Network Rail considers the key objectives of this Project to be:

3.1 To grow freight network capacity making some key yards and sidings more readily available to all operators and managing and providing visibility of the capacity of these key facilities to drive improved network performance.

¹ <http://www.rail-reg.gov.uk/server/show/ConWebDoc.10391>

3.2 To encourage development of the existing operational freight estate and develop new traffic-generating facilities. Network Rail will become the party facilitating access to more sites. FOCs and end users can apply to Network Rail for access and Network Rail will facilitate such access through lease or through regulated access arrangements, depending upon the classification of the site (as further described in section 8).

3.3 To ensure that non-discriminatory access is provided to the sites surrendered by DBS. Network Rail intends to apply regulated access charges to those sites surrendered by DBS which become absorbed as part of Network Rail's network (as further described in section 8).

3.4 To separate the landlord and haulier relationship for end users meaning that no one party will control both lease and haulage rate negotiations with a given end user. By extension, this means that generally FOCs will be negotiating with end users on the same basis and rental income from end users will flow directly to Network Rail.

3.5 To prevent land ownership being used or perceived to be used as a mechanism to control the award of haulage contracts.

3.6 To lead development of the number of freight-generating sites so as to expand the portfolio of sites with freight potential available to all FOCs.

3.7 To involve as little change as possible for end user tenants, with a focus on safeguarding existing traffics.

3.8 To avoid complex and varied transitional arrangements.

3.9 To be replicable so that Network Rail could offer similar terms to other FOCs.

3.10 To bring unused or under-utilised assets into more beneficial use for freight or where appropriate for wide rail use or where there is no industry need, to release sites for alternative use.

3.11 To move towards a model where the SFS and SSFS lists are replaced by a new reserved freight sites list.

3.12 To manage the extent and timing of additional track assets transferring to Network Rail by staging their transfer and linking additions to improved network flexibility (through the creation of Network Nodal Yards and Network Non-Nodal Yards) and/or mechanisms to recover maintenance cost.

3.13 Following consultation, if the acquisition is completed then Network Rail will need to consider the following from a portfolio management perspective:-

- Recognise and avoid disruption to existing operational requirements of freight traffic and customers;
- Take account of investment made by DBS in any particular site in determining the extent and basis on which DBS will retain an interest;
- When it is dealing with any DBS site which will revert to Network Rail, that Network Rail will not unduly discriminate between FOCs and any affected parties;
- The principles of the Project are designed such that Network Rail is prepared to replicate them for any other FOC which wishes to dispose of its freight site portfolio in a similar way.

4. Project Benefits

Industry benefits

4.1 The key purpose of this transaction is to unlock the significant operational potential of a considerable number of key freight sites, through a change to DBS's property rights and consequently for a degree of control to be passed to Network Rail.

Network Rail business case

4.2 Following due diligence procedures and legal completion of the Project, a premium payment would be paid to DBS to reflect the significant contractual changes proposed and in particular the fact that Network Rail is to become the party entitled to the entire rental income from tenants. The business case for such a payment is expected to be achieved based purely on:

- Current annual rental income and projected income growth into regulatory Control Period 5 (CP5);
- Commercial development potential; and
- Rental cost savings for Network Rail on sites currently sub-let from DBS.

4.3 Further commercial property benefits may arise for Network Rail and the wider industry from the proposal through:

- Providing Network Rail with the opportunity to take longer term strategic views; and
- Creating additional commercial property value through the acquisition of DBS leasehold interests including new rental income opportunities for Network Rail which would not be achieved while DBS hold long leasehold interests on sites.

4.4 It is proposed that all sites included in the Project would not be placed onto the SSFS list as a result of the transaction and the change in ownership structure.

5. Project Scope

5.1 The scope of the proposal is a change to almost all DBS's property interests on Network Rail's land together with some other DBS sites. A full list of sites currently within scope can be seen at [Annex A](#)².

5.2 Network Rail intends to acquire six freehold sites, namely:

- Avonmouth;
- Brandon;
- Carlisle Upperby;
- Carnforth;
- Leeds, Neville Hill (Halton Moor);
- Shirebrook

5.3 It is proposed that the leases of up to 104 Let Sidings, 107 Yards and Sidings and approximately 40 other sites are surrendered to Network Rail. A limited number of leasehold sites will be excluded. Currently excluded are:

- Langley due to significant contamination issues in the former oil terminal;
- Kings Cross due to contractual site issues; and
- Euston Granby Terrace due to issues affecting valuation.

