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Railways Act 1993 Section 22A:

**Transport for Wales Rail Limited (TfWRL) (4th Supplemental Agreement)
GB Railfreight Limited (GBRf) (17th Supplemental Agreement)**

1. Under section 22A of the Railways Act 1993 (the Act), we have issued directions to Network Rail, TfWRL and GBRf to enter into the above supplemental agreements. These directions grant GBRf the three firm access rights in its application, and grant TfWRL nearly all the access rights in its application. This letter explains our decision.

Summary

2. Currently, TfWRL operate an hourly passenger service on the Wrexham-Bidston line and GBRf freight services serve the Padeswood Cement Works. TfWRL wants to increase its services to two trains per hour (2tph) and GBRf wants to convert some temporary rights to firm rights. Network Rail's capacity and timetabling work could not fit the freight trains and the extra passenger services on the existing infrastructure. This suggests enhancements are needed to accommodate the applications. Since Network Rail and the parties could not resolve the conflicted services, the parties applied to ORR to make directions under the Act.
3. This letter directs the approval of three firm contractual rights for GBRf to operate trains at the time slots requested. It also directs that TfWRL is granted twenty four of the additional twenty six rights for which it applied, enabling an increase in passenger service levels. The two rights not granted to TfWRL are those which clash with the current freight services. This ORR decision is based on our independent analysis of the line's capability, operational issues, and a cost-benefit analysis of the proposed services.

4. The freight trains are already serving the cement works, so can continue, but on a firm contractual basis. The additional passenger trains will commence once TfWRL operational arrangements, including the new rolling stock, are ready.
5. Following examination by ORR, Network Rail declared the line as 'congested infrastructure' in accordance with The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the Regulations). The declaration sets out legal obligations for Network Rail to conduct capacity analysis and produce a capacity enhancement plan for consideration.

Background

The Wrexham to Bidston line

6. The Wrexham-Bidston line runs from the Wirral Peninsular to Wrexham, North Wales. Sections of the track are used by freight trains serving Deeside and the cement works. At Bidston the line connects with the Merseyrail network. There were plans to extend the Merseyrail services which have not proved viable. In 2018 Transport for Wales (an arm's length Welsh Government body) announced plans for a 2tph service and these plans were included in the Wales & Borders franchise specification.

Passenger services

7. In 2018, Transport for Wales announced plans for a [North Wales Metro](#). Keolis Amey Operations (TfWRL's predecessor) entered into a Grant Agreement with Transport for Wales in October 2018. This included a requirement to operate 2tph from Wrexham to Bidston on Weekdays and Saturdays from December 2021 as part of the franchise. The service specification required participants in that procurement to seek Network Rail's confirmation that capacity was available. Network Rail confirmed there was sufficient capacity for the proposals subject to accommodating freight paths.
8. TfWRL's plans aim to improve the overall reliability of its services and provide better connections with the North Wales coast. TfWRL has invested £25m in new diesel-hybrid Class 230 units to enable a half-hourly service. Due to issues with entry dates into service, the plan is to supplement them with Class 197 units.
9. TfWRL regard this proposed uplift in services as an important step towards the North Wales Metro, providing more journey options for residents and visitors across the region. TfWRL has also stated its aspiration is to increase the frequency of the service to 4tph.

Freight

10. GBRf has operated at Padeswood Cement Works since September 2019, increasing its services during the period to June 2020. GBRf submitted its request for firm rights to Network Rail on 23 June 2020. After its 14 September 2020 Sale of Access Rights (SoAR) Panel met, Network Rail notified GBRf that it could only have firm rights for its services up until PCD (December) 2021. The rights would be reviewed as part of the Wales Events Steering Group (Wales ESG). Network Rail allowed the services on a temporary basis (using Train Operator Variations Requests - TOVRs) until both the Wales ESG and a Network Rail timetable review had assessed the viability of TfWRL's 2tph commitment. There are also other freight operators with aspirations to run services in this area.
11. On 27 September 2021 GBRf asked Network Rail to confirm its position as to which rights it supported between TfWRL and GBRf. Network Rail reiterated that it would only support firm GBRf rights until PCD 2021. After further discussions the parties could still not reach agreement. The application to ORR to direct new access rights under section 22A was submitted by GBRf on 31 December 2021.

