

SCHEDULE

Article 3

INTERNATIONAL ARTICLES

THE INTERGOVERNMENTAL COMMISSION

Having regard to the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic (“the Principals”) concerning the construction and operation by private concessionaires of a Channel Fixed Link signed at Canterbury on 12 February 1986 (“the Treaty”), and in particular Articles 1 and 10;

Having regard to Council Directive [91/440/EEC](#) of 29 July 1991 as modified by Council Directives [2001/12/EC](#) of 26 February 2001 and Directive [2004/51/EC](#) of 29 April 2004 on the development of the Community’s railways and, in particular, its article 10.3;

Having regard to Council Directive [95/18/EC](#) of 19 June 1995 as modified by Directive [2001/13/EC](#) of 26 February 2001 on the licensing of railway undertakings;

Having regard to Council Directive [2001/14/EC](#) of 26 February 2001 on the allocation of railway infrastructure capacity, and the levying of charges for the use of railway infrastructure and safety certification and in particular its Article 8.2 whereby for specific investment projects, infrastructure managers may set or continue to set higher charges on the basis of the long-term costs of such projects if they increase efficiency and/ or cost-effectiveness and could not otherwise have been undertaken;

Having regard to the quadripartite Concession signed on 14 March 1986 between the *ministre de l’urbanisme, du logement et des transports* representing the French State and the Secretary of State for Transport of the United Kingdom of Great Britain and Northern Ireland on the one part, and France-Manche SA and the Channel Tunnel Group Ltd on the other part (the Concession);

Considering the specific nature of the investment undertaken to assure the design, financing, construction and, since 1994, operation of the Channel Tunnel;

HAS ADOPTED the following regulation:

Article 1

Purpose

1. This Regulation applies to the use of those parts of the Channel Fixed Link necessary for the delivery of—

- (a) international transport services by international groupings;
- (b) international combined transport goods services; and
- (c) international freight services by railway undertakings,

in accordance with the above Directives.

Article 2

Definitions

2.—(1) “Concession” and “Concessionaires” have the meaning given article 1 of the Treaty.

“Common Section” means that part of the Fixed Link which is normally used by all categories of trains for the delivery of the services described in Article 1.

“Intergovernmental Commission” means the Intergovernmental Commission established by Article 10 of the Treaty to supervise in the name and on behalf of the Principals all matters concerning the construction and operation of the Fixed Link.

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(2) The expressions used in this Regulation, which are also used in the Directives referred to above, shall have the meaning they bear in those Directives.

Article 3

Access and Transit Rights

3.—(1) International groupings shall have access and transit rights through the Common Section, on equitable and non-discriminatory conditions, for the provision of international transport services between the Member States where the railway undertakings constituting the groupings are established.

(2) Railway undertakings established or to be established in a Member State shall have access and transit rights through the Common Section, on equitable and non-discriminatory conditions, for the purpose of the provision of international combined transport goods services or international freight services.

(3) Access and transit rights through the Common Section include, for any railway undertaking or international grouping, the right to the following minimum access package—

- (a) handling of requests for infrastructure capacity;
- (b) the right to utilise capacity which is granted;
- (c) use of running track points and junctions in the Common Section;
- (d) train control including signalling, regulation, dispatching and the communication and provision of information on train movements; and
- (e) all other information required to implement or operate the service for which capacity has been granted.

(4) Access and transit rights through the Common Section also comprise—

- (a) use of the electrical supply system for traction current;
- (b) access to any installation intended to receive rail-borne freight that the Principals decide, in accordance with Article 1.2 of the Treaty, forms part of the Fixed Link;
- (c) shunting in the event of technical breakdown; and
- (d) access to the emergency sidings in the event of an incident.

Article 4

Management of infrastructure

4. Subject to the provisions of articles 9.2 and 11.3, the Concessionaires shall be the infrastructure manager of the Fixed Link. The Concessionaires' profit and loss accounts and balance sheets relating on the one hand to the provision of transport services by railway undertakings and on the other for business relating to the management of railway infrastructure shall be kept and published separately. Any public funds paid to one of these two areas of activity may not be transferred to the other. The accounts for the two areas of activity shall be kept in a way that reflects this prohibition.

