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Head of Stations and Depots
Directorate of Railway Market and Economics
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

31 March 2015

Dear Head of Stations and Depots

SECTION 17 APPLICATION

Please find attached a signed copy of our application to the Office of Rail Regulation (ORR) for direction under Section 17 of the Railways Act 1998 (the Act) for a new station access contract.

In support of our application, I have also included a copy of correspondence between AGA and London Southend Airport (LSA).

If you require further information in support of our application or clarification on information provided, please contact me to discuss.

Yours sincerely,



Susan Cross
Head of Franchise Management and Development

telephone 07789 272340
email susan.cross@abelliogreateranglia.co.uk

DOCUMENTS ATTACHED

1. Copy of Signed Application
2. Correspondence between AGA and LSA
 - a. Letter dated 3 October 2012 from Andrew Camp (AGA) to Alastair Welch (LSA)
 - b. Letter dated 11 October 2012 from Alastair Welch (LSA) to Andrew Camp (AGA)
 - c. Letter dated 12 October 2012 from Andrew Camp (AGA) to Alastair (LSA)
 - d. Letter dated 18 October 2012 from Andrew Camp (AGA) to Alastair Welch (LSA)
 - e. Letter dated 2 July 2013 from Andrew Camp (AGA) to Alastair Welch (LSA)
 - f. Letter dated 9 July 2013 from Andrew Camp (AGA) to John Sarson (LSA)
 - g. Letter dated 15 November 2013 from Andrew Camp (AGA) to David Lister (LSA)
 - h. Letter dated 3 December 2013 from David Lister (LSA) to Andrew Camp (AGA)
 - i. Letter dated 6 March 2014 from David Lister (LSA) to Andrew Camp (AGA)
 - j. Letter dated 8 April 2014 from Andrew Camp (AGA) to David Lister (LSA)
 - k. Letter dated 13 May 2014 from David Lister (LSA) to Andrew Camp (AGA)
 - l. Letter dated 27 August 2014 from David Lister (LSA)** to Andrew Camp (AGA)
 - m. Letter dated 19 September 2014 from Andrew Camp (AGA) to Roger Clements (LSA)
 - n. Letter dated 22 October 2014 from Andrew Tinkler (LSA) to Andrew Camp (AGA)
 - o. Letter dated 27 March 2015 from Andrew Camp (AGA) to John Sarson (LSA)

** AGA did not reply to this letter due to the fact that it was agreed with the DfT that AGA would terminate the agreements. However, a copy of the draft letter prepared can be sent to the ORR if required

1. Copy of Signed Application

**APPLICATION TO THE OFFICE OF RAIL REGULATION FOR
A STATION ACCESS CONTRACT
UNDER SECTION 17 OF THE RAILWAYS ACT 1993**

1. Introduction

This form should be used to apply to the Office of Rail Regulation (ORR) for directions under section 17 of the Railways Act 1993 (the Act) for a new station access contract. Section 17 is the means by which those seeking the right to use a railway facility apply for third party access if they have failed (for whatever reason) to reach agreement with the facility owner.

The form sets out the ORR's standard information requirements for considering such applications.

It is very important that the application is made in good time and prospective applicants are strongly advised to read (and if necessary take advice on) the procedures which are laid out in the Act, (Section 17 and Schedule 4).

The Stations and Depots Team at the ORR will be happy to discuss prospective applications. Applicants are strongly encouraged to contact the Office at an early stage, preferably before making an application, to discuss their likely requirements. Contact details are shown at the foot of this form.

A copy of ORR's template station access contracts can be accessed electronically and downloaded via the ORR website [here](#).

2. The application

2.1 Title of proposed contract:

Station Access Agreement between Stobart Rail Limited as SFO and Abellio Greater Anglia as Beneficiary relating to Southend Airport station

2.2 Contact details (*Company and named individual for queries*):

Company: Abellio Greater Anglia Ltd

Contact individual: Susan Cross

Job title: Head of Franchise Management and Development

Address: 11th Floor, One Stratford Place, Montfitchet Road, London E20 1EJ

Telephone number: -07789 272340

Fax number: N/A

E-mail address: susan.cross@abelliogreateranglia.co.uk

2.3 Licence and railway safety certificate/authorisation Please state whether the applicant intends to use the station himself or whether someone else will use the station on his behalf.

