



OFFICE OF RAIL REGULATION

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## **REASONS DOCUMENT FOR THE DECISION OF THE OFFICE OF RAIL REGULATION ON AN APPLICATION FROM GRAND CENTRAL RAILWAY COMPANY LIMITED UNDER SECTION 17 OF THE RAILWAYS ACT 1993**

### **Application**

1. On 2 March 2007 Grand Central Railway Company Limited ("Grand Central") applied to the Office of Rail Regulation ("ORR") under section 17 of the Railways Act 1993 ("the Act"). In its application, it asked us to give directions to Great North Eastern Railway Limited ("GNER") to enter into a Station Access Agreement ("SAA") in respect of York station, where GNER is the Station Facility Owner ("SFO").
2. Grand Central made an application under section 17 of the Act because it had insufficient information to calculate appropriate charges.

### **Information Provided by the Parties**

3. In a letter of 22 March 2007, GNER wrote that it had provided all necessary information to Grand Central, but had not yet received Grand Central's vehicle count. In a letter dated 10 April 2007 GNER wrote that it could not comply with our request to provide percentages of Common Charges payable by all Users including Grand Central as to do so it required vehicle counts from Grand Central, which it had not yet received.

4. In an email dated 11 April 2007, Grand Central informed us that its vehicle count for York station would be 252 per week (13 104 per year).
5. In an email dated 26 April 2007, GNER informed us that on the basis of this vehicle count, the percentage of Common Charge payable by Grand Central would be 2.79%.
6. In an email dated 4 April 2007, GNER informed us that the wording in Schedule 1 paragraph 9 of the draft SAA, which related to an additional abatement in the case of failure of CIS screens on a specific platform, had been included in error. Grand Central had queried the inclusion of this wording and confirmed in an email dated 4 April 2007 that it had no objection to removing this, and saw no reason to retain it. This wording was therefore removed from the draft SAA.
7. In an email dated 25 May 2007, GNER said that it considered paragraph 5.2.1(g) of the draft SAA ("Franchise Agreement Termination") to be unnecessary. In an email dated 30 May 2007 Grand Central confirmed that it was of the same opinion. This wording was therefore removed from the draft SAA.

## **Process**

8. In considering this application we have followed the consultation procedure specified in Schedule 4 of the Act, supplementing this with additional requests for information where deemed necessary. Specifically, we have followed the process detailed below:
  - On 2 March 2007 we invited GNER to make written representations on the application from Grand Central and directed it to furnish us with the names and addresses of every interested person, as required by paragraphs 3(1) and 4(1) respectively of Schedule 4 to the act.
  - On 19 March 2007, as the Department for Transport had been identified as an interested person by GNER, we invited it to comment on the application. We also invited comments from all other users of York station as interested parties (i.e. not "interested persons" as defined in Schedule 4 to the Act).
  - On 27 March 2007 we invited Grand Central to make further written representations on the written representations received from GNER, as required by paragraph 3(2) of Schedule 4 to the Act.
  - On 27 March 2007 and again on 11 April 2007 we also asked both Grand Central and GNER to answer various questions arising out of the application and the representations received.

## Consultation Responses

9. On 4 April the Department for Transport informed us that it did not intend to make any representations on this matter. We received no representations from any of those consulted as interested parties.

