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OFFICE OF RAIL AND ROAD

18 December 2018

Rachel Gilliland  
Head of Commercial Freight  
Network Rail Infrastructure Limited  
Kings Place  
90 York Way  
London  
N1 9AG

Russell Evans  
Policy and Planning Director  
First Rail  
4th Floor Capital House  
25 Chapel Street,  
London  
NW1 5DH

Dear Rachel and Russell

## **Consent to amendment of dates in Clause 3.5 in East Coast Trains Limited's Track Access Contract**

1. We have today issued a notice of consent under Clause 3.7 of the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and East Coast Trains Limited (ECTL) to amend the dates in Clause 3.5 of the contract. This is following a request made to us by ECTL on 13 December 2018. This letter explains the reasons for our decision.

### **ECTL's application**

2. In its letter ECTL explained that it is close to signing the contract but the financier's major shareholders have raised some questions over the future compatibility of the rolling stock with other similar fleets. This primarily relates to the fact that the fleet is an electric-only variant rather than one with bi-modal capability. Although these issues are in the process of being addressed it won't be possible to sign the contract by the date required date in the contract.

3. ECTL is hoping to reach a satisfactory conclusion quite soon but, recognising that it may be necessary to find alternative financing, it has requested an additional contingency period beyond this. ECTL says that placing the order by this revised date would still allow delivery of the fleet during the May 2021 timetable.



## Consultation

4. There is no requirement for industry consultation under Clause 3.7 but, as required, we consulted Network Rail which was content for the date to be extended as requested.

## ORR review and conclusions

5. We included a date in ECTL's contract by which it must procure rolling stock in order to avoid a situation where ECTL unduly delays implementation of its services, blocking capacity that could otherwise be used.

6. We accept that ECTL has good reasons why it needs to extend this date and that this will not unduly delay the implementation of ECTL services or block capacity that could otherwise be used on the East Coast Main Line.

7. In considering the request and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that issuing such a notice is appropriate and consistent with our section 4 duties, in particular those relating to:

- protect the interests of users of rail services;
- promote 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;
- contribute to the development of an integrated system of transport of passengers and goods; and
- enable persons providing railway service to plan the future of their businesses with a reasonable degree of assurance.

Yours sincerely

A handwritten signature in black ink that reads 'Ian Williams'.

**Ian Williams**