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Dear James and Carew,

Directions in respect of a track access contract between Network Rail Infrastructure Limited and London and Birmingham Railway Limited

1. The Office of Rail and Road (ORR) has today 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 London & Birmingham Railway Limited (London Midland). This letter explains our decision.

The application

2. On 18 May 2015 London Midland submitted an application under section 17 of the Railways Act to the ORR. ORR conducted a consultation on behalf of London Midland for this application, on 23 June 2015.

3. London Midland explained it had been requested by the Department for Transport (DfT) to make an application to extend the duration of its track access contract to the Principal Change Date (PCD) 2022, to align with the Expiry Date in the Track Access Contract of West Coast Trains Limited. The intention of this application was to provide London Midland and the DfT (on behalf of any subsequent franchisee) with the ability to plan the timetabling and franchise development process. The application did not propose changes to any of the services currently run by London Midland, and the access rights specified in Schedule 5 were "quantum only".

4. At the time of the application, Network Rail had set out its position that it was willing to extend London Midlands access rights to PCD 2017. It was not willing to grant rights beyond that date due to uncertainty over the impact of HS2 engineering works at London Euston.



Industry consultation

5. The consultation process was carried out for four weeks ending 21 July 2015. LOROL; East Midland Trains; Direct Rail services; Chiltern Railways; and, First Great Western responded to the consultation but raised no objections to the application.

6. Alliance Rail originally objected to the approval of access rights, but later withdrew that objection on the basis of the reduced contract duration that the parties agreed upon (see below).

Statutory consultation

7. Schedule 4 to the Act requires ORR to undertake a statutory consultation process for applications made under section 17. In response to our statutory notice, we received notification, on 4 August, that there were no Interested Persons within the statutory definition of Paragraph 1 of Schedule 4 to the Act. Formal representations on the application were received from Network Rail on 16 July 2015.

Issues considered by ORR

8. ORR wrote to Network Rail on 3 July 2015 to invite written representations in respect of the application. Network Rail responded on 16 July 2015, setting out it was content to offer rights which extended beyond the date on which the franchise was due to end, i.e. to PCD 2017. It further noted that a direct award since the application was made meant that London Midland would be running the franchise until June 2017, and that the extension it had offered would facilitate that and allow the new franchisee to apply for a new or extended contract to start from PCD 2017. Network Rail's main points are set out, below:

Duration of rights

9. Network Rail noted that the duration of rights sought were intended to align with the Expiry Date in the Track Access Contract of West Coast Trains Limited in 2022. It explained that at the time those rights were agreed (in 2012) the industry did not know that HS2 would be a funded government commitment with a firm southern terminus. It considered that the circumstances within which LM was applying for the same duration was therefore significantly different. Network Rail considered that it was now not clear whether the industry would need to reduce services at Euston in order to deliver an acceptable level of service during construction work for HS2.



10. Network Rail was also mindful of the Railways Infrastructure (Access and Management) Regulations 2005 and did not believe that a clear justification had been provided for access rights in excess of five years.

Schedule 5 rights

11. Network Rail did not support the inclusion of firm rights for passenger train slots and associated calling patterns in respect of the section of line in between London Euston and Queen's Park and vice versa. It proposed that such rights should be agreed on a contingent basis.

Inclusion of an ETCS schedule

12. 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. A proposed Schedule was included within the representations.

Development of compromise agreement

13. In January 2016 Network Rail confirmed that it now had additional clarity over capability at Euston and that the current level of capacity would remain until at least PCD 2018. On that basis it offered a compromise contract to London Midland, with firm rights up to PCD 2018. On 27 January 2016 London Midland confirmed that a compromise of a contract running to PCD 2018 would be acceptable to them.

14. The reduced duration of the contract meant that ETCS would not be a factor during the lifetime of the contract.

ORR's conclusions

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;
- and,



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.

Yours sincerely,



John Trippier