Article 5

Network statement for the Fixed Link

5.—(1) The Concessionaires shall develop, publish, keep up to date and modify as necessary a network statement for the Fixed Link (“the Network Statement”) in accordance with Article 3 and Annex 1 to Council Directive [2001/14/EC](#). The Concessionaires shall give timely notice to

international groupings and railway undertakings operating services through the Fixed Link of any major changes to the quality or capacity of the infrastructure.

(2) The Network Statement shall contain all the information necessary to exercise access and transit rights through the Fixed Link, in particular—

- (a) a description of the nature of the infrastructure which is available to railway undertakings and international groupings and the conditions of access and transit in the Fixed Link;
- (b) the principles and criteria for capacity allocation, setting out the general characteristics of the infrastructure and any restrictions relating to its use, including likely capacity requirements for maintenance;
- (c) the procedures and deadlines for the capacity allocation process, in particular—
 - (i) the procedures according to which applicants may request capacity from the infrastructure manager;
 - (ii) the requirements governing applicants;
 - (iii) the schedule for the application and allocation processes;
 - (iv) the principles governing the co-ordination process;
 - (v) the procedures to be followed and criteria used where infrastructure is congested;
 - (vi) details of restrictions on the use of infrastructure; and
 - (vii) any conditions by which account is taken of previous levels of utilisation of capacity in determining priorities for the allocation process;
- (d) the charging principles and tariffs; and
- (e) the measures taken to ensure the adequate treatment of freight services, international services and requests subject to the ad hoc procedure.

(3) The Concessionaires shall consult all the interested parties, including the Intergovernmental Commission, on the draft Network Statement, stating the deadline for the receipt of comments.

(4) The Concessionaires shall finalise the Network Statement and publish it appropriately, no less than four months in advance of the annual deadline for requests for infrastructure capacity.

(5) The Network Statement shall be kept up to date following the same process.

Article 6

Exercise of Access or Transit Rights

6. An international grouping or railway undertaking shall not be permitted to exercise the access or transit rights specified in Article 3 unless it—

- (a) is licensed in accordance with the provisions of Council Directive [95/18/EC](#), as amended by Article 1 of Council Directive [2001/13/EC](#), and complies with all mandatory requirements of national legislation and regulation, and also the operating rules of the Concessionaires approved by the Intergovernmental Commission and the security provisions laid down by the Principals;
- (b) is adequately insured for provision of services in the Fixed Link or has made equivalent arrangements for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of its clients, the Concessionaires of the Fixed Link and other third parties;
- (c) has received and continues to hold a safety certificate from the Intergovernmental Commission following a technical report by the Concessionaires, as described in Article 32 of Council Directive [2001/14/EC](#), which specifies the safety requirements necessary to operate a safe service through the Fixed Link;

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- (d) on fulfilling the three conditions above, has entered into an agreement with the Concessionaires. This agreement shall set out the rights and obligations of the parties in line with the conditions set out in Article 7.

Article 7

Nature and content of agreements

7.—(1) Conditions governing agreements to be entered into under Article 6(d) shall be non-discriminatory, in accordance with article 10.5 of Council Directive 91/440/EEC as amended by Article 1 of Directive 2001/12/EC and Directive 2004/51/EC.

(2) Agreements to be entered into under Article 6(d) shall include—

- (a) the administrative, technical and financial provisions necessary to ensure compliance at all times with the conditions specified in points (a) to (c) of Article 6 above;
- (b) the provisions relating to allocation of train paths over the Common Section agreed as a result of application of the procedures specified in Article 9;
- (c) the provision relating to fees set according to the rules specified in Article 11.

Article 8

Framework agreements

8.—(1) The Concessionaires may agree with any railway undertaking or international grouping a framework agreement covering a number of years, setting out the characteristics of the infrastructure capacity required by the railway undertaking or international grouping and offered by the Concessionaires over any period exceeding one timetable period. A framework agreement shall not specify the path or paths in detail but be drawn up so as to meet the legitimate commercial needs of the railway undertaking or international grouping.

(2) A framework agreement shall in principle be for a period of five years. The Concessionaires may agree to a shorter or longer period. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks. Any period longer than ten years shall be possible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is covered by contractual commitments.

(3) The framework agreement shall not be such as to preclude the use of the infrastructure by other applicants or services.

(4) The framework agreement shall allow for the amendment or limitation of its terms to enable better use to be made of the railway infrastructure.

(5) The framework agreement may include provision for penalties should it be necessary to modify or terminate the agreement.

(6) Whilst respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.

