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Dear Martin and Nigel

DB Schenker Rail (UK) Limited: Proposed 63rd Supplemental Agreement

Introduction

1. On 31st January 2012, the Office of Rail Regulation ("ORR") approved the 63rd Supplemental Agreement ("SA") to the track access contract ("TAC") between Network Rail Infrastructure Limited ("Network Rail") and DB Schenker Rail (UK) Limited ("DBS") under section 22 of the Railways Act 1993 ("the Act"). The agreement was submitted formally to us on 13th January 2012. This letter sets out the reasons for our decision.

Purpose of the agreement

2. The 63rd SA proposes changes to the Schedule 5 Rights Table to Service Group 1206 to amend and surrender existing Level 1 Rights, and to include new Level 1 Rights in respect of services which have working timetable paths in the December 2011 timetable. The 63rd SA takes effect from today until the expiry of DBS's track access contract on the Principal Change Date 2015.



INVESTOR IN PEOPLE

Doc # 438926.02

Consultation

3. In line with the arrangements for industry consultations on TACs¹, a pre-application consultation was carried out by Network Rail and DBS. Only Freightliner Group (“Freightliner”) responded. It raised the following points:

- Flow 1: 6L58 crew stops should be Ipswich Station rather than Ipswich Yard – *subsequently amended*;
- Flow 2: 6M44/45 are apparently “Y” paths but have different arrival times at Mountsorrel – *6M44 WSX-Y arrival time amended to match that of 6M45 MTFO-Y*;
- Flow 2 6M43 WSX -Y is no longer “Y” – *amended to 6M43 WSX*;
- Flow 13: Small Heath flow change of days – there no longer appear to be an WTT paths to match this flow – *these services were surrendered*; and
- The following have Train Service Codes for this Service Group, but are not shown in the Schedule 5 Rights Table: 6M66 18:07 SX Acton TC – Mountsorrel and 6E63 05:41 MO Mountsorrel – Peterborough – *6M66 not required in the absence of a return path and 6E63 included in the Rights Table*.

4. Given the proposed changes to the access rights, as detailed above, Freightliner confirmed that it had no remaining concerns. The appropriate changes formed part of the informal submission to ORR on 12 December 2011.

ORR Review

5. Our review of the 63rd Supplemental Agreement did not raise any operational, performance, economic or drafting issues.

6. In our letter of 23 September 2011² we explained that, in the short term, we would not approve extensions to existing TACs beyond December 2013 until we had consulted on our future policy and reached a conclusion. We also said that for operators seeking new or amended rights during this period that;

“...we will consider each application on its merits taking account of the nature and extent of the rights sought before deciding whether to approve them beyond December 2013. We will write separately to those operators who have submitted applications in due course.”

¹ Industry code of practice for track access application consultations, Annex A of the *Criteria and procedures of the approval of track access contracts*: (<http://www.rail-reg.gov.uk/upload/pdf/408.pdf>)

² <http://www.rail-reg.gov.uk/server/show/nav.201>, under “Related documents”.

7. Given our interim policy, we carried out an extensive review of the changes proposed to the Rights Table in respect of proposed changes to Level 1 rights and new Level 1 rights, i.e., those rights with specific timings and routings, and which, if approved as submitted to us, would apply until the Expiry Date of the TAC (PCD 2015), unless surrendered earlier by DBS. This would far exceed the December (PCD) 2013 date to which we have said we are prepared to approve them. In considering the 63rd SA, we have taken into account:

- (a) the number of Level 1 Rights (being Firm Rights) sought;
- (b) the timing, operation and routing of the proposed services;
- (c) the effect they could have on future timetable changes;
- (d) implications of major projects that are, or will be, underway in this timescale; and
- (e) the extent to which the changes to the Rights Table use additional capacity, or simply make different use of existing capacity.

8. We have satisfied ourselves that the capacity implications of the revised access rights as informally submitted to us on 12 December 2011 require no revisions to be compliant with our interim policy and we are therefore, content to approve them.

ORR's conclusions

9. In considering the application and in reaching our decision, we are required to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We believe that approval of this supplemental agreement is consistent with these duties, in particular our duties to:

- (a) protect the interests of users of rail services;
- (b) promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;
- (c) contribute to the development of an integrated system of transport of passengers and goods;
- (d) promote competition in the provision of railway services; and
- (e) enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.



Conformed copy of the track access contract

10. Under clause 18.2.4 of the TAC, Network Rail is required to produce a confirmed copy, within 28 days of any amendment being made, and send copies to the ORR and the train operator. I look forward to receiving the conformed copy.

Public register

11. In accordance with section 72 of the Act, we will place a copy of the 63rd SA on our public register. The parties have asked us to redact the customer name from the Schedule 5 Rights Table prior to placing on the public register and we have agreed to this request.

12. A copy of this letter will be sent via email to Steven Saunders and Rob Fairy at Network Rail.

Yours sincerely

Sona Trivedi

Track Access Executive