5.4 It is important to note that the surrender of leasehold interests includes over one hundred vacant sites and a number of other sites capable of wider use which Network Rail considers to represent a significant potential opportunity to improve operational utilisation of the portfolio.

6. Site Categorisation

6.1 Due to differing nature and purposes, the sites have been separated into seven categories. Whilst the structure for each type of site may not be capable of meeting each individual project objective, the aim is that collectively the structures will contribute to the achievement of those objectives.

End User Tenanted Sites

The purpose of these sites is generally to be occupied in whole or in part by rail traffic-generating End Users, for example aggregates terminals, cement plants and rail served warehouses.

FOC Operational Hubs

These are facilities that feature significant operational functionality and/or capital investment by a FOC such as Wagon Repair Depots, Traction Maintenance Depots and FOC specific marshalling/stabling facilities.

Network Nodal Yards

These are key yards located adjacent to major traffic origin/destination points or along arterial freight routes with multiple double ended sidings capable of taking modern train lengths and to be used for reworking, crew or traction change and reversal. These facilities will have a yard plan managed by

²It should be pointed out that the proposed allocation of the sites to the various categories detailed in Annex A is subject to final agreement between DBS and Network Rail.

Network Rail and access and capacity allocation will be Network Rail's responsibility and which will become part of the timetable process. These sites will be managed as part of the national network.

Network Non-Nodal Yards

These are loops and siding groups not specifically related to a major traffic origin or destination point and not located along an arterial freight route but which will be part of Network Rail's network with a utility for stabling of traffic and which have the potential to be made available for use by FOCs. These sites will be managed as part of the national network.

Freight Terminals

These are generally sites at which the loading/unloading and storage of multi-customer products and inter-modal operations are carried out, but where there are typically no third party tenants. The legal structure for setting up Freight Terminals very much reflects that for FOC Operational Hubs. Operational access and egress will be controlled by a FOC as will the loading and unloading activity but with access enquiries managed by Network Rail.

Freight Reserved Sites

Sites with no current traffic or declared out of use (but not made available for non-rail freight related development) and to be held available for a FOC or end user to utilise for rail freight traffic purposes.

Non-Freight Sites

In the case of Non-Freight Sites, they are those that are unsuited to modern freight operations and which could be subject to development and value release.

Future Categorisation

These proposed new site categories do not neatly fit with the existing privatisation template lease boundaries and DBS and Network Rail are presently working on a process known as "shrink down" to identify which areas DBS will need to retain for the purposes of its business going forward and the categorisation of those areas. This process will also generate new plans, where required, to show site splits and, at a practical level, provide information that will need to be included within the legal documents required to give effect to the Project.

Larger sites can feature a composition of sub-areas each allocated into one of the categories above to reflect their operational nature. **Annex A** indicates the categories of land and track at each site. **Annex B** includes draft schematic plans illustrating the proposed track demarcations of some multi-category sites.

7. Regulatory Matters

7.1 Network Rail considers it important to obtain stakeholder recognition of the benefits of the new industry operating model including the principles referred to in this section and the preservation of existing Connection Agreements through the transition to the new operating model.

7.2 To the extent that the surrender (or variation) of the existing rights or the grant of new rights to DBS at any Let Siding or Freight Terminal as part of the Project might have resulted in those sites reverting to the SSFS List, they will not do so. All sites comprised in the Project will fall outside the scope of the SSFS list and the 1994 Supplemental Agreement going forward.

7.3 Where Network Change may be required (for example in connection with a Network Nodal Yard and Network Non-Nodal Yard) then Network Rail understands the need to go through the appropriate formal process.

7.4 It is also important for it to be acknowledged that Network Rail is not presently funded for the implications of being the facility owner or operator of any network which Network Rail acquires now as a result of the Project or in the future under these arrangements, and so will not be responsible for the carrying out or cost of any operation, maintenance, reinstatement or upgrade of any such network, except where:

- it is explicitly provided, as part of the Project, that network is to become part of Network Rail's national network (i.e. in relation to Network Nodal Yards and Network Non-Nodal Yards)
- Network Rail is adequately funded (taking into account any loss of existing Connection Agreement income) to take on that responsibility, or otherwise agrees that any relevant Project network will become part of Network Rail's national network.