Please state whether the proposed user of the station (a) holds a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, and (b) has a valid safety certificate/authorisation under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended). If the answer to (a) or (b) is no, please state the point which that person has reached in his obtaining of the licence, exemption or railway safety certificate/authorisation (as the case may be)

a) Yes

b) Yes

It is the intention that AGA enter into a standard ORR approved Single Station Access Agreement (SSAA) with Stobart Rail Limited as Station Facility Owner (SFO) and Abellio Greater Anglia Ltd as the beneficiary. With effect from the commencement of a new agreement, AGA shall continue to schedule the current timetable for all its trains in passenger service to call at London Southend Airport for the purposes of setting down and picking up passengers

3. The proposed contract

3.1 Executive summary Please provide an executive summary of the proposed contract. This should cover the station services, the commercial terms, and the applicant's reasons for seeking the contract in the terms proposed. The summary in this section should also explain (here or by cross-reference to the answers in the sections below):

- where there is an existing agreement in respect of the services in question, any differences between the existing agreement and the proposed contract; and
- any aspects in which the proposed contract contains bespoke provisions departing from the published template station access contract.

AGA want to enter into a standard ORR approved Single Station Access Agreement which is the industry standard model. The current suite of agreements with Stobart are non-standard and was an experiment for shared income based on a ticket revenue share, with Stobart receiving 91% of all gross revenue less season tickets which equate to 73% of total revenue.

The current agreements assigned to AGA under the transfer scheme from National Express, has provided Stobart with £6.8m of revenue since the initial Franchise commenced on 5 February 2012. In the last 13 periods ending RSP 2015/P12, Stobart has received £2.9m of revenue.

At the current rate, the Southend Airport Station, which was constructed at a cost of £16m, will have been fully funded within the next 3 years; excludes revenue from National Express from July 2011 to 5 February 2012. The return on investment has been estimated at 1670% over 30 years.

The current number of passengers at Southend Airport is one million which Stobart planned to rise to two million by 2017. Of this, the current percentage of passengers using rail to arrive or depart the airport terminal is 41%. The financial contribution that Stobart receive from AGA is 73% of total revenue excluding seasons and the more passengers using the service will allow Stobart to receive a greater share of the income whilst AGA's margin reduces even further.

Under the current agreement, AGA receives a cost contribution for calling at the station relating to additional driver turn as well as braking and traction electricity costs. AGA understands that this will not be provided under a standard industry model.

Southend Airport Station was built by Stobart Rail Limited and opened in July 2011 as part of their airport expansion plans. The station and ticket office is owned (under a long lease on Network Rail land), operated and maintained by Stobart as the SFO.

The services to Southend Airport have been designated as an 'experimental service' under Section 36 of the Railways Act 2005 by the Secretary of State for a period of five years from 8 July 2011 until 7 July 2016.

The station is governed by a suite of agreements including a non-templated SAA, the Stobart Access Conditions, an Operating Agreement, Collateral Agreement and Retailing Agent's Licence. The original agreements were established between Stobart and London Eastern Railway Limited (LER, a company owned by National Express Group), on 15 July 2011. These agreements were assigned to AGA on 5 February 2012. AGA issued notice to terminate the agreements on 17 September 2014,

with the full support of the DfT, on the basis that the original agreement did not provide for a fair and sustainable commercial agreement between the two parties and in their existing form, the Agreements represented a potential call on the public purse, i.e. the cost of building the station was not intended to be funded by the tax payer.

Stobart have been unwilling to meet and review the operation of the agreements.

The principles behind the original agreements set out the terms of the original access charge mechanism and relevant revenue to be shared between the parties. This was originally agreed between LER, Stobart and the DfT, but was however, substantially different from a normal access agreement format, primarily in terms of setting out how revenue from the services to the station would be shared between the operator and Stobarts (SFO). The mechanism for sharing revenue within this non-standard model is unbalanced in the favour of Stobart and as such does not provide any incentives for AGA and Stobart to work together to develop and enhance the services for the customers, instead a disproportionate amount of revenue is being taken out of the rail industry and away from rail customers. In simple terms, if an operator carries the passenger then they should receive the associated revenue for providing that service. This is the franchising model used elsewhere across the industry and AGA would expect this contract to follow a similar rationale, i.e. the operator receives revenue for the passengers carried and the SFO receives a station access charge for allowing the operator to call at the station. In this case Stobart will also receive commission for tickets sold at the Southend Airport station since they are the lead retailer there and are responsible for the retail facilities and staffing.

Under a standard SAA, AGA would be willing to look at adopting the 'model' AGA has successfully applied at Stansted. This means that AGA would be willing to work with Stobart to develop mutually beneficial commercial opportunities in the same way that AGA has successfully worked in partnership with MAG to offer an attractive customer proposition through innovative retailing and new services. For example working with the Manchester Airport Group, AGA has, with DfT consent, been able to implement a midweek Cambridge to Stansted shuttle service to supplement the existing Cross Country service and are now working with Network Rail to operate weekend services. AGA has also amended the London Liverpool Street services to allow for additional early morning services to operate, installed a joint MAG/Stansted help/information/sales desk at London Liverpool Street, as well as offers retailing enhancements e.g. on-line offers etc for Stansted Airport customers.

