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24 March 2021

Dear Stephen and Jonathan,

Directions in respect of a new track access contract between Rail for London Infrastructure and MTR Corporation (Crossrail) Limited

The Application

1. The Office of Rail and Road (ORR) has today issued directions under section 18 of the Railways Act 1993 (the Act) to Rail for London Infrastructure Limited (RFL(I)) to enter into a track access contract (TAC) with MTR Corporation (Crossrail) Limited (MTR). The application was submitted to ORR by RFL(I) on 15 January 2021. This letter explains our decision.
2. The TAC covers access rights between London Paddington (CCOS) and Abbey Wood for trial running and trial operations services purposes on the Crossrail Central Operating Section (CCOS) only.
3. The TAC will be effective from the later of 29 March 2021 and the date upon which the conditions precedent specified in Clause **Error! Reference source not found.** of the TAC have been satisfied in full. It will expire on the earlier of the commencement date of a new contract for the operation of passenger service, or 31 December 2022.
4. The TAC is based upon the RFL(I) template testing services track access contract, which itself is based upon the RFL(I) template form of track access contract for revenue-earning passenger services. The template access agreements are based upon Network Rail's "model clause" template track access agreement adapted for the specific circumstances of the CCOS.

5. The completion of trial running and trial operations will allow the commencement of revenue earning passenger services on the CCOS to be provided by MTR under its Concession Agreement with Rail for London (RfL).
6. As the TAC relates to access rights only within the CCOS and is limited to trial running and trial operations services, no industry consultation was required.

Matters considered by ORR

7. ORR reviewed the proposed TAC and raised a number of queries with the parties. We asked that the following changes be made to the proposed TAC wording, prior to ORR issuing a Direction.
 - i. When passenger services commence in the CCOS, we understand that it is RfL(I)'s intention to levy an investment recovery charge under paragraph 3 of Schedule 3 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016. ORR approval is required before any such charge may be levied, and ORR has not yet determined whether such a charge is permitted. Accordingly, you removed references to (i) an investment recovery charge; and (ii) a fixed costs charge.
 - ii. The Expiry Date was defined as 31 December 2025. We considered that this would have resulted in an unnecessarily long trial period. You have therefore amended this date to 31 December 2022, which we consider still allows a reasonable time beyond the expected trial period. We note that if required the TAC can be extended using section 22 of the Act.
 - iii. The TAC did not explicitly exclude the access rights being used to carry fare paying passengers during this trial period, and we considered that this should be made clear. Paragraph 2.2 in Schedule 5, was originally marked "Not Used", but in line with our comments, you have now amended it to make it clear that the services are for the purpose of trial running and trial operations only and cannot be used for the purpose of carrying fare paying passengers.
 - iv. In Schedule 7, track access charges for the route section Paddington - Whitechapel and reverse were shown as £151. We queried this figure and you confirmed that it should be amended to £68. You also confirmed that the route section Customs House – Abbey Wood is not applicable to this TAC and removed that reference.

ORR's conclusions

8. In considering the contract 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 concluded that issuing directions in respect of this contract is consistent with our section 4 duties, in particular those relating to:
 - a) promoting improvements in railway service performance;
 - b) protecting the interests of users of railway services;

- c) promoting the use of the railway network for the carriage of passengers and goods; and,
 - d) enabling persons providing railway services to plan their businesses with a reasonable degree of assurance.
9. A copy of the Directions and the signed contract will be placed on our public register. Copies of this letter and the contract will also be placed on the ORR website. I am also copying this letter to Peter Craig at Network Rail, and the Department for Transport.
10. Once the agreement is signed, in accordance with section 72(5) of the Act, you must send a copy to ORR within 14 days.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'J. Trippier', written in a cursive style.

John Trippier