

Government Legal Department

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Your Ref: Z1806070/SCX/CLGA

Our Ref: RWS/ADS/00173458/1

Date: 15 May 2018

BY EMAIL ONLY

Dear Sir / Madam

East Coast Franchise – Follow-up to your pre-action response dated 1 May 2018

We write in respect of your pre-action response dated 1 May 2018 sent in reply to our client's pre-action protocol letter of 16 April 2018.

We note that the Secretary of State has *“already commenced a review of the appropriateness of relevant companies to hold Passports, in anticipation of the expected early termination of the franchise, albeit that a final conclusion will not be reached until after the termination has occurred.”*

Our client is surprised that this fact was only disclosed in response to its Pre-Action letter given that:

(a) The Secretary of State told Parliament that:

“... There will be those who claim that because Stagecoach overbid, it should be excluded from bidding for future franchises. I have to be clear that the legal advice on this is clear. As the company is meeting its financial obligations to support the franchise, including with the full parent company's support, and because it has operated services on the east coast line successfully, the Department has concluded that there are no adequate legal grounds to restrict it from bidding on current and future franchise competitions on this basis. Members will understand that it is my duty to follow legal advice, but let me be clear that we will keep its eligibility for current and future bids under close scrutiny and constant review...”

(b) No mention was made of the panel review process in the Secretary of State's letter of 22 March 2018.

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Further, and in any event, it is obviously critical that the Passport review process is completed as quickly as possible given that Stagecoach and Virgin continue to enjoy the benefits those Passports provide in the interim. It is also already clear that the East Coast franchise will terminate early and a decision will need to be made soon as to which operator(s) should run the East Coast line after the formal end of the franchise.

You have indicated that the final decision reached by the review panel will be made public, as will the decision over which operator(s) will run the line following formal termination. However, we note that you have not confirmed: (a) that the provisional decision on whether Stagecoach and Virgin are fit to hold Passports will be made public / communicated to our client; or (b) the timetable for the review process. As to point (a), given the central importance of this provisional view to the appropriateness of Stagecoach and/or Virgin being allowed to continue to operate the East Coast line, it is essential that the public and our client know the basis upon which the decision on who should be allowed to run the line will be made. As to point (b) we note that there have been a number of very recent press reports suggesting that the transport secretary is expected to make a decision "within days". Extracts of the relevant articles are enclosed.

In the light of the above and the imminently expected announcement, please confirm by **4pm on Thursday 17 May**:

- (a) When the DfT convened the panel charged with carrying out the review process.
- (b) That the Secretary of State will make public and / or communicate to our client the provisional view reached by the review panel.
- (c) The timetable for the Department's panel review process, including, in particular, the dates by which it will reach its provisional and final views on the appropriateness of Stagecoach and/or Virgin retaining their Passports.

Yours faithfully



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