## Decision

10. We have decided that it would be appropriate for us to direct GNER to enter into a contract, with certain additions and minor amendments to the required access contract submitted with Grand Central's application. We have issued directions to this effect.
11. The directions stipulate that the contract must be entered into no later than 6 July 2007. Our directions have been issued separately to GNER and will be published on our website (<http://www.rail-reg.gov.uk>).
12. This part of the letter focuses on the changes we have made to the required contract submitted by Grand Central.
13. The major changes we have made to the submitted contract are listed below:
  - (a) The beneficiary having commenced operation of passenger services was inserted as an additional condition precedent at clause 2.1.7. Clause 2.3.2 was then changed so that, subject to clause 2.4, all the other Clauses and Conditions would come into effect on the date that the Conditions Precedent set out in clause 2.1 have been satisfied in full.
  - (b) Several knock on amendments resulting from this change have also been made. A requirement for the Beneficiary to give prior notice no less than 14 days in advance of the satisfaction of condition 2.1.7 was also inserted in clause 2.2.
  - (c) An expiry date of "The earlier of the date of expiry of the Track Access Agreement or the date on which Great North Eastern Railway Limited ceases to be Station Facility Owner" was inserted in Schedule 1 paragraph 4.
  - (d) "2.79%" was entered as the Percentage of Common Charges payable in Schedule 1 paragraph 9.
  - (e) The following wording was deleted from Schedule 1 paragraph 9: "The User's Daily General Charge payable by the Beneficiary shall be abated by five percent (5%) for each day or part thereof after the expiry of the first 48 hours of any period during which the Station Facility owner fails to provide a fully operational customer information systems screen on Platform 3."

(f) The following wording was deleted at clause 5.2.1(g): “Franchise Agreement Termination: Termination of the franchise agreement pursuant to which the Beneficiary provides railway passenger services to or from the Station unless the Beneficiary and the Secretary of State shall have entered into a further franchise agreement on or before the date of such termination.”

(g) Several additional changes were made to correct minor drafting errors.

14. A DeltaView comparison of the directed contract against the one submitted by Grand Central is enclosed with this letter.

### **The Railways Act 1993**

15. This section provides an overview of the relevant legislative provisions.

16. Under the Act, anyone seeking access to a station, for or in connection with the operation of trains, must enter into a contract directed by us. If not, section 18(1) provides that the access contract will be void. Where an applicant for access cannot agree the terms of access with a facility owner it is entitled to apply to us under section 17 to direct those terms. The Railways Infrastructure (Access and Management) Regulations 2005 which enable an applicant to appeal various access matters to us provide that where directions may be sought under section 17, the applicant must lodge its appeal under this section.

17. When we exercise our functions under Part 1 of the Act, we are governed by our statutory duties, most of which are set out in section 4 of the Act. These duties are not in any order of priority and it is for us to decide how to balance our duties in reaching a decision. In considering the application and in reaching our decision as to appropriate directions in this case, we have had regard to our duties under section 4 of the Act as amended, complied with the statutory procedures, and adhered to the process and timescales set out in Schedule 4 to the Act.

18. We have considered all of our duties in reaching our decision on this application. Section 4 requires us to balance all our duties and, in balancing these duties, we necessarily have to exercise our judgment to achieve the right balance, taking into account the particular circumstances of each case.

19. In relation to this case and for the reasons set out below, we have given particular weight to:

- Section 4(1) (a) otherwise to protect the interests of users of railway services;
- Section 4(1) (b) to promote the use of the railway network in Great Britain for the carriage of passengers and goods and the development of that network, to the greatest extent that we consider reasonably practicable;

- Section 4(1) (d) to promote competition in the provision of railway services for the benefit of users of railway services; and,
- Section 4(1) (g) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

### **Reasons for our Decision**

20. The figure of 2.79% was inserted in Schedule 1 paragraph 9 based on the figure for the percentage of Common Charges payable by Grand Central provided to us by GNER, on the basis of the vehicle count provided to us by Grand Central.

21. The deviations from the template regarding the commencement date of the SAA were inserted due to Grand Central's uncertainty over the exact date on which they will begin running services. In cases where the parties are able to reach agreement over a SAA, such provisions are not necessary as the parties generally wait until there is a firm start date before submitting a proposed Station Access Agreement. In this case, however, due to the length of the statutory process associated with an application under section 17 of the Act, this was not a practicable option. These circumstances therefore made necessary the substantial deviations from the template contract in this regard.

22. These were the only substantive issues within ORR's purview to be resolved.

Yours sincerely

**Brian Kogan**

