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for Transport

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From the Secretary of State
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Dear Andrew,

Thank you for your letter of 6 February, further to my comments in the House of Commons of 5 February on East Coast Rail.

My remarks in the House reflected the comprehensive National Audit Office report of 2011 (on the termination under the last Labour Government); that report made no reference to any ban on National Express from bidding for franchises as a consequence of its default on the East Coast. I concluded from that, that a ban could not have been in place.

Under established conventions, Ministers are not permitted to see documentation relating to advice given to Ministers under a previous administration of a different political party.

Notwithstanding, my Department has therefore, at the request of my Permanent Secretary, reviewed the available documentation relating to the period in question, and in the period leading up to the final settlement with National Express in December 2010. As the National Audit Office report indicates, that settlement included an assurance that the default on the East Coast would not be held against them in bidding for future franchises.

I am informed however that this search has identified no other public statement suggesting a general and explicit ban was in place on National Express from bidding for franchises, following their default on the East Coast in 2009. To impose such a ban – then as now – would have been difficult under EU procurement legislation, and in particular the requirement for proportionality.

Separately, I would note that a letter has been identified indicating that, in March 2010, the Department for Transport declined to issue an Invitation to Tender for two franchises to a consortium in which National Express held a

significant shareholding, on the basis that National Express did not meet specific criteria set out by the Department at that time, including in relation to the significance, materiality, and wider relevance of its breach of contractual obligations under the Franchise Agreement for the East Coast Main Line.

While the record shows that there was not a general or explicit ban, it is also clear that you followed your obligation under the Railways Act 1993 for any Secretary of State to be satisfied in relation to any specific franchise competition that any bidder meets the requirements to be a "suitable person".

Looking forward, this legal obligation applies equally of course to my own decisions as Secretary of State. On the issue of whether Stagecoach should be excluded from bidding for all future franchises, I have received clear legal advice that there are no adequate legal grounds for doing so. As you would expect, I fully intend to act lawfully in this matter. Equally however, as I have said, we will keep Stagecoach's eligibility for all current and future franchise bids under close scrutiny, and review in accordance with the even more robust processes in place now to ensure that all bidders meet relevant legal requirements.

As I stated in the House on 5 February, the actions I am now taking in relation to the operation of the East Coast and on rail franchising more generally, reflect the three key principles of protecting the interests of passengers, ensuring value for taxpayers' money and supporting continued investment in our railways.

I am placing this letter in the Libraries of both Houses.

Yours sincerely,



Rt Hon Chris Grayling MP

SECRETARY OF STATE FOR TRANSPORT