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Dear Akaash and Sue

36th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and First Trenitalia West Coast Rail Limited (trading as Avanti West Coast (AWC)) dated 1 December 2022

Today, we have decided that we will direct Network Rail and AWC to enter into the 36th supplemental agreement. This application converts contingent rights which AWC already holds to firm rights for services between Liverpool Lime Street and London Euston. All the rights concerned relate to services already running in the timetable and which are expected to continue operating until at least the expiry of Avanti's track access contract in 2030. This letter explains in more detail the reasons for our decision made under section 22A of the Railways Act 1993 (the Act).

Application

In its S22A application, submitted to ORR on 31 March 2026, AWC applied to convert to firm a total of 17 weekday, 22 Saturday and 9 Sunday contingent rights that it already holds between Liverpool Lime Street and London Euston.

The amendments were requested from the Subsidiary Change Date (SCD) in May 2026, but the application and its associated evidence was not submitted in sufficient time for ORR to make a determination before that date.

Industry consultation

Network Rail undertook the usual industry consultation from 11 March to 13 April 2026. Comments in support or stating no objection were received from Great Western Railway, CrossCountry, London TravelWatch and Transport Focus.

Wrexham, Shropshire & Midlands Railway (WSMR) objected to the proposals, and particularly argued that its own proposals should be accommodated instead. WSMR objected on grounds of capacity, performance and power supply, and argued that decisions should be made on the basis of the best use of capacity in a broader social and economic sense. WSMR stated that AWC's proposals should not be "priority" by Network Rail.

GB Railfreight stated that a clearer articulation of freight impacts was needed before it could form a view.

Statutory Consultation

As required under the Act, on 31 March, we sought Network Rail's representations on the application, and it replied on 22 April. We forwarded these representations to AWC on 23 April and asked for its comments, which AWC provided on 7 May.

Network Rail's representations

Network Rail noted that the existing contingent rights for these services were granted under AWC's 2nd supplemental agreement in 2022. This was itself a S22A application that Network Rail did not support, and ORR subsequently directed the parties to enter into the agreement with the rights being granted on a contingent basis, rather than the firm basis for which AWC had applied.

Network Rail did not support the granting of firm rights at the time of the 2022 application due to the issue of platform availability at Euston and the lack of traction electricity capacity at Bushey. In Network Rail's view, these reasons for its non-support remain relevant to this new 36th supplemental agreement, and there has since been a further Declaration of Congested Infrastructure between Crewe and Weaver Junction, which Network Rail cites as an additional factor. Network Rail noted that there was already a Declaration of Congested Infrastructure on the West Coast Main Line (WCML) South fast lines between Camden South Junction and Ledburn Junction, and that AWC's aspiring rights would use this infrastructure.

With regard to the power supply issue, Network Rail stated that in 2025 it had undertaken an updated power supply modelling exercise to assess the impact of accommodating all outstanding access proposals for additional electric services on the network's traction power supply capability. It argued that the introduction of new services using electric rolling stock could lead to excessive demand on the overhead line power supply system, and that planned power supply upgrades are not expected to be completed until 2031 at the earliest. Network Rail stated that it therefore could not support additional rights for electric services in the affected area until these upgrades are completed, and providing firm access rights to AWC poses unmitigated risks related to performance of the infrastructure.

Network Rail also stated that there were several other outstanding aspirations from open access operators to operate services on this infrastructure whose applications have not yet been decided by ORR, including from Wrexham, Shropshire and Midlands Railway (WSMR), First Rail Stirling's (Lumo) aspirations between London Euston and Rochdale, Liverpool and South Wales Railway (L&SWR) and AWC's own 39th supplemental agreement.

