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Senior Executive, Access & Licensing

25 July 2018



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Dear Tamzin and James

Approval of the seventh supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and West Midlands Trains Limited (WMT) (jointly “the parties”)

1. We have today approved the above supplemental agreement submitted to us formally on 6 July 2018 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.

Purpose of the agreement

2. The purpose of this agreement is to extend WMT’s weekday and Saturday Cross City services, which currently terminate at Longbridge, to Bromsgrove, running three trains per hour. There will also be a new half hourly Sunday service between Birmingham New Street and Bromsgrove. These enhanced services have been enabled by the electrification of the line between Barnt Green and Bromsgrove.

3. The rights sought are intended to take effect from 29 July 2018, following the completion of electrification works and testing and will remain for the duration of the Contract (currently the Principle Change Date 2018).

Industry Consultation

4. Network Rail consulted on the sixth Supplemental Agreement (which originally included these services, as well as some extensions to Rugeley) between 4 December 2017 and 11 January 2018. First Greater Western Limited (GWR), GB Railfreight (GBRf) and DB Cargo (DBC) expressed concern about the potential impact of the extended Bromsgrove services on current and future freight capacity. The freight operators said that the application had identified conflicts between the proposed services and existing freight rights and these had not been resolved. They also queried how many train paths per hour would remain available for the operation of freight services if the proposed services went ahead. They further expressed concern about “banked” freight traffic (where an extra locomotive is required to assist services getting up the Lickey Incline). GWR’s concerns, which related to their interactions with the Barnt Green line, were resolved by correspondence.

5. On 12 February 2018, WMT advised ORR that Network Rail was unable to complete the electrification on time (i.e. by the May timetable change). Therefore, the Bromsgrove extensions were removed from the sixth supplemental agreement and, in due course, submitted in this application. On 23 February 2018, the parties wrote to GBRf, GWR and DBC to inform them that the Bromsgrove extensions would be withdrawn and resubmitted later. They also attempted to address the concerns that had been raised during the consultation.

6. The letters to the consultation respondents said that WMT would not be progressing an application for rights for two proposed slots where conflicts had arisen between existing freight services. They also said that Network Rail had endorsed the sale of rights for these Bromsgrove extensions and this required a confirmation that the extensions did not compromise any existing Freight or Strategic Capacity paths through Bromsgrove. They further said that the ability to run up to two freight trains per hour through Bromsgrove would be maintained. Finally, they said that all the extended services took into account and honoured the current access rights held by freight operating companies on this route.

Informal submission

7. On 13 March 2018, the parties advised ORR that they were about to informally submit an application for the seventh supplemental agreement. They said that they did not intend to re-consult, as they had already undertaken a consultation exercise for the same access rights for the sixth supplemental agreement and there was no material change to the rights proposed. They asked if ORR had any concerns about this approach and we said that we did not.

8. The parties then submitted this agreement informally. The application explained in detail the concerns that had been raised during the consultation and the responses the parties had sent to the consultation respondents. It also said that they considered the issues to be resolved.

Our review

9. On 13 April 2018, we contacted GBRf and DBC to update them on the current situation with the parties' application for the proposed Bromsgrove extensions. We also asked them if they considered that the concerns they had raised during the consultation for the sixth supplemental agreement had been resolved.

10. GBRf replied on the same day. It said that it did not consider its concerns to be resolved. It said that the original sixth supplemental agreement application stated that Network Rail *"needed confirmation that the extended services compromised no existing freight or strategic capacity through Bromsgrove, nor the ability to run up to two freight services per hour through Bromsgrove"*. GBRf went on to say that it had not seen any confirmation regarding these issues.

11. DBC replied on 24 April 2018. It said that, if it had been consulted on the new application, it would have reinstated its concerns, as set out in its letter to the parties during the original consultation. It went on to say that WMT's response *"appeared to indicate that the extended Cross-City services would in effect introduce a 'cap' on capacity in terms of the availability of Up direction "banked" freight paths on the route for much of the day"*.

12. DBC noted that the parties had not taken forward two slots because of conflicts with freight services but expressed concern about the flexibility to accommodate new or amended services.

13. On 24 April 2018, ORR asked the parties to comment on the further representations made by GBRf and DBC. They replied on 8 May 2018. The parties said that, by truncating the paths for two proposed Bromsgrove round trips, they had incorporated and satisfied the existing access rights held by all other operators. They went on to say that the issue came down to a trade-off, using appropriate provisions of Part D of the Network Code, between future capacity for potential freight traffic, versus WMT's aspiration and ability to operate additional passenger services.

14. The parties then went on to set out a number of points in favour of their application. They said that a significant amount of taxpayer money had been invested to enable the implementation of the Bromsgrove service upgrade on this corridor and Network Rail had already been funded, via the CP5 Enhancements Delivery Plan, and was obliged to deliver the Bromsgrove Electrification Programme. They said that the introduction of the enhanced services would make a significant contribution to the CP5 HLOS metrics for additional passengers into central Birmingham. They also said that the services were entirely consistent with the established route study and, therefore, formed part of the long term strategy for the route. Lastly, they said that the services formed part of the consultation for the West Midlands franchise in 2015 and 2016, were incorporated into the Invitation to Tender for the new franchise and are, therefore, a franchise commitment to the DfT.

15. We carefully considered all of the information provided by the parties and the freight operators regarding this application. As the proposed Bromsgrove extensions were, unusually, contained in two separate applications, we took care to ensure that GBRf and DBC were updated with developments and had a further opportunity to comment on the new application. We also thought that it was important for the parties to have the opportunity to respond to these comments.

16. We note that there has been significant investment in the building of Bromsgrove Station, infrastructure enhancements and the electrification of the line. It is clear that the enhanced services will benefit passengers and are part of long term plans for the route.

17. We also appreciate that it is important for freight operators to explore the potential impact of any new or extended passenger services on current and future freight services. However, taking into account all the information we have seen, we are content that the parties have taken reasonable steps to resolve any concerns and mitigate any impact.

18. We particularly note that when two conflicts arose between existing banked freight services and the proposed Bromsgrove extensions, WMT did not progress an access rights application for the two relevant slots (which will continue to terminate at Longbridge).

19. The parties have also confirmed that the enhanced services take into account the current access rights held by freight operators on this route and the ability to run up to two freight trains per hour through Bromsgrove would be maintained. The parties further noted that Network Rail's Sale of Access Rights panel's endorsement of this application required a confirmation that the extended services did not compromise any existing Freight or Strategic Capacity paths through Bromsgrove.

20. For the reasons explained above, we have concluded that we should approve this application. In considering the agreement 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 have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of railway services
- promoting the use of the railway network for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;
- promoting competition in the provision of railway services for the benefit of users of railway services;
- having regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services or of the persons who make available the resources and funds and of the general public;

- and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance.

21. 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 WMT. Please send the conformed copy to me at ORR.

22. 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 and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Rodgers', is positioned above the printed name.

Jonathan Rodgers

