

31 March 2020



Associated British Ports
25 Bedford Street
London
WC2E 9ES

Colas Rail Limited
19 Dacre Street
Victoria
London
SW1H 0DJ

Amendment of facility access contracts between Associated British Ports and Colas Rail Limited.

Under section 22 of the Railways Act 1993, and further to the application made by Associated British Ports and Colas Rail Limited, I approve the amendment to these facility access contracts between the parties, as submitted to ORR on 30 March 2020:

- (i) dated 1 September 2010 (Hams Hall)
- (ii) dated 16 April 2015 (Immingham)
- (iii) dated 16 April 2015 (South Wales)

The amendment is termed the 3rd Supplemental Agreement and changes the expiry date of each contract to 31 March 2025, and a copy is enclosed with this notice.



GORDON HERBERT

Duly authorised by the Office of Rail and Road



Steve Jones

Executive, Access and Licensing
Railway Markets and Economics

Email: steve.jones@orr.gsi.gov.uk

31 March 2020



Chris Geldard
Acting for Associated British Ports
Associated British Ports
25 Bedford Street
London
WC2E 9ES

Simon Ball
Freight Director
Colas Rail Ltd
19 Dacre Street
London
SW1H 0DJ

Dear Chris and Simon,

Approval of changes to the facility access contract between Associated British Ports and Colas Rail Limited

1. On 31 March 2020 the Office of Rail and Road (**ORR**) approved the 3rd Supplemental Agreement (SA) to three facility access contracts (**FAC**) between Associated British Ports (**ABP**) and Colas Rail Limited under section 22 of the Railways Act 1993 (**the Act**), submitted to us on 30 March 2020. This letter sets out the reasons for our decision.

Purpose of the agreement

2. The purpose of the 3rd SA is to amend the expiry date of the existing FAC that Colas Rail has with ABP at the ports of Immingham, Hams Hall and South Wales. It is to take effect on the expiry of Colas Rail's current FAC on 31 March 2020 and will change the expiry date to 31 March 2025. The FAC allows Colas to operate freight services on ABP's network.

Consultation

3. ABP undertook the usual industry consultation between 10 March and 24 March 2020. No comments were received and there are no outstanding concerns following closure of the consultation period.

ORR Review

4. Our initial review of the 3rd SA took place in March 2020 after the consultation period and the contracts were signed. The 3rd SA did not raise any regulatory, performance or economic issues.
5. This application to extend contracts by five years falls within our Duration of Access Contracts Policy.

ORR Decision

6. This is an application under section 22 of the Act and is agreed between the parties.

7. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
- (i) to protect the interests of users of railway assets;
 - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
 - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
 - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

Public Register

8. In entering any provision on the register, ORR is required to have regard to the need to exclude, as far as is practicable, the matters specified in section 71(2)(a) and (b) of the Act. These sections refer to:
- a. any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that individual; and
 - b. any matter which relates to the affairs of a particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that body.

Please let me know if there any matters that need redacting.

Yours sincerely

S Jones

Steve Jones

Third Supplemental Agreement

between

ASSOCIATED BRITISH PORTS

As Facility Owner

and

COLAS RAIL LIMITED

As Train Operator

relating to

The amendment of Facility Access Contracts

THIS THIRD SUPPLEMENTAL AGREEMENT is made on the 31st day of March 2020

BETWEEN: -

- (1) **ASSOCIATED BRITISH PORTS**, a statutory corporation created under the Transport Act 1981 and registered in England under number ZC000195, having its principal office at 25 Bedford Street, London EC2E (“**ABP**”); and
- (2) **COLAS RAIL LIMITED**, a company registered in England under number 2995525, having its registered office at Dacre House, 19 Dacre Street, London, SW1H 0DJ (the “**Train Operator**”).

WHEREAS: -

- (A) The parties entered into Facility Access Contracts at:
 - i. The Port of Immingham dated 16th April 2015
 - ii. The South Wales Ports of Newport, Cardiff, Barry & Swansea dated 16th April 2015
 - iii. The Hams Hall Railfreight Terminal dated 1st September 2010

in a form approved by the Office of Rail Regulation (“**ORR**”) pursuant to the section 18 of the Act (which Facility Access Contracts as subsequently amended are hereafter referred to as the “**Contracts**”).

- (B) The parties propose to enter into this Third Supplemental Agreement in order to vary the **Contracts** as described below.

IT IS HEREBY AGREED as follows: -

1. INTERPRETATION

In this Third Supplemental Agreement:

- (A) Words and expressions defined in and rules of interpretation set out in the **Contracts** shall have the same meaning and effect when used in this Third Supplemental Agreement except where the context requires otherwise; and
- (B) “**Effective Date**” means the date when the following conditions precedent, which cannot be waived by the parties, have been satisfied in full:
 - i. This Third Supplemental Agreement has been signed by, or on behalf of, the parties; and
 - ii. **ABP** has, within 14 days of such signature, sent a signed copy of this Third Supplemental Agreement to **ORR**.

2. EFFECTIVE DATE AND TERM

The amendments to the Contracts as set out in this Third Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect when the Contracts shall cease to have effect.

3. AMENDMENTS TO EACH OF THE CONTRACTS

Clause 1.1 **Definitions** of the Contracts shall be amended by replacing:

“**Expiry Date**” means 31 March 2020

with

“**Expiry Date**” means 31 March 2025

4. GENERAL

The parties agree that the Contracts, as amended by this Third Supplemental Agreement, shall remain in full force and effect in accordance with their terms, and with effect from and including the Effective Date and during the period in which the amendments made by this Third Supplemental Agreement are to have effect, all references in the Contracts to “the Contract”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contracts as amended by this Third Supplemental Agreement.

5. LAW

This Third Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with English Law.

6. COUNTERPARTS

This Third Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.

