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Dear Chinua and Steve

Approval of the 1st Supplemental Agreement to the track access agreement between HS1 Limited and Eurostar International Limited

Introduction

1. On 21 March 2011, the Office of Rail Regulation (“ORR”) approved the 1st Supplemental Agreement to the track access contract (“TAC”) between HS1 Limited (“HS1”) and Eurostar International Limited (“Eurostar”) under the Railways Infrastructure (Access & Management) Regulations 2005 (“the Regulations”). The agreement was submitted formally to us on 1 March 2010. This letter sets out the reasons for our decision.

Purpose of the agreement

2. The purpose of the 1st Supplemental Agreement is to make certain changes to Schedules 4 and 5 of the existing TAC.

3. The proposed changes to Schedule 4 amend provisions to give effect to discount arrangements for Marne la Vallee services and the proposed changes to Schedule 5 introduce Service Groups for Eurostar services as discount arrangements, in line with charging arrangements, will operate on a service group basis.

ORR’s Consideration

Consultation

4. In considering the application for provisional approval of the 1st Supplemental Agreement it was noted that a pre-application consultation was not carried out by HS1. It



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cited the financial nature of the proposed amendments (and Eurostar's agreement to the amendments) as the reasons for not carrying out a consultation.

5. We previously advised HS1 that we would accept a Supplemental Agreement which had not been consulted on if HS1 had carried out consultation in relation to its general policy on access charges discounts. HS1 has not yet consulted on its general policy therefore we informed HS1 that we would have expected it to have carried out consultation in relation to this Supplemental Agreement. We further stated that it was our view that consultation on the proposed discount would provide an important opportunity for any operator who considered that it should be offered a similar discount, to explain this.

6. HS1 stated that the justification paper, annexed to the application, provides the basis for its general discounting policy and that it intended to commence consultation on the general policy immediately after concluding this Supplemental Agreement. HS1 has provided us with a draft consultation document and is shortly to commence consultation. Pending such consultation, we are willing to take a pragmatic approach in this particular case. We expect HS1 to carry out consultations in relation to all future applications in accordance with our C&Ps.

7. We have explained to HS1 that our approach is on the basis that it accepts the risks associated with not having a clear and transparent discount policy in place. Namely, that other operators could appeal to HS1 if they were not offered the same discounts for similar services. HS1 has acknowledged our position.

Similar Services

8. We note that HS1 has set out its thinking in relation to "similar services" in its justification paper and it understands that it has a legal obligation to apply similar discounts to similar services. We strongly recommend that HS1 address the issue of "similar services" in its consultation on its discounts policy.

9. It is our view that "similar services" should be read in the context of paragraph 6(3) which envisages discounts being granted with reference to specified traffic flows, therefore the flow of traffic between two points. Another factor which should be considered when looking at whether a service is "similar" is the market or market sector served by that service. As Eurostar is the only operator which currently provides the London to Marne-la-Valee service, we are content to approve the proposed discount since there are no similar services, at present.

Schedule 5

10. We understand that HS1 has used the form of Schedule 5 from the existing TAC as opposed to using ORR's model Schedule 5. We referred HS1 to our Criteria and Procedures (C&Ps) final conclusions document in which we said that we expected all future contracts to be based on ORR's model contract Schedule 5. We are only prepared to approve this supplemental with the existing form of Schedule 5 on the basis that HS1 has agreed to work with us to bring Schedule 5 of its access contracts in line with ORR's model contract Schedule 5.



ORR's review

11. Our review of the 1st Supplemental Agreement did not raise any operational, performance, economic or drafting issues.

ORR's conclusions

12. Pursuant to Regulation 28(1) of the Regulations, in considering the application and in reaching our decision, we are required to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Railways Act 1993. We believe that approval of this supplemental agreement is consistent with these duties, in particular our duties 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;
- promote competition in the provision of railway services; and
- enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

Conformed copy of the track access contract and public register

13. Pursuant to paragraph 3.75 of our Criteria and Procedures document, HS1 is required to produce a conformed copy of the TAC, within 28 days of any amendment being made, and send copies to ORR. I look forward to receiving the conformed copy.

14. We will place a copy of the 1st Supplemental Agreement on our public register. The parties have asked us to redact the whole of Appendix 3 (the justification paper) prior to placing on the public register and we have agreed to this request.

Yours sincerely

Kara Johnson

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