Padeswood Cement Works

12. Padeswood Cement Works is owned by Hanson UK (Hanson), part of Heidelberg Cement Group. It makes a substantial contribution to the UK's building material. Currently, 80% of its product is moved by lorry (leaving 20% by rail). Hanson believe a modal shift towards rail will support increased delivery volumes. In 2020 there were 107 train services; 120 in 2021; with 138 trains expected in 2022. Hanson has invested in upgrading the cement works which has included building three new rail cement silos alongside the existing railhead. In 2018, this enabled the first cement traffic to leave the cement works by rail since the 1990s.
13. Rail freight services, operated by GBRf have increased to four services (out and return) per week. GBRf used short term 'spot bid' access rights, TOVRs, for these services. Only one of those train services (a light loco move) has been converted to firm status (through the GBRf 14th SA dated 10 May 2021). The three others are the subject of this section 22A application.
14. Modal shift to rail offers Hanson the potential to reduce its carbon footprint and alleviate reliance on HGV drivers and the local road network. Use of rail requires certainty over access to the network and assurance on its capability. Hanson has claimed that a crossover is required on the line and other work is needed to enable longer trains (23 wagons). It developed proposals to enable increased operations at the cement works and shared them with key stakeholders. On 26 February 2020, Hanson met with Welsh Government officials and Network Rail to discuss how infrastructure modifications

could increase future capacity and what funding might be available.

ORR's role

The legislation

15. ORR is the independent safety and economic regulator for Britain's railways. For track access, we make sure that passenger train companies and FOCs have fair access to the rail network and that best use is made of capacity. Our [Guidance on the statutory and contractual framework, July 2022](#) sets out how we do this.
16. If a train operator wants to access the railway network, it must apply to Network Rail for access rights, which then requires approval by us. If a train operator cannot agree terms, including access rights, then it can apply to ORR. Under section 22A(1), ORR may give directions in respect of: *'(a) amendments permitting more extensive use of the railway facility or network installation by the applicant; and (b) any amendments which ORR considers necessary or desirable in consequence of those amendments.'*
17. Section 4 of the Act lists the duties which we must consider in exercising our functions under the access regime. The selection of relevant duties for this case are listed at the end of this letter. Amongst those duties ORR must have regard to the strategies and policies of Welsh Ministers (the Welsh Government), so far as they relate to Welsh services or to any other matter in or as regards Wales that concerns railways or railway services. GBRf highlighted sections 4(1)(a), 4(1)(b), 4(1)(ba), 4(1)(c) and 4(1)(g) as 'very relevant' to ORR's decision.

Industry consultations

18. Industry consultations should be carried out in line with the legislation and best practice, which are set out in the *Industry code of practice for consultations, November 2017* [Track access guidance](#).

TfWRL

19. An industry consultation for TfWRL's proposed rights was carried out between 21 July and 23 August 2021. Transport Focus, Great Western Railway (GWR), Merseyrail and GBRf provided comments. GWR said it had no objection. Transport Focus said they supported the application. Merseyrail said it had no comments or observations on the proposal.
20. GBRf made the only substantive comments. It said it was concerned that TfWRL's proposal competed with the firm access rights in its application. It also expressed concern that if TfWRL's application was granted it would restrict the growth of freight

services to and Padeswood Cement Works. GBRf's comments came after a meeting between the parties and Network Rail where, TfWRL proposed an alternative route for the conflicting freight services. GBRf ruled the alternative route out, meaning its concerns remained unresolved.

GBRf

21. An industry consultation for GBRf's proposed rights was carried out from 5 October 2020 to 5 November 2020. The main issues raised were:

- Great Western Railway said they would like two of the northbound paths to be standardised so that the "Monday Only" matched the "Wednesday and Friday Only" paths. GBRf agreed and amended the proposed rights so that they have a common slot over all three days.
- CrossCountry Trains had a concern about TPR compliance at Bristol Parkway. GBRf agreed a 60 minute operational stop at Gloucester could be removed to allow more flexibility between the Bristol/Avonmouth area and Birmingham.
- The Department for Transport raised a concern about running freight services through busy network between Wolverhampton and Birmingham. GBRf confirmed that the services run via Bescot and Sutton Park on a freight-only route. GBRf also added that these services have been running for a year with no underlying performance issues.
- Liverpool City Region noted that the freight rights would conflict with the proposed uplift in passenger services. GBRf stated it was working closely with TfW to minimise the impact.
- Other responses noted the journey times possible with the new Class 230 trains and infrastructure improvements, that would facilitate the new passenger and freight services.

22. TfWRL had significant concerns about how the GBRf rights would impact its own planned services. TfWRL suggested GBRf amend its timings and/or use an alternative route. This is discussed further below.

23. There was a gap between the GBRf consultation and the submission to ORR. However, we did not consider it necessary to re-run the industry consultation. This is because there were not any significant developments and TfWRL carried out its own related consultation in 2021. We have engaged directly with the stakeholders (including funders) primarily affected to ensure transparency and published the case on our website.