3.2 Terms not agreed with the facility owner Please set out here those specific areas of the proposed contract which the applicant has **not** been able to agree with the facility owner, the reasons for the failure to agree and the reasons for seeking these provisions

AGA does not believe the clause in the original contract for a relevant revenue share should apply. Stobart should not be able to retain 91% of all gross revenue (excluding seasons) including commercial agreements that AGA has entered into which sit outside of the Lennon data capture system. This is unbalanced and provides no incentive for collaborative working between the two parties.

Without further service enhancements there is an increasing likelihood of additional crowding and a worsening customer experience, as demand for airport services continues to grow.

Stobart have not been willing to negotiate on changes to the original contract, nor provide funding for required additional capacity e.g. emergency strengthening, due to overcrowding at weekends has had to be solely funded by AGA. It is understood that Stobart do not view the unequal distribution of the revenue as unfair. In the meantime, the airport continues to grow with further expansions to the runway, a re-sited new extended terminal as well as a new hotel. In theory, Stobart are currently able to subsidise their airport activities and offer preferential landing rates to airlines whilst AGA experience reduced revenue streams. The Saturday and Sunday strengthened services are now

permanent in AGA's timetable at a cost of £539k at 2014 per annum, at 2014 prices, funded by AGA.

AGA does recognise the importance of the link to the airport and the approx. 41% of passengers arriving or departing by rail. However, the growth is causing issues with overcrowding with AGA not having sufficient revenue to increase capacity if the bulk of the revenue is taken by Stobart. There are examples where the current arrangements has led to potential reputational damage due to non-joined up working e.g. a recent Stobarts First Class promotion gave away First Class tickets to airline passengers, without considering the capacity within First Class on 321 units nor the impact on existing First Class Southend passengers.

3.3 Departure from ORR's template station access contract Please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to the ORR's published template station access contract (as appropriate, cross-referencing to the answers below). Wherever the proposed contract contains a new process the ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends

As mentioned at point 3.1, it is the intention that AGA enter into a standard single Station Access Agreement (SAA) with Stobart Rail Limited as Station Facility Owner (SFO) and Abellio Greater Anglia Ltd as the beneficiary. The SAA should expire at 0159 hours on 16 October 2016 (plus ability to extend by up to 7 railway periods if the SoS gives notice) at the request of the DfT as they are working on a strategy which should be set out in the ITT.

3.4 Duration of contract Please indicate the commencement date sought for the proposed contract, and provide justification for the proposed duration if appropriate

AGA is seeking a new contract to be agreed and in place by no later than 0159 hours on 17 May 2015 which should be backdated to the Passenger Change Date for December 2014 as set out in the Station Access Amending Agreements submitted to ORR on the 9 December 2014 by Stobart. However, AGA has advised Stobart that if the engagement with the ORR and the formal process takes us beyond the May deadline, then we are happy for a further extension to the current agreements with the ORR to enable the process to run its course through to determination. This is on the basis that any determination is backdated to the PCD for December 2014 as currently set out in the amending agreements.

AGA initially proposed a date in line with the Passenger Change Date in May in order to give sufficient time to develop a strategy and enter negotiations with Stobart. However, Stobart have not been willing to negotiate with AGA as (1) they believe there is no right of negotiation under the agreements and (2) that the current arrangements give them a level of income that subsidises their airport expansion.

4. The expression of access rights and the consumption of capacity

4.1 Benefits Please set out what specific benefits will result from the proposed contract. In particular, please describe any new rights sought or significant changes in the facilities or services to be used, their benefits and any impact on existing beneficiaries.

Using a standard industry model, will stop AGA subsidising Stobart through the current ticket revenue share mechanism under the existing agreements. This will provide AGA an incentive to continually review overcrowding and where appropriate implement further train strengthening or targeted timetable enhancements, in collaboration with Stobart. This will also encourage joint marketing and partnership working, with the overall aim to growing the passenger numbers using the rail link and improving customer satisfaction generally. Please also refer to Section 3.1 regarding the successful working relationships AGA has fostered at Stansted Airport.

AGA will also continue to schedule the current timetable so that all of its trains in passenger service call at London Southend Airport.

4.2 Adequacy Please set out to what extent and by what process (if any) the applicant has satisfied himself that the facilities and services required can be supplied at the station in question.

AGA is not seeking to reduce the current timetable serving Southend Airport Station, just constrained by the contract. Without changing the contract, AGA, Network Rail and Stobart will not be able to develop additional services calling at the station in-line with expected airport growth.

4.3 Franchise obligations Please indicate the extent to which the use of the station in the proposed contract is necessary to fulfil obligations under a franchise agreement.