7.5 Notwithstanding any other provision of this document, to ensure that the principles in paragraph 7.4 are achieved:-

- network (other than Network Nodal Yards and Network Non Nodal Yards) will immediately be placed “out of use” on any acquisition (whether by transfer, surrender, exercise of break right, expiry of lease term or otherwise) by Network Rail without Network Rail incurring any liability to any party (except that in any circumstances where legal rights of End Users or others mean that Network Rail is not lawfully entitled to place the relevant network “out of use” on this basis)
- where network (other than Network Nodal Yards and Network Non Nodal Yards) cannot immediately be placed “out of use” transitional measures may be adopted; and
- any future lease or access arrangements contemplated by this Project must also reflect these principles (including leases and access arrangements of surrendered network).

7.6 To the extent that any sites are acquired and will include future disposal, Network Rail recognises that Condition 7 of its Network Licence imposes land disposal obligations and Network Rail is committed to compliance with these.

7.7 Network Rail recognises that through any arrangements as a result of the proposed Project it must not unduly discriminate between any parties in accordance with Condition 9 of its Network Licence.

8. Operating Models

8.1 The operating models to apply to each site category are summarised in this section which also includes further detail on the intended legal and property mechanisms to be used.

8.2 End User Tenanted:

8.2.1 Summary

- There are over 60 locations where DBS headleases will be varied so as to ‘shrink down’ to just include the off-network operable track beyond the existing connection point with Network Rail’s network (including track within the End Users’ demise).
- It is proposed that End User lease terms remain unchanged. Therefore, Network Rail assumes the landlord role and receives rent direct.
- Network Rail assumes responsibility for any vacant land on a site which is not leased to End Users.
- End Users’ obligations to maintain the track within their demise or procure Track Maintenance Agreement (“TMA”) or equivalent remain unchanged.
- DBS will continue to perform the role of facility owner (“FO”) and operator with regard to the off-network operable track, recovering its costs (including Connection Agreement charges and track maintenance, operational and safety services) from either (a) End Users or, if applicable, (b) 3rd party access charges. Third party access will continue to be governed by relevant statutory and regulatory mechanisms. Where for any reason those mechanisms do not apply to a site (for example because of an exemption or exclusion) the lease terms will provide that access is made available on terms which (a) only apply charges to the extent that relevant costs are not recoverable from the End User; and (b) ensure such charges are fair, transparent, non-discriminatory and proportionate to the use which the 3rd party makes of the facility, consistent with the provisions of the Industry Code of Practice for access to freight sites, as and when introduced.
- Throughout, End User(s) will be at liberty (with Network Rail assistance if required) to take responsibility for the off network operable track (whether on the basis of acquiring either a Network Licence or appropriate Exemption from ORR and to displace DBS (or other lead FOC) as FO. This will be another ground for the break of the DBS/FOC off-network operable track lease(s) and the grant of a similar lease to said End User(s) This would be drafted to include termination provisions to preclude an End User obtaining an ability to “ransom” the industry.
- The existing Connection Point with Network Rail’s network and therefore the Connection Agreement will remain unchanged (unless there is a Network Nodal Yard or Network Non-Nodal Yard between the End User demise and the connection point with the national network).
- There will be no requirement for Network Change as there will be no change to the extent or function of Network Rail’s network.
- Network Rail will be in a position to seek to generate additional operational activity by attracting new tenants to vacant areas of such sites.

8.2.2 Access

- In all cases FOCs will incur the costs of operation (i.e. the sourcing or provision of ground staff).

8.2.3 Visibility of Capacity Information

- FOs will be responsible on application for advising Network Rail or other FOC's requiring access to the site for their traffics, of the available capacity.
- Network Rail will be responsible for managing the promotion and development of available sites for further freight traffic use.

8.2.4 Legal Structure

- There will be a Deed of Variation to the existing DBS lease to surrender the majority of the site. All that will remain in the varied lease will be the operable track.
- Some of the key terms include:
 - Mutual rights to break the lease on early termination of the haulage contract so as to enable DBS to "walk away" and Network Rail to have the ability to grant a new lease on similar terms to a new haulier or an End User; the same to apply if the End User wants to elect to take responsibility for the track and become the facility owner of it; and
 - Existing arrangements for sidings maintenance will continue, i.e. DBS will continue to maintain and will receive payment for this from the End User tenant. The existing Sidings Maintenance Agreement in place between DBS and its customer will continue.
- There will be a landlord break right exercisable if, in Network Rail's opinion, the whole or part of the track lease area is not being used for the purpose of enabling DBS to fulfil its obligations under its haulage contract with the End User tenant for an agreed period with a "neutral" third party resolution if the parties disagree. Network Rail is presently putting together a set of criteria to be utilised in the operation of these termination provisions.
- If Network Rail provides DBS with suitable rail freight access arrangements to the relevant End User sites, Network Rail shall be entitled to exercise a break right of the whole or any part of the track area. This provision will assist in the opening up of adjacent "spare" land by another FOC and allow intensification of track use as necessary. For example, by shrinking the track area the balance could allow for a new connection to be made from Network Rail's national network to newly developed/utilised adjacent freight facilities operated by another FOC.
- Typically, connection between the existing DBS lease and Network Rail's network is governed either by certain of the provisions of the existing head lease or a separate free standing Connection Agreement. This mechanism will be preserved to permit existing connection arrangements to remain, so as to preclude the need for a new Connection Agreement to be put in place.

