



OFFICE OF RAIL AND ROAD

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5 April 2016

Dear Andriana and Tony

Notice of Consent to Relevant Schedule 8 Modifications agreed between Network Rail Infrastructure Limited and Govia Thameslink Railway Limited

1. The Office of Rail and Road (ORR) has issued a notice of consent in respect of the proposed Relevant Schedule 8 Modifications submitted to this office on 4 February 2016 amending the track access agreement between Network Rail Infrastructure Limited (Network Rail) and Govia Thameslink Railway Limited (GTR), (jointly "the parties").

Purpose of the Change

2. On 26 July 2015, Southern merged with the GTR Franchise. This created implications for the Schedule 8 performance regime as the result of changes to the level of TOC-on-Self Delays and TOC-on-TOC delays.

3. At the time of the merger, it was agreed by the parties that a Schedule 8 Relevant Modification provision would be added to the new GTR track access contract to allow for the outputs of the recalibration to be produced.

4. The parties agreed to restructure the Southern part of the Service Groups to bring the structure of the regime into line with the pre-existing GTR (previously FCC) service groups.

5. The recalibration used the same input data as the CP5 recalibration, remapping and recalculating the benchmarks and payment rates on the basis of GTR existing at the time of the original calibration.

Consultation

6. There was no requirement for industry consultation as the changes do not affect any other train operating company.

ORR review

7. Although we agreed to the use of Relevant Schedule 8 Modification provisions to implement retrospective changes to Appendix 1, in light of the re-calibration not having been prepared in time, the time that has taken to implement these changes is very disappointing. While we recognise that the error to TOC payment rates may have created some uncertainty, we were clear that the rates should have been re-calibrated regardless, so the error should not have held up the process of calculating and applying the re-calibration. Having the wrong rates, or worse, no rates in contracts significantly impacts the incentive effects of the regime, and undermines its effectiveness. For that reason it is very important that accurate rates are in place from the beginning of the contract period. These types of reopener should only be used in exceptional circumstances and we expect the changes to be applied as soon as possible after the Effective Date of the revised contract.

8. We reviewed the application and made two suggestions to the parties. Firstly we noted that the payment rates were incorrectly set in 2015/16 prices. Secondly, we found some discrepancies in two of the service groups. The parties acknowledged the errors and made the necessary amendments.

ORR's conclusions

9. In considering the proposed modifications 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 consenting to these modifications is consistent with our section 4 duties, in particular those relating to promoting efficiency and economy on the part of persons providing railway services (section 4(1)(c)).

10. Please find enclosed a copy of the notice of consent. Copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at the Department for Transport. Copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter without enclosures to Madeline Matthews at Network Rail.

Yours sincerely



Michael Albon