Article 9

Procedure for allocation of train paths

9.—(1) The Concessionaires shall establish an allocation body to allocate train paths in the Fixed Link. The allocation body shall ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis and in accordance with Community law, and shall respect the confidentiality of any commercial information provided to it in the exercise of this function. Subject to compliance

with Article 9.2, the Concessionaires as infrastructure manager shall fulfil the role of the allocation body.

(2) The allocation body established in accordance with Article 9.1 shall be independent in its legal form, organisation and decision-making from any railway undertaking.

(3) Requests for train paths, corresponding to the exercise of the rights laid down in Article 3, shall be submitted to the allocation body, or to any other relevant infrastructure manager, or to any joint body established by infrastructure managers for this purpose. Requests for train paths shall be submitted in accordance with the conditions and procedures set out in the Network Statement complemented, where a framework agreement is in place and as appropriate, by the provisions of that agreement. The allocation body must adhere to the requirements set out in Article 18 to Council Directive [2001/14/EC](#).

- (a) The right to use specific infrastructure capacity in the form of a train path may be granted to international groupings and railway undertakings for a maximum duration of one working timetable period. Any international grouping or railway undertaking who is a party to a framework agreement shall apply for capacity in accordance with the terms of that agreement. Once the allocation body has allocated capacity to an international grouping or railway undertaking, that capacity may not be transferred by the recipient to another undertaking or service. Any trading in infrastructure capacity is prohibited and shall lead to that international grouping or railway undertaking being excluded from the further allocation of capacity.
 - (b) The allocation body shall consider all applications for capacity under the conditions and following the deadlines set out in the Network Statement. It shall take account of the capacity needed for maintenance, renewal and improvement of the infrastructure. It shall as far as is possible meet all requests for infrastructure capacity. Where there are conflicting requests for capacity, the allocation body shall have the right to propose different paths to those that were requested; any such proposal must be accompanied by a justification. The allocation body shall attempt, through consultation with the appropriate applicants, to achieve a resolution of any conflicts.
 - (c) At the end of the scheduling process, the allocation body shall establish a draft working timetable which it shall circulate to all interested parties. Interested parties shall have at least one month in which to make any comments on the draft. At the end of that period, the allocation body shall take appropriate measures to deal with any concerns that are expressed, and then establish a definitive allocation proposal.
 - (d) Without prejudice to the provisions of article 12, in case of disputes relating to the allocation of infrastructure capacity, the allocation body shall establish a dispute resolution system in order to resolve such disputes promptly. The system shall be described in the Network Statement and, where the system is applied, a decision shall be reached within a time limit of ten working days.
 - (e) Requests for paths may be made after publication of the working timetable and for the remainder of the duration of that timetable period. Ad-hoc requests for individual train paths may also be made at any time during the current working timetable period. The allocation body must respond to ad hoc requests for individual train paths as quickly as possible and, in any event, within five working days. Information supplied on available spare capacity shall be made available to all international groupings or railway undertakings who may wish to use this capacity.
- (4) The allocation body shall give its reasons for any refusal of train paths.
- (5) The allocation body may, giving reasons, withdraw or alter allocated paths—
- (a) to allow unscheduled maintenance on the railway infrastructure;

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- (b) at the request of the Intergovernmental Commission, of either of the two Principals or of both Principals acting jointly, to give priority to transport needed for national defence; or
- (c) to allow more efficient use of the infrastructure when the path has, for a period of at least one month, been used less than a threshold quota set out in the Network Statement.

Fifteen days notice must be given to the path holder, and the railway undertakings affected must be consulted, on any decision to modify or withdraw paths. The allocation body must advise the duration of the modification or withdrawal. In the circumstances described at (c) above, the modification or withdrawal may last for the duration of the current working timetable period.

However, in the event of an emergency and where absolutely necessary, particularly in the event of an accident, a breakdown rendering the infrastructure temporarily unusable or any other event preventing the reasonably safe use of the infrastructure, the allocation body may without warning withdraw the paths allocated for as long as is necessary to repair or recover the system. The allocation body shall immediately inform the Intergovernmental Commission of such a closure.

The terms governing compensation shall be set out in the agreement entered into in accordance with Article 6(d).

9.—(6) The allocation body shall co-operate with other infrastructure managers to ensure that there is proper co-ordination of train paths through the Fixed Link and on to other networks, and shall establish such procedures as are appropriate to enable this to take place in accordance with article 15 of Council Directive [2001/14/EC](#).

