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Dear Michelle and Paul

38th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and XC Trains Limited (trading as CrossCountry) dated 8 August 2017

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and CrossCountry (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision. ORR's approval of this application will ensure continuity of service for passengers using CrossCountry's routes via Birmingham New Street and will give the train operator certainty for the purposes of planning its business. It also supports CrossCountry's ongoing efforts to reintroduce its full complement of services post-pandemic.

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 as a section 17 (S17) on 25 January 2024, as it included a track access contract extension plus several amendments for the Principal Change Date (PCD) in December 2024 which Network Rail was not prepared to support. As some of these amendments coincided with the locations identified in our letter of 24 April 2024, the application was subsequently included in the process



outlined above. CrossCountry eventually agreed to split the contract extension into a separate application for PCD 2024 (the 30th supplemental agreement) and the remainder of the disputed application became this section 22A (S22A) 38th supplemental agreement in October 2024.

Application

4. The purpose of this supplemental agreement is a number of uplifts to CrossCountry's existing services. This mostly involves additional rights on top of services between: Paignton and Bristol Temple Meads; Southampton and Reading; Stansted and Cambridge; and Birmingham New Street and a variety of other locations such as Stansted, Cambridge, Reading, Bristol Temple Meads, Manchester, Derby, Newcastle, and York. There is also a small number of new services from York to Birmingham New Street, and Birmingham New Street to Manchester Piccadilly.
5. Network Rail proposed to grant CrossCountry the rights sought in this application for one timetable period only on a contingent basis with no presumption of the continuation of these additional rights beyond the Subsidiary Change Date (SCD) in May 2025. To maintain service continuity, the rights were granted on this basis as part of the agreed section 22 36th, 37th and 41st supplemental agreements, but CrossCountry has upheld its application to hold them on a firm basis to the end of its contract.
6. The amendments in this application will be effective on a **contingent** basis upon PCD 2025 and will expire upon PCD 2026. This is excepting a single weekday right from Southampton Central to Reading, which is granted on a firm basis to the expiry date or earlier termination of CrossCountry's track access contract, which is currently PCD 2027.

Industry consultation

7. The initial industry consultation took place from 26 January to 26 February 2024, noting that the application at that time was a S17 and included a wider range of rights across CrossCountry's operated network, and a contract extension. All of the rights within the 38th supplemental agreement were included in this application so re-consultation was not required subsequently when it became a S22A.
8. Industry was then invited to comment on Network Rail's final representations from 17 to 21 October 2025.
9. In the initial consultation, a comment in support or raising no objections or concerns was received from Transport Focus.
10. Also in the initial consultation, Chiltern, East Midlands Railway, Great Western Railway, Freightliner, Grand Union Trains, Northern, West Yorkshire Combined Authority and London TravelWatch all raised various concerns about performance modelling and the interaction of the proposed services with their own. CrossCountry responded to these queries and concerns at the time. However, it has now been more than 18 months since these were raised and most of those who had objections have now secured their rights for PCD 2025, meaning that their early queries are largely no longer applicable.

11. Further, when industry was invited to comment on Network Rail's final representations, no further comments or queries were received. We are therefore proceeding with our determination on the basis that no particular concerns are still outstanding.

Statutory Consultation

12. As required under the Act, we sought Network Rail's representations on the S17 application, and it replied on 16 February 2024. We forwarded these representations to CrossCountry and asked for its comments, which it provided on 11 March 2024.

13. Network Rail provided representations on the subsequent S22A application on 13 November 2024. These were forwarded to CrossCountry for its response, which it provided on 27 January 2025.

14. Following the completion of Network Rail's capacity analysis on the West Coast Main Line (WCML) and the other interacting locations associated with this application, namely ECML: King's Cross to Edinburgh and Leeds, Birmingham, Birmingham-Derby, Derby-Sheffield, Oxford, and Gloucester, it sent its final representations on 3 October 2025. Again, we forwarded these to CrossCountry and asked for its comments, which it provided on 17 October.

Network Rail's representations

15. In its initial representations for the S22A dated 13 November 2024, Network Rail stated that it was unable to support the application because it requested firm rights at WCML, ECML: King's Cross to Edinburgh and Leeds, Birmingham, Birmingham-Derby, Derby-Sheffield, Oxford, and Gloucester, all of which were included in the list of 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 are several other applications which impact on these locations. It stated that to support these rights for the duration of the contract could be perceived as unduly discriminating against other operators.

16. CrossCountry responded to the effect that it would continue to work with Network Rail to find a way forward with the rights it had requested and pointed out that it had submitted its application in plenty of time for Network Rail to consider its requirements outside of the competing applications process.

17. In its final representations, Network Rail stated that it was now partially supportive of the amendments requested in the application. It supported only one of the firm rights requested, which was the 1 x weekday right from Southampton Central to Reading. Other than this, it only supported those rights where CrossCountry's requested quantum was in line with the services within the timetable. Anything above this level was rejected. Additionally, with the exception of the Southampton to Reading right, those rights Network Rail was prepared to support were on a contingent basis only for 12 months until PCD 2026, due to performance concerns in the area.

18. There were also some instances where CrossCountry had proposed to relinquish rights that Network Rail believed it needed to retain in order to operate the timetable, and in these cases it did not support the relinquishment.



19. CrossCountry was broadly in agreement with Network Rail's position, although disappointed that only contingent, time-limited rights were being offered. It also argued that the length of time Network Rail had taken to provide its representations had put CrossCountry at a disadvantage during this process.
20. There are also some instances where CrossCountry did not apply for sufficient rights to operate its services in the upcoming timetable. These additional rights are contained in the upcoming 44th supplemental agreement for PCD 2025.

ORR review

21. 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.
22. Access rights are approved or directed on a quantum basis. It is for Network Rail to produce a robust timetable to accommodate them. This application includes services which Network Rail has included in the ECML ESG timetable for December 2025.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.

28. Overall, we concurred with Network Rail's assessment that there is sufficient network capacity to accommodate the majority of these services. However, there are some areas of concern, particularly around Birmingham New Street and capacity concerns in the Bristol area with respect to future aspirations.
29. While we support Network Rail's proposed approach, we would also expect it to allocate sufficient attention and support at both route and regional level to effectively drive performance improvements in this area, rather than simply limiting the rights that operators such as CrossCountry are granted.
30. We concluded that we would direct the parties to enter into this supplemental agreement on the basis of those rights that Network Rail is prepared to support, on a contingent basis to PCD 2026, with the exception of a single firm right between Southampton Central and Reading which is to the end of CrossCountry's contract.

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))

32. We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should direct the parties to enter into the application in the form set out in this letter and accompanying directions notice.

Conformed copy of the track access contract

33. 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 CrossCountry. ORR's copy should be sent for my attention.

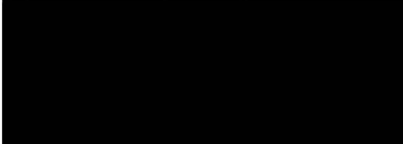
Public register and administration

34. 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