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Dear Martin and Nigel

DB Schenker Rail (UK) Limited: Proposed 73rd Supplemental Agreement

Introduction

1. On 2nd March 2012, the Office of Rail Regulation ("ORR") approved the 73rd 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 1st March 2012. This letter sets out the reasons for our decision.

Purpose of the agreement

2. The 73rd SA proposed changes to the Schedule 5 Rights Table to Service Groups 4003, 4011, 4014 and 4067 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 May 2011 timetable. The 73rd SA took effect from 2nd March 2012 until the expiry of DBS's track access contract on the Principal Change Date 2015.



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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 GB Railfreight (“GBRf”) responded with the following queries:

- Since DBS currently has a specifically authorised length limit of 41 SLUs approved for 6Y15 and 6E16 services along the West Highland Line, and that the flows associated with these headcodes are transferring from Service Group 4067 to 4176, can the length limit now be withdrawn?
- Since 6Y15 SX last ran on 6th July 2011 and 6E16 FSX and FO ran on 7th July 2011, should these services have rights, between Fort William and Mossend, for every day of the week, or for Monday and Tuesday only given the traffic concerned?
- It would be better if a FO right is not approved at the time specified in the commentary, so as to assist GBRf in obtaining a more robust West Highland Line path for its northbound Rio Tinto Alcan service to Fort William.

4. Network Rail noted that the services referred to by GBRf were rights being proposed for surrender. 6Y15 and 6D16 (now 6E16) are already shown in the current Rights Table as they were inserted into Service Group 4176 under DBS’s 68th SA which was signed off by ORR in May 2011. DBS’s proposals merely “tidy up” the Rights Table by removing 6Y15 and 6E16 from Service Group 4067.

5. In response, GBRf confirmed that it had no remaining concerns. The appropriate changes formed part of the informal submission to ORR on 21st February 2012.

ORR Review

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. In considering the 73rd 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 1st March 2012 require no revisions to be compliant with our interim policy. Given that the amendments are minor alterations to timing, the transfer of rights to another Service Group, and the addition/removal of Intermediate Points, effectively reducing the Contract Miles of some of the services and thereby freeing up capacity on this route, we were 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 73rd 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