

**Louise Beilby**  
Senior Access Executive



11 October 2024

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Dear Sophie and Lee

**Approval of the 30th supplemental agreement to the track access contract (TAC) between Network Rail Infrastructure Limited (Network Rail) and XC Trains Limited (trading as CrossCountry) dated 8 August 2017**

We have today approved the above supplemental agreement submitted to us formally on 11 October 2024 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. It also explains ORR's position on the concurrent application that CrossCountry has submitted in accordance with section 17 of the Act.

**Concurrent section 17 application**

On 24 April 2024 ORR [wrote to industry](#) to set out a process for access applications for the December 2024, May 2025 and December 2025 timetable changes. In that letter we asked industry to comply with a deadline of 20 May 2024 for applications for additional rights (or amended rights that change capacity parameters) for these timetable changes that met specific criteria. CrossCountry submitted such an application on 25 January.

In reaching a decision on this supported 30th supplemental agreement, it is important to clarify that:



- ORR has reached its decision in the full knowledge of CrossCountry’s concurrent section 17 application (which will be resubmitted as a section 22A after this approval);
- CrossCountry’s section 17 application remains “live” and we continue to try to progress it. However, ORR cannot reach a decision on that application as Network Rail has not yet completed its analysis. We continue to press Network Rail to complete its analysis as quickly as possible; and
- most importantly, the approval of the 30th supplemental agreement ensures that CrossCountry secures its TAC extension and has approved access rights in the December 2024 timetable.

### **Purpose of 30th supplemental agreement**

The purpose of the 30th supplemental agreement is to extend CrossCountry’s TAC from its current expiry date on the Principal Change Date (PCD) in December 2024 to PCD 2027. It also includes amendments to existing rights to deliver the commitment for a daily through return service between Cardiff and Edinburgh. The service amendments that are associated with this will apply on a contingent basis only for one timetable period, ending on the Subsidiary Change Date (SCD) in May 2025. All amendments will commence on PCD 2024.

Network Rail noted that it could only agree to the requested additional access rights on the lines between Cardiff and Edinburgh (service groups EH01 and EH02) until SCD 2025 due to potentially competing applications from other train operators, and that there could be no presumption of the continuation of these additional rights beyond SCD 2025.

### **Industry consultation**

Network Rail undertook an industry consultation for two weeks from 7 August.

West Midlands Trains queried the potential performance impact of the Cardiff-Edinburgh service, including some concerns about platforming at Birmingham New Street. It also asked if CrossCountry had carried out any performance analysis for the period following PCD 2024. CrossCountry provided a response to these queries on 26 August; at the time of writing, WMT had not responded or raised any further queries or objections.

GB Railfreight commented that the way the application had been set out made it seem that CrossCountry was applying for a lot of new services, and asked for figures concerning the



actual increase in service quantum. CrossCountry explained that there was no overall change, just an amendment to the way the rights are expressed, which closed the query to GB Railfreight's satisfaction.

Great Western Railway, London TravelWatch, Northern Trains, and Transport Focus replied stating that they had no objections to make.

### **ORR review**

We raised a query with Network Rail and CrossCountry about what performance analysis had been carried out on the contingent rights in Table 2.2; CrossCountry stated that all of the rights but one are continuations of current rights and current services that have been operating for several timetables, and so no bespoke performance modelling has been carried out on them. Our review of the application raised no other operational, performance or economic concerns.

We noted Network Rail's position on the continuation of additional rights on the lines between Cardiff and Edinburgh line beyond SCD 2025 due to competing aspirations from other train operators. In light of this, our usual policy of a strong presumption of the continuation of existing rights will not apply for service group EH01 and EH02 rights beyond SCD 2025.

### **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 the Department for Transport and Network Rail's Policy and Access Team. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

**Louise Beilby**