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Executive, Access & Licensing

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Dear Megan and Chris

24th 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 24th relate to Mendip Rail services between the South West and terminals in London and the South East. This is the largest single bulk haulage contract in the UK and ORR's approval of this application provides Freightliner with certainty to plan its business and contributes to fully realising the benefits of the Mendips recast exercise carried out by Network Rail, Mendip Rail and Freightliner (for the December 2023 timetable) to create better spacing of schedules, workable arrivals and departures at quarries, improved train planning rules and ensuring capacity is efficiently utilised to meet customer needs, all of which significantly improved performance of these service.

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 recast timetable was formalised as part of Freightliner’s 18th Supplemental Agreement, the purpose of this 24th application is to further amend some of those rights to reflect additional work that was conducted and represents how the services are currently running in the working timetable. The application is for 15 new one-hour window firm rights, 32 amendments to existing one-hour window firm rights and 2 relinquishments.
7. To provide a level of certainty for the 15 new access rights, Network Rail has granted these on a contingent basis under its [interim approach](#) until the end of the May 2025 timetable. The rights were granted as part of the agreed 29th supplemental agreement. 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 at Principal Change Date 2026.

Industry consultation

9. 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 13 May to 27 May 2025.
10. In the initial consultation, comments in support or raising no objections or concerns were received from Cross Country, First Greater Western Limited (GWR) and Avanti West Coast (AWC).
11. MTR Elizabeth Line (MTREL – operator of the Elizabeth Line at the time of consultation now GTS) raised concerns regarding timing loads of a number of trains, and the associated slower maximum speeds, asking if there was a risk to performance or

capacity. Freightliner responded directly, closing out the concerns and garnering MTREL's support.

12. During the opportunity to comment on Network Rail's final representations in May this year, MTREL (GTS) restated its concerns regarding one right that retains the slower timing load characteristics, 7L43 Hanwell Bridge to Bow Depot, stating that MTREL (GTS) understood wagons of this type '*should no longer be present in the WTT*'.
13. In Freightliner's May 2024 response to MTREL (GTS) it stated '*There is a medium term aspiration to migrate remaining class 7 trains into class 6 timing loads once the Mendip Rail wagon fleet renewal program has been completed....Once this fleet replacement is completed, FLHH will be removing class 7 paths from the WTT and updating Access Rights accordingly.*' Freightliner has confirmed to us that it is currently working through all class 7 schedules and converting them to class 6. This conversion process will be undertaken as separate supplemental agreements in the future once this current 24th application has been resolved, in the form it was originally consulted, to avoid confusion. We are satisfied with this reasoning.

Statutory Consultation

14. 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.
15. In November 2024 we asked Network Rail some clarification questions as the Firm Rights requested as part of the application reflected train slots already running in the working timetable as train operator variation requests (TOVRs) and we therefor wanted to understand what additional analysis it considered was required in order to expedite this application. It sent updated representations to ORR 19 December 2024 and we forwarded these to Freightliner.
16. Network Rail sent its final representations on 9 May 2025. Again, we forwarded these to Freightliner and asked for its comments, which it provided on 29 May 2025.

Network Rail's representations

17. 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.
18. In response to our clarification questions in November 2024, Network Rail provided updated representations noting that it had '*undertaken analysis to understand whether any of the requested Rights could be progressed as a Section 22 application for Firm Rights to the end of the contract.*' This analysis revealed a number of interactions between other applications as well as at the 2 interacting locations of Oxford and WCML South. Network Rail also identified 2 new firm rights and amendments to 9 existing firm rights that it was able to support at the time as a Section 22 application. Freightliner has not progressed these in the interim and so the rights remain part of this application.

19. Regarding the remaining rights Network Rail 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.’*
20. In its final representations Network Rail was broadly supportive requiring amendments to 2 rights, which Freightliner agreed to, but only offered a 24 hour window for 6B51 [Weekdays] which Freightliner could not agree to. Following additional work, Network Rail has since amended its support for this right to a one-hour window firm right.
21. Four services do not meet Network Rail performance criteria but are supported with mitigation plans in place. The representations also note that nine of the services use West Coast Mainline (WCML) South, however do not not operate into or out of London Euston or operate on the WCML South fast lines and four services pass through Oxford station, but these are not additional services and have been running for some years.

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. 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 = pass

Four of the services, 6L42 [Weekdays] 6M52 [Weekdays] 6C48 [Weekdays] and 6A61 [Weekdays], have not met the criteria but are supported by Network Rail with ‘robust mitigation plans in place’. The performance improvement plan for 6M52 [Weekdays] appears to be a reasonable approach to improving Right Time departure of the service, however we asked for more detail on the mitigation plans in place for the other 3 Rights. We are satisfied with the additional information provided by Network Rail and consider it to provide a reasonable level of assurance.

24. Nine of the services 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. 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
25. 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.

26. Some rights in this application were identified as conflicts against rights in the Freightliner Heavy Haul LTD 25th and 27th applications. The conflicts were against rights not supported by Network Rail that Freightliner have since withdrawn as they are no longer required. Although there are two potential interactions with CrossCountry rights, related to their 38th application, Network Rail noted that *'the services aligned to the rights do not currently directly interact however do operate within close proximity.'* As the Rights contained within this application have been running for a number of years and Cross Country has provided its support for this application during the industry consultation in 2024, we consider there is minimal risk in directing this application.
27. Overall we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in Freightliner's 24th supplemental agreement.

Our duties under section 4 of the Act and our decision

28. 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))
29. 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

30. 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

31. 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