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Dear Joe and Ben

Approval of the Eleventh Supplemental Agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Trenitalia c2c Limited (c2c) (jointly “the parties”) dated 3 March 2017

We have today approved the above supplemental agreement submitted to us formally on 7 December 2002 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains the reasons for our decision.

Purpose

The purpose of this agreement is to extend c2c’s access rights for weekend services between Barking and Liverpool Street from the Subsidiary Change Date (SCD) 2021 until the Principal Change Date (PCD) 2022.

Industry consultation

Network Rail undertook the usual industry consultation between 15 September and 15 October 2020. Transport Focus supported the application and Great Western Railway said that they had no objections. MTR Elizabeth Line (MTREL) and Greater Anglia (AEA) responded with some queries and concerns.

MTREL referred to its own need to extend its access rights into Liverpool Street and said an application to do this had previously been rejected by Network Rail, pending an update on the Anglia Capacity Study. It said that it needed further clarification regarding the approach to access rights on the Anglia Route beyond May 2021 before it could agree to support c2c's application. It also asked for Network Rail to confirm it was happy (in principle) to extend MTREL's access rights from May 2021.

Network Rail replied that this c2c application related to weekend rights only and the Capacity Study is only looking at weekday rights. A MTREL application to extend its own rights would need to be progressed via the relevant Network Rail customer team.

MTREL responded and asked for more clarity regarding Network Rail's Anglia Route access rights position, saying that it was not aware that the Capacity Study related to weekdays only. Network Rail responded to this by explaining how the Capacity Study was being discussed with and communicated to operators. There were then further exchanges relating to the process MTREL would follow for extending its access rights.

AEA said that it did not support the application, expressing concern about the performance of the existing services, the operation of cyclical platform blocks at Liverpool Street which had been to the detriment of Great Anglia's firm rights and what it considered to be a lack of an examination of long term platform capacity.

AEA also expressed concern regarding Network Rail's decision not to agree to extend its rights into Liverpool Street beyond PCD 2021 and commented on the consistency of Network Rail's approach.

Network Rail provided detailed answers regarding the operational concerns AEA had raised and referred to the joint mitigation studies designed to resolve them. It also said that it considered the approach it had taken regarding Anglia Route access rights to be consistent. There were no further queries from AEA. Network Rail went back to it at a later date to check if the queries were still outstanding and did not receive a further response.

ORR review

Our review of the application raised no operational, performance or economic concerns.

We acknowledge MTREL's concerns regarding their own access rights and whether or not Network Rail have been consistent in their approach with all operators on this route. We will obviously need to consider the approval of any future MTREL application for an extension of access rights in due course and will, at that time, consider if the approach taken by Network Rail is consistent with the approach it has applied to other operators.



We also acknowledge AEA's concerns but we consider that Network Rail provided detailed and reasonable responses in order to address those concerns. We also note that AEA have not taken those concerns any further.

We will also consider if the approach taken by Network Rail to any future AEA application on this route is consistent with the approach it has applied to other operators.

We have asked Network Rail to provide us with further information regarding the Anglia Capacity Study.

Having considered the concerns raised by both operators against the benefits of extending these access rights, on balance, we believe that approving c2c's application best meets our statutory duties, as set out below.

Our duties under section 4 of the Act and our decision

We have concluded that approval of this supplemental agreement strikes the appropriate balance in discharging our statutory duties under section 4 of the Act; in particular, those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

Conformed copy of the track access agreement

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 the Train Operator. Please send the conformed copy to me at ORR.

Public register and administration

Electronic copies of this letter, the approval notice and the agreement will be sent to Department for Transport and Network Rail's Regulatory Reform Team. 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', written over a light grey horizontal line.

Jonathan Rodgers