Article 10

Congested infrastructure

10.—(1) Where the Concessionaires find that it is not possible to satisfy requests for infrastructure capacity, they must immediately declare the infrastructure to be congested, inform the Intergovernmental Commission, and apply the priority criteria set out in the Network Statement.

(2) The Concessionaires shall submit to the Intergovernmental Commission, within six months of the declaration described in Article 10.1, a capacity analysis in accordance with article 25 of Directive [2001/14/EC](#).

(3) Following consultation with the users of the infrastructure the Concessionaires shall, within six months of the completion of the capacity analysis described in article 10.2, produce a capacity enhancement plan in accordance with article 26 of Directive [2001/14/EC](#) and in conformity with any relevant provisions of the Concession.

Article 11

Infrastructure Charges

11.—(1) The Concessionaires shall co-operate with other infrastructure managers to achieve the efficient operation of train services. They must aim to guarantee the optimum competitiveness of international rail freight and ensure the efficient utilisation of the Trans-European Rail Freight Network.

(2) The Concessionaires shall establish a charging body to set out specific charging rules and to determine charges for the use of the Fixed Link in accordance with Chapter II of Directive [2001/14/EC](#). Subject to compliance with article 11.3, the Concessionaires as infrastructure manager shall fulfil the functions of the charging body. In any event, the Concessionaires shall collect the infrastructure charges for the use of the Fixed Link.

(3) The charging body established in accordance with article 11.2 shall be independent in its legal form, organisation and decision-making from any railway undertaking.

(4) The charges shall be established in accordance with the charging principles set out in Chapter II of Directive 2001/14/EC above, and in particular article 8.2, with the exceptions listed to those principles, and to the permitted discounts and adjustments, taking into account performance and the possibility of reservation charges.

(5) The charging body must be able to justify the charges billed as against the charging principles set out in this Regulation and in Chapter II of Directive 2001/14/EC and, in particular, to show that the charging scheme has been applied to all international groupings and railway undertakings in a fair and non-discriminatory way. The charging body must respect the commercial confidentiality of information provided to it by applicants.

Article 12

Regulatory Body

12.—(1) An international grouping or railway undertaking exercising or seeking to exercise access or transit rights through the Common Section shall have a right of appeal to the Intergovernmental Commission if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the infrastructure manager or, where appropriate, the railway undertaking, concerning—

- (a) the network statement;
- (b) the criteria contained within it;
- (c) the allocation process and its result;
- (d) the charging scheme;
- (e) the level or structure of infrastructure fees which it is, or may be, required to pay; and
- (f) the enforcement and monitoring of safety rules.

(2) For the purpose of carrying out this appeal function the Intergovernmental Commission may call upon such bodies or experts appointed for that purpose, in conformity with article 10.7 of the Treaty.

(3) The Concessionaires and other interested parties shall supply to the Intergovernmental Commission, without undue delay, all relevant information requested by that body. In particular, the Concessionaires shall supply to the Intergovernmental Commission all the information necessary to enable that body to ensure that charges set by the Concessionaires are compliant with Chapter II of Directive 2001/14/EC and are non-discriminatory.

(4) The Intergovernmental Commission shall take a decision and take action to remedy the situation within a maximum period of two months from receipt of all relevant information about an appeal or complaint. Notwithstanding article 12.5, a decision of the Intergovernmental Commission shall be binding on all parties covered by that decision.

(5) Decisions of the Intergovernmental Commission shall be subject to judicial review by the competent authorities of either France or the United Kingdom. The lodging of an appeal before the authorities of one State precludes the presentation of a second claim on the same count before the authorities of the other State.

(6) For the purpose of monitoring competition in the rail services market, in so far as it relates to the Channel fixed link, the Intergovernmental Commission, without prejudice to the national laws of the Principals on competition policy, may call upon such bodies or experts appointed for that purpose, in conformity with article 10.7 of the Treaty.

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Article 13

Entry into force

13.—(1) This Regulation annuls the regulation signed on 22nd December 1998.

(2) This Regulation shall enter into force on the date of the later of the notifications by the two Governments of the completion of their necessary internal procedures.

Done by the Intergovernmental Commission on 25 October 2005 in the English and French languages, both texts being equally authoritative.

J D Henes

Head of the UK Delegation,
Intergovernmental Commission

J-P Ghuysen

Head of the French Delegation,
Intergovernmental Commission