Applications

TfWRL 4th Supplemental Agreement (4th SA)

24. The TfWRL application was submitted to ORR on 25 November 2021 with letters of support from local stakeholders: Growth Track 360, North Wales Mersey Dee Business Council, Liverpool City Region Combined Authority, Mersey Dee Alliance, Dr James Davies MP, Justin Madders MP and Carolyn Thomas MS.
25. The purpose of the 4th SA is to grant TfWRL the rights to operate additional passenger services between Wrexham Central (or Wrexham General for some services) and Bidston on Weekdays and Saturdays. The service on this line is currently hourly. TfWRL is seeking additional firm rights to increase this to 2tph. The stated aim of the increase to 2tph is to make train journeys more attractive for commuters and leisure travellers, while boosting the North Wales economy by connecting people to employment, education and leisure opportunities. The additional services would operate on a semi-fast basis. They were initially planned to start in December 2021 but by the time ORR received the application this date was moved back to May 2022. It has subsequently been pushed back twice since.
26. Network Rail's position on TfWRL's timetable bid for the additional services (and the corresponding access rights) has changed over time. Originally it supported some of the additional services but, in November 2021 decided it did not support any of them. However, following a timetable review that took place between December 2021 and April 2022, Network Rail now supports all additional rights that do not conflict with the GBRf rights.

GBRf 17th Supplemental Agreement (17th SA)

27. GBRf applied to ORR for its 17th SA on 31 December 2021. It contains three new firm rights. The train services are currently running on a temporary basis under TOVRs for inclusion in the Working Timetable. The application is to make the rights firm and extend those paths until PCD 2026, in line with GBRf's track access contract with Network Rail. The services supply cement for the Hinkley Point nuclear power station in Somerset. The three new firm rights GBRf have applied for are:

- 6V41 SuO Departure 13:45-14:45 Penyffordd Cement GBRf – Avonmouth Hanson Sdg GBRf Arrival 20:45-21:45
- 6V41 TThO Departure 16:40-17:40 Penyffordd Cement GBRf – Avonmouth Hanson sgd GBRf Arrival 01:10-02:10

- 6M42 MWFO Departure 08:50-09:50 Avonmouth Hanson sgd GBRf –
Penyffordd Cement GBRf 17:15-18:15

28. The services are planned to depart Avonmouth on Monday, Wednesday and Friday mornings to arrive at Penyffordd (Padeswood Cement Works) later each evening – ‘one out and back... freight service three times per week’. The service then departs Penyffordd on the evening of the following day (or Sunday in the case of the Friday arrival). It is the evening timings that cause issues for the passenger services.

ORR’s review process

TfWRL

29. TfWRL’s application included details of its discussions with Network Rail about access rights and timetable paths. Given the GBRf 2020 industry consultation in the TfWRL application, we had anticipated that TfWRL and GBRf were competing for the same capacity.

30. As required by the Act, on 25 November we invited Network Rail’s representations on the application. In its representations, submitted on 21 December 2021, Network Rail explained it could not support the application, primarily due to the capacity constraint on the line. TfWRL’s bid for the services in the May 2022 Timetable was also rejected. Network Rail explained its decisions were based on issues or risks with infrastructure, timetable production, level crossings, as well as freight and maintenance access.

31. For further detail on correspondence please see:

- [Transport for Wales Rail Limited 4th supplemental agreement Section 22a - Network Rail representations dated 21 December 2021 \(orr.gov.uk\)](#),
- [Transport for Wales Rail Limited \(TfWRL\) response to Network Rail representations on proposed section 22a 4th supplemental agreement - 7 January 2021 \(orr.gov.uk\)](#),
- [Railways Act 1993 Section 22A: Applications from Transport for Wales Rail Limited \(TfWRL\) and GB Railfreight Limited \(GBRf\) for access to the Wrexham to Bidston line - Update letter dated 26 April 2022 \(orr.gov.uk\)](#)
- [Network Rail Response to ORR directions: GBRf 17th Supplemental Agreement and Transport for Wales 4th Supplemental Agreement under section 22A of the Railways act 1993](#),
- [Transport for Wales Rail Ltd \(TfW Rail\) response to Network Rail’s further Representations on Proposed 4th Supplemental Agreement 2022 06 10 \(orr.gov.uk\)](#)

GBRf

32. GBRf submitted its section 22A application to ORR on 31 December 2021 for the three firm rights concerned. We decided to consider the TfWRL and GBRf cases together, given dependencies between them. On 18 January 2022 we invited Network Rail's representations on GBRf's application. Network Rail replied on 1 February 2022. GBRf in turn provided comments on Network Rail's representations on 3 March.
33. On 10 March 2022 ORR officials conducted a site visit, hosted by GBRf and Hanson, with Network Rail cooperation. They viewed the rail freight facilities at Padeswood Cement Works, the method to access the network, Penyffordd signal box and Bidston station. This visit included observing a shunting operation and the loading of a cement train. This helped us get insight into the limitations of the network and confirmed the constraints listed in representations. We confirmed that there were no ready operational solutions, such as 'top and tailing' services.
34. ORR considered that a more definitive view was needed from Network Rail on whether it supported the application. On 8 April 2022 Network Rail provided further representations. On 16 May 2022, on conclusion of its economic report, Network Rail provided further representations which supported the GBRf application.

