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Dear John,

GNWR ROLLING STOCK

Following on from our recent conversation in Manchester I thought it would be helpful to set out our current position regarding the procurement of the GNWR rolling stock.

As the ORR is aware, the preferred (and business case) option is for a new build of Class 390 tilting electrical multiple units. We have been working closely with Alstom for a number of years on this option, and they engaged more fully with us following the GNWR approval in August.

Alstom and Alliance have been seeking derogations to the design of the Class 390 units to enable the build to go ahead. These derogations are necessary as EU standards have changed since the first build of Class 390 in 2001. Alstom developed a plan that sought the derogations on the following basis:

- 'Plan A' 'Re-use of the Type Examination Certificate issued by Correl Rail on 31 May 2011, based on the derogation issued by DfT in 2008 under article 9(1)(e) of HR RST TSI 2008'.

- **'Plan B'** 'Re-use of past Authorisation for Placing in Service of vehicles not in the scope of former Rolling Stock TSIs in force (HS RST TSI 2008, CR LOC&PAS TSI 2011)
- **'Plan C'** to apply for a new derogation against the 2014 LOC and PAS TSI (and some aspects of the 2008 HS rolling stock TSI) and that would need to be on the basis of economic viability under article 9(1) (d) of the 2008 Interoperability Directive. This plan would require the Commission's approval.

Unfortunately both plan A and B are no longer options, and so plan C remains the only viable route available for gaining the authority to enable a new build of Class 390 unit. Alstom advised Alliance of this fact when the ability to pursue plans A and B had been exhausted, and have started the work to prepare and submit the necessary file papers.

Plan C is therefore being progressed and Alstom have informed us that this could take between 3 and 6 months to obtain the derogations required from the submission of the file papers which is expected to take place in May (2016).

This will obviously impact upon the delivery and then also the planned start date of services. An approval (or possible rejection) must take place within 6 months of the submission, and as a result the progression of plan C will result in a delay to the start date of around 12 months for GNWR services.

As we have progressed plans with Alstom, we also looked at other possibilities for tilting rolling stock, notably the Class 221 fleet of Voyager Leasing. This fleet is off lease in 2018, but Voyager Leasing has indicated it is unwilling to offer terms to Alliance as they are expecting the DfT to lease the fleet beyond 2018. Whilst we understand the call option within the direct agreement has already been exercised once by the DfT, we have no desire to formally pursue this option as it would

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undoubtedly have an impact on future WCML services if no replacement was forthcoming.

Impact of the delay in acquiring rolling stock

The impact of the delay in procuring the rolling stock fleet could lead to the GNWR track access rights falling away on the [REDACTED] as we will be unable to satisfy Clause 3.5 (d) of the contract within the timescales. This states:

“(d) 1700 hours on [REDACTED] if the Train Operator fails to obtain written notice from ORR that it has met the condition in Clause 3.8.1(a) by 1700 hours on [REDACTED]”

The condition in Clause 3.8.1 (a) relates to the procurement of the Class 390 unit or an equivalent unit type. This clause states:

“The Train Operator shall (in sufficient time to enable ORR to comply with Clause 3.8.2 below) provide ORR with evidence reasonably satisfactory to ORR of its compliance with the following Investment Conditions:

(a) that it has entered into a contract to procure a minimum of 4 Class 390 (Pendolino) 6-car trains or rolling stock with at least equivalent capacity and traction characteristics, for a minimum 10 years duration;”

This unavoidable delay from GNWR’s perspective, in procuring the rolling stock, could now lead to the track access contract expiring on the [REDACTED] unless the ORR uses its powers under Clause 3.7 of the contract to vary the relevant expiry dates.

Proposal to the ORR

Under Clause 3.7 of the contract the ORR is entitled to amend “any of the dates” in Clause 3.5. We would ask that given the circumstances, that the ORR agree to amend the dates as was envisaged under Clause 3.7.

We recognise that this is not ideal; however the circumstances we have outlined are entirely unavoidable and beyond the control of the parties involved. We would however like to state that the DfT has been constructive in its dialogue with Alstom in an attempt to ensure the process now outlined is successful.

We therefore ask that the ORR amend the following dates based on the representations made in this letter:

Amend Clause 3.5 (d) to allow derogations and the procurement of the Class 390 units. It is proposed that this clause should read:

“(d) 1700 hours on [REDACTED; one year extension on previous date] if the Train Operator fails to obtain written notice from ORR that it has met the condition in Clause 3.8.1(a) by 1700 hours on [REDACTED; one year extension on previous date];

Amend Clause 3.5 (e) to incorporate the delay in delivery of the rolling stock following the delay in obtaining derogations, so that this clause reads:

(e) 1700 on the Principal Change Date in 2019 if the Train Operator has not commenced operation of the Services on or before that date;

The business case for GNWR is based upon a 10 year duration, which itself is based upon the significant commercial investment in the Class 390 fleet. The delay in derogations will most likely also delay the start date of our service and hence revenue

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streams and returns will be affected if the operational period is less than 10 years. We therefore request that the ORR also amend the definition of the Expiry Date of the contract so that this also reflects the expected delay in start-up.

We ask that the ORR amend the Expiry date to “the Principal Change Date in December 2028”. This is a year longer than the current expiry date and secures the operating period necessary to underpin the business case on which the investment is based.

Letter of intent

Arriva and Alstom are also progressing a Letter of Intent in order to define our contractual relationship moving forward, and we would be pleased to meet with the ORR to discuss the delay to the rolling stock procurement, our proposed plan, the impact this has on the timescales and our proposals to amend the dates in the contract so that we can reach agreement on the way forward.

Yours sincerely



Ian Yeowart