

**Katherine Goulding**

Executive, Access and Licensing  
Railway Markets and Economics

Email: katherine.goulding@orr.gsi.gov.uk

27 July 2016

Craig Tomlin  
Customer Manager  
Network Rail Infrastructure Ltd  
One Eversholt Street  
London  
NW1 2DN

Aaron Hickling  
Operations Manager  
DC Rail  
Room 8  
32 Friar Gate  
Derby  
DE1 1BX

Dear Craig and Aaron,

**Directions relating to the track access contract between Network Rail Infrastructure Limited and Devon and Cornwall Railways Limited**

1. On 27 July 2016 the Office of Rail and Road (**ORR**) approved the proposed track access contract (**TAC**) between Network Rail Infrastructure Limited (**Network Rail**) and Devon and Cornwall Railways Limited (**DCR**) under section 18 of the Railways Act 1993 (**the Act**), submitted to us on 8 July 2016. This letter sets out the reasons for our decision.

**Background**

2. The proposed TAC is to take effect on the expiry of DCR's current TAC on 6 August 2016 to run until August 6 2021. The TAC allows DCR to operate freight services on Network Rail's network.
3. The proposed TAC would have been suitable for approval under our Freight General Approval (**GA**). However we removed the GA in January 2016 due to policy changes to the expression of freight track access rights moved from "levels" to "windows", which would not be covered by the existing GA. This meant that you could not enter into the TAC under the GA as originally envisaged. Therefore, as we suggested, you submitted the proposed agreement to us for specific approval on 8 July 2016.

**Consultation**

4. There was no industry consultation for the proposed TAC. We feel this is appropriate in the circumstances as there are no track access rights included or deviations from the model freight TAC.

**ORR Review**

5. We reviewed the proposed TAC. We had a query about the date given on page 16 of the TAC, which you resolved by removing the date. In the signed contract, this



will need to be filled in with the correct date of signature. There were no other issues.

## Part J

6. While we directed in February 2016 on several section 17 applications<sup>1</sup> with the revised Schedule 5<sup>2</sup>, these TACs do not come into effect until December 2016. Therefore the new DCR TAC will be amongst the first TACs to go into effect that uses windows instead of levels. If DCR is involved in an access right transfer under Part J of the Network Code from a TAC that uses levels, it would be useful for DCR to contact us to discuss how these access rights should be expressed.

## ORR Decision

7. This is an application under section 18 of the Act and therefore an agreed agreement between the parties who are prepared to enter into it as submitted.
8. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
  - (i) to protect the interests of users of railway assets;
  - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
  - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
  - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

## Public Register

9. Once the agreement is signed, in accordance with section 72(5) of the Act, you must send a copy to ORR within 28 days and in accordance with section 72(2)(b)(iii), a copy will be placed on our public register and website.
10. In entering any provision on the register, ORR is required to have regard to the need to exclude, as far as is practicable, the matters specified in section 71(2)(a) and (b) of the Act. These sections refer to:

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<sup>1</sup> Available to view at <http://orr.gov.uk/what-and-how-we-regulate/track-access/track-access-process/track-access-decisions>

<sup>2</sup> Further information on the revised Schedule 5 can be found at <http://orr.gov.uk/what-and-how-we-regulate/track-access/current-work/industry-reform>

- a. any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that individual; and
  - b. any matter which relates to the affairs of a particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that body.
11. When submitting the copy of the signed agreement would you therefore please identify any matters which you would like the ORR to consider redacting before publication. You will need to give reasons for each request explaining why you consider that publication would seriously and prejudicially affect your interests.

Yours sincerely

**Katherine Goulding**

