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To: all Freight Operating Companies (FOCs), Freight Customer Track Access Contract holders and potential holders of such contracts, Network Rail Infrastructure Limited and Train Operating Companies (TOCs) by e-mail

New General Approval for freight track access contracts: conclusions

1. On 30 September 2016 we consulted on a new General Approval for freight track access contracts (GA). We received four responses, from DB Cargo (UK) Limited (DBC), Greater Western Railway (GWR), Network Rail Infrastructure Limited (Network Rail) and Transport for London (TfL). We have published them on our website alongside our consultation documents, this conclusions letter¹ and the new GA². I am grateful for the time taken by respondents to comment on our proposals. This letter sets out the consultation questions asked, a summary of the responses received and our comments and any actions that we have taken or will take in response.

Question 1: Is the proposed range of the arrival and departure windows that can be generally approved useful? Should this range be broader or narrower, and if so, why?

2. Two responses supported the proposed range, and two suggested further restrictions on the range of windows that could be approved under the GA.
3. Network Rail supported the proposed range of windows, believing it struck the right balance between allowing flexibility and providing diligence.
4. DBC said it was content with the proposed range, but suggested that ORR might want to review the range after twelve months to see how the proposed range worked in practice. DBC raised the issue of a service that could be run over Congested Infrastructure, but which is not the only route it can use, and if such services were excluded from being generally approved, even if not routed to run over Congested Infrastructure.
5. Both GWR and TfL suggested that services running through the passenger peak should be explicitly excluded from the GA. GWR also suggested that the proposed four hour minimum for windows could be expanded to five or a similar number to protect passenger services during the peak instead of an outright exclusion

¹ <http://orr.gov.uk/consultations/closed-consultations/policy-consultations/new-general-approval-for-freight-track-access-contracts>

² <http://orr.gov.uk/what-and-how-we-regulate/track-access/applications-decisions-appeals-and-agreements/forms-model-contracts-and-general-approvals>

Our view

6. We agree with DBC's suggestion to review the range in the GA once we have seen how it works in practice. For services that could potentially run over Congested Infrastructure, this is why we use the term "Planned" to refer to the path given to a service in the Working Timetable (WTT), to allow for services that could potentially move over Congested Infrastructure but are not actually so routed.
7. On excluding peak period traffic to the proposed GA, freight services, by practice, already avoid the passenger peak periods where possible. It is for Network Rail to manage its network efficiently. A four hour range for windows should be wide enough to avoid passenger peaks for both GWR and TfL services. The range of passenger peak periods also varies throughout the country, and we would not want to set an exclusion based on peaks in London and the southeast which would unnecessarily restrict the use of the GA for other areas of the country. Also, the current GA does not restrict freight services to the off-peak.
8. We therefore have kept the four hours range for arrival and departure windows. We will review the range when there is sufficient practical experience to enable us to reach an informed view on its operation.

Question 2: Should the provision for amending access rights to match the Working Timetable be expanded, subject to successful industry consultation?

9. All the responses supported the expansion of this provision, although with some comments. Network Rail supported the expansion.
10. DBC found it unclear from the wording in the proposed GA if it was intended only to cover changes if the range of the departure and arrival windows remained the same but the actual start and finish times required equivalent movement around the clock-face. DBC believed that the current wording could be used to reduce the range of a window e.g. from four hours to one hour.
11. GWR supported the provision, and suggested that, subject to successful industry consultation, it should be expanded as far as is possible for a GA. GWR said that consultations provide an opportunity for aspirations of all parties to be considered, which are not present in current WTTs. Additionally recent revisions to paths could have a bearing on performance and these should be considered. GWR also believed that revised freight firm rights could have an impact on planning engineering works, particularly over public holidays, or affect the allocation of paths over infrastructure with reduced capacity.
12. TfL was content with the proposal, as it required industry consultation, and the WTT already reflects compromises agreed between each party regarding the allocation of capacity. TfL emphasised that paths not being used should be withdrawn as quickly as possible to prevent ossification of network capacity.

