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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 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 in this application support growth in intermodal services between deep sea ports and inland terminals. These directions provide Freightliner with a reasonable degree of assurance for the purposes of planning its business, giving clarity to train planners and a stable train plan. This is supportive of the UK's broader decarbonisation strategy and the growth of freight moved by rail.

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.

Application

4. The original application was for 30 new 1-hour window firm access rights to support anticipated growth in intermodal services. Following receipt of Network Rail's final



representations, Freightliner advised it was no longer applying for most of the rights in the original application and now only requires 3 of the originally requested rights.

5. The right from Cardiff Wentloog to Tilbury is a continuation of a service that departs from Barry Docks. Freightliner already has a firm right for the service between Barry Docks and Wentloog.
6. The Doncaster to Mossend/Millerhill Yard return rights support new traffic which Freightliner has been working with its customer and Network Rail to develop. This has involved work on understanding the capability of the network for the operation of modified containers on low platform wagons and developing feasible options for terminal operations. The services are due to commence in December 2025.
7. The rights are to commence on a contingent basis for one timetable period from the start of the December 2025 Timetable.

Industry consultation

8. The initial industry consultation took place from 24 May to 24 June 2024. Details of the aspirational rights were redacted from external publication due to commercial sensitivity at the time, so industry was not able to comment meaningfully on the original application. We invited industry to comment on the updated, unredacted rights table between 17 - 26 November 2025. We received 4 responses.
9. GTS and GWR responded with support and no objection, respectively. Avanti West Coast requested additional information on the Cardiff to Tilbury right which was provided and LNER responded that due to Network Rail's largely redacted final representations it is *'unable to determine if the concerns we raised about capacity and performance have been addressed. Due to this, LNER continues to object to the application.'* As the rights have not yet commenced there is no performance data available however, as detailed later in this letter, we have received assurance from Network Rail that there is adequate capacity for these services to run, at least for the December 2025 timetable.

Statutory Consultation

10. 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 and it provided comments on 18 July 2024.
11. Following the completion of Network Rail's analysis it sent its final representations on 11 April 2025. Again, we forwarded these to Freightliner and asked for its comments, which it provided on 19 May 2025.
12. Following a number of developments in this case over the intervening months we requested updated representations from Network Rail on 7th October and again on 29th October 2025. Network Rail has not provided updated representations and due to timing it has advised this will not be possible in advance of the December timetable change as *'We do not have Routes/Regions approval at this stage due to timescales,*



and a full internal consultation and SoAR Panel review would be required for proper assessment.'

Network Rail's representations

13. In its final representations, received 11 April 2025, Network Rail did not support the application. It noted that the majority of the 30 rights contained in the original application pass at least one of the locations listed by ORR. It also stated that *'These services would be above the proposed ECML December 2025 timetable, unless ORR decided to direct against the proposed TT, and therefore would increase the risk to performance and likely result in further detriment.'*
14. It noted that as part of its analysis it had contacted Freightliner to understand whether these aspirations were all still required, but no response was received. In its conclusion it notes *'Given that these trains have not been bid into the May 2025 nor December 2025 Working Timetables over any infrastructure, and considering the number of conflicts identified, Network Rail is not supportive of this application at the current time, as we do not believe it is an appropriate use of capacity.'*
15. Freightliner responded 19 May 2025 noting that Network Rail's statement that access proposals had not been submitted was *'fundamentally untrue – Freightliner submitted access proposals for some of the Rights included in this application as part of PDNS submissions at D-40.'* It provided details of 3 rights that it had bid for and advised *'having considered ongoing business development, Freightliner are in a position where all other Firm Rights applied for in this application can now be withdrawn.'* Network Rail subsequently offered paths corresponding to the 3 applied for rights in the December 2025 timetable.
16. The 3 rights have been amended since the original application and Freightliner acknowledge this: *'the proposed rights do fall outside the originally applied for windows but this is due to the structure of the ECML Dec 25 WTT not having been finalised at the point we had to submit the application, and thus the available capacity not being understood.'*
17. When we asked Network Rail to provide updated representations on the 3 remaining rights it responded that its position of non-support was unchanged and that it considered the amended rights to be out with the scope of those mentioned in ORR's letter of [1st November 2024](#) *'The offered WTT paths are sufficiently different in terms of origin and/or timing windows compared to what was in the initial application. The differences mean what we originally consulted both internally and to industry is significantly different to reality.'*
18. Following internal discussion and several exchanges with Network Rail and Freightliner, we are of the view that the original application, the bid for and offered working timetable paths and the rights contained in the updated application are sufficiently similar that they fall within the spirit of amendments mentioned in ORR's letter of [1st November 2024](#). On 29 October we asked Network Rail to provide updated representations on this basis. Network Rail replied *'Our position on the Freightliner Limited 26th SA remains unchanged. We do not have Routes/Regions approval at this*

stage due to timescales, and a full internal consultation and SoAR Panel review would be required for proper assessment. This process would likely delay any Rights being put in place in time for the December 2025 timetable.'

ORR review

19. We carried out a full review of the application with the information we had available, 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.
20. **4L53 Cardiff Wentloog to Tilbury 2:** This train does not pass through any of the interacting locations referenced in our April 2024 letter. However, it does traverse parts of the network where we anticipate future growth in both passenger and freight traffic.
21. **4S31 Doncaster to Millerhill Yard and 4E31 Mossend to Doncaster:** Both interact along the East Coast Mainline (ECML) and neither of these services were included in the ECML Event Steering Group (ESG) Timetable. As the services have not yet commenced there is no performance data available.
22. The absence of final representations detailing supporting analysis or modelling from Network Rail makes it difficult to confidently assess the application ahead of the December timetable change, despite the knowledge for some time that the 3 rights in question have been offered paths in the December 2025 working timetable.
23. As part of our application assessment and our assurance of the timetable delivery we contacted Network Rail's Timetable Production Team and asked it to confirm that the 3 rights have been offered as the team is comfortable with the capacity and performance implications. The response was *'All three of the listed trains have been offered as part of the December 2025 New Working Timetable and all the necessary validation and other checks have been undertaken. From a Timetable Production point of view we have no further changes or queries in play in connection with these trains.'*
24. While we do not consider this sufficient evidence or analysis to direct the application as Firm rights at this time, we are of the view that the evidence we have seen is adequate for us to direct one-hour window Contingent Rights for these services for the December 2025 timetable. This will provide Freightliner with a reasonable degree of assurance to plan its business and a contractual right to run the services from December. We understand that an application relating to these rights is being prepared by Freightliner and Network Rail with a view to converting these rights to firm for the May 2026 timetable, should the required analysis and modelling support this.
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.

Our duties under section 4 of the Act and our decision

26. 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))

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

Conformed copy of the track access contract

28. 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

29. 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