

Company Secretary
Network Rail Infrastructure Limited
Waterloo General Office
London
SE1 8SW

2 June 2025

ORR consent under network licence Condition 18 (*Interests in railway vehicles*): South East Alliance

Decision

1. On 14 May 2025, Network Rail Infrastructure Limited ("Network Rail") applied to the Office of Rail and Road for consent, under Condition 18 of its network licence, to its proposed involvement in rolling stock arrangements under a new South East Alliance – an alliance between Network Rail and SE Trains Limited ("Southeastern"). The proposal is described in more detail in Network Rail's application, attached at Annex A.
2. We have considered the information supplied by Network Rail. For the purposes of Condition 18 of Network Rail's network licence, ORR consents to the licence holder entering into the arrangement, as proposed.
3. Network Rail is required to send to us a copy of the South East Alliance Agreement once it is effected.

Background

4. The purpose of Condition 18 is to prohibit the licence holder from becoming directly or indirectly involved in train operations without ORR's consent. This is to prevent 'vertically integrated' activities, which may cause anti-competitive concerns.
5. The proposed alliance would be expected to give rise to a management reporting structure whereby a Network Rail employee may become involved in managing Southeastern's rolling stock, which would not be in accordance with Condition 18.1 of Network Rail's network licence. As a consequence, Network Rail applied for our consent under Condition 18, so that it may enter into the alliance and carry out such activities. Network Rail considers that doing so would be part of its transition into Great British Railways, which is expected to complete in 2027.

Reasons for decision

6. We are aware that the objective of Network Rail forming alliances with train operators is not to distort competition in train services through its potential involvement in train operations, but to deliver benefits for the parties involved as well as rail users and taxpayers.
7. We note Network Rail's statement that the proposed alliance would not be a separate legal entity and its confirmation that there would be no transfer of accountability from Network Rail to Southeastern or vice versa. The separation of infrastructure manager and train service operator would be maintained and we have no concerns that the proposed alliance would impact Network Rail's operation of its network.

8. Network Rail is satisfied that its System Operator capacity allocation activities will be separate from the activities of the alliance. The separation of activities will be defined in the Alliance Agreement.

9. We have previously set out our position on alliances, our current policy statement being updated and published in [2020](#). We note that Network Rail would establish a new alliance that is in accordance with the key principles we set out in that policy statement.

10. We note Network Rail's confirmation that it has engaged with relevant stakeholders, and that it will put measures in place to ensure that the alliance does not give rise to any undue discrimination. We consider that doing so would be consistent with the requirements of Condition 20 of its network licence (*Non-discrimination*).

11. We also note that Network Rail has considered its obligations under Condition 16 (*Financial ring-fence*) of its network licence, which restricts Network Rail's engagement on activities that are not Permitted Business, as defined in its network licence. Network Rail anticipates that its activities under the proposed alliance would fall under Permitted Business and we note that the draft Alliance Agreement sets out the expected activities of the two parties, with the activities specified for Network Rail being consistent with Permitted Business activities. If this were not so, or were to change, Network Rail would need to conduct any non-qualifying activity as a *De Minimis* activity, under Condition 16.1(b) of its network licence, otherwise it would need our specific consent to carry out any such activity.

12. We have considered the application and the information we have received from Network Rail, and have decided that, for the purposes of Condition 18 of its network licence, it is appropriate to grant consent to Network Rail entering into the arrangement, as proposed. Network Rail is required to send to us a copy of the South East Alliance Agreement once it is effected.

13. In reaching our decision we have considered our Railways Act 1993 section 4 duties, as appropriate, and have given particular weight to our duty to exercise our functions in a manner which we consider best calculated to "protect the interests of users of railway services".

14. The consent is effective immediately until 31 March 2029, or such longer period as we may specify in a notice given to Network Rail. We may at any time modify or revoke this consent after consulting Network Rail, if it appears to us to be requisite or expedient to do so, having regard to the duties imposed on us by section 4 of the Railways Act.

