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Sam Price  
Head of Contracts  
Abellio ScotRail Limited  
Atrium Court  
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Dear Nicholas and Sam,

## **Directions relating to the Track Access Contract between Network Rail Infrastructure Limited and Abellio ScotRail Limited**

1. The Office of Rail and Road (ORR) has today directed Network Rail Infrastructure Limited (Network Rail) and Abellio ScotRail Limited (ScotRail), (jointly the parties), under Section 18 of the Railways Act 1993, to enter into a Track Access Contract (TAC) as submitted to ORR on 29 February 2016. The purpose of this letter is to explain the reasons for our decision.

### **The Application**

2. The parties originally submitted a proposed new track access contract on 21 January 2016. Following our comments, a revised draft was submitted to us on 29 February 2016 and directions refer to that version of the draft contract.

3. The purpose is to extend the current contract to align it with the ScotRail Franchise. This new agreement will last until Principal Change Date (PCD) December 2022.

4. The new contract will enable ScotRail to have priority bidding rights for the December 2016 timetable and to successfully continue operating their franchise obligations.

5. The only additional rights being sold are for the extension of the existing Edinburgh/Haymarket – Dunbar service to Berwick upon Tweed on weekdays and for 4 new Sunday services in each direction between Edinburgh and Berwick upon Tweed.

These rights will cease to apply after PCD December 2016 and this has been reflected in the contract. The rights will aim to provide greater cross border connectivity to Edinburgh.

### **Industry Consultation**

6. Network Rail undertook a 28 day industry consultation ending on 15 January 2016. They received one response from First TransPennine Express (TPE).

7. TPE stated they supported the quantum only approach in relation to the rights that interact with the West Coast Main Line (WCML). TPE also stated that should service intervals and journey time protections be granted for other locations 'against policy' then they would also seek similar rights.

### **Issues Considered by ORR**

8. We note from ScotRail's application that in line with Network Rail's access rights policy, it had removed journey time and interval protections from services which interact with the East and West Coast Main Lines. However, it wanted to retain these for other services, including Maximum Key Journey Time protections (MKJT).

9. We wrote to ScotRail on 18 February 2016 outlining our position. We understand the importance the Scottish Minister's place on improved journey times which is reflected in ScotRail's franchise. We had no objections to the inclusion of some Maximum Journey Time protection.

10. ScotRail made representations on 22 February 2016 about the importance of having MKJT. They highlighted the need to protect the capability of the network from degradation and to secure the benefits of significant investment to reduce journey times, amongst other things.

11. However, we were not persuaded that MKJTs were justified and that Network Rail should be prevented from proposing any change to (for example) sectional running times, station dwell times, performance or engineering allowances in the Timetable Planning Rules impacting an MKJT, even if the change was justified.

12. Similarly, ScotRail made representations about the importance of Service Interval protection. This included the commercial significance of sensible intervals.

13. While we acknowledge the importance of an optimum spread of services, we were not persuaded that additional contractual protection was justified beyond that already provided in Part D of the Network Code (noting ScotRail faced little or no competition from other operators on the relevant routes).

14. We have, however, agreed with ScotRail, Transport Scotland and Network Rail that we will review how less specified rights have worked in practice after one year.

## **ORR Review**

15. We reviewed the draft contract and identified issues with the way the tables in Schedule 5 had been laid out, specifically with the descriptors which link tables 2.1, 4.1 and 6.1 together. The parties have acknowledged the discrepancies that exist within Schedule 5 and proposed a full review of both the quantum rights and calling patterns to be implemented as soon as practicable after the new contract is signed. We have agreed to this proposal.

16. We also made suggestions to improve the drafting quality and to ensure it reflected the changes recently made to the model contract. The parties accepted these changes and have amended the draft accordingly.

## **ORR's conclusions and directions**

17. 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**

18. 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 Steven McMahon at TS.

19. 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**