8.3 Network Nodal Yards:

8.3.1 Summary

- There are approximately 15 nationwide locations which would constitute Network Nodal Yards. These typically comprise features such as 2-8, train length, double ended reception lines and are a defined subsection of a larger established yard complex.
- The sub-division is proposed to be recorded in new plans and published as part of the network in the Sectional Appendix, such expansion of the network of which Network Rail is the operator being established using the standard Network Change procedure.
- Network Rail will be responsible for the maintenance of Network Nodal Yard track which consequently will require asset surveys, recording of assets into Network Rail's Ellipse system and assimilation of asset data into Network Rail's maintenance work bank.
- Network Rail will define and procure any Operational Services Agreements required for Person in Charge ("PIC") control of train egress / access to and from Network Rail's existing national network.
- Network Rail will be responsible for periodic publishing of a yard plan for each Nodal Yard (see [Annex C](#) for a sample yard plan), illustrating the hour by hour occupancy (and so too, availability) of each line. The yard plans will be an integral part of the timetabling process and will be a key tool in ongoing effective management of capacity allocation.
- Connection Agreements will be produced for any End User Tenanted Site or FOC Operational Hub sub area sites connecting into a Network Nodal Yard, as applicable. However, subject to any regulatory requirement, (i) there will be no connection charges levied in relation to FOC

Operational Hubs and (ii) the connection charges in relation to the End User Tenanted Site will not exceed the charges that would have been levied were there no Network Nodal Yard.

- There will be a staged establishment of Network Nodal Yards over an 18 month period, pending the assimilation of asset data, establishment of a maintenance regime and compilation of the first yard plans.

8.3.2 Access

- The arrangements for access to Network Nodal Yards will be similar to those applicable to Network Rail's national network.
- There will be no separate charge for entry and egress.
- FOCs will incur the costs associated with additional operations over and above those for arriving at and departing from a Network Nodal Yard. For example, the provision of ground staff for run-round movements. Network Rail will not be providing such services.

8.3.3 Visibility of Capacity Information

- Network Rail will be responsible for defining and publishing yard planning rules. These rules will describe the physical and operational parameters of the yard that will apply to the subsequent planning and timetabling of trains utilising it.
- The yard plan will give a readily understandable statement of available capacity to all stakeholders.

8.3.4 Legal Structure

- Network Rail will take a surrender of the areas to be comprised in a Network Nodal Yard from DBS. There will be a staged transfer of some sites in this category (over a relatively short period) to assist with Network Rail's Asset Management Programme.
- As part of the 'shrink down' process being carried out between Network Rail and DBS it is becoming clearer where Network Nodal Yards are "free standing" and can be set up simply by taking a surrender of the whole of the existing DBS lease. Alternatively, some sites have been identified where a surrender of part of the DBS lease will be required to "create" the space for the Network Nodal Yards. The area retained by DBS will be a FOC Operational Hub and/or off-network operable track related to an End User Tenanted site (please see section below for a summary of FOC Operational Hub provisions).
- For users of Network Nodal Yards there will be no lease granted. Rights to utilise the site by a given train at a given time in a given line will be defined in the rights for a given service in a manner similar to that as is currently used in the rest of the network.
- There will be a process of reviewing rights which will delete train entries in the Yard Plan if a service ceases so maintaining optimal use of capacity.

8.3.5 Development

- Network Rail intends to encourage the development of adjacent ancillary activities at Network Nodal Yards, common crew relief facilities and servicing facilities etc.
- Network Rail may also look to expand or otherwise enhance the operational functionality of Network Nodal Yards in the future (assuming business case qualification), for example through raising typical running speeds from 5mph to 15mph and lengthening sidings to enable longer trains to be accommodated.