Representations

TfWRL

35. This section summarises the TfWRL representations, application and supporting documents. The application supports the Welsh Government's wider commitment to improve connectivity to employment, education and leisure opportunities and drive economic regeneration in the North Wales region.
36. These aspirations formed part of the 2018 commitment in TfWRL's Rail Services Agreement with TfW. There had been longstanding engagement with Network Rail about capacity. As a result, the Welsh Government invested in the procurement of new rolling stock to facilitate the uplift in service.
37. TfWRL says that Network Rail unreasonably refused to sell access rights to share capacity in an efficient and economical manner, or in the interests of prospective users of railway services. It provided a detailed response to the issues Network Rail had raised, emphasising that the increase to 2tph was a commitment of the Welsh Government and included a significant £25m investment in new trains. It agreed that adding train paths on the current infrastructure was difficult but was confident there could be a timetabling solution that suited all parties.

GBRf

38. GBRf's representations were contained in its Form F and other supporting information provided throughout ORR's review process. These included, on 2 March 2022, a detailed response to Network Rail's initial representations. This section summarises GBRf's representations.

Expansion of operations

39. GBRf said growth in the aggregates sector has been particularly strong and its construction traffic has reached record levels recently. In the period June 2020-December 2021 over 87% of planned services were run, so the current slots are well-utilised. Currently, 20% of cement leaves Padeswood Cement Works by rail through GBRf operating three trains per week, with 12 wagons per train. GBRf's aspirations include operating 285 trains per annum by 2025. This would need significant infrastructure improvements (in the cement works and on the Network Rail network) to accommodate longer, heavier and more frequent loads.

Investments made by GBRf and its customer

40. GBRf and Hanson investments have enabled an increase in traffic from Padeswood Cement Works. GBRf's are part of its nationwide investment in new aggregates and building materials services, which also included the addition of three Class 66 and ten Class 69 locomotives to its fleet, new wagons and traincrew.

41. In 2015, Hanson invested in a new kiln. In 2019, its upgrades at Padeswood Cement Works totalled £24m, including the development of a new cement mill, three rail cement silos and a rail loading facility. These investments support its aim to increase the productivity of the plant to 650,000 tonnes of cement per year and help secure its long-term viability.

Environmental benefits

42. Both GBRf and Hanson claim that increased rail traffic to and from Padeswood Cement Works has clear environmental benefits. GBRf cited the Department of Transport's policy paper *Decarbonising Transport* (July 2021) that states that rail is one of the most carbon-efficient forms of moving goods over long distances.

43. Hanson claims its gradual modal shift to rail is to achieve its target of becoming net-zero by 2050. It targets a reduction of approximately 5,000 vehicle movements (or 0.8 million road truck miles) and points to the benefits of a modal shift regarding local air quality, noise and environmental disruption. It notes rail is more than six times more carbon efficient than road.

Window size

44. GBRf's three firm rights are all with one-hour windows, which it says are essential due to the heavy traffic at Avonmouth. The departure time is set to reflect the required arrival time. The one-hour window also preserves customer confidence in GBRf's ability to provide the train services and timings needed.

Network Rail representations

45. This section summarises Network Rail's representations on the TfWRL and GBRf applications through its formal responses, documentation, emails and discussions. Network Rail also assisted with ORR's site visit.

TfWRL's application

46. Network Rail provided written representations to ORR on 21 December 2021. These representations explained the background and provided Network Rail's position that it could not support the application in full. Network Rail cited performance and operational issues as reasons to reject the application.

47. Network Rail stated that the 2tph aspiration presented conflicts with the freight application which would prevent it operating as proposed. Network Rail Train Planning concluded that it would be detrimental to include the additional 1tph across the whole day. Concerns were raised that the proposal would bring extended journey times and reliability risks due to a delay in the use of new rolling stock.

48. Further concerns were voiced about the detrimental impact the proposed uplift in services would have on Network Rail's ability to perform essential track maintenance duties. Furthermore, safety concerns were raised about station pedestrian crossings, a public right of way and a user worked crossing that would require mitigations to be implemented as part of the Wales Route level crossing programme.

GBRf's application

49. Network Rail provided written representations to ORR on 1 February 2022 and supplemental comments on 9 February. These representations explained the background and answered some ORR specific questions on operational issues. Further comments were provided on 8 April in response to GBRf's letter.

May 2022 Representations

50. On 16 May 2022 Network Rail issued representations that set out its position in respect of both the TfWRL and GBRf applications based on its Capacity Planning Timetabling Review. It then shared its economic evaluation on 23 May 2022. It supported all the

rights requested by GBRf in its 17th SA. It considered the new 2tph TFWRL services as feasible with a revised service pattern, subject to certain outstanding issues. It also acknowledged a Declaration of Congested Infrastructure would be required. At this point it set out three outstanding issues (level crossings, maintenance access and fleet readiness) which needed resolution.

ORR's analysis

Operational issues

51. Operational issues impacting on capacity for the line are set out below. We agree with Network Rail that not all the freight and passenger rights can be accommodated on the current infrastructure.

