

From: Hugh Clancy  
Sent: 22 September 2010 12:44  
To: Gusanie, Richard  
Subject: Re: Consultation on changes to our policy on the duration of long term track access contracts

Dear Richard

### **Revision of ORR's policy on long term track access contracts**

Thank you for the opportunity to comment upon the proposals to revise the policy on long term track access contracts. This letter draws together the response of all FirstGroup's rail operations, including First ScotRail, First TransPennine Express, First Capital Connect, First Great Western and Hull Trains.

I have attached our responses to each of the specific questions posed by the consultation document.

In general we support your proposed changes and understand the reasons for them which are well explained in the document.

The only area we disagree with your proposals is your apparent retention of the 10 year limit on track access contracts where a longer Franchise Agreement is in place. The DfT is currently consulting on future Franchise Agreements both their length and how they will be specified. It is therefore unclear how long future franchise agreements will be or the nature of the Track Access rights that a Franchisee will require over the term of the agreement to satisfy the train service specification. We therefore believe that the ORR should not fetter its discretion and should consider applications for longer track access contracts based on longer Franchise Agreements on their merit with an open mind. We hope that as policy develops the criteria which determine the length and terms of future Franchise Agreements do not create a situation where a Franchisee contracts to deliver services which it is unsure whether it will get the access rights it needs to deliver those services over the full term of the agreement.

One other area we believe could be clarified is how long before the termination of a Track Access contract can its extension be confirmed? Network Rail can have long term issues which create a liability to the train operator, as shown by the Hatfield compensation problems. An operator needs to ensure that at no point is it operating on a contract of very short duration with potential for long term losses due to a failure of Network Rail. We believe that contracts should as a minimum be extendable 18 months before they expire.

### **Answers to Focussed Questions**

- Do you agree with our proposal to treat networks, for the purposes of duration, the same regardless of whether or not they have been declared as specialised infrastructure? (Paragraphs 2.12-2.13)

YES.

- Do you agree with our view that, under the amended Regulation 18(8), the period between five and fifteen years is essentially a continuum whereby, as contract length increases, it becomes more difficult to justify a contract of that duration on the basis of commercial contracts, specialised investments or risks? (See paragraph 2.19)

YES

- Do you agree with our proposal that, aside from in exceptional circumstances, track access contracts justified solely on the basis of commercial contracts should be no longer than ten years? (Paragraphs 2.25-2.28)

No we believe this is an unnecessary constraint. The DfT are consulting on Franchise Length at the moment. It would clearly be ideal if the criteria that the DfT used for determining Franchise Length and terms matched with the Track Access rights a Franchisee was able to secure. We understand the need to change the existing guidance at this time. We believe that as the changes to legislation allow for 15 year agreements on the basis of commercial contracts the ORR should consider the nature of those contracts and the nature of the rights that are being requested before determining that 10 years is the correct maximum. Ten years may be appropriate on the basis of the current Franchise Agreements and the current way in which access rights are specified, but that may change and we believe that ORR should keep the option open to allow 15 year access agreements to be granted in the event that longer franchises are offered. This providing the rights requested do not unreasonably restrict competition and development of other services on the Network.

- Do you consider there is a need for clarification of any aspect of our current policy or our approach for how to apply our proposed revised policy?

Yes it would be desirable to have guidance on how long in advance of its termination date a contract can be extended to create an overlap. We believe this should be no less than 18 months.

- Do you have any comments to make on our impact assessment of the proposed policy (set out in Annex A

No.

Kind Regards

Hugh Clancy  
Commercial Director, Rail