8.4 Network Non-Nodal Yards

8.4.1 Summary

- Network Non-Nodal Yards typically comprise features such as a connecting line, loop line, a small number of sidings or a sub section of a larger yard complex.
- In some limited instances, a connecting line (currently under a DBS lease) which links an End User or third party site to Network Rail's network and viewed as a so called 'ransom strip' would be defined as a Network Non-Nodal Yard.
- It is proposed that sites be subdivided, defining the extent of the Network Non-Nodal yard and other sub areas i.e. Freight Reserved Sites, End User Tenanted Sites, and FOC Operational Hubs.
- The sub-division would be recorded in a revised plan and published as part of the network in the Sectional Appendix, such expansion of the network being established using the standard Network Change procedure.

- Network Rail will be responsible for the maintenance of Network Non-Nodal Yard track and therefore will be required to undertake asset surveys, recording of assets into Network Rail Ellipse system and the assimilation of asset data into Network Rail's maintenance work bank.
- Connection Agreements will be produced for any End User Tenanted or FOC Operational Hub sub area sites connecting into a Network Non-Nodal Yard as applicable. However, subject to any regulatory requirement, (i) there will be no connection charges levied in relation to FOC Operational Hubs and (ii) the connection charges in relation to the End User Tenanted Site will not exceed the charges that would have been levied were there no Network Nodal Yard.
- There will be a staged transfer of Network Non-Nodal Yards pending the assimilation of asset data and the establishment of a maintenance regime.
- With a lower level of operational intensity, such sites are less likely to feature a yard plan, however train movements and occupancy would still be subject to normal timetable processes.

8.4.2 Access

- The arrangements for Access to Network Non- Nodal Yards will be the similar to those applicable to Network Rail's existing national network.
- There will be no separate charge for entry and egress.
- FOCs will incur the costs associated with additional operations over and above those for arriving and departing (i.e. provision of ground staff for train acceptance, dispatch and run round moves). Network Rail will not be providing such services.

8.4.3 Visibility of Capacity Information

- Network Non-Nodal Yards will feature a lower level of traffic activity than Network Nodal Yards and as such Network Rail will not be publishing yard plans. However, regular train movements will be timetabled on the basis of a set of yard rules that define operable lengths and total yard capacity.

8.4.4 Legal Structure

- The legal structure will reflect that of Network Nodal Yards.
- Network Rail will take a surrender of the areas to be comprised in a Network Non-Nodal Yard from DBS. There will be a staged transfer of some sites in this category (over a relatively short period) to assist with Network Rail's Asset Management Programme.
- As part of the 'shrink down' process being carried out between Network Rail and DBS it is becoming clearer where Network Non- Nodal Yards are "free standing" and can be set up simply by taking a surrender of the whole of the existing DBS lease. Alternatively, some sites have been identified where a surrender of part of the DBS lease will be required to "create" the space for the Network Nodal Yards. The area retained by DBS will be a FOC Operational Hub and/or off network operable track related to an End User Tenanted site.
- For users of Network Non-Nodal Yards there will be no lease granted. Rights to utilise the site by a given train at a given time on a given line will be defined in a similar way to those granted to use Network Rail's national network.
- There will be a process of reviewing rights to ensure that the Yard Plan is kept up to date so maintaining optimal use of capacity.

8.4.5 Development

- Network Rail will be open to the potential for enhancing the operational functionality of any Network Non-Nodal Yard site (assuming business case qualification), so providing for longer trains, improved running speeds etc.

8.5 FOC Operational Hubs:

8.5.1 Summary

- The sites are seen as key to the continuing operation of DBS's business and are presently held under a variety of privatisation template leases.
- Two distinct sub-categories: (i) large fixed capital assets such as TMD's, WRD's (ii) sidings intensively used to support current traffic operations.
- As part of the 'shrink down' process, Network Rail and DBS have identified core areas that need to remain in DBS occupation control while the balance of these sites will be surrendered to Network Rail. The sites that are required to remain in DBS occupation will have the present Head Lease structure varied.

8.5.2 Access

- Network Rail will not permit a FOC Operational Hub to be sited between Network Rail's network and an End User Tenanted Site or third party site to avoid the creation of so-called 'ransom' strips.
- Other FOCs wishing to use a competitor's FOC Operational Hub facility may do so under normal access arrangements which may be overlaid by the provisions of the industry Code of Practice for access to freight sites, as and when introduced. For any sites where the statutory and regulatory mechanisms governing 3rd party access do not apply (for example because of an exemption or exclusion), terms similar to those described in Section 8.2.1 in respect of 3rd party access will be included in the lease.

