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Dear Paul and Sue

**3rd Supplemental Agreement to the Track Access Contract between
Network Rail Infrastructure Limited (Network Rail) and First Trenitalia
West Coast Rail Limited (trading as Avanti West Coast (AWC)) dated
1 December 2022**

1. This letter outlines the decision ORR has made on this application under section 22A of the Railways Act 1993 (the Act) to Network Rail and AWC (jointly the parties) and, in due course, we will direct the parties to enter into the above supplemental agreement. This letter explains the reasons for our decision. ORR's determination of this application will ensure service continuity between London Euston and Glasgow Central.

Background

2. 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.

3. This application was originally submitted to us in November 2022 and was planned to commence in December 2023, but the start date was pushed back by AWC and as a result it became part of the complex and competing applications process. It was resubmitted to us as part of that process on 17 May 2024.

Application

4. The purpose of this supplemental agreement is to grant AWC the following rights on a **contingent, time-limited** basis only:
 - Extension of existing 2x additional off-peak weekday and 2x Saturday contingent rights from Euston to Glasgow Central, and the return services for the same.
5. We are not granting the extension of the existing 1x additional off-peak weekday and 1x Saturday contingent rights from Blackpool North to Euston, and the return services for the same, which AWC also requested as part of this application. We will explain our reasons for this and the other elements of our decision later in this letter.
6. The contingent rights which already exist in AWC's contract were granted under the 22nd supplemental agreement to run from the Subsidiary Change Date (SCD) in May 2025. These were granted for one timetable period only, to expire on the Principal Change Date (PCD) in December 2025, and in our decision letter we stated "that there could be no presumption of the continuation of these additional rights beyond PCD 2025".
7. The rights that we are prepared to grant will commence upon the PCD in December 2025 and will expire on the SCD in May 2026. Our usual policy of a strong presumption of the continuation of existing rights will not apply for the rights granted in this application beyond SCD 2026.

Industry consultation

8. The initial industry consultation took place from 22 May to 22 June 2024. Industry was then invited to comment on Network Rail's final representations from 27 June to 11 July 2025.
9. In the initial consultation, comments in support or stating no objection were received from West Midlands Trains, Northern Trains, Transport Focus, DB Cargo and Amey.
10. GB Railfreight and Freightliner both stated that they did not yet have enough information about other potential applications in the area and Network Rail's plans to accommodate them to be able to offer their support, nor about the final details of the West Coast Main Line (WCML) timetable.
11. London TravelWatch (LTW) sought reassurance about any potential performance impact of the services at Euston and Watford Junction, which AWC provided to LTW's apparent satisfaction.

12. Arriva Rail London asked AWC to confirm that the introduction of these services would not impact on its own operations and expressed concern that the timing loads had not been specified during consultation.
13. Wrexham, Shropshire and Midlands Railway (WSMR) commented to the effect that it had not identified any clashes with its own proposals but noted that there appeared to be unused paths in the timetable which it wanted to utilise itself. The WSMR application has since been rejected by ORR.
14. The Virgin Group also commented on the unused paths and pointed out AWC's poor current timetable performance and the electrical power supply constraints on the WCML. Again, Virgin's application has since been rejected by ORR but its comments on timetable performance are relevant to Network Rail's analysis.
15. When industry was invited to comment on Network Rail's final representations, no further comments were received. We have concluded that the lack of response from industry to the most recent opportunity to comment means that there are no outstanding objections to AWC's application.

Statutory Consultation

16. 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 AWC on 3 July 2024 and asked for its comments. AWC provided comments on 22 July 2024.
17. Following the completion of Network Rail's capacity analysis on the WCML, it sent its final representations on 20 June 2025. Again, we forwarded these to AWC and asked for its comments, which it provided on 9 July 2025.

Network Rail's representations

18. In its initial representations dated 30 May 2024, Network Rail stated that it was unable to support the application because it requested rights on the WCML South which was one of the 10 interacting locations identified by Network Rail as containing competing aspirations and subsequently listed by ORR in its letter of 24 April 2024. As a result, there were several other applications which impacted on the WCML. It stated that to support these rights for the duration of the contract could be perceived as unduly discriminating against other operators.
19. In its response, AWC noted Network Rail's position and stated that it remained confident that the services within this application were deliverable with the network capacity available and that it would work collaboratively with industry partners to restore these services.
20. In its final representations, Network Rail stated that it was not supportive of this application. It pointed to its WCML Representations of 7 February and 25 April that stated concerns about capacity, timetable performance and congested infrastructure. On this latter point, the declaration of congested infrastructure in May 2020 still applies

and precludes Network Rail from granting additional firm rights on the WCML South Fast Lines between Camden South Junction and Ledburn Junction. Significantly, it noted that the theoretical capacity of the unsupported additional access rights would utilise firebreaks within the timetable structure and have a significant detriment to performance. Additionally, there would be an impact on passenger flow at Euston station, and some of the proposed services would potentially interact with DfT proposals for HS2 operation.

