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Access Executive



10 November 2023

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Dear Rob and Chris

Approval of the 14th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Freightliner Heavy Haul Limited dated 11 December 2016

1. Today we approved the above supplemental agreement (SA), submitted to us formally on 25 October 2023, under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains the reasons for our decision.

Summary

2. This letter directs the approval of contractual rights for Freightliner Heavy Haul (FLHH) to operate trains at the time slots requested. ORR's decision is based on our analysis of the line's capability, performance and operational aspects. We have considered MTR's arguments and concerns raised but are persuaded by the case made by Network Rail and FLHH as to why these rights should be granted. The key reasons for our decision are:
 - The services are already running, and Network Rail has demonstrated that they perform well.
 - MTR's concerns about traffic management and the adoption of freight management policies by Network Rail are not significant enough to prevent the operator from obtaining access rights.
 - MTR raised concerns about performance however we have been persuaded by Network Rail that sufficient effort has been made to improve operations in the area.

- The provision of contingent or time-limited rights, suggested by MTR, is not a suitable solution. FLHH is currently running these services and Network Rail has a bank of data already on how the services perform.

Purpose

3. The purpose of this agreement is to grant FLHH the firm rights necessary for the delivery of aggregates from Port Talbot and the quarries at Moreton-on-Lugg in Herefordshire to distribution sites in the South East for construction projects.
4. The SA converts FLHH's train slots currently operating as Train Operator Variation Requests (TOVRs) to firm rights. It adds 17 additional firm rights and removes two existing firm access rights from FLHH's Track Access Contract. The rights will expire on the Expiry Date of the Track Access Contract (PCD 2026).
5. The rights sought in FLHH's application support a large haulage contract, which moves critical construction materials to receiving terminals in the South East. The amended Rights Table included in FLHH's application reflects its current operations and use of capacity.

ORR's role

6. ORR is the independent safety and economic regulator for Britain's railways. For track access, we make sure that both passenger and freight train operators have fair access to the rail network and that best use is made of capacity. Our guidance module [The statutory and contractual framework \(July 2022\)](#), sets out how we do this. 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. Section 4 of the Act lists the duties which we must consider in exercising our functions under the access regime.

Industry consultation

7. Network Rail undertook the normal industry consultation, in line with the [Industry code of practice for track access application consultations](#), which ran from 20 December 2022 to 23 January 2023. There was only one issue raised during consultation, which was by MTR Elizabeth line (MTR) and was not resolved ahead of Network Rail and FLHH's informal submission to ORR. MTR raised concerns about introducing additional freight services in the peak hours and the impact these may have on prospective MTR services. Also, MTR argued that there had not been sufficient performance analysis undertaken to ensure that the services would not negatively impact upon MTR and other users.
8. Following efforts made by Network Rail to resolve its outstanding objection, Network Rail notified MTR that the parties would be informally submitting the application on 10

August 2023 and asked MTR for any further comments. No further comments were received, and the application was submitted to ORR.

9. On 25 September 2023 Network Rail notified us that, following further conversations, MTR still had objections to the rights contained within the application. Network Rail submitted an updated Form F and Annex 2A, with additional correspondence included, for ORR's review and determination.

ORR review process

10. On 14 September 2023 we placed the key submission documents, including the consultation correspondence, on our website for transparency (subject to redactions of personal information required by FLHH). Network Rail committed to working with MTR concurrently to resolve MTR's outstanding objections.
11. Following Network Rail's attempt to resolve MTR's objections, we invited MTR to make representations directly to us in relation to FLHH 14th and 16th SAs (both informally submitted on 14 August 2023) which effectively put the applications on hold.
12. We have considered the application in detail and whether it would equate to fair and efficient use of capacity. We also factored in what impact the access rights have on rail operations, including the performance of existing services, especially on a busy network.