8.5.3 Legal Structure

- Broadly speaking, FOC Operational Hubs form two main types. First of all traction maintenance depots and wagon repair depots and other sites with fixed capital assets. Secondly, sidings used to support traffic workings and local distribution centres. There will be different deeds of variation for the TMD/WRD style of FOC Operational Hub and the sidings type.
- There will be a right for DBS to terminate the lease if they no longer require the site for operational or maintenance purposes.
- User clause provisions will be tightened to keep focus on rail related use.
- If Network Rail provides DBS with suitable rail freight access arrangements to the relevant FOC Operational Hub sites, Network Rail shall be entitled to exercise a break right of the whole or part of the track area comprised in the FOC Operational Hub site lease. This provision will assist in the opening up of adjacent "spare" land by another FOC or end user and allow intensification of track use as necessary. For example, by shrinking the track area, the balance could allow for a new connection to be made from the national network to newly developed/utilised adjacent freight facilities operated by another FOC.
- The term of TMD/WRD leases as varied would remain unchanged but feature a 35 year rent free period with a market rent applicable thereafter.
- The term of sidings leases as varied would remain unchanged, at a peppercorn but with toughened Use it or Lose it (UIOLI) provisions and with maintenance responsibility remaining with the tenant.
- NR will require robust UIOLI termination provisions. Through the consultation process, Network Rail welcomes constructive industry contributions to the final definition of UIOLI clauses, but the present suggestions centre around the following:-
 - Network Rail can issue a UIOLI notice on DBS for the surrender of an entire site if Network Rail has an alternative use for the site (which could include relevant interest from another FOC) and a train service has not passed over the relevant Connecting Network within the previous 90 days. ("Train service" will be defined as a contracted movement of railway vehicles to or from a location where loading or unloading of vehicles by rail for a customer is proven to have taken place).
 - Network Rail will also be able to issue a UIOLI notice on DBS for the surrender of part of a site if Network Rail has an alternative use for the part of the site (which could include relevant interest from another FOC) and DSB has failed to make appropriate use of the relevant part of the site (although the qualifying criteria for appropriate use are yet to be established).
 - DBS would have an ability to challenge a UIOLI notice (within 28 days) if the reason for non use is due to circumstances outside of DBS control (e.g. force majeure).
 - There will be an expedited procedure to resolve disputed matters on a final and binding basis.
- It is intended that sidings should become a more fluid commodity with a greater turnover of sites matching and supporting ongoing and evolving FOC traffic requirements.

8.5.4 Development

- A FOC may choose to develop or otherwise alter its FOC Operational Hub subject to normal landlord consent.

8.6 Freight Terminals:

8.6.1 Summary

- The terminals category comprise:

- Euroterminals originally developed to meet anticipated Channel Tunnel freight needs, namely: Mossend, Trafford Park and Willesden.
- Wakefield Euroterminal.
- A number of smaller commodity specific freight facilities utilised for the loading, unloading and storage of end customer products.

8.6.2 Access

- It is proposed that terminals will be operated as multi-user facilities with Network Rail receiving any access enquiries.
- The Facility Owner tenant will publish a tariff of services for such sites.

8.6.3 Visibility of Capacity Information

- The Facility Owner tenant at a given terminal will be required to produce occupancy and activity plans so giving transparency of available capacity.

8.6.4 Legal Structure

- Subject to constraints where a third party (not Network Rail) is landlord, the parties intend to have a legal structure that reflects that of FOC Operational Hubs (the TMD/WRD style site rather than sidings).
- There will be no change to the amount of rent or lease term but where applicable there will be a variation of the DBS lease to reflect an enhanced landlord break clause.
- Where third party rental income is generated from Freight Terminals this will flow directly to Network Rail either because Network Rail is now the direct landlord of the third party or because it will take an assignment of the benefit of that rental income from DBS.
- NR will require robust UIOLI termination provisions. Through the consultation process, Network Rail welcomes constructive industry contributions to the final definition of UIOLI clauses, but the present suggestions centre around the following:-
 - Network Rail can issue a UIOLI notice on DBS for the surrender of an entire site if Network Rail has an alternative use for the site (which could include relevant interest from another FOC) and a train service has not passed over the relevant Connecting Network within the previous 90 days. ("Train service" will be defined as a contracted movement of railway vehicles to or from a location where loading or unloading of vehicles by rail for a customer is proven to have taken place).
 - Network Rail will also be able to issue a UIOLI notice on DBS for the surrender of part of a site if Network Rail has an alternative use for the part of the site (which could include relevant interest from another FOC) and DSBK has failed to make appropriate use of the relevant part of the site (although the qualifying criteria for appropriate use are yet to be established).
 - DBS would have an ability to challenge a UIOLI notice (within 28 days) if the reason for non use is due to circumstances outside of DBS control (e.g. force majeure).
 - There will be an expedited procedure to resolve disputed matters on a final and binding basis.

