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**Regulatory Policy Manager**

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Dear Megan and Chris

**25th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and Freightliner Limited 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. ORR's approval of this application contributes to supporting significant ongoing investment in equipment, staff and infrastructure from both Freightliner and its customers. The train paths in this supplemental agreement are for intermodal traffic between deep-sea ports and inland intermodal terminals and reflect Freightliner's current commercial contracts. These directions provide Freightliner certainty for the purposes of planning its business and its ability to deliver further benefits through future investment.

**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, where 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. On 20 May 2024, Freightliner submitted a S22A application seeking to amend 131 1-hour window firm rights, add 2 additional 1-hour window firm rights and relinquish 2 1-hour window firm rights. The application seeks to update existing rights with a new electric timing load developed by Freightliner and Network Rail, which more accurately reflects the performance and capability of Freightliner’s electric fleet. Freightliner highlight that this electric fleet improves capacity utilisation by taking advantage of faster acceleration and better tractive effort available to maintain higher speeds.
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 2030.
8. Freightliner and Network Rail have produced an updated Schedule 5 rights table to reflect the final position. We have assessed these amendments and are content they are consistent with ORR’s amendments policy.

### **Industry consultation**

9. The industry consultation ran from 24 May – 24 June 2024 with Avanti West Coast, GTS (MTR Elizabeth Line) and CrossCountry responding with concerns.

#### *Avanti West Coast*

10. Avanti West Coast wanted to understand how the acceleration profile of the timing load proposed in Freightliner’s 25<sup>th</sup> SA would compare to what is currently in use. Freightliner responded that the proposed changes do not necessarily imply an increase in power usage, adding that the trains have already been considered as part of power modelling and so do not introduce any new demand. Freightliner claimed that they improve performance, will support more efficient network usage and this will enhance capacity both for future passenger and freight growth.

#### *GTS (MTR Elizabeth Line)*

11. GTS raised concerns about the train crew relief arrangements at Reading and enquired about the duration of station dwell times to ensure they do not block any points or overlaps.
12. Freightliner responded that no train crew stops are proposed and highlighted that Freightliner is financially incentivised to consistently monitor that its train drivers are on time and that changes are swift and within the 2 minutes allowed.

#### *CrossCountry*

13. CrossCountry responded that the application does not provide sufficient information for CrossCountry to understand the likelihood of any impact on its services or to consider what capacity may be available. CrossCountry added that without further information on the detail of services, it is unable to assess the impact of longer and heavier timing loads.

#### *Opportunity for comment*

14. On 10 April 2025, GTS responded to the Tranche 1 Opportunity for comment and noted that in the provided WCML freight tracker, 4L43 (Freightliner 25<sup>th</sup>) was not offered in the May 2025 timetable, and asked Network Rail to confirm whether a viable path has been identified and, if it is routed via Forest Gate, that it will not negatively impact Elizabeth Line services. This access right was not supported by Network Rail in its final representations, which effectively closes out this concern.
15. The Opportunity for comment for this application ran from 6 August – 20 August 2025.
16. On 12 August 2025, GTS responded that with just the information provided, it is difficult to establish which trains would potentially impact GTS services and that further information (inc. TRUST print-outs) would be needed to provide GTS the information it needs to conduct a robust review and either support or object the application. GTS also provided a list of trains that are of immediate concern.
17. Network Rail responded that all the rights are listed in an Annex so can be checked by operators, and that TRUST is available to all operators to pull out the relevant information.
18. On 1 September 2025, GTS responded that it does not have the resources to interrogate TRUST and identify the status of individual freight trains, and it is not reasonable for Network Rail to expect operators to do so. GTS also believe that their applications, even for minor changes, have come under intense scrutiny from Network Rail but the same does not seem to apply with some freight applications.
19. On 10 September 2025, GTS added that unless Network Rail provide the requested information then it will object the applications on the basis of inadequate information.
20. On 2 October 2025, following receipt of some further relevant information, GTS asked Network Rail to investigate conflicts/tight margins (inc. performance modelling) on a list of services. GTS confirmed that at this point, it is still unable to support the application.



21. On 15 October 2025, Network Rail advised GTS that performance modelling is not required as the services are already running in the timetable.
22. On 21 October 2025, GTS confirmed that it does not support the application, explaining that it has identified several tight margins at Forest Gate Junction and a potential conflict and that it needs a clearer document to be prepared for its consideration.
23. ORR notes GTS' comments on this application and have been considered as part of our review. However, it is also important that ORR moves to take a decision on this application so that we can reach a decision in advance of PCD 2025. This is based on the information we have received to date from Network Rail, Freightliner and stakeholders and we do not consider the further information requested by GTS is required as part of this process.

### **Statutory Consultation**

24. 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 6 July 2024 and asked for its comments. Freightliner responded that the increase to trailing weights and train lengths included in the access rights of this application form a key part of the delivery of a more efficient freight operation, allowing best use to be made of existing capacity by maximising the use of each path.
25. An additional consultation period ran from 28 August – 11 September 2025 wherein Freightliner was asked to respond to Network Rail's final representations.
26. In its response, Freightliner confirmed that it was content to accept the changes proposed by Network Rail to the Schedule 5 Rights Table i.e. to accept the access rights that Network Rail supports.

