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Access Policy Manager,
Office of Rail and Road,
25 Cabot Square,
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22nd July 2024

Dear,

Network Rail Representations for the proposed 41st Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and GB Railfreight Limited dated 11th December 2016

General Comments (Pages 1 & 2):

Thank you for the opportunity to respond to Network Rail's representation on our 41st Supplemental Agreement. It is noted that Network Rail is sending out broadly generic letters stating that due to the unprecedented scale of 83 unsupported applications, it is planning to phase its analysis.

Network Rail has also stated that "*applications consisting of rights for geography not impacted or for later timetable changes should be considered separately*". With our 41st Supplemental, containing proposed firm rights for aggregates and building materials services mainly in the North of England and most associated with the ECML, this will mean complicated splitting of applications, potentially doubling them, and leading to some real confusion. GB Railfreight would rather splitting does not occur mid-process, now that this supplemental has been submitted to ORR.

For the record, the train slots associated with the proposed firm rights are in the current Working Timetable and have been in previous timetables.

The High-Level Plan and Dependencies:

This states that "*if interactions occur at different points in time, i.e. different Timetable Change Dates then this could have an impact on when Network Rail will be able to submit its position with regard to this application*". This definitely does not have to be so.



As occurs with a Section 22A, where it becomes clear that some rights can subsequently be supported in a specific timetable, the supported rights (e.g. those needed for December 2024 Timetable in the first instance) can be split out and approved separately. They do not necessarily need to wait for Network Rail's approval of those rights also in any specified subsequent timetables.

As mentioned earlier, this is far from ideal and can become quite complicated. However, it has got to be a way forward rather than not having any rights at all for December 2024.

For the record, all 16 proposed firm rights in this 41st Supplemental are required as soon as it is practicable, i.e. for the December 2024 Timetable. All have been in several Working Timetables and this application is merely seeking to normalise what is in the current timetable.

Network Rail Review of Form F and Associated Documents:

It is the case that this application for firm rights was sent after 20th May 2024 deadline however it appears that other operators have been permitted to submit their main requirements after 20th May 2024 and it is GBRf's view that it not be unduly penalised on this basis, not least as all the proposed rights are for long-standing train slots already in the timetable.

Contractually, submissions for access rights can be made at any time and I would expect ORR to take all applications into account if they are relevant.

Network Rail has also stated it *"has made every attempt in their initial assessment of the Application received to be able to inform ORR of any early positions it might have on the Access Rights sought"*.

GB Railfreight cannot understand why Network Rail cannot make an initial assessment on this application as these services are all in the WTT and it will have performance information on these trains.

East Coast Main Line (ECML) Access Rights:

GB Railfreight has very strong concerns about Network Rail's approach to firm access rights for services that operate on or close to the ECML. It has had some sort of policy in place for over 12 years. We cannot have an "accepted position" that restricts legitimate operators from carrying out their lawful, contractual business by restricting the access rights process since 2012.

It must also be noted that the ECML Task Force is not there to make capacity decisions but to give guidance when asked. We cannot wait even more months (time undetermined) before this application for firm rights gets taken forward.



Allowing business continuity while preserving freedom of action for ORR in taking its decision:

This states that *"where a single application has been made relating to multiple timetable periods, there is a risk that rights might not be available in time for an operator to commence services as early as it would like...."*. This should not be the case.

As occurs with a Section 22A, where it becomes clear that some rights can subsequently be supported, the supported rights (e.g. those needed for December 2024 Timetable in the first instance) can be split out and approved separately. They do not necessarily need to wait for Network Rail's approval of those rights also in subsequent timetables.

As mentioned earlier, this is far from ideal and can become quite complicated. However, it has got to be a way forward rather than not having any rights at all for December 2024. For the record, the rights for GBRf's 41st Supplemental are required as soon as it is practicable.

GB Railfreight is already looking to extend its Contingent Rights for the train slots in this supplemental however this is so unsatisfactory as it gives GBRf and its customers no certainty for its business. That leads to a lack of 3rd party investment and also large numbers of train slots, building up, that seek firm rights later in the process.

Appendix C: North West & Central Region Assessment:

Firstly, contrary to what is written, this application is not seeking any firm access rights in Birmingham or the surrounding area.

Secondly, in any case, it is GB Railfreight's view that Network Rail should not be producing a strategic plan for **passenger services** (my emphasis) in the West Midlands area, but a strategic plan for freight and passenger services across the West Midlands.

If it tries to produce a plan for passenger services without the freight spec as an integral part, at the start of the process, NW&C Region will run into exactly the same problems as the ECML Event Steering Group and Capacity Planning are doing right now.

Taking all the above into account, GB Railfreight believes ORR has got to reach a decision really quite quickly for December 2024 applications for which this 41st Supplemental is required and, particularly, not let Network Rail extend yet another ECML access rights policy.

Yours sincerely,

[redacted]
Head of Strategic Access Planning.