Our view

13. As the new format of using windows avoids the need to adjust access rights for the small changes to clock-face times, we do not want to limit the new GA to these small changes. However we note DBC's comment on how it could potentially be used to reduce a window. This was not the intention and we have therefore added wording that clarifies that the amendments allowed do not include decreases of window sizes.
14. We note GWR's support for the provision for amending access rights and agree that consultations give the opportunity for the industry to comment on proposals. However, future aspirations do not override current requests for use of capacity. If GWR had any particular concerns over its future aspirations, it should consider applying for access rights for such traffic in advance. This would not prevent the capacity being used by other operators before it is needed by GWR.
15. We agree revised paths could have an impact on performance. The majority of freight access rights are agreed after a trial running period to assess this. The range of arrival and departure windows that can be approved not being any narrower than the existing window under the GA should also help prevent negative impacts on performance.
16. We also note GWR's comments on the potential impact of freight services on planned engineering works. All access rights are subject to the Engineering Access Statement and Part D of the Network Code. We therefore are not restricting the range of access rights that can be approved under the GA due to planned engineering works.
17. We agree with TfL that paths that are no longer being used should be withdrawn. We believe the current process for releasing slots, as laid out in Part J of the Network Code, works to free up capacity where it is not being used. We note FOCs have worked closely with Network Rail to release some 4400 paths over the last two years.
18. Based on the responses we received, we will keep the expanded provision, with a change at paragraph 5(c) of Annex D to reflect that it cannot not be used to decrease the range of windows.

Question 3: Do you have any comments on the above proposed changes to the General Approval, or any amendments we have not included that you think we should consider?

19. There were several comments and suggestions for changes for the final GA, which we have detailed below.
20. DBC believed that paragraph 4(c) of Annex D of the proposed GA might need to be reviewed, as the wording appeared to allow for a reduction of flexibility of access rights (e.g. a reduction in the Minimum Turn Around Time at Origin from three hours to one hour). DBC suggested that "delete or reduce" is changed to one or the other, depending on which is appropriate, and "increase" used for Minimum Turn Around Times.

21. GWR considered that being able to alter timing loads or train lengths without consultation might alter rights fundamentally without other industry parties having recourse to review them. The Vehicle Change process supplies this for train length but might not for timing load.
22. TfL noted that there appears to be confusion between the lists in Annex D which do and do not require consultation, as reductions or deletions could be regarded as amendments but are defined in a separate section. This needed clarification. TfL also thought the GA should explicitly exclude changes that affect peak periods, except where the change is to remove a freight path that runs during peak periods.

Our view

23. We note DBC's suggestion for the wording of paragraph 4(c) of Annex D, and updated Annex D with a new paragraph for Minimum Turn Around Times which only permits these to be increased or deleted.
24. We reviewed the process for altering timing loads and/or train lengths in light of the concerns GWR raised. We consider that the RT3973 process³ would capture the impact of any changes alongside the Vehicle Change process.
25. We note TfL's comment on the lists in Annex D, and have changed "amend" to "adjust" or "change" to clear up any confusion between the lists. As discussed in paragraph 7, we do not think excluding passenger peak hours from the GA is justified.

Question 4: We are required to review the impact of any regulatory changes. How will a revised GA impact on your business?

26. Out of the four responses, two considered that the revised GA would impact positively on their business, while two had concerns over a negative impact.
27. DBC considered that a new, revised GA would have a positive impact on its business by contributing to reducing the time and effort needed to amend its access rights. Network Rail also welcomed the revised GA and believed it would promote efficiency.
28. GWR was concerned that its franchise timetable might not be capable of being implemented as new rolling stock and infrastructure are delivered if freight rights were unrestricted. GWR wanted these risks to be reduced.
29. TfL stated that it might experience adverse impacts on its key business objectives if the GA permitted the operation of additional freight services during peak periods, as these could conflict with its urgent priority to relieve overcrowding on peak services in the London area. TfL also stated that it was important to keep the usage of the revised GA under review to ensure it was leading to appropriate allocation of network capacity, and that further intervention might be required if this was occurring.

³ <http://www.networkrail.co.uk/asp/10536.aspx>

Our view

30. We appreciate the comments made and will consider them in assessing the impact of these changes.
31. If there are particular concerns over capacity for planned improvements, operators could consider applying for track access rights now or even asking for capacity to be added to strategic capacity.
32. As suggested, we will monitor usage of the GA to ensure that it is being used appropriately and whether any further action would be needed.

Other Matters

33. There are other minor changes to the final revised GA. Congested Infrastructure has been capitalised to reflect that it is a defined term, and there has been some minor adjustment of the wording in Annex D.

Next steps

34. We have now issued our revised GA, which can be found on our website and this can be used to generally approve track access contracts with Network Rail from 6 December 2016. Any generally approved contracts and amendments must be sent to ORR at track.access@orr.gsi.gov.uk within 14 days of being signed to be placed on our public register.

Yours sincerely

A handwritten signature in black ink that reads 'K. Goulding'. The signature is written in a cursive style and is underlined with a single horizontal line.

Katherine Goulding