MTR's representations

13. MTR's representations of 13 October 2023 raised concerns about the inadequate adoption of freight management and regulation policies (including the Concept of Operations guidance) by the Thames Valley Signalling Centre (TVSC) and by the Train Running Controllers (TRCs) at Western Route Control.
14. MTR stated that some freight paths currently deliver poor performance which have a negative impact on MTR's services. MTR confirmed that it would only support access rights on a time-limited or contingent basis until it has full visibility of the 'final timetable' that incorporates all applied for freight services, including the FLHH 18th SA (Mendips timetable recast) and until a performance review of the December 2023 timetable has been undertaken.
15. Finally, Transport for London (TfL) in early consultations and subsequently MTR wanted reassurance that capacity reserved through its Track Access Option is protected for services not currently utilised.

Network Rail's position

16. Network Rail has consistently assured both ORR and train operators that improving performance has been a key priority. This was demonstrated by seven services being removed from the SA at the request of the Route due to performance concerns. Network Rail has explained some of the operational improvements it has implemented around Hayes which clears the Up Relief line more quickly and prevents delays to MTR trains. This revised method of working is supported by Network Rail's Western Route.
17. Network Rail states that the 14th SA does not represent a change to the current timetable. It seeks to secure access rights that underpin already-established traffic flows and service patterns, which pre-date MTR passenger services. It therefore decided that performance modelling would not be a proportionate assessment tool for understanding the impact the services have on other operators. Rather, Network Rail opted to conduct performance checks in line with the usual process for freight applications during the internal consultation period.

ORR analysis

Operational improvements

18. A number of operational and infrastructure improvements were made ahead of application to ORR to improve performance in the Thames Valley area. For example, operational improvements were made around the Hayes Goods Loop, which previously was an area associated with delays and issues particularly with moving freight services off the mainline and into the Tarmac terminal.
19. Network Rail introduced a change in the method of working at the Tarmac terminal in Hayes. Rather than directly running into the terminal, which required the train driver to stop and pick up a radio from the shunter and then moving forward at 5mph; the train now runs directly into Hayes Up Goods Loop, which clears the up relief more quickly. ORR understands that freight trains then propel into the Tarmac terminal from the London end of Hayes Goods Loop, which has no interaction with the MTR services running on the relief lines.
20. Network Rail confirms that this change in the method of working gives sufficient margin for the FLHH service to access the terminal without delaying MTR trains. This is now the standard method of working used by FLHH and Network Rail train planners. Network Rail has told us that the application has been reviewed and approved by Western Route, its Sale of Access Rights (SoAR) Panel and other relevant departments through its internal consultation process.
21. Although MTR is not convinced, we are persuaded that Network Rail has made considerable effort in improving operations in the Thames Valley area in the context of

this application, which has improved performance both for freight and passenger operators overall.

Freight management and regulation policies

22. MTR argued that in order to support FLHH's 14th SA, it would need Network Rail to adopt and consistently use the freight management and regulation policies it shared with Network Rail, which it argues is key to the successful delivery of the timetable. In particular, MTR asked that the 'TVSC Paddington – Maidenhead Regulation Policy' is adopted by the TRCs at Western Route Control. This document provides a 'first come, first serve' approach at junctions in the Thames Valley for passenger services who receive priority over out-of-path (for example delayed) freight trains.
23. Network Rail stated that these guidance documents have not yet been implemented and set out protocol representing 'business-as-usual' freight service management and are not specially related to access rights.
24. MTR also cited a document that provides guidance for managing long distance services in the Thames Valley and states that the TRC should agree a plan for any late-running freight with the Information Controller. MTR believes that this process is applied inconsistently which can lead to a domino effect of issues caused by late running freight on the relief lines.
25. ORR has carefully considered MTR's serious concerns and Network Rail's response about how traffic is managed on this busy network. We are satisfied that sufficient improvements have been made that reduce the effect delayed freight (or passenger) services may have on other operators. ORR welcomes further improvements through the introduction of freight management and regulation policies, but we do not consider that current or historic challenges to traffic management should prevent the sale of access rights in this case.

One-hour windows

26. All rights included in FLHH's 14th SA have one-hour windows. FLHH says that this ensures a stable train plan and allows both FLHH and other stakeholders to efficiently manage and optimise access to the network. Most terminals served by services included within this supplemental are located in urban areas and as close as possible to the locations where aggregates are required by the construction industry, thus minimising onward transportation by road.
27. Space within these terminals is constrained, and orders are processed on a 'just in time' basis, with a short window between rail arrivals and the need to fulfil customer orders. FLHH argued that one-hour windows are essential to the end user, providing certainty on the time a train will arrive. ORR recognises that this arrangement is standard and is in line with our [2016 decision letter](#).