8.6.5 Development

- Network Rail will ultimately look to procure expressions of interest in the future tenure and operation of the Euroterminal facilities with a view to attracting operators prepared to invest in and develop these facilities to expand their traffic base. Network Rail will seek to balance future lease duration with levels of incoming investment and development.

8.7 Freight Reserved sites:

8.7.1 Summary

- Freight Reserved Sites are sites with operational traffic potential (or tracks within sites so categorised) that will be protected and retained for future freight development.
- Track at such sites will be retained but not maintained providing a retained capacity 'bank' for future rail development.

- Any existing network connections will be preserved in so far as is practicable from an ongoing network operational and maintenance perspective.
- In the future it is intended that FOCs or End Users may take a lease at such sites.
- Where a Freight Reserved Site is a defined part of a wider yard or sidings complex, such sites offer scope for FOCs to take a lease and establish their own FOC Operational Hubs to support their traffic base (subject to similar legal structure to that noted in 8.5.3).
- Alternatively, such sites may be developed by an End User or FOC into a new End User Tenanted facility.
- It is proposed that Connection Agreement arrangements be defined on a case by case basis.

8.7.2 Access

- Access will be granted through a lease (see section 8.7.4).
- Network Rail will publish a list of all such sites, and over time it is anticipated that a comprehensive catalogue can be developed with details of site size, connectivity (road and rail) etc.
- Any enquiries relating to leases will be made directly to Network Rail.

8.7.3 Visibility of Capacity Information

- n/a.

8.7.4 Legal Structure

- Those sites categorised as Freight Reserved will be surrendered by DBS on completion.
- Going forward Network Rail intend to lease sites on a short term basis to FOCs. The basis for this new Sidings Lease template is being developed but key features will include;
 - Market rental;
 - FOC responsible for maintenance;
 - No compensatable improvements;
 - Robust use it or lose it provisions.

8.7.5 Development

- It will be in Network Rail's interest to actively seek new tenants in order to maximise value and generate traffic.

8.8 Non Freight sites:

8.8.1 Summary

- These are sites to be earmarked for disposal or redevelopment, possibly for other rail use or non-rail development.
- The typical features of such sites would be that they are undersized for modern freight operations, have been out of use for a number years or are lacking network connectivity.
- It is proposed that these sites be released for redevelopment.

8.8.2 Access

- n/a

8.8.4 Visibility of Capacity Information

- n/a

8.8.5 Legal Structure

- These sites will be surrendered to Network Rail on completion.

8.8.6 Development

- These sites will be available for a variety of development uses, from disposal for subsequent non-rail developments to rail industry ancillary developments.

8.9 Other:

8.9.1 There are a handful of sites that do not readily conform to any of the above models due to the status of tenants or alternative landlord arrangements.

8.9.2 These will require a case by case assessment for final categorisation & determination of an operating model or inclusion / exclusion from the Project.

9. Third party rental income

9.1 One of the key terms for the Project is Network Rail should be in receipt of the benefit of all third party rental income both from rail served and non-rail served third party users at sites.

9.2 Where Network Rail is to take a surrender of all or part of an existing DBS lease that benefits from underleases to third parties then on completion of that surrender, Network Rail will become that third party's direct landlord and the rents from that underletting will flow directly from that third party to Network Rail. No changes are required to the third party's underlease as part of this process. On completion the third party will receive a letter from DBS informing of the change of its landlord to Network Rail and that rents will in the future be payable to Network Rail.

10. Legal Documentation overview

10.1 The legal documentation required to give effect to the aims of Network Rail and DBS in relation to the project will include:

- A contract that will be exchanged between Network Rail and DBS ("the Agreement");
- The entering into of deeds of surrender either of whole or part of existing DBS leases;
- Deeds of Variation to be entered into for some DBS leases including a variation down to just operable track at to End User Tenanted sites; and
- A number of other ancillary documents.

10.2 As far as possible, it is envisaged that on completion of the Agreement, sites will simultaneously be surrendered to Network Rail and the variations to DBS leases entered into. There will be a small number of Network Nodal Yard and Network Non-Nodal yard sites where transfer to Network Rail is staged over a relatively short period.

