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15 August 2019

Alex Aitken
Franchise and Access Manager (Wessex)
Network Rail Infrastructure Ltd
Basingstoke Rail Operating Centre
Gresley Road
Basingstoke
RG21 4FS

Neetika Garg
Track Access Manager
First MTR South Western Trains Ltd
South Bank Central
30 Stamford Street
London
SE1 9LQ

Dear Alex and Neetika

Approval of the 2nd supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First MTR South Western Trains Limited (First MTR SWT)

1. We have today approved the above supplemental agreement submitted to us formally on 15 August 2019 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.

2. The purpose of this agreement is to extend the Contingent Rights granted under the General Approval for the May 2019 timetable and to provide additional rights consistent with the first of a package of improvements to rail services as specified in the Franchise Agreement.

3. Network Rail undertook the usual industry consultation with responses received from Transport Focus and GTR. Transport Focus offered support for the proposed amendments but highlighted scores from the autumn 2018 Passenger Survey which showed room for improvement for First MTR SWT. Govia Thameslink Railway Limited (GTR) raised a number of queries to better understand some of the details of the proposed changes. First MTR SWT responded to GTR's points and there were no further comments.

4. Our review identified no performance, operational or economic issues and we are satisfied that approval is in accordance with our statutory duties under section 4 of the Railways Act 1993.

5. The quality of the informal submission was lacking with a number of inconsistencies between the Form P and the draft agreement where they did not support each other in a way that we (and consultees) could easily understand or check the changes being sought. Only after highlighting this to the parties and a few iterations was a submission made that that we could approve. Although we may point out errors or inconsistencies where we see them, it is not ORR's responsibility to ensure that the Form P and supplemental agreement are accurate and properly drafted and we accept no responsibility if they turn out to be deficient in any way. That responsibility lies squarely with the parties.

6. In considering the agreement 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 approval of this supplemental agreement is consistent with our section 4 duties, 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)).

7. 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.

8. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and to 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.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M Albon', written in a cursive style.

Michael Albon