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OFFICE OF RAIL AND ROAD

25 May 2016

Rachel Gilliland
Head of Commercial Freight
Network Rail Infrastructure Limited
Kings Place
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Ian Yeowart
Managing Director
Alliance Rail Holdings Limited
88 The Mount
York
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Dear Rachel and Ian

Consent to amendment of dates in Clause 3.5: Great North Western Railway Company Limited

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 Great North Western Railway Limited (GNWR) to amend the dates in Clause 3.5 of the contract. This is following a request made to us by GNWR on 27 April 2016. This letter explains the reasons for our decision.

GNWR's application

2. GNWR explained that it was taking longer to obtain the necessary derogations from the applicable EU rolling stock standards from the European Commission than it had originally envisaged. Instead of relying on existing derogations it has proved necessary to apply for new derogations which will take an additional 3 to 6 months. This delay will necessarily impact on the date by which GNWR can enter into a procurement contract for the rolling stock, its subsequent delivery and the start of services.

3. GNWR therefore asked for the dates in the contract by which GNWR must (a) enter into a rolling stock procurement contract and (b) commence services to be extended by 12 months. GNWR also asked for the Expiry Date to be put back by 12 months to ensure its business case for ordering new rolling stock remained viable in light of the later expected start date.

Consultation

4. There is no requirement for industry consultation under Clause 3.7 but, as required, we consulted Network Rail. Network Rail was content to extend the dates by which GNWR must enter into a rolling stock procurement contract and commence services. However, it

said it could not support extending the Expiry Date until the Principal Change Date 2028, due to capacity uncertainty connected to the start of HS2 operations, at least until the issues had been discussed at the next Sale of Access Rights panel on 31 May 2016.

ORR review and conclusions

5. We have considered GNWR's request and Network Rail's representations.

6. We included dates in GNWR's contract by which GNWR must procure rolling stock and start services for transparency and to minimise uncertainty surrounding GNWR's start up processes and the overlapping refranchising of the West Coast and West Midlands franchises. We accept that obtaining the necessary rolling stock derogations is taking longer than originally envisaged and it would not be in the public interest to allow the contract to lapse due to the failure to meet the dates originally specified in the contract.

7. Whilst we consider it is right to extend these dates, we still want to achieve that certainty as soon as possible. Although GNWR requested a 12 month extension it explained that the derogations progress should take between 3 and 6 months, and in light of this we have consented to shorter extensions than those requested:

- The date by which GNWR must enter into a contract to procure rolling stock is being changed from [REDACTED] to [REDACTED].
- The date by which GNWR must commence services is being changed from the Principal Change Date 2018 to the Subsidiary Change Date 2019.

8. When we approved GNWR's application we accepted its business case justified a 10-year contract. Whilst we noted Network Rail's concerns over what capacity may be available in 2028 we took account of the fact that GNWR has quantum-only rights for just 6 return services a day and did not see it as reasonable to reject an extension of the Expiry Date based on current uncertainties over capacity in 2028. We have therefore consented to the change of the Expiry Date from the Principal Change Date 2027 to the Subsidiary Change Date 2028.

9. 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, appearing to read 'David Reed', written in a cursive style.

David Reed