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Dear Tamzin and Chris

Directions in respect of the twenty fourth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First TransPennine Express Limited (FTPE) (jointly, “the parties”)

1. On 13 May 2019 we issued directions for Network Rail to enter into the above supplemental agreement with FTPE. The application was submitted to ORR on 23 December 2018 under section 22A of the Railways Act 1993 (the Act), after FTPE was unable to reach agreement with Network Rail regarding the proposed new services. This letter explains the reasons for our decision.

Purpose of this agreement

2. In its application FTPE sought access rights for 3 additional off-peak Anglo-Scottish services in the parties’ contract, effective from the Subsidiary Change date (SCD) 2019 until SCD 2024¹. The specific services, as reflected in the May 2019 timetable, are:

¹ The approved access rights are until SCD 2020

- SX 2310 Manchester Airport to Carlisle (using the Castlefield Corridor circa 2330)
- SUN 2110 Manchester Airport to Glasgow Central (using the Castlefield Corridor circa 2130)
- SUN 2210 Edinburgh to Manchester Airport (using the Castlefield Corridor circa 0130)

3. Network Rail would not support this application because it had concerns about capacity and performance on the Castlefield Corridor. FTPE emphasised in the application that the three proposed services would operate at times of the day when there was sufficient capacity and that there would be no adverse impact on performance.

Industry Consultation

4. Network Rail undertook the industry consultation from 19 December 2018 to 16 January 2019. There were no objections or concerns raised. East Midlands Trains queried if any the proposed services impacted on Engineering Access. FTPE and Network Rail confirmed that there was no impact.

Statutory consultation

5. As required under the Act, on 11 January 2019, we sought Network Rail's representations on the application and it replied on 29 January 2019. We forwarded these representations to FTPE and asked for its comments. On 14 February 2019, FTPE replied with its comments.

Network Rail's representations

6. Network Rail said that, although it was initially hopeful that it could support the new services as they were running at quieter times of the day, it was unable to do so. It said that performance in the Manchester area, and especially the Castlefield Corridor, had been extremely poor since SCD 2018 and this must be uppermost in Network Rail's mind when deciding whether or not to support any additional traffic. It also noted that there was an ongoing review into performance in the corridor to understand what can be done to improve performance within the existing service parameters. It further said that there had been improvements in performance for the existing quantum of services, since the Principal Change Date 2018, as a result of changes to service patterns and franchise derogations and Network Rail did not want to jeopardise this work.

7. The fact that Network Rail would be declaring Congested Infrastructure through the Castlefield Corridor and it was on ORR's Regulatory Escalator for FTPE's performance were also noted.

8. Network Rail also commented on the application with regard to its Sale of Access Rights policy. With FTPE's agreement, it had considered supporting the services as

contingent rights, time-limited until SCD 2020, and contractually confined to the proposed hours of operation (after 2100 and before the morning peak). However, it was felt that this approach would not be keeping with the policy as the proposed constraints on the rights would introduce too much specificity into the parties' track access contract.

FTPE's comments

9. FTPE explained that the 3 additional services within the Anglo-Scottish service group represented TPEs Franchise aspiration to move towards a 7-day Railway and equivalent timetable. In support of the services FTPE said:

- The Manchester Airport to Carlisle Train is related to the introduction of FTPEs new Liverpool – Glasgow service. The unit needs to leave Manchester Airport and arrive in Carlisle in readiness for an early morning passenger service departure from Carlisle to Liverpool to then work a new additional service from Liverpool to Glasgow.
- The Manchester Airport to Glasgow Central offers an additional passenger service on Sundays that already operates Mon – Sat. This service already performs well and provides improved connectivity from Manchester Airport to Glasgow and Scotland for flights arriving at the Airport late Sunday afternoon / evening. This further enhances airport connections and reduces reliance on travel by car.
- The Edinburgh to Manchester Airport service achieves the same but in the reverse direction on Sundays, providing connections from Edinburgh to Manchester City Centre and Manchester Airport for night-time flights. 1M97 already operates SX Mon – Fri, with the service performing well and providing improved connectivity to Manchester Airport.

10. FTPE said it was focused on maintaining the performance improvements since PCD 2018 and emphasised two key factors in its approach to ensure that the capacity and performance of the Castlefield Corridor was maintained and protected.

11. Firstly, the additional services were deliberately timed to pass through the Corridor at Off-Peak times and well below the current Train Planning Rule Capacity of 15 trains per hour. FTPE's view was that the additional services would benefit customers with improved connection times to and from Manchester Airport without impacting on performance. It noted that Network Rail had highlighted that the Corridor has congestion issues between 0700 and 2000 and would be more than happy to contractually agree to the additional rights being confined to the proposed hours of operation.

12. Secondly, FTPE noted the good performance of equivalent services and said it did not anticipate any performance issues with the additional services. It also noted that it was a key part of the industry approach to improving performance in this area.

ORR review

13. We reviewed the application and carefully considered all of the information provided in the application, the responses to the industry consultation, Network Rail's representations on the application, and FTPE's comments on those representations.

14. While giving a train operator rights to services within a defined time window might usually be considered a constraint on Network Rail's flexibility when creating the timetable, in this instance it would work to its advantage to ensure that the services would not operate during the more congested times of the day. We felt that this would deal with the concerns set out in Network Rail's representations. We considered that time limiting the services until SCD 2020, as contingent rights, and contractually confining them to a time window of 2100 to 0500 (as FTPE had offered) would be a reasonable approach to take regarding this application.

15. On 29 March 2019, we advised Network Rail that we were minded to approve FTPE's application and direct it to enter into the supplemental agreement. We advised that, if it wished to wish to make any further representations before we confirmed this decision it could do so by 5 April 2019. On that date, Network Rail confirmed it had no further representations to make. It also confirmed that FTPE would amend the supplemental agreement to reflect our decision. This was subsequently received on 5 April 2019. We suggested a number amendments to the drafting to which the parties agreed.

16. On 13 May 2019, we confirmed our decision and directed Network Rail to enter into the supplemental agreement. The parties subsequently entered into the agreement on 15 May 2019.

17. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

18. 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 the Train Operator. Please send the conformed copy to me at ORR.

19. Electronic copies of this letter will be sent to Keith Merritt at Department for Transport to Peter Craig at Network Rail. Copies of the directions notice and the agreement have already been sent to them. Copies of the approval notice and the agreement will be placed on ORR's public register and copies of this letter and the agreement will be placed on the ORR website.



Yours sincerely

A handwritten signature in black ink, appearing to read "Jonathan Rodgers". The signature is fluid and cursive, starting with a large loop for the letter 'J' and ending with a long, horizontal stroke.

Jonathan Rodgers