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Dear Paul and Sue

Thirtieth Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and First Trenitalia West Coast Rail Limited dated 8 December 2019

We have today issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail Infrastructure Limited (Network Rail) and First Trenitalia West Coast Rail Limited (FTWCRL) (jointly “the parties”) to enter into the above supplemental agreement. This letter explains the reasons for our decision.

Application

The purpose of this agreement is to grant FTWCRL a contingent right necessary to operate a Sunday evening service between Birmingham New Street and Chester, partly facilitated by the withdrawal of a Chester to Crewe service. The right is to commence on the Subsidiary Change Date (SCD) 2022 and will expire on the Principal Change Date (PCD) 2022. The expiry date aligns with the end of FTWCRL’s current track access contract. The PCD 2022 timetable is still in the process of being finalised and ORR is



currently considering an application for a new FTWCRL track access contract from that date.

The original application, for a larger number of services was submitted to ORR on 26 March 2021 under section 22A of the Act as the parties had not been able to reach agreement. The application has evolved as time has gone on. At the time of submission, the proposed start date of the services was September 2021, this subsequently changed to PCD 2021 and is now SCD 2022.

Industry consultation

Network Rail undertook the usual industry consultation for a month from 26 October 2020 and there were two responses. Cross Country supported the application and East West Rail had a number of questions which were responded to.

At the time of the consultation, some of the services had been accommodated in the timetable but some hadn't. Network Rail's position was they could not support any additional rights on the WCML but both parties were working collaboratively and looking for solutions for the services not accommodated in the timetable.

Statutory Consultation

Following submission of the application in March 2021, as required under the Act, we sought Network Rail's representations on the application and it replied on 28 April 2021, saying it was not supportive of the application at the moment but would review the situation by 30 May 2021.

We forwarded these representations to FTWCRL and asked for its comments. It provided them on 14 May 2021. It explained that, following further discussion with the Department for Transport, the proposed start date of the services was now PCD 2021. It noted some errors in Network Rail's description of the services and also commented on the timetabling process and Network Rail's WCML access policy.

Network Rail provided its further representations on 28 May 2021 after its Sale of Access Rights Panel had considered the application further. It would support the services accommodated in the timetable on a contingent basis between PCD 2021 and PCD 2022 only. They refer to the WCML Access Policy, saying that cases would be reviewed on a case by case basis, particularly if they are less restrained areas of the day (like these services). They reiterated their position that they did not support access rights for services not accommodated in the timetable.

ORR review

There were a number of developments with this application following the statutory consultation as FTWCRL's requirements evolved and Network Rail reviewed whether services could be accommodated in the timetable and access rights supported. This



resulted in the application being reduced to the access right set out above, which is supported by Network Rail.

Our review of the application resulted in some queries regarding the drafting of the agreement, which were resolved after discussion with FTWCRL. We had no other concerns.

Our duties under section 4 of the Act and our decision

We approve and direct this access right, on a contingent basis and until PCD 2022. We will consider any request to extend it in line with our statutory duties and the information available at the time. Our usual presumption in favour of the continuation of access rights should not be assumed.

We consider that this decision 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)(b)), 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)).

We communicated this decision to the parties on 3 August 2021 and requested some changes to the agreement before we would direct the parties to enter into it. FTWCRL subsequently advised us that, after further discussion with the Department for Transport, the proposed start date of the services would now be SCD 2022. FTWCRL then submitted an updated agreement.

Conformed copy of the track access contract

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 FTWCRL. ORR's copy should be sent for my attention.

Public register and administration

Electronic copies of this letter, the approval notice and the agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. Copies of the approval notice and the agreement will be placed on ORR's public register (website) 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', is positioned below the text 'Yours sincerely'.

Jonathan Rodgers