Infrastructure

52. There are network constraints on this line that limit capacity in terms of the number and length of trains. The maximum line speed is 40mph for the route due to a number of weak bridges. The line speed for loaded trains is lower again at 25mph. This speed restriction is a blanket rule for the whole of the Wrexham-Bidston route. GBRf claims that due to the steep gradients on parts of the line, freight trains run at 12mph, and as low as 6mph in bad weather.

53. The steepest gradients on the line, and the operational constraints could be avoided if there was south-facing access at Padeswood Cement Works, and a crossover between the running lines, so freight trains did not need to travel north to Dee Marsh to run-around (further affecting capacity). Loaded trains that return from Dee Marsh towards Avonmouth encounter the steepest gradients on the route, which severely limit trailing loads and efficiency.

54. The long signal sections affect headways and severely constrain the capacity of the route. Penyffordd signal box is switched out overnight (currently 21:30-06:30) meaning that freight services cannot operate to or from the cement works at this time (although we understand this may change to 22:30 to accommodate the increased traffic). Outside of these hours Wrexham signal box controls the whole section from there to Dee Marsh. This limits the number of trains in the area at night, as the signal section is doubled in size.

Level Crossings

55. The uplift of freight services, but particularly of passenger services (to 2tph in most hours), has significant safety and operational implications for level crossings on the line. It said that there were seven crossings that needed intervention to mitigate the

level crossing risk to enable the safe commencement of services.

56. Network Rail's 16 May 2022 representations referred to the Level Crossing Programme as an unresolved issue. First, it said that a temporary footbridge at Buckley Station was the appropriate solution for the level crossing, with the introduction of additional TfWRL services. However, its own later review decided that the footbridge would not be required. On 15 July 2022, we asked Network Rail to explain the position. On 26 October 2022 Network Rail set out its plans for resolving the issue.

Maintenance access

57. Network Rail's 16 May 2022 representations also stated that it needed to resolve the increased costs of maintenance access resulting from the increase in services with TfWRL. Again, we asked for the plan to resolve this but did not receive a clear response until 26 October 2022.

Bidston station

58. Bidston station has an island platform with two faces. TfWRL services turnaround in the westbound platform. Some turnaround times are tight (the shortest at three minutes) and services must occupy the platform between the 4tph Merseyrail service to West Kirby, which also uses the platform in the westbound direction. This tight operation currently happens once an hour and would happen twice an hour with the additional TfWRL services. Given that Merseyrail services operate to a standard hour timetable, there is no additional timetabling risk from the second TfWRL service. Although the doubling of services does increase the potential for delays during disruption and impact on overall performance.

TfWRL fleet readiness

59. Network Rail and ORR became aware of potential delays to the introduction of the new Class 230 trains. We now understand TfWRL has plans to rollout services following testing after December 2022. The use of new Class 197 stock (potentially in addition to Class 230 stock) is also under consideration as a mitigation. ORR is prepared to direct the selected new firm rights in the interests of providing funders and operators certainty.

Padeswood Cement Works

60. Accessing the Padeswood Cement Works site consumes significant capacity. Freight trains arriving must wait for the previous northbound passenger train to clear the signal at Dee Marsh (around five miles away), resulting in a wait of around 15 minutes. To enter the sidings, adjacent to the main line, the freight train must first shunt back the whole train into the first reception siding. It is then split, usually into nine and four

wagons, with the front portion drawn forward and then shunted back into the second reception siding. This process means that freight trains occupy the main line for around 35 minutes. On departure, freight trains must repeat the above in reverse order, and therefore occupy the line for approximately another 30 minutes. In total, the accumulated time for arrival and departure of one freight train occupying the line between Penyffordd and Buckley is 74 minutes.

61. To meet Hanson's aspirations (of 285 trains by 2025), it will need two train movements per day, one in and one out. This will also entail longer and heavier trains. The increase would require further investment in capacity, both on the Wrexham-Bidston route and within the Padeswood Cement Works site.

Infrastructure improvements

62. The Wrexham-Bidston line capacity limitations have been discussed for years leading up to these two applications. One example is that in January 2019, Hanson attended a site visit with Network Rail to propose the reinstatement of the Down-Main to Up-Main crossover (removed in 2008) to prepare for the new rail traffic to and from the cement works.
63. Hanson has suggested two infrastructure improvements to improve access to the cement works. One involves entering the sidings at the northern end, which has practical issues which would need discussing with Network Rail; its preferred option would be to enter at the southern end of the site. Both options would provide a south facing connection and require the reinstatement of the crossover at Penyffordd. This would forego the need for freight trains to travel to, and turnaround at, Dee Marsh before heading back south. Running to Dee Marsh means tackling a steep gradient, which is the main restriction for trains longer than 13 wagons. The proposed south-facing access point was Hanson's preferred option as it also reduced arrival time from 41 minutes to six minutes and departure times from 35 minutes to five minutes. It would also allow 26 wagons to enter the sidings in one movement, as opposed to the current splitting of the train in two.
64. Another suggestion is the installation of an intermediate signal towards Wrexham, which could improve capacity by halving the time it takes for a train to clear the Penyffordd section and reduce the headway from 15 minutes to eight minutes in that direction. GBRf also claimed in its Form F that the main intervention required is additional block signals.

