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Executive, Access & Licensing

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Dear Megan and Chris

23rd Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and Freightliner Limited (Freightliner) dated 11 December 2016

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and Freightliner (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision.
2. This application supports the operation of domestic intermodal traffic between Daventry and Grangemouth in Scotland for WH Malcolm Ltd. Freightliner took over this traffic from the incumbent in 2023 and the rights contained in the application are updates to reflect how this traffic currently operates.
3. These directions provide Freightliner certainty for the purposes of planning its business, giving clarity to train planners and a stable train plan for trains of significant value to the economy. This is supportive of the UK's broader decarbonisation strategy and the increasing demand for the reliable movement of containers by rail, as well as taking advantage of Government funding to support this shift.

Background

4. On 24 April 2024, ORR wrote to industry setting out a process for access applications for December 2024, May 2025 and December 2025, given our expectation (as confirmed by Network Rail) that we would receive numerous complex and competing applications across that period. Applications were submitted to ORR for direction as "unsupported" applications, as Network Rail was not able to agree that there was sufficient capacity and therefore submit agreed applications for our approval.

Application

5. The purpose of this supplemental agreement is to amend 6 existing one-hour window firm rights and add 3 new one-hour window firm rights.
6. The 3 new services are currently running under Contingent Rights, originally for the December 2024 timetable as a General Approval in the 18th Supplemental Agreement (SA), and now dated until the end date of the May 2025 timetable in the Freightliner Limited 29th SA submitted in line with the [Interim Approach](#) taken by Network Rail.
7. The rights are to commence on a firm basis upon the date that the supplemental agreement is entered into by the parties and will expire when the contract expires at Principal Change Date 2026.

Industry consultation

8. The initial industry consultation took place from 10 May to 10 June 2024. Industry was then invited to comment on Network Rail's final representations from 4 July to 18 July 2025.
9. In the initial consultation, comments in support or raising no objections or concerns were received from Avanti West Coast. Network Rail's final representations note that *'No concerns were raised relating to any of the headcodes in this application during consultation.'*
10. GWR & Transport for Wales responded to the invitation to comment in July 2025 with support and no further comment, respectively.

Statutory Consultation

11. As required under the Act, on 30 May 2024, we sought Network Rail's representations on the application, and it replied on 28 June 2024. We forwarded these representations to Freightliner on 4 July 2024 and asked for its comments. Freightliner provided comments on 18 July 2024.
12. Freightliner submitted an earlier application, the 17th SA, for the same rights contained within this 23rd application in March 2024. Network Rail noted in its initial representations that *'The 17th SA went through the normal Network Rail internal consultation process.... There were no concerns raised for any of the services contained in the 17th SA during internal consultation'* In October 2024 we wrote to Network Rail to provide an update on whether this case could be expedited as the rights represented how services were running and seemed to be a stable part of the base timetable. It sent updated representations to ORR 4 December 2024 and we forwarded these to Freightliner
13. Following the completion of Network Rail's capacity analysis on the West Coast Mainline (WCML) South area and the other interacting locations associated with this application, namely Birmingham area, it sent its final representations on 27 June 2025. Again, we forwarded these to Freightliner and asked for its comments, which it provided on 23 July 2025.

Network Rail's representations

14. In its initial representations dated 28 June 2024, Network Rail stated that it was unable to support all the rights in the application because it requested new and amended firm rights that pass through 2 of the interacting locations identified by Network Rail as containing competing aspirations and subsequently listed by ORR in its letter of 24 April 2024: *'Considering the ORR's letter, and the volume of applications subsequently received, we require further assessment and analysis of the application and as such cannot provide a final view at this stage.'*
15. Two Access Rights were supported by Network Rail in its initial representations, one new and one amended right, as they do not interact with the geography specified. Freightliner did not choose to split out the application and progress these 2 Rights.
16. In its further representations, received 4th December 2024, Network Rail highlighted several interactions with other applications and told us it *'has since identified, following further analysis, that it could not support the two previously agreed services due to conflicts with other services submitted as a S22A. As such, we are unable to progress this application until further work is completed on the High-Level plan.'* It concluded: *'To ensure consistency across applications (and to avoid any prejudicial decision that could unduly favour one party where aspirations interact), the process outlined in NRs high-level plan of August 2024, continues to be the approach by which we are assessing applications for upcoming timetable periods.'*
17. In its final representations, Network Rail stated that it was now in a position to support the access rights sought in this application with some minor changes to align the arrival windows of 2 rights with the Working Timetable.

ORR review

18. We carried out a full review of the application, taking into account issues that were being considered in relation both to this application and to the competing demands on capacity on the wider network.
19. The rights in this application have been running in the timetable since 2023. Network Rail has assessed the performance of each headcode against the following criteria:
 - Right Time Departures - average above 80% over 13 periods = pass
 - Freight Operating Company on Other Operators delay - less than 5 instances over 13 periods = passand all the headcodes in this application have passed these criteria.
20. Seven of the services included in this application use the WCML South, however they do not operate into or out of London Euston and do not operate on the WCML South fast lines. Our review of the wider capacity and performance information on the WCML, evidence from the applicants and the information we requested from Network Rail leads us to agree with Network Rail's position of supporting these services. In arriving at our conclusions on WCML capacity and performance, we have assured ourselves that Network Rail is taking a fair and non-discriminatory approach to all applications

from public and private sector operators on the WCML South. We are satisfied it is taking a consistent approach.

21. For these reasons, in reaching our decision we have placed weight on reducing or ending the uncertainty of this period, in line with our duty of enabling operators to plan their businesses with a reasonable degree of assurance.
22. Overall we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in Freightliner's 23rd supplemental agreement.

Our duties under section 4 of the Act and our decision

23. We have considered this supplemental agreement, and we have concluded that its approval is consistent with the discharge of our statutory duties under section 4 duties of the Act: in particular, those relating to:

- enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g))
- promoting improvements in railway service performance (section 4(1)(zb))
- protecting the interests of users of railway services (section 4(1)(a))
- promoting the use of the railway network for the carriage of passengers and goods (section 4(1)(b))
- having regard to the funds available to the Secretary of State (section 4(5)(c))

24. We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should approve the application.

Conformed copy of the track access contract

25. 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 Freightliner Limited. ORR's copy should be sent for my attention.

Public register and administration

26. Electronic copies of the directions notice and the supplemental agreement will be placed on ORR's public register (website) and copies of this letter and the supplemental agreement will be placed on the ORR website.

Yours sincerely

Margret Haswell