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Office of Rail and Road
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Customer Relationship Executive
Network Rail
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BY EMAIL ONLY

T:
E:

20 September 2017

Dear _____,

Application for directions: Proposed 4th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and GB Railfreight Limited dated 11 December 2016

I refer to your letter of 11 August 2017 where you invited Network Rail Infrastructure Limited to make written representations in respect of the 4th Supplemental Agreement application made by GB Railfreight under Section 22a of the Railways Act 1993 (the Act). Our representations to the Office of Rail and Road (ORR) follow here within.

Background

Network Rail recognises the application made to ORR and acknowledges that GB Railfreight sought originally to make its application under Section 22 of the Act (i.e. with the support of Network Rail).

The GB Railfreight application was considered at Network Rail's Sale of Access Rights Panel on 30 May 2017, where it could not be substantially authorised owing to our ongoing review of East Coast Main Line (ECML) capacity (NB: a substantial proportion of the 4th Supplemental Agreement sought to obtain rights on the ECML until Principal Change Date 2026). At that time, Network Rail was willing to progress the sale of additional ECML Firm Rights (1 hour windows) until Principal Change Date 2020, after which our proposal was that the additional rights would revert to Contingent Rights (24 hour windows) until the end of GB Railfreight's current Track Access Contract in 2026.

We also reported to GB Railfreight that the sale of additional Firm Rights (1 hour windows) through Mirfield/Calder Valley would be limited up to Principal Change Date 2019, again with Contingent Rights (24 hour windows) to follow thereafter, due to the TransPennine Route Upgrade and the need for diversionary route capacity along this line of route.

Both of the aforementioned matters were subject to further discussion at the Sale of Access Rights Panel on 26 June 2017 and subsequently we were able to report, provisionally, to GB Railfreight that we were withdrawing our position concerning the limitation of additional Firm Rights through Mirfield/Calder Valley, however our limitation on the sale of additional Firm Rights on the ECML was now brought forward to Subsidiary Change Date 2019 (vice Principal Change Date 2020) and thereafter we no longer supported the sale of Contingent Rights.

Appendix B of the GB Railfreight application provides all relevant communications between Network Rail and GB Railfreight during the above timeline of events.

Appendix B of the application does not report Network Rail's position on those rights sought by GB Railfreight which do not interact with the ECML or Mirfield/Calder Valley lines of route, and that are not additional rights. For clarity, Network Rail was, and is, supportive of authorising such rights within the GB Railfreight application.

Current position

Regarding the original limitation of the sale of additional Firm Rights through Mirfield/Calder Valley up to Principal Change Date 2019, Network Rail confirms that no such limitation is proposed and we are content here with the sale of additional Firm Rights to GB Railfreight up to Principal Change Date 2026, except where those particular additional Firm Rights interact with the ECML. We acknowledge that our original position was incorrect inasmuch as it was not reasonable for Network Rail to propose selling less specified rights where we sought to have flexibility in pathing/re-routeing during TransPennine engineering works.

Regarding our limitation of the sale of additional Firm Rights on the ECML up to Subsidiary Change Date 2019, ORR will be aware that we have been working to provide both yourselves and industry stakeholders with our position regarding the ability to grant future ECML rights beyond May 2018. It has also been requested of Network Rail that we provide an update regarding the underpinning enhancement programme. In our *ECML Access and Enhancements: Aligning infrastructure with services* letter to ORR, dated 20 September 2017, our position on these matters was confirmed and provides our representations in full regarding our proposed limitation of the sale of additional Firm Rights on the ECML where GB Railfreight's application is concerned. The *ECML Access and Enhancements: Aligning infrastructure with services* letter forms Appendix 1 to this letter.

Appendix 2 to this letter provides Network Rail's response on which specific additional Firm Rights sought by GB Railfreight's application interact with the ECML and are proposed for sale as Firm Rights only up to Subsidiary Change Date 2019. These are marked in green and orange in the Rights Table and carry the following comment in the Special Terms column of the Rights Table: 'Sale of Access Right expires on the last day of the Working Timetable before SCD2019'. It should be noted that the distinction between green and orange rights in Appendix 2 is that those highlighted green have an associated Train Slot already operating on the ECML and those in orange do not but have the reasonable potential to.

One matter which Network Rail has failed to identify to GB Railfreight in its application is that we do not support any further comments within the Special Terms and Minimum Turn Around columns of the Rights Table which relate to arriving or departing before or after another Firm Right/Train Slot. Such comments, which feature more heavily in this application than previous, would, if committed to the Track Access Contract, limit Network Rail's ability to flex GB Railfreight Train Slots as permitted by existing Departure and Arrival Windows. Network Rail proposes that such comments should appear as Non-contractual comments in the Rights Table.

Yours sincerely,

Customer Relationship Executive, Network Rail