21. In its response to these representations AWC stated that it believed there to be sufficient capacity to operate the services it applied for and that these services were included within the December 2022 ESG timetable. It pointed towards some performance improvements that it believed it had recently made and that its current fleet of hybrid rolling stock is providing passengers with a better experience. It did not agree with Network Rail's view of capacity and performance and remained convinced that its application could be accommodated. In support of its argument it noted the fact that these rights have been running in its track access contract on a contingent basis since SCD 2025 and that the capacity to accommodate them therefore already existed and was being utilised.

ORR review

22. 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.
23. On 6 May 2020, Network Rail formally declared the WCML South Fast Lines (from London to Leighton Buzzard) as Congested Infrastructure. A declaration of congested infrastructure by Network Rail does not mean that parties cannot apply for access or that ORR cannot grant access. We do, however, consider this a relevant consideration in our assessment of capacity.
24. Network Rail's WCML South Congested Infrastructure Report (November 2020) concluded that no significant additional capacity could be utilised between Camden South and Ledburn Junction without harming performance. This application includes services which would utilise capacity in an area that has either been declared congested or which Network Rail is considering declaring congested.
25. The restructured December 2022 timetable produced an additional hourly path between London Euston and Liverpool in each direction, while also providing for five paths a day between London Euston and Stirling/Preston. However, even without additional rights being allocated, timetable productions have eroded space since ORR's decision to approve rights between London Euston and Stirling for Grand Union Trains Limited (now First Rail Stirling) services in March 2024. Network Rail's position is that nine theoretical paths in each direction remain throughout the day and that these now act as 'firebreak' paths. Firebreak paths are planned gaps or unused time in the timetable used to recover from delays. Network Rail has provided clear evidence that the firebreaks are frequently used.

26. Network Rail's simulation modelling produced for the planned WCML timetable expects that overall performance on WCML will deteriorate once the additional AWC London Euston to Liverpool and First Rail Stirling services are introduced in the timetable period from December 2025. The introduction of the services in these applications, in addition to those already approved by ORR, would trigger a notable impact to network performance through increased knock-on delays. Network Rail concludes that there is very limited spare track capacity during peak periods, with the network already operating close to its limits.
27. 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. 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.
28. However, in the case of this application, we do not agree with all the conclusions that Network Rail has drawn during its analysis. Our reasons for the position we have taken as detailed in paragraphs 4 and 5 of this letter are as follows:
- We agree with Network Rail's decision not to support the extension of the Blackpool North to Euston return services. These are currently operating under contingent rights for one timetable period only, ending at PCD 2025. The service occupies one of the paths identified by Network Rail as critical for managing performance on the WCML South Fast Lines. These rights were granted on the basis that First Rail Stirling services were not running at the time; however, those services are expected to commence during the PCD 2025 timetable period. Therefore, we agree with Network Rail that this is likely to have a negative impact on overall performance delivery, and on this basis, we do not support the request for these rights.
 - We do **not** agree with Network Rail's decision to not support the Euston to Glasgow Central return services. The route between Preston and Glasgow is a two-track railway with significant mixed traffic. Network Rail's representations highlight that performance delivery is likely to be more challenging once the First Rail Stirling services commence operation. Introducing additional services on the north-west section would therefore increase operational risk. However, the First Rail Stirling paths have sufficient separation in the timetable, so we do not anticipate significant interaction with the AWC services. Additionally, these services do not reflect an increase in capacity use on the WCML South, as this capacity is already allocated to Avanti. Based on this analysis, and Network Rail's updated position to offer the weekday paths in the December 2025 timetable (see next paragraph for more details), we consider it appropriate to grant these rights on a time-limited contingent basis. This approach provides an opportunity to assess the combined performance of these services before considering whether to grant longer-term firm rights. We also support applying the same approach to the Saturday rights.

29. AWC recently took an appeal to the Access Disputes Committee relating to the Euston Glasgow services, and its belief that Network Rail had not followed Part D of the Network Code in its decision to not support the application for those services. Following the conclusion of the appeal, ORR understands that Network Rail has advised AWC that capacity does exist within the timetable to accommodate these services and they have been offered back as part of the December 2025 timetable. Network Rail stressed that the existing performance concerns that were outlined within its representation letter for this application were still valid, and Network Rail's position therefore remained unchanged. It also highlighted that the SO services were not part of the dispute taken to Access Dispute Committee, and have not been offered back in the December 2025 timetable. We acknowledge Network Rail's concerns over performance and it is for this reason that we are granting the rights on a contingent, time-limited basis only.
30. Having concluded that we will direct the parties to enter into this supplemental agreement for AWC to be granted rights in the form set out in this letter, we will now work with the parties on the details of the supplemental agreement that we will direct Network Rail to enter into. The parties will need to engage with us at pace to enable this to happen promptly to provide certainty for the December 2025 timetable.

Our duties under section 4 of the Act and our decision

31. We have considered this supplemental agreement, and we have concluded that its direction 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))

Conformed copy of the track access contract

32. 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 AWC. ORR's copy should be sent for my attention.



Public register and administration

33. Electronic copies of this letter, the directions notice and the supplemental agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. 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



Louise Beilby