### **Network Rail's representations**

#### *Initial representations*

- In its initial representations dated 28 June 2024, Network Rail stated that although it was aware that Freightliner would be applying for the proposed access rights, it had not yet had an opportunity to fully consider its position on the application and whether it can support the access rights. Network Rail instead performed an initial assessment of the Form F and associated documents submitted.
- Network Rail highlighted that Freightliner did not supply F3 prints and/or PEX files to support the aspirational timing load and length uplift sought for the purposes of Network Rail's capacity and performance assessments. Network Rail encouraged Freightliner to supply these and committed to work with Freightliner to understand the rights being proposed and the information needed for Capacity Planning's assessment.
- Network Rail said that following ORR's letter of 24 April 2024, Freightliner submitted this application ahead of the usual timescales for aspirational traffic and as a result, some of the early development work and due diligence that Network Rail would

have completed with the operator ahead of submission had not been completed. As a result, a number of elements of the application were not fully mature, and further assessments may be required as the aspiration develops.

- The application also seeks new and amended rights on the East Coast Main Line (ECML) so Network Rail said it was only in a position to assess the application post a decision on the ECML ESG implementation and an ECML Taskforce recommendation as to what timetable the ECML ESG will be implementing.

### *Final representations*

- In its final representations dated 27 August 2025, Network Rail confirmed its support for 51 access rights, partial support for 29 access rights (with mitigations and/or special terms in place) and non-support for 60 access rights.
- Where Network Rail supports Firm rights with 1-hour windows, it is on the basis that they have concluded their consideration of other applications. Network Rail confirmed that the rights it supports have all been included in the proposed December 2025 ECML timetable.
- The access rights that Network Rail partially supports have been reflected in the amended Rights Table provided on 2 December 2025.
- Network Rail is not supportive of some of the amendments, either because they have different characteristics as to what was previously requested (e.g. different timing loads) or because the amendments are associated with paths that are no longer in the Working Timetable – for those, Network Rail will seek to remove those unused access rights through Part J.

### *Performance*

27. All aspirations in this application are amendments to existing rights and so, Network Rail states that there would be little impact on available capacity for other operators should these amendments be directed.

28. Network Rail assessed the performance of each headcode against the following criteria:

- a. Right Time Departures - average above 80% over 13 periods = pass
- b. FOC on Other Operators delay - less than 5 instances over 13 periods = pass

29. Although most of the services passed the above performance criteria, and are supported by Network Rail, there are some which did not meet the criteria and therefore Network Rail only support with robust mitigation plans in place. These services are 5H54, 4L92, 4L88, 4L85. Network Rail highlighted that as all these services hold existing firm rights, even if the amendments were not supported by Network Rail, Freightliner would still have rights to run the traffic and so Network Rail believes that the performance impact would remain.

30. Network Rail has concerns over the sale of access rights across Sandy Lane, Yarnton Lane and Tackley Level Crossing however is able to support this application as the



rights requested are amendments to existing firm rights so there isn't an uplift in quantum over the level crossings.

## **ORR review**

31. Although Network Rail identified several applications that could present a conflict against the rights within Freightliner's 25<sup>th</sup> SA, our review has found that these conflicts pose minimal risk. The applications that Network Rail identified are:
- Colas Rail 10<sup>th</sup> SA – the access right, which conflicts with the Colas 10<sup>th</sup> SA, is not supported by Network Rail
  - Freightliner Heavy Haul 28<sup>th</sup> SA – this application has been withdrawn
  - Freightliner 26<sup>th</sup> SA - this application was substantially reduced to just 3 access rights, which have all been offered in the December 2025 by Network Rail.
  - East Coast Trains (Lumo NorthWest) – ORR rejected this application
32. ORR's Operations specialists have reviewed the application and are satisfied that Network Rail has followed a fair process that was in line with other CCA applications submitted.
33. With regards to Avanti West Coast's concerns around power provision, we are satisfied that Network Rail has sufficiently responded to the issue and that Network Rail remains confident in its ability to support these services and see no reason to further challenge Network Rail's position on power provision.
34. With regards to Network Rail's assessment on timetable/network performance, we note that the majority of services supported by Network Rail are performing at an acceptable level, as measured against the criteria outlined in Network Rail's final representations.

## *Conclusion*

35. 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.
36. 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.
37. As referred to in the Network Rail representations, in late 2024, the Secretary of State and Department for Transport (DfT) accepted the recommendation to start the timetable in December 2025. This follows investment by the DfT in rolling stock and infrastructure to enable faster and more frequent services on the ECML. We consider directing the rights in this application supports our duty to have regard to guidance from



the Secretary of State in terms of the value for money from public investment as well as the funds available to the Secretary of State.

38. Network Rail expects that implementing the ECML ESG timetable will lead to a limited reduction in train service punctuality. Network Rail is assuring us of the operational and timetable alterations it is leading with industry, to mitigate this reduction. It expects to be able to identify and implement further improvements following the introduction of the timetable.
39. In weighing all of our duties, reviewing the capacity and performance on the ECML and wider network, we consider directing rights which can be used to implement a longer-term baseline timetable, in this case the ECML ESG, is preferable to the alternative. Furthermore, we will continue to hold Network Rail to account to ensure the proposed timetable delivers the expected benefits to passengers, funders and freight operators.
40. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as included in the updated Rights Table provided by Network Rail on 2 December 2025.

#### **Our duties under section 4 of the Act and our decision**

41. 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)(b))
- 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))

42. 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**

43. 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 DB Cargo (UK) Limited. ORR's copy should be sent for my attention.



**Public register and administration**

44. 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

**Ryan Holt**

