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11 November 2020

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Catherine Rowe  
Track Access Manager  
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Dear Alistair and Catherine

**Approval of the 84th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Abellio East Anglia Limited dated 10 December 2004**

We have today approved the above supplemental agreement submitted to us formally on 10 November 2020 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains the reasons for our decision.

**Purpose**

The purpose of this agreement is to extend the expiry date of Abellio East Anglia's track access contract from the Subsidiary Change Date 2021 to the Principal Change Date 2021.

**Industry consultation**

Network Rail undertook the usual industry consultation. Comments in support were received from c2c, Transport Focus and Cross Country Trains.

The application was submitted with an outstanding objection from MTR Elizabeth Line (MTREL). MTREL runs services on the same routes and had previously had an application to extend their rights beyond May 2021 rejected. It did not specify when this had occurred. The reason given for the rejection was that an Anglia capacity study was ongoing at that time and no access rights were being granted after SCD 2021 until that study had been completed. MTREL subsequently requested clarification on the status of this policy and an assurance that all operators were receiving equal treatment during the sale of access rights process.

Network Rail's response was that significant progress had been made on the capacity concerns workstream, which had allowed it to agree to extend AEA's contract for a further timetable period. It said there was no reason to believe that a similar application from MTREL would not now also be approved by the Sale of Access Rights Panel (SoAR).

MTREL considered that the capacity work had not been made transparent and the process by which SoAR makes its decisions was still unclear. Therefore, MTREL's concerns remain unresolved.

## **ORR review**

Our review of the application raised no other operational, performance or economic concerns.

## **Our duties under section 4 of the Act and our decision**

When we consider access applications, we must do so in a way that we consider best fulfils our statutory duties as set out in section 4 of the Railways Act 1993. We have concluded that approval of this agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of rail services;
- promoting the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable; and
- contributing to the development of an integrated system of transport for passengers and goods; and
- enabling persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

We acknowledge the concerns of MTREL and the steps that Network Rail and AEA have undertaken to address them. We note that the objection is not to the application itself, but to the lack of clarity around the sale of access rights on the Anglia route.



We understand that Network Rail has done further work on the capacity concerns workstream on the Great Eastern Main Line between the time that MTREL's application was restricted to May 2021 and its authorisation of AEA's application until December 2021. We believe that this accounts for what appears to be an inconsistency in approach in the SoAR process.

Having therefore considered the concerns raised by MTREL against the benefits for extending AEA's track access contract, on balance, we believe that approving AEA's application best meets our statutory duties, in particular, those listed above.

### **Conformed copy of the track access agreement**

Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.

### **Public register and administration**

Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter to Jonathan James at MTR Elizabeth Line.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louise Beilby'. The signature is written in a cursive style with a long horizontal stroke at the end.

**Louise Beilby**