Implications

65. It appears there is agreement amongst parties that some enhancement is needed for both freight and passenger services (current and aspirational) to be accommodated

throughout the day. Any plans need further review, planning and funding confirmation. Furthermore, enhancement proposals are not a decision for ORR to take, nor is ORR able to direct access rights in anticipation of, or conditional upon, enhancements. Having said this, ORR's persistence (since 28 January 2022) that Network Rail considered whether the line was congested, resulted in a Declaration of Congested Infrastructure on 1 August 2022. This means Network Rail now has a legal obligation to review, analyse and produce a Capacity Enhancement Plan.

Alternative freight route

66. TfWRL suggested that GBRf's weekday services could be moved to later evening slots, outside the evening peak, to permit a second passenger service to run in those times. This proposed alternative route for the freight services would operate via Shrewsbury, Hereford, and Newport (Maindee Junctions).
67. This alternative route would adversely affect GBRf by requiring its traincrew to learn 94 miles of new route, as well as covering the booked turns, whilst the necessary training took place. Significantly, GBRf said that the revised services would create issues with the terminal times, or available time slots at other sidings on the route. The likely disruption and expense (as covered in GBRf's Form F) meant the option was rejected and not pursued by the parties.
68. We note such a change would not increase capacity on the line, so may only be a short-term solution and potentially create knock-on effects elsewhere. If the circumstances or information changes, the parties may wish to reconsider whether alternative routes would resolve problems associated with conflicting services or future aspirations.

Economic assessment

69. The passenger and freight train operators' applications under section 22A indicates a conflict over expectations in rail use. This type of case is unusual for ORR, so has limited precedent. However, the issue is covered in our guidance module '*The use of capacity, 29 July 2022* [Track access guidance](#)':

Capacity choices: competing passenger and freight services: When assessing competing passenger and freight applications for the same capacity we will use transport appraisal methodology (such as WebTAG) to estimate freight user benefits in any cost benefit analysis where freight may be materially affected as well as in complex cases with alternative uses of capacity. We will calculate freight user benefits using generic values of time and reliability.....

Consequently, we have independently reviewed and compared the costs and benefits of the passenger and freight services in this case, as set out below.

Network Rail's economic evaluation

70. In May 2022, Network Rail carried out its “high-level” economic evaluation of the options for the use of capacity between Wrexham and Bidston. This cost benefit analysis followed the Department of Transport’s Transport Analysis Guidance (TAG). The first option was the continued operation of only freight services that operate between Penyffordd and Avonmouth. The second option was an increase the volume of passenger services between Wrexham and Bidston from one to two trains per hour (where not conflicting with freight services). It also separately compared the conflicting passenger and freight services. TfWRL's full aspirations (of 2tph) required the cost-benefit analysis for option 2 and the conflicting services.
71. The results, calculated over a 60-year appraisal period, showed that passenger services would offer ‘poor’ value for money, as the costs would outweigh the benefits. The freight services were found to be ‘financially positive with economic benefits’ providing ‘very high’ value for money in comparison to the passenger services. The report recommended ‘prioritising the freight service.....based on the appraisal outputs’. Consequently, Network Rail adjusted its position in respect of the proposed GBRf application.

ORR economic evaluation

72. ORR commissioned Systra Ltd to conduct an independent assessment of Network Rail’s cost benefit analysis work. Systra reviewed Network Rail's analysis and conducted its own modelling, after discussions with relevant stakeholders.
73. [Systra’s review concluded in September 2022](#). It found that the work produced by Network Rail was generally consistent with the TAG and it did not identify any errors influencing the cost benefit analysis conclusions. Systra adapted Network Rail's analysis by removing train leasing and infrastructure costs in the passenger options. These adaptations improved the value for money of the passenger options, but the conclusions were the same as Network Rail’s, i.e. for this case freight offers higher value for money where it conflicts with passenger services.
74. Systra noted that there is an element of uncertainty over the need for the freight paths beyond the end of the cement work’s current orders. It recommended that ORR assures itself a procedure is in place for the transfer of unused access rights for alternative uses. We are satisfied that Part J of the Network Code provides industry-accepted procedures for the transfer of unused access rights. There are also provisions for the surrender or adjustment of services in the case of ‘Better Use’ (J10). Systra also noted that there was a possibility of an alternative route for the freight traffic (as covered as above).

75. With regards to the freight services, we understand that the commercial demand is expected to continue. The end of the commercial contract ties in with the current end date of GBRf's framework agreement, the end of 2026. However, the timings of the services could change in the longer term and there may be scope for adjustment or re-negotiation of the timings.