AWC's comments

In its response to Network Rail's representations AWC quoted part of ORR's decision letter on the 2nd supplemental agreement from 2022 as follows: *"We have looked very closely at all the evidence submitted from the parties and consultees. We assert that the recommendations in the WSP report are still applicable and appropriate, and if AWC is granted the rights on a contingent basis, it can build up a performance analysis over the coming timetable period which will give it the ability to apply for firm rights on whatever of the services it has consistently been able to run. We have concluded that, in the overall public interest, we should approve the application with the rights being granted on a contingent basis"*. AWC asserted that all of the trains it wished to have firm rights have been running reliably since at least December 2025 and that there had been no negative impact on performance or power supply as a consequence.

AWC stated that it had therefore met "ORR's threshold" for being granted firm rights. It also stated that it did not understand Network Rail's comments with regard to additional capacity use, since it was not applying for any increase in quantum of rights but only to have contingent rights made firm.

ORR review

ORR awarded these rights as contingent in 2023 because we agreed with Network Rail's concern that platforming and power supply constraints may cause the services to have a negative impact on performance.

In our decision letter for the 2nd supplemental agreement, we stated that we would grant contingent rights at that time to allow AWC to build up a performance analysis to "give it

the ability” to apply for firm rights on these services in the future. This was not a guarantee that firm rights would be granted as a result of such an application, and this statement did not preclude the consideration of other issues coming to light in the meantime which might reasonably have an impact on capacity and performance. However, we have carefully examined the evidence that AWC presented as part of its application, and we consider that it has given sufficient demonstration that the firm rights can now be accommodated.

AWC presented evidence with regard to the consistent operation of these services, which we analysed to determine the impact that these services had had on performance. Following our assessment, we consider that the services in this application do not drive poor performance on WCML to any significant degree.

Since these services have been running under contingent rights, we are not aware of any material issues arising from their operation. This provides reassurance regarding the practical operation of the services and suggests that, in day-to-day terms, the introduction of these trains has not resulted in any evident adverse impacts on network performance.

We note that the key considerations which informed ORR's original decision remain, namely, the underlying issues of Euston platform capacity and power supply constraints, which continue to be relevant considerations. Platforming at Euston has proven to be operable, and we acknowledge that AWC itself identified four rights that are directly affected by the power supply constraint and has excluded these from the application.

While the original infrastructure and capacity concerns remain, the operational performance to date provides a degree of confidence that these services can be accommodated without evident adverse impacts. It is also relevant that the services were incorporated into the December 2022 timetable, and Network Rail has included them since then. ORR's own WCML capacity assessments and access decisions over the past two years, including in relation to proposed open access services, have been undertaken on the basis that these AWC services would continue to operate. These factors provide additional support for awarding the rights as firm.

We are also satisfied that the services that are the subject of this application are not in competition with any outstanding application for access from any other operator or aspiring operator because they are not applying for the same paths that these services are operating in. Even if ORR were to reject this application the services would continue to operate on a contingent basis and the paths would still not be “freed up” for other operators.

We will now work with the parties on the details of the supplemental agreement that we will direct Network Rail to enter into. The parties will need to engage with us at pace to enable this to happen promptly.

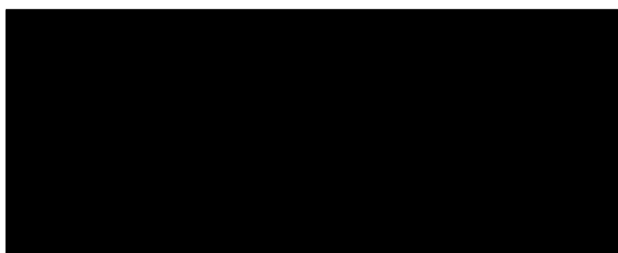
Our duties under section 4 of the Act

We have looked very closely at all the evidence submitted from the parties and consultees 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 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 to the greatest extent that it considers economically practicable (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

Public register and administration

An electronic copy of this letter will be sent to Network Rail's Policy and Access Team and will also be placed on ORR's public register and website. I am also copying WSMR into this decision letter.

Yours sincerely

A large black rectangular box redacts the signature of Martin Jones.

Martin Jones