11. Track Ownership and Facility Owner Responsibility

11.1 Please refer to the paragraphs 7.4 and 7.5 of this consultation. It is important to Network Rail that the industry acknowledges the contents of those statements and this section 11.

11.1.1 Any track, operational or otherwise, on any site within the scope of the Project is not to become part of Network Rail's network, unless or until specifically advised through the established Network Change.

11.1.2 Any non-Network Rail network operational track will be the responsibility of either the lead FOC at a site or the End User benefitting from it.

12. Freight Site Review 2013

12.1 Network Rail will host workshop events ("Sites Review") in 2013 which will be open to all FOCs and End Users and where the entirety of the remaining designated SFS and SSFS sites plus the sites categorised for the purposes of this Project as Freight Reserved Sites will be thoroughly reviewed. For the avoidance of doubt End User Tenanted sites and Non Freight Sites (including those identified for possible development/disposal) will not be included in the workshop. In relation to the Non Freight Sites, the Network Rail business case requires certainty that these will be capable of disposal, subject to Licence Condition 7.

12.2 The aim of the Sites Review will be to reach an informed identification of the sites reviewed that have future rail freight potential and that should be reserved for freight and those that have no future rail freight potential and which therefore can be sold or released for other use.

12.3 The criteria which Network Rail would expect to use include the following:

- Suitable, current or achievable heavy goods vehicle road access.
- Suitable length of rail frontage to the site.
- Existing mainline connectivity.
- Reasonable prospect of affecting future connectivity to a line with available capacity.
- Proximity of residential dwellings.
- Local Authority planning designation.
- Period of non rail activity.

12.4 In addition, the Sites Review will consider Network Rail and FOC suggestions of existing (i.e. pre-Project) Network Rail sites not on either SFS or SSFS lists but which could be included within the Freight Reserved listing.

12.5 Sites not included in the Sites Review and those sites deemed by the Sites Review to have no future rail freight potential will be available for lease or disposal (subject to Licence Condition 7) as per any other Network Rail land.

12.6 Notwithstanding the proposed Sites Review, Network Rail will in the meantime as part of normal business, continue to progress any potential release of sites or parts of sites for alternative use or development, through consultation within the industry.

12.7 Those sites included on this new comprehensive 'Freight Reserved' list will then constitute Network Rail's managed freight estate which will be:

- Protected (publicised by way of an online catalogue) and able to be promoted by Network Rail.
- Subject to joint Network Rail and an all FOC governance group (a version of the former 10% club with expanded membership).
- Available for lease by a FOC or an End User for the purposes of rail freight traffic.
- Subject to proper focus on enhancement, development and investment (subject to normal Network Rail business case process) to realise full traffic operational potential.

12.8 Network Rail will propose for consideration governance arrangements for the proposed arrangements.

13. Consultation Process and Next Steps

13.1 Consultation with stakeholders is key to this Project and Network Rail is interested in feedback on any aspect of the proposal. Specific consultation questions have not been set as comments are welcomed on the document as a whole. Network Rail will be happy to meet with any stakeholders during the consultation period to discuss any aspects in more detail as Network Rail believes that wider industry benefit will be achieved through being more open and transparent about how freight sites are proposed to be controlled and operated in the future.

How you can respond

13.2 Consultation responses can be submitted either electronically or by post to the property consultation addresses below:

propertyconsultation@networkrail.co.uk

Property Consultation
Freight Team
Network Rail Infrastructure Limited
Kings Place
York Way
London
N1 9AG

Response date

13.3 This consultation will have a closing date of 28 November 2012. Early responses would be appreciated in order to maximise the time available to react and respond as appropriate.

Publication of responses

13.4 During the consultation period responses received will be placed on Network Rail's website so that all views expressed are visible to all.

13.5 Respondents should indicate clearly if they wish all or part of their response to remain confidential and, if so, clearly state to which organisations they wish the information to remain confidential. Otherwise, it is expected that the information will be published on the above mentioned website and may be quoted in future. Where a response is made in confidence, it should be accompanied by a copy excluding the confidential information so that can be treated as above. Network Rail may also publish the names of respondents in future documents or on the website, unless a respondent indicates that it wishes its name to be withheld.

Next steps

13.6 After the formal consultation period closes, Network Rail will look to resolve any outstanding queries and incorporate any agreed revisions to the proposed freight sites categories.

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