

East Midlands Trains
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Millennium Way
Derby
DE24 8HG

To: Ian William
Senior Track Access Manager
Office of Rail & Road
One Kemble Street
London
WC2B 4AN

(By E-mail Only)

20th June 2019

Dear Ian,

Re: Application for Directions: Track Access Contract between Network Rail Infrastructure Limited and East Midlands Trains Limited

This letter constitutes the response of East Midlands Trains Limited (“EMT”) to the representations made by Network Rail (“NR”) in its letter to the Office of Rail & Road (“ORR”) dated 7th June 2019 concerning EMT’s application under Section 17 of the Railways Act 1993 for the extension to the current track access contract (“TAC”) to Principal Change Date (PCD) 2021.

EMT’s application to extend the current TAC by a year to PCD 2021 as directed by the DfT is to provide EMT, the DfT and the successor franchisee with business continuity. With reference to ORR’s Track Access guidance, the total duration of the TAC can include a period of up to two years after the end of the relevant franchise for the purpose of an orderly transfer to the new franchisee and to ensure the continuation of priority bidding rights. Furthermore, in reference to the DfT’s Rail Passenger Franchising Mobilisation Guide, EMT is expected to extend the current TAC to ensure that the successor franchisee (as Abellio) has a TAC with two years’ worth of validity after the franchise changeover date. At the time of EMT’s proposal submitted to NR for approval, the planned start date of the new East Midlands franchise was anticipated to take place by 18th August 2019 at the earliest and 2nd February 2020 at the latest, and therefore, a year extension to the current TAC to PCD 2021 is, in EMT’s view, a reasonable request and adequate in the circumstances.

EMT notes NR’s comments that a year extension appears excessive as the new franchise starts from 18th August 2019 and the new franchisee will have a good opportunity to negotiate its new TAC prior to the expiry of the existing contract i.e. December 2020 and hence is supportive of agreeing to a six-month extension. However, in light of the recent letter of the ORR to the industry referencing ‘problems with sale of access rights process’, it is imprudent and offers little apparent benefits to only extend the contract by a short time in the current industry context where SoAR and the industry process in general is in danger of being overwhelmed by the number of track access applications.

An extension to only SCD 2021 would mean a further extension would likely be necessary prior to August 2020 (the Priority Date for the May 2021 Timetable), which would be complicated by a number of other likely longer term changes that the successor East Midlands franchisee would need

to make that would require NR, ORR and industry approval, including major quantum changes for the December 2020 Timetable and local alterations in December 2021. EMT wishes to point out that given the length of time NR has consumed with processing this initial application, which is by comparison not at all complex, it is EMT's view that NR would be naïve to assume that there is plenty of time for the new franchisee to negotiate a new TAC prior to expiration of the existing contract if only extended by six months. Also, EMT has cause for concern as to whether the SoAR process could respond in a timely manner, which will increase the delay to the submission of access rights applications and more applications under either Section 22a or Section 17 will be needlessly submitted directly to the ORR for approval.

As acknowledged in NR's letter, EMT is not seeking additional services or access rights through this application. With regard to the issue of Castlefield Corridor, we would expect NR to be fair and consistent with the approach taken with Northern and TPE in which NR took their existing services in May 2019 as a baseline and insisted on contingent rights to apply only for additional paths over the Castlefield Corridor. It is in this spirit that EMT believes the Declaration of Congested Infrastructure was intended and EMT strongly believes that the continued status of its existing services (as Firm Rights) should not be disadvantaged in this circumstance.

EMT hopes that these comments are helpful. If you require further clarification, please feel free to contact me.

Yours sincerely,

Lanita Masi
Track Access & Network Change Manager
East Midlands Trains