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Dear Paul and Sue

2nd Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and First Trenitalia West Coast Rail Limited 11 December 2022

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 (trading as Avanti West Coast, referred to in this letter as AWC) (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision.

Application

The original application requested firm rights to run additional services between London Euston and Liverpool Lime Street, starting from the Principal Change Date (PCD) 2023. ORR has decided to grant the rights on a contingent basis only,

commencing on PCD 2023 and expiring on the Expiry Date or earlier termination of AWC's track access contract.

Industry consultation

AWC undertook the industry consultation. The application was originally consulted in October 2019 as part of a S17, but the removal of these elements from that application converted it to a S18 and therefore these rights were removed from the original request and were re-consulted separately.

During re-consultation, there were no objections raised other than by GUT. This objection was subsequently withdrawn along with its competing application.

Statutory Consultation

As required under the Act, on 4 November 2022, we sought Network Rail's representations on the application and it replied with a summary of its position on 28 November, with full representations being provided on 6 January 2023. We forwarded these representations to AWC on 6 January, and asked for its comments. AWC provided comments on 23 January.

It should be noted that part of the reason why Network Rail disputed this application initially was that there was a competing application from Grand Union Trains (GUT) for services in the same area. This was a major consideration in all of the subsequent analysis and capacity planning work carried out by both Network Rail and ORR. However, GUT withdrew this application on 1 September so this letter does not make detailed reference to the implications of the competing application, since it is no longer a factor in our decision.

Other than the GUT application, there were two major reasons for Network Rail's disagreement: firstly, the issue of platform availability at London Euston in the light of the closures of platforms for HS2-related upgrade work; and secondly, the lack of traction electricity capacity at Bushey, which was again due to be upgraded and which would have better facilitated the running of additional electric trains in this area. The projects were originally due to be completed in May 2025, and NR indicated that they would be willing to consider granting firm rights after that date but not before.

AWC disputed Network Rail's conclusions and stated that its own power modelling assessment suggested that some of the rights could be accommodated by the existing arrangements for traction power. It was prepared to consider applying for some contingent rights but wanted Network Rail to give further consideration to grant firm rights in other slots, especially in light of GUT's application withdrawal.

ORR review

During the application review process, we asked an external consultancy firm, WSP, to carry out an assessment of competing applications for West Coast Main Line capacity. Their work was done on the basis of the original project completion dates and on the assumption that there would also be GUT trains running on the same route. WSP came to the conclusion that there was enough platform and electrical capacity to grant AWC the rights on a contingent basis until May 2024, when they could increase the service frequency, and December 2024, which the rights could be converted to firm.

Since the application was submitted, there have been significant delays to the delivery of platforming and electrical upgrade work. Network Rail has not given a timescale for either project but at the same time, it has not changed its position on AWC's application, stating that there is too much uncertainty around when the Euston and Bushey works will commence and be completed to agree to any of AWC's services at this stage. The withdrawal of GUT's competing application has also not affected Network Rail's stance, and it has been unwilling to reconsider whether some of the services could be accommodated.

Our duties under section 4 of the Act and our decision

We have considered this supplemental agreement and we have concluded that its approval 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 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.

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 [TOC abbreviated name]. 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 'Louise Beilby', is positioned below the text 'Yours sincerely'. The signature is written in a cursive style with a long horizontal stroke at the end.

Louise Beilby