ORR conclusions

Network Rail's handling of conflicting services

76. There is some capacity for more services but not for everything contained in the two applications. Despite working with both operators for years in advance, no solution to the conflicting aspirations could be found and initially the applications were rejected by Network Rail.

77. From 2018 onwards Network Rail knew that TfWRL wanted to uplift services to 2tph. It did not fully consider the interaction of freight services with passenger demand. The Timetable Planning Rules (TPRs) were not fully reflective of the day-to-day operations, therefore timetables were not properly planned.

78. Network Rail should have considered the applications simultaneously upon receipt of the second application. It should then have made a decision using rigorous analysis and evidence at that time. Instead, it rejected both applications leading to the parties making s22A applications to ORR.

79. Network Rail's initial representations were not at the level required for ORR to make an informed decision, although they improved later. We wrote to Network Rail on 26 April 2022 setting out the information needed to take decisions on the applications. Network Rail reacted well to this request in parts but some Network Rail decisions, e.g. on level crossings, were still not timely. ORR considers that much of this information could have been prepared and provided sooner given the time Network Rail knew about the potential for competing capacity demands. We are grateful to the applicants for their cooperation and patience.

Access rights

80. Our conclusion is to direct Network Rail to grant GBRf all of the rights it applied for and TfWRL twenty four of the twenty six rights for which it applied. TfWRL should not be granted those rights which conflict with the firm rights granted to GBRf. We have considered this very carefully, especially in light of the plans for North Wales Metro services. The economic evidence provided by Network Rail and Systra was important, but complete capacity, performance and operational evidence was needed for ORR to direct access. These economic reports are only directly relevant to the GBRf 17th SA

and the TfWRL 4th SA. Conclusions from these reports cannot necessarily be transposed to other cases.

Future services

81. It was not possible to satisfy all the contemporary requests for capacity without network enhancements, so even less likely to meet the aspirational demands. Network Rail could have considered whether this line was congested infrastructure sooner. ORR makes no direction on what, if any, enhancements should be made, as that is not part of our role. Network Rail has now declared the line congested infrastructure, so it must comply with regulations 26, 27 and 28 of the Regulations. ORR will monitor Network Rail's progress and expect it to consider future aspirations in its work.

ORR duties

82. Our decision is consistent with the discharge of all our statutory duties under section 4 duties of the Act. The full list of ORR's statutory duties can be found in our document [Our rail and road duties](#). We consider that these duties are particularly relevant to this case:

- otherwise to protect the interests of users of railway services;
- promote the use of the railway network in Great Britain for the carriage of passengers and goods.....;
- contribute to the development of an integrated system of transport of passengers and goods;
- contribute to the achievement of sustainable development;
- enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance;
- in exercising functions that are not safety functions:
 - take into account the need to protect all persons from dangers arising from the operation of railways;
 - have regard to the effect on the environment of activities connected with the provision of railway services;
 - have regard to any general guidance given to ORR by the Secretary of State about railway services or other matters relating to railways;
 - have regard to any notified strategies and policies of the National Assembly

for Wales, so far as they relate to Welsh services or to any other matter in or as regards Wales that concerns railways or railway services;

- have regard to the ability of the National Assembly for Wales to carry out the functions conferred or imposed on them by or under any enactment;
- have regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services or of the persons who make available the resources and funds and of the general public.

Next steps

83. We expect Network Rail to enter into the directed Supplemental Agreements with GBRf and TfWRL. Under clause 18.2.4 of the track access contract, Network Rail is required to produce conformed copies, within 28 days of any amendment being made, and send copies to ORR, GBRf and TfWRL. ORR's copy should be sent for my attention.

84. Copies of this letter, the approval notice and the agreement will be sent to Transport for Wales, the Welsh Government, the Department for Transport and Network Rail's Policy and Access Team. Copies of the directions notices will be placed on ORR's Public Register and a copy of this letter will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Clancy', with a long, sweeping tail.

