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Executive, Access & Licensing

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Dear Megan and Chris

26th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and Freightliner Heavy Haul 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. The rights contained within this 26th agreement relate to aggregates services primarily from the Peak District that are already running. In directing these rights, we are providing Freightliner with the certainty to support its existing commercial contracts and for planning its business with a reasonable level of assurance.

Background

3. 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.
4. [DfT wrote to us](#) on 20 June 2025 referring to “the cumulative scale and impacts of abstraction when [ORR] assesses Open Access applications” and asking ORR that this should be “factored into all future decision-making”. To ensure that we were able to

proceed with decision making for relevant public service operators in light of this, we had to clarify the DfT letter before finalising our decisions.

5. As we were already at an advanced stage in the decision-making process for this and many other applications by this point, [we wrote to DfT](#) stating that we intended to proceed with our established approach to access applications for the East Coast Main Line (ECML) in order to support the major timetable change coming up in December 2025 and to avoid risk to that timetable's implementation. As we did not receive a response by Monday 7 July, we have proceeded with decision making in line with our published policy.

Application

6. The purpose of this supplemental agreement is to add 13 new one-hour window firm rights for aggregates traffic.
7. Network Rail has granted 12 of these rights on a contingent basis under its [interim approach](#). These were originally for the December 2024 timetable as a General Approval in the 29th SA and are now dated until the end date of May 2025 timetable through the 32nd SA under General Approval. Freightliner has upheld its application to hold these rights on a firm basis to the end of its contract.
8. 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.
9. Since the original submission of this application 5 rights have been withdrawn by Freightliner due to changes in flows since the original application.

Industry consultation

10. The initial industry consultation took place from 24 May 2024 to 24 June 2024. Industry was then invited to comment on Network Rail's final representations from 8 July to 18 July 2025.
11. In the initial consultation, comments in support or raising no objections or concerns were received from First Greater Western Limited (GWR) and West Yorkshire Combined Authority.
12. During the opportunity to comment on Network Rail's final representations in July this year London North Eastern Railway Ltd (LNER) raised an objection to this and other applications, related to the 5 future rights each way between London and Leeds that it aspires to introduce. On the 10th of July, following the ECML Spending Review, the Department for Transport (DfT) confirmed that there was no funding available within the settlement to continue development over the forthcoming four years for the project that enables the 5 future rights between London and Leeds each day. That being the case, we do not believe the rights contained in this supplemental agreement will impact LNER's 5 future rights for the foreseeable future.

Statutory Consultation

13. 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.
14. Network Rail sent its final representations on 4 July 2025. Again, we forwarded these to Freightliner and asked for its comments, which it provided on 23 July 2025.

Network Rail's representations

15. In its initial representations dated 28 June 2024, Network Rail stated that it was unable to support the application because the rights pass through interacting locations identified by Network Rail as containing competing aspirations and subsequently listed by ORR in its letter of 24 April 2024.
16. In its final representations Network Rail was partially supportive requiring amendments to 9 rights, which Freightliner agreed to. The 5 rights that Network Rail did not support were subsequently withdrawn by Freightliner due to changes in requirements since the original application.
17. Network Rail noted that there are no power supply concerns as all rights sought are for train services which operate with diesel locomotives. All the services of the rights supported by Network Rail in this application perform well and it stated no further analysis was required.

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 Network Rail Representations did not highlight any specific issues with rights which interact with the ECML. As these rights are already running with good performance and we are satisfied with Network Rail's assessment.
20. Since 2019, Network Rail has offered operators only contingent or time-limited rights, providing limited certainty for businesses. The ECML ESG was set up to transparently develop a timetable which considered the service specifications and aspirations of timetable participants for implementation. This process was cross-industry, involving public service, freight and open access operators.
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. The 5 unsupported rights in the original application presented conflicts against some other applications, however Freightliner has since withdrawn those.

23. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in Freightliner's 26th supplemental agreement.

Our duties under section 4 of the Act and our decision

24. 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))

25. 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

26. 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 Heavy Haul Limited. ORR's copy should be sent for my attention.

Public register and administration

27. 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