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Dear Andriana and Tony,

Directions relating to the Track Access Contract between Network Rail Infrastructure Limited and Govia Thameslink Railway Limited

1. On 1 March 2016, the Office of Rail and Road (ORR) issued directions under section 17 of the Railways Act 1993 (the Act) to Network Rail Infrastructure Limited (Network Rail) to enter into a track access contract with Govia Thameslink Railway Limited (GTR). This letter explains our decision.

Background

2. On 18 November 2015, GTR submitted an application under section 17 of the Railways Act 1993 ("The Act") to extend its Track Access Contract (TAC) by five years to be co-terminus with its franchise (i.e. to run to PCD 2021).

3. The application was for "quantum only" rights and also incorporated changes in access rights approved under the 1st and 2nd Supplemental Agreements. GTR required access rights to enable it to submit a valid Priority Date Notification Statement in March 2016.

4. The application was submitted under section 17 of the Act as the parties were unable to agree on several aspects of the proposed contract. These included:

- (i) *The expiry date* – Network Rail did not support GTR's application for rights until PCD in December 2021. The Thameslink Programme will be active during the period that would be covered by an extension of this length. The

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Programme will involve significant changes to the timetable including the diversion of the vast majority of services to and from the Great Northern Outer Route via the Thameslink Core. Network Rail does not want to contractualise GTR's proposal during the period as it believes this will ossify capacity into Kings Cross which it may wish to make available for other operators. Network Rail was content to agree an extension to the contract up to the Subsidiary Change Date (SCD) 2018.

- (ii) *TAC Start Date* – Network Rail expressed further concern about how any Supplemental changes between March 2016 and December 2016 would be included in the new proposed Track Access Contract commencing December 2016.
- (iii) *Specificity of Schedule 5* – Network Rail noted that the application stated that “quantum only” rights were being sought, however, it highlighted that the proposed contract included rights under Tables 3.1, 3.1a and 3.2b. It did not consider that evidence of demonstrable need (in accordance with the Network Rail Access Rights Policy) had been provided to justify their inclusion.
- (iv) *ERTMS Provision* – In anticipation of the ETCS programme of works commencing during the lifetime of the proposed contract, Network Rail sought to include a Schedule that would provide for obligations and arrangements in respect of that programme of works. GTR opposed this Schedule as it has not been agreed with other train operating companies on a cross industry basis.

Industry Consultation

5. The consultation process was carried out by Network Rail on behalf of GTR, concluding on 23 December 2015. It received the following responses:

- (i) *Virgin Trains East Coast (VTEC)* requested a copy of GTR's indicative timetables on 24 November 2015. It later confirmed that it did not object to the application.
- (ii) *South West Trains (SWT)* queried on 14 December 2015 whether the proposal was for quantum rights only. Network Rail replied indicating that the proposal would be for quantum rights only including the rights approved under the 1st and 2nd Supplemental Agreements. SWT acknowledged the reply and did not offer any further comments.

- (iii) *East Midland Trains (EMT)* commented on 23 December 2015 on the inclusion of tables 3.1, 3.1a and 3.1b in the new contract. GTR acknowledged this and confirmed that the tables would be removed.
- (iv) *First Greater Western (GWR)* raised objections on 23 December 2015 on GTR's proposal potentially conflicting with its aspirations to operate an enhanced Reading-Gatwick service via Redhill from May 2017. GTR confirmed that the rights sought within the proposal were "quantum only" until SCD 2018. On this basis GWR subsequently agreed to support the application.
- (v) *Transport Focus* supported the application stating that passengers would benefit from GTR's train services.
- (vi) *Department for Transport* supported the application, viewing the proposal as being consistent with GTR's Franchise Agreement.

Statutory Consultation

6. Section 4 to the Act requires us to undertake a statutory consultation process for applications made under section 17. In response to our statutory notice, we received notification that there were no Interested Persons within the statutory definition of Paragraph 1 of Schedule 4 to the Act. Formal representations on the section 17 application were received from Network Rail on 21 December 2015 with GTR's response to these representations being received on 4 January 2016.

7. Following Network Rail's representations, GTR confirmed in its response that it accepted the comments made by Network Rail in respect of the Specificity of Schedule 5 and that it would amend the application accordingly for the next submission.

ORR Review

8. On the basis of the representations provided and the responses made in the consultation process, we wrote to the parties on 12 January 2016 outlining the position we were minded to take. This included:

- (i) *The expiry date* – agreeing with Network Rail's proposal for the contract to be until SCD 2018 for the reasons provided in its representations.
- (ii) *TAC start date* – to start the contract from 1 March 2016 and terminate the existing contract early, in order to simplify the process for future amendments between the Priority Date (PD) 2016 and PCD December 2016.

- (iii) *Specificity of Schedule 5* – GTR had agreed to Network Rail's representations so no directions would be required.
- (iv) *ERTMS Provision* – agreeing with GTR's proposal to remove the clause as this had not been consulted and agreed with industry.

9. The parties were invited to comment this position. No comments were received.

10. GTR subsequently submitted a new draft contract on 29 January 2016 based on the recommendations made.

11. Network Rail proposed on 17 February 2016 to start the contract at PCD 2016 rather than PD 2016, to enable planned contract changes relating to the Capacity Charge Rate in Schedule 7, Schedule 8 and Schedule 4 to have retrospective effect from July 2015. We agreed to this proposal.

12. We reviewed the revised draft contract and provided several suggestions to improve the drafting. We also pointed out to the parties that there had been recent changes made to the Model Contract that had not been captured in the draft contract and would need to be incorporated before directions could be issued.

13. We advised the parties on 24 February 2015 that the applications made for the recalibration of Schedule 8 would not be approved before PD 2016 and therefore an additional Schedule 11 reopener would need to be included into the contract.

14. The parties accepted the comments we made and submitted an amended draft on 26 February 2016.

ORR's conclusions and directions

15. 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;
- d) enabling persons providing railway services to plan their businesses with a reasonable degree of assurance.

Administration

16. 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 Keith Merritt at DfT.

17. 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



Michael Albon

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