Gareth Clancy

Annex A – Timeline of events

October 2018	TfWRL's predecessor, Keolis Amey, enter into a Grant Agreement with Welsh Ministers for commitment to 2tph Wrexham – Bidston service.
January 2019	The reinstating Down Main to Up Main crossover at Penyffordd is discussed between Network Rail and Hanson in preparation of rail freight traffic.
March 2019	Conversations begin between GBRf, Network Rail and TfW regarding 2tph.
August 2019	Early GRIP1 conclusions are that existing infrastructure does not support 2tph AND 1 tph freight services.
September 2019	GBRf introduce new Padeswood CW services. Signalling intervention is needed to further improve capacity.
16 February 2020	Hanson presents to the Welsh Government and Network Rail in Cardiff. It is suggested a south facing connection is important to maximising capacity at Padeswood CW and delivering Hanson's Zero Carbon Emissions target.
23 June 2020	GBRf's proposed 17 th SA (along with other proposed rights) are submitted to Network Rail.
14 September 2020	Following a SoAR panel meeting, Network Rail notifies GBRf that it would only support firm rights 'up until December 2021 (PCD 2021) where they will be reviewed in line with the Wales ESG specifically relating to the 2 tph service'. GBRf notifies Network Rail that the Draft Calendar of Events Listing (appendix D) states that the major Wales & Borders services change is from December 2022, not December 2021.
23 September 2020	Network Rail confirms that it would only support firm rights until PCD 2021.
27 September 2020	GBRf ask for Network Rail to clarify its position as to which rights it supports, and which it does not.
30 September 2020	Network Rail confirms again that it would only support firm rights until PCD 2021. GBRf resubmitted the 14 th SA without the contested rights.
5 October 2020	Consultation on GBRf's 17 th SA opens with a 5 November deadline.
July 2021	Site visit attended by Network Rail, TfWRL and the Welsh Government in which the need for a south facing connection 'for Hanson to fulfil their ambitions was clearly outlined'. Several virtual meetings then take place to discuss infrastructure improvement options at Padeswood CW.
21 July 2021	TfWRL's consultation opens with a 23 August 2021 deadline, with a stated commencement date for additional services of December 2021
24 August 2021	Following a meeting with TfWRL, GBRf responds to TfW's consultation.
13 September 2021	TfWRL 4 th SA authorised at SoAR Panel subject to a number of conditions.
25 November 2021	Network Rail's Capacity Planning team fully reject TfWRL' May 2022 timetable bid for 2tph. It had previously partially supported its December 2021 2tph bid.

25 November 2021	TfWRL submits 4 th Supplemental Agreement to ORR under s22A, with commencement date of services now moved to May 2022. ORR invites Network Rail to provide written representations on TfWRL's application.
21 December 2021	Network Rail provided representations on TfWRL's application and requests comments from TfWRL.
31 December 2021	GBRf submits 17 th Supplemental Agreement to ORR under s22A.
7 January 2022	TfWRL provides comments on Network Rail's representations.
18 January 2022	TfWRL inform ORR that Network Rail's Capacity Planning team is reviewing its decision to reject TfWRL's May 2022 timetabling bid, aiming to accommodate both operator's proposals in the timetable.
18 January 2022	ORR invites Network Rail to provide written representations on GBRf's application.
19 January 2022	GBRf provides ORR with data showing how many cement trains ran against the planned numbers from June 2020 to December 2021.
20 January 2022	GBRf provides ORR with additional information produced by Hanson about expansion plans for rail freight.
27 January 2022	ORR asks Network Rail to keep it updated with any information and developments regarding the Capacity Planning team's ongoing work on Wrexham – Bidston timetabling.
1 February 2022	Network Rail provides ORR with written representations in respect of GBRf's application.
9 February 2022	Network Rail provides ORR with supplemental written representations in respect of GBRf's application.
16 February 2022	TfWRL representations in response to ORR questions.
17 February 2022	ORR invite GBRf to comment on Network Rail's representations in relation to GBRf's application.
3 March 2022	GBRf provide comments on Network Rail's representations in relation to GBRf's application.
10 March 2022	ORR attend a site visit to Padeswood CW and Penyffordd signal box, and meet with representatives from GBRf, Hanson and Network Rail.
11 March 2022	ORR/Network Rail meeting to discuss Timetabling and capacity issues. Network Rail agree to provide ORR with written representations that include a project plan working to assess whether the TfWRL and GBRf applications can be accommodated in a 2022 timetable.
24 March 2022	ORR invite Network Rail to comment on GBRf's representations of 9 February and set out Network Rail's position as to whether it can support any of the rights sought by GBRf.
8 April 2022	Network Rail provide representations in response to ORR's invite to comment

on GBRf's representations.

21 April 2022	Network Rail confirm that a May 2022 timetable increment for TFWRL services would no longer be possible.
26 April 2022	ORR publishes a letter providing an update for stakeholders, setting out what information it expected Network Rail to provide regarding timetabling, congested infrastructure and its updated position on access rights.
29 April 2022	Network Rail share a timetabling recommendation paper.
11 May 2022	Network Rail publish changes to 2023 Timetable Planning Rules including Rules that apply to the Wrexham to Bidston route.
16 May 2022	Network Rail representations that set out its position with regards both GBRf and TFWRL applications and sets out three unresolved issues.
23 May 2022	Network Rail shares its economic evaluation of the competing freight and passenger services.
27 May 2022	Network Rail invites responses to a network change proposal for the removal of level crossing on the Wrexham to Bidston route.
30 May 2022	Network Rail shares a planned timeline for a Congested Infrastructure declaration for the Wrexham-Bidston line.
15 July 2022	ORR request update regarding unresolved issues.
1 August 2022	Network Rail declares the infrastructure between Wrexham Central and Bidston as Congested Infrastructure.
23 September 2022	Systra conclude a report for ORR reviewing the economic benefit analysis carried out by Network Rail.
26 October 2022	ORR/Network Rail meeting regarding remaining unresolved issues (level crossings and maintenance access). Network Rail confirm resolution.
