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Dear Alistair and Catherine

**Approval of the 79th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Abellio East Anglia Limited dated 10 December 2004**

We have today approved the above supplemental agreement submitted to us formally on 13 August 2020 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains our decision.

**Purpose**

The purpose of this agreement is to make firm Abellio East Anglia (AEA)'s contingent rights to operate through services between Norwich and Stansted Airport which were introduced in December 2019. Previously, there were separate services between Norwich and Cambridge, and Cambridge and Stansted requiring airport passengers to change trains at Cambridge. The original intention had been to give firm rights to combine these train slots in the 75th supplemental agreement but, due to an oversight, the right to combine them remained contingent.

## Industry consultation

Network Rail undertook the usual industry consultation. Comments in support were received from Transport Focus and Cross Country Trains. Govia Thameslink asked for clarification on the nature of the services and, once this was received, had no objections to the application.

The application was submitted with an outstanding objection from GB Railfreight (GBRf). This is a continuation of the objection to this proposed through service that it raised during consultation for the 75th SA. GBRf was concerned that the retiming of the services between Norwich and Cambridge to accommodate the through service has a negative impact on its ability to run freight services between Norwich and Ely. In support of this, they pointed towards the rejection of a proposal to run a freight service on this route in December 2019, which it believed was due to the through service.

GBRf also said that running the trains as a through service forced inefficient use of constrained capacity. It was concerned in particular about the use of through platforms, which it describe as being at a premium, instead of bay platforms at Cambridge, and limited platform and track access at Stansted during the day.

Network Rail's response to the rejection of the GBRf proposed service in December 2019 is unchanged from the reasons given at the time when it provided detailed reasons why GBRf's proposed service which were not due solely to running the through service. It explained that, at the time of the access proposals, both operators had equal status, i.e. "an expectation of rights", and that it had given the paths to AEA in accordance with the Decision Criteria in Part D of the Network Code.

Network Rail said that there were no strategic capacity paths identified on this route. In its view, the conversion of two separate services into one has contributed, along with a number of other measures, to reduced movements in the Cambridge area which benefitted network operation. Network Rail said it had tried to minimise the impact on other operators by flexing AEA's departure times to assist in the operation of freight routes where possible. It also mentioned that the through service forms part of AEA's franchise commitment.

GBRf in turn believe that the capacity assessment was made using the current timetable and that it is not possible to state with certainty that it will still apply to future timetables if AEA's services are recast. It is noted that such a recast is not within the scope of this application; however, GBRf's concerns remain unresolved.

GBRf noted that while the provision of a through service might well be a franchise commitment, it did not believe this constituted persuasive authority in the granting of firm rights as this would discriminate against those who do not have franchise commitments.

GBRf also raised queries with Network Rail relating to the Vehicle Change process for AEA's Class 745 and 755 fleets to which Network Rail responded. The Vehicle Change process is not strictly relevant to this supplemental agreement.

### **ORR review**

When we consider access applications, we must do so in a way that we consider best fulfils our statutory duties as set out in section 4 of the Railways Act 1993. We have concluded that approval of this agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of rail services;
- promoting 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; and
- contributing to the development of an integrated system of transport for passengers and goods; and
- enabling persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

We acknowledge the concerns of GBRf and the steps that Network Rail and AEA have undertaken to address them. We note that the parties' positions on the issue of capacity are ultimately not reconcilable.

We note that there is no strategic capacity identified on this route and, even without firm rights, Network Rail had given the paths in the December 2019 timetable to AEA in accordance with the Decision Criteria in Part D of the Network Code.

While we agree that being a franchise commitment does not constitute persuasive authority in the granting of firm rights, we are satisfied that providing a through service brings positive benefits to passengers by removing the need to change trains at Cambridge. This is particularly beneficial to passengers travelling to and from the airport with luggage.

Having therefore considered the concerns raised by GBRf against the benefits for the new services, on balance, we believe that approving AEA's application best meets our statutory duties, in particular, those listed above.



### **Conformed copy of the track access agreement**

Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.

### **Public register and administration**

Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter to Jason Bird at GBRf.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louise Beilby'. The signature is written in a cursive style with a long horizontal stroke at the end.

**Louise Beilby**