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Dear all

## **XC Trains Limited track access contract**

On 15 May 2015, XC Trains Limited (Cross Country) applied to ORR for directions under section 17 of the Railways Act 1993 for a new track access contract to take effect from the Principal Change Date (PCD) 2017 until the Subsidiary Change Date (SCD) 2020.

The main issues on which the parties could not agree were journey time protection and service interval protection as, at the time, Network Rail was reviewing its access rights policy and was not prepared to agree additional specification above 'quantum only' rights before the policy was finalised. An industry consultation on the proposed contract, including service interval and journey time protection was undertaken between 13 May and 10 June 2015.

On 15 September 2015, we asked Cross Country to discuss its requirements with Network Rail in light of its then recently published new access rights policy to see if the parties could reach agreement.

On 26 May 2016, Cross Country and Network Rail met us to explain their respective positions. Network Rail said it was prepared to agree a one-year contract from PCD 2017 to PCD 2018 with journey time and service interval protection. Cross Country said that it would reluctantly agree to journey time expiring at PCD 2018 but wanted to retain service interval protection until SCD 2020.

As this was one of the first times that Network Rail had agreed to more specific access rights than 'quantum only' since it published its new access rights policy, and the potential precedents this may set, we asked the parties to provide us with a joint letter explaining the justification for these additional protections which we said we would share with the industry for comment.

The parties submitted a joint letter on 19 July 2016 but we felt the reasons given were not particularly unique or compelling and without more detailed explanation the letter seemed

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unlikely to give other operators a clear understanding of why Network Rail had agreed to Cross Country's requests when it had refused similar requests from others. We wrote to the parties on 12 August 2016 asking them to provide a revised, more detailed letter.

On 16 November 2016 the parties submitted a revised joint letter and a revised version of the proposed track access contract track. The protections have been reduced in the latest proposal. Copies of the joint letter and the revised Schedule 5 to the contract are attached. The protections which Network Rail is prepared to agree for one year are:

**Journey Time protection** in each direction between:

Derby and Leeds;  
Derby and Newcastle; and  
Leeds and Newcastle.

**Service Intervals protection** at Birmingham New St for services in each direction between:

Cardiff and Nottingham;  
Birmingham New St and Leicester/Stansted airport; and  
Birmingham New St and Nottingham.

Note: Cross Country previously had service interval and journey time protection which (similar to many other operators' rights) expired on the Principal Change Date in December 2016. Its Schedule 5 is also unusual in that it has a bespoke Table 2.3 which gives Cross Country Firm Rights to combine services to form through services e.g. Birmingham – Leeds services can be combined with Leeds - York/Newcastle services to form Birmingham – York/Newcastle through services; and Nottingham – Birmingham services can be combined with Birmingham – Reading services to provide Nottingham – Reading through services.

If you have any comments on the journey time or service intervals protection contained in the proposed Schedule 5 or on the justification provided for them, please let me have them by email or post, marked for my attention at the address below by Friday 27 January 2017.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Rodgers'.

**Jonathan Rodgers**