02/06/2025

X

Les Waters

Head of Licensing

Signed by: S-1-12-1-966673442-1316586399-15867803-3367161311/6cf3732f-04be-44fd-8530-4edcf25f8629

Duly authorised by the Office of Rail and Road



Les Waters
Head of Licensing
Office and Rail and Road
25 Cabot Square
London

(Sent by email)

Network Rail Infrastructure Limited
The Quadrant
Elder Gate
Milton Keynes

Email:
[redacted]

14 May 2025

Dear Les,

Network Licence, Condition 18 (Interest in railway vehicles): South East Alliance

As part of the move towards greater integration between track and train, we intend to enter an Alliance agreement with SE Trains Limited. The aim of this Alliance is to identify and implement ways to reduce net subsidy and deliver for all customers. As an Alliance is not a legal entity, no accountability or formal decision-making responsibility is being transferred to the Alliance or between Network Rail or SE Train Limited. Therefore, there will be no transfer accountability for Network Rail's regulatory obligations but may result in Network Rail employees having an interest in railway vehicles. We therefore request consent from ORR under Licence Condition 18 as set out later in this letter.

Background

The government has set out a vision to deliver a unified and simplified rail system that reduces fragmentation, places train operators under public ownership, improves services for passengers and freight users while delivering better value for money for taxpayers. The

Passenger Railway Services (Public Ownership) Act 2024, is the start of a fundamental structural reform required to achieve the vision. The transfer of Operators into public ownership is an opportunity to integrate track and train through alliancing. The Secretary of State has set out integration as the first of five priorities and subsequently has endorsed an approach and plan for establishing Alliances to enable this. Alliances, with deeper integration between track and train, will accelerate integration benefit realisation while enabling early implementation of elements of GBR design ahead of legislation.

Alliances will not be legal entities. There will be no transfer of accountability between organisations entering Alliance agreements thus maintaining the separation of infrastructure manager and rail service operator. Alliances will create a platform from which integration plans can be developed. This is a similar approach to that taken in the 2012 South West Alliance and in Scotland since 2014.

Proposal

[SE Trains Limited](#) became a wholly owned subsidiary of DfT Operator Limited ("[DfTO](#)"), formerly known as DfT OLR Holdings Limited, in October 2021. The majority of its services operate within Network Rail's Kent route, and comprise around 70% of services in Kent route. These are key factors for the South East being chosen as the first of a number of Alliances.

An Alliance Managing Director (Steve White) has been appointed, with proven expertise in both track and train operations. The Alliance MD will be responsible for making local track and train decisions regarding the operation and maintenance of the infrastructure and train service delivery within a specified geography.

To maintain the requirements of safety certification and relevant statutory duties for both of the organisations the Alliance MD will lead, he will be employed by SE Trains Limited but have a reporting relationship to both the DfTO CEO and Network Rail's Southern Regional Managing Director.

The activities of the Alliance will be set out in the Alliance Agreement (a draft copy of which is attached, and a final version will be provided once signed) and managed by the Alliance MD and joint executive team. All staff working on Alliance matters will remain within the employment of their home organisation. The Alliance Agreement will be capable of termination in accordance with the terms in the Alliance Agreement.

The Alliance will provide a structure in which employees of both organisations will be able to identify efficiencies and opportunities to reduce net industry subsidy. Examples include:

- expanding opportunities for daytime access for maintenance work following a successful trial at six sites on Kent route;
- a joint approach to the management of safety in sidings;
- optimisation of the workbank for major renewals programmes;
- fitment of train borne cameras to help with proactive infrastructure fault detection; and
- expanding opportunities for a 'one team' approach for Leadership at Managed Stations

The Alliance MD will report into an Alliance Board, which will set the direction of the Alliance and be comprised of senior representatives from Network Rail and DfTO. The Board will integrate existing meetings where possible, which means there are no proposed changes to the existing interfaces with Network Rail and DfTO corporate governance frameworks, allowing existing organisational accountabilities to be maintained and assured.

The Alliance Board will make sure the Alliance conforms with the Alliance agreement and the regulatory and statutory obligations of both Network Rail and DfTO, including Network Licence obligations. DfT will be attendees at the Alliance Board; as an independent party and to maintain oversight.