Under our Franchise Agreement, the Service Level Agreement (SLC) commits AGA to continue to operate the services shown in the Winter Edition 14' of the GB Rail Timetable.

4.4 Public funding Please indicate whether (and if so to what extent) the services in the proposed contract are subject to financial support from central or local government (other than the Secretary of State), and provide a point of contact at that body

AGA does not receive any public funding and under its current franchise takes the risk on revenue and also has a profit share mechanism in place with the DfT. The issue of public funding is a consequence of the current SAA arrangements whereby Stobart receive 91% of all RSP revenue excluding season tickets (Stobart has also interpreted the Relevant Revenue clause to be all revenue including non-Lennon). The revenue that Stobart actually receive is 73% of all revenue. Therefore, the 'reasonable' return on investment under the current arrangement has been estimated at 1670% over 30 years and brings into question the issue of State Aid.

4.6 General guidance given by the Secretary of State and/or Scottish Ministers Please state here any general guidance given by the Secretary of State or the Scottish Ministers considered relevant to this application and why

The DfT has directed AGA to continue to serve Southend Airport Station as required under its SLC

for the duration of the current Franchise. The DfT are carrying out a market review and we have been advised that it is their intention to instruct bidders through the ITT.

5. Charges

Please indicate, and explain the reasons for, how the proposed charges were determined.

The charges should be determined by Stobart based on an ORR approved Single Station Access Agreement using ORR guidelines on approach to access charges.

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6. Enhancement

6.1 Enhancement details Where the proposed contract provides for the delivery of any station enhancements, or the services in the proposed contract are predicated on any planned station enhancements, please give full details of the relevant enhancement schemes, including a summary of outputs from the scheme, timescales and the extent to which the station change procedure in the Station Access Conditions has been completed

Stobart are the SFO of Southend Airport Station and to our knowledge has not carried out any enhancement schemes or issued a station change procedure.

6.2 Enhancement charges Please confirm that the arrangements for the funding of any station enhancements are consistent with the ORR's enhancement framework, and summarise the level and duration of payments, and the assumed rate of return

Not applicable to AGA

7. Other

7.1 Associated applications to the ORR Please indicate whether this application is being made in parallel with, or relates to, any other current or proposed applications to the ORR (e.g. in respect of track, station or light maintenance depot access contracts or agreements)

The station is governed by a suite of agreements including a non-templated SAA, the Stobart Access Conditions, an Operating Agreement, Collateral Agreement and Retailing Agent's Licence. AGA wish to enter into a standard template SAA and associated documents plus a Retailing Licence.

7.2 Supporting information Please indicate here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application)

Please see 3.1 and 4.1 which outlines the benefits of working in partnership. AGA has also attached to this Section 17 application the correspondence between Stobart and AGA which demonstrates the fact that Stobart have been unwilling to meet and review the operation of agreements.

Schedule A – correspondence between AGA and Stobart

7.3 Side letters and collateral agreements Please confirm here that the whole of the proposed contract between the parties has been submitted with this application and that there are no side letters or other documents which qualify or otherwise affect the proposed access contract

There are no side letters. As Stobart have not been willing to negotiate, AGA has no information to support the proposed QX or LTC charge.

7.4 Confidentiality exclusions Please indicate clearly any elements in the application and the proposed contract that the applicant would wish to exclude from wider consultation on the grounds of confidentiality specified in section 71(2) of the Railways Act 1993, and provide a full justification for each instance by reference to those statutory grounds. Subject to its decision on such exclusions, it is the ORR's intention to publish this application and the proposed contract on the ORR website. (NB under the process established by Schedule 4 of the Railways Act 1993, the ORR is obliged to send a copy of the application **in full** to the facility owner)

AGA does not propose any exclusions

8. Certification

Warning: Under section 146 of the Railways Act 1993, any person who, in giving any information or making any application under or for the purposes of any provision of the Railways Act 1993 (including section 17), makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and so liable to criminal prosecution

I certify that the information provided in this form is true and complete to the best of my knowledge

Signed SM Cross

Date 31 MARCH 2015

Name (in caps) SM CROSS

Job title HEAD OF FRANCHISE
MANAGEMENT
AND DEVELOPMENT

For (company) ABELLIO GREAT BRITAIN

9. Submission

9.1 What to send

Please supply, in hard copy, the signed top copy of this application form, three copies of the proposed draft contract, copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information.

Please also supply the application, the proposed contract and, insofar as it is possible, any other supporting information, in electronic form, by E-mail, **in plain Microsoft Word format** (*i.e.* excluding any macros, auto-para or page numbering, or other auto-formatting).

9.2 Where to send it

Head of Stations and Depots
Directorate of Railway Market and Economics
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

Email: stations.depots@orr.gsi.gov.uk

2. Correspondence between AGA and LSA