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Network Rail Infrastructure Limited
1 Eversholt Street
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Jason Lewis
Head of Rail Network Strategy
Eurostar International Limited
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London
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Dear Danny and Jason

Approval of the fifth supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Eurostar International Limited dated 8 October 2008

We have today approved the above supplemental agreement submitted to us formally on 8 December 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 the reasons for our decision.

Purpose

Eurostar's current track access contract with Network Rail provides it with access over a short section of Network Rail's infrastructure to enable the connection of Ashford International Station with the High Speed One network. This supplemental agreement extends expiry date of the contract from the Principal Change Date in December 2022 to the Principal Change Date in December 2024, allowing for the continuation of these rights. It also converts the rights from firm to contingent.

Industry consultation

Network Rail consulted the industry on this supplemental from 12 October to 12 November 2022. High Speed One replied and gave a number of reasons why the contract should be extended by five years rather than the two years proposed.

ORR review

This application was of a poor standard. The agreement did not contain any drafting that would have amended the firm rights in the contract to contingent. The agreement was incorrectly referred to as a General Approval, which is a different document used in different circumstances. These matters were corrected before the agreement was formally submitted.

For a number of reasons, Eurostar hasn't operated at Ashford International since March 2020 and currently doesn't anticipate running these services until 2024 or 2025. This means that the access rights are currently unused and would remain unused for a significant period of time. There is process in Part J of the Network Code for unused access rights to be reviewed and Network Rail has set out its current approach [here](#). The implications of this approach for Eurostar's access rights suggests that they should be surrendered.

The application did not refer to this issue, simply saying that the proposed extension will allow Eurostar to maintain their readiness to begin operating services. We asked Network Rail to comment on its current approach to unused access rights in respect of this application. In response, Network Rail said that the two year extension to the expiry date to be a reasonable compromise position and the decision to continue the access rights on a contingent basis for a further two years noted the slightly unique nature of the infrastructure they operate on and also that there was no conflicting capacity interest from other operators. Network Rail went on to say that, if Eurostar are not in a position to operate services beyond December 2024, it is unlikely further extensions would be granted and this will be reviewed in early 2024.

Given the unique nature of these access rights and the lack of another competing operator we considered that Network Rail's position was reasonable. Going forward, Network Rail needs to review this situation on a regular basis and take into account any relevant changes in circumstances.

Our duties under section 4 of the Act and our decision

We have concluded that approval of this supplemental agreement strikes the appropriate balance in discharging our statutory duties under section 4 of the Act; in particular, those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).



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 the Department for Transport and Network Rail's Policy and Access Team. 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.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Rodgers', is positioned below the text 'Yours sincerely'. The signature is fluid and cursive.

Jonathan Rodgers