Please note that there are other considerations which are being dealt with outside of this letter; for example, Richard Hines (Chief Inspector of Railways) from ORR has been engaged in discussions regarding safety.

More broadly Shadow GBR and the Secretary of State have endorsed the proposed approach to Alliancing, and we continue to engage with the Department of Transport (Passenger Services directorate) on plans to mobilise the Alliance.

Licence Condition 18 considerations

Licence Condition 18.1 states:

The licence holder shall not hold any direct or indirect interest in the ownership or operation of any railway vehicle in Great Britain, except where:

(a) ORR has consented to the licence holder holding the interest;

(b) the railway vehicle is used wholly or mainly for the Licensed Activities;

or

(c) the railway vehicle forms part of the Royal Train

Licence Condition 18.3 continues:

...the licence holder holds a direct interest in the ownership or operation of a railway vehicle where the licence holder has... the right to manage the affairs of another person who has any such interest in, or operates, any railway vehicle.

Individuals in the alliance will be employed either by Network Rail or Southeastern. Southeastern employees will continue to be responsible for the day-to-day management of rolling stock. However, there is a likelihood that a Network Rail employee (e.g. acting as a Chief Operating Officer reporting into the Alliance Managing Director) could line manage a Southeastern employee (Fleet Director) who manages rolling stock.

LC18 was not drafted with alliances in mind; its main purpose was to prevent vertical integration as stated in [a letter](#) from Rob Plaskitt dated 20 December 2012, “*the key purpose of condition 5 [now condition 18] is to prohibit the network licence holder from entering into arrangements that would constitute vertical integration with passenger train operators*”. In our view, the arrangement does not create a new vertically integrated operating company. The alliance is a contractual arrangement between Network Rail and Southeastern under which we have agreed to work together but remain separate companies.

We therefore request consent from ORR under LC18 to enter into the proposed arrangement to be valid until 31 March 2029.

Other Licence considerations

- ***Licence condition 16 - Financial ring-fence***

LC16 restricts the activities Network Rail can spend its funding on. There is no plan to deviate from current spending plans and we anticipate all of Network Rail's activities will fall under Permitted Business. Should this not be the case, we will either account for the spend under 'De Minimis' or seek consent. Unlike the 2012 Wessex Alliance, there will be no 'risk and reward' arrangement. Furthermore, there will be no change to the way in which we prepare our financial accounts.

- ***Licence Condition 20 - Non-discrimination***

LC20 is a requirement on Network Rail not to unduly discriminate, notably between freight and passenger operators. We intend to put in place measures to make sure there is no undue discrimination, and propose to keep ORR informed of actions to mitigate any risk. In particular, timetabling and capacity allocation will remain with the System Operator function within Network Rail, maintaining compliance with the Railways (Access, Management and Licensing of Railway Undertakings) Regulations.

We treat this obligation not to unduly discriminate very seriously and we are particularly focused on being able to maintain a consistent approach in all our dealings with our passenger and freight operating companies.

We have and will continue to engage with our stakeholders, notably GTR, freight operators and London St Pancras High Speed. Discussions are taking place at managing director and director level with these organisations to share plans as the details evolve, and to demonstrate to them how we will continue to act in accordance with the conditions in our Network Licence (e.g. the importance of segregated activities).

We are also satisfied that capacity allocation activities are separated from the activities of the alliance. While there is a degree of information gathering about capacity requirements within the route, NRIL's capacity allocation activity is largely managed by the System Operator. This separation of activities is defined within the Alliance Agreement.

The role of the Alliance Board will be to hold the alliance to account regarding these points, particularly in relation to the interests of other operators and how the Alliance interacts with them.

Conclusion

The proposed alliance is intended to identify opportunities to reduce net subsidy and deliver benefits to passengers. We note ORR's '[Alliancing: ORR policy statement](#)', published in February 2020, and believe our proposals are in accordance with this statement. We will put in place measures to make sure we continue to meet our regulatory obligations, including not unduly discriminating against operators outside the Alliance.

In order to remain compliant, we request consent under Licence Condition 18.

Yours sincerely,

Head of Regulatory Compliance & Reporting

On behalf of Network Rail Infrastructure Limited