Network Rail's strategic planning

28. MTR shared concerns that a strategic approach is not being taken regarding changes to the freight timetable and the introduction of additional freight services and terminals on the Thames Valley. MTR argues that there appears to be a lack of co-ordination between the Long Term Planning, Short Term Planning and Spot Bid Freight planners to assess the performance risk, in particular the introduction of additional or revised freight services around the morning and afternoon peaks. Network Rail argues that freight growth on the network is crucial to meeting its net zero targets, along with supporting the construction of major infrastructure projects and growth of the UK economy.

Network Rail performance assessment process

29. MTR wants to see performance modelling undertaken on the final December 2023 timetable. MTR argued that it has had to undertake TRENTO performance modelling for future timetable changes in order to satisfy the Network Rail SoAR panel, but it is concerned that significant changes to the freight timetable are not modelled in the same way, presenting potential performance risk to MTR. Network Rail argues that there is no change to the current timetable and the rights just underpin already-established traffic flows and service patterns.

30. In the event where there are unresolved issues arising from Network Rail's consultation regarding the likely operational performance impact, we require supporting performance information as part of an application. Network Rail has provided details on the impact that the rights will have on operational performance through historic running data as well as details on actions it has taken to ensure these services have been effectively implemented. We understand Network Rail's position that although a full performance modelling exercise is sometimes warranted and was deemed necessary for a recent MTR application, it does not invalidate what Network Rail has opted to do for FLHH's application.

Mendip recast and related applications

31. MTR is not willing to support the SA until it sees the final timetable incorporating all the services included in various live SA applications. For example, MTR has concerns regarding FLHH's 18th SA, which is a major re-write of services to and from the Mendip quarries. ORR's view, as noted in our guidance module [The use of capacity](#), is that each SA needs to be assessed individually. ORR makes a determination on track access applications based on the merits of each case. Network Rail assured us that FLHH's 14th SA has no direct dependency or involvement with the Mendip traffic.

Specific services of concern

32. TfL set out specific services (6A82 and 6A85) that were of particular concern due to them running during the peak MTR service hours on the Relief Lines. TfL argued that attempting to run a fully laden freight train along the Thames Valley at the height of the morning peak is not good practice and would adversely impact MTR services during its most critical periods.
33. Network Rail responded that these issues were historically due to inadequate Train Planning Rules (TPRs). Network Rail argued that FLHH since undertook a review of these and there have been no further issues since. Network Rail also argued that there was a minor amendment to the arrival time for 6A85 as a result of feedback from Western Route in relation to the Event Steering Group (ESG) timetable, which should prevent the train flexing any later into the MTR peak period.
34. MTR set out two afternoon peak services which it had concerns about (6C65 and 6C66). Network Rail confirms that these afternoon services were an operational requirement due to the terminal at Hayes needing to be staffed when the trains are present. Network Rail argues that retiming them later would require additional staff to be rostered which would erode the viability of the traffic flow in general, and as such cannot be accommodated.

Time limited/contingent rights

35. MTR suggested that contingent rights are put in place for FLHH's freight services until it can see how the timetable performs and have assurance that the regulation policy and Concept of Operations has been implemented successfully. Network Rail argues that these services are already existing and currently operating on the network and as part of the current timetable. Performance checks and mitigations, as applicable, have been reviewed and conducted as part of Network Rail's internal consultations.
36. ORR's view is that contingent rights would not be an appropriate solution in this instance. FLHH's services have already been running for many timetables as TOVRs so its impact on timetable performance is known. Contingent rights would not be suitable as these would not provide the certainty that is needed by the rail user, and they cannot continue to rely on TOVRs.

Track access option (reservation of capacity)

37. During and following the industry consultation, TfL and MTR shared concerns around the protection of capacity that they believe is secured through the Crossrail Track Access Option contract.
38. Network Rail responded that the concept train plan used for MTR performance modelling was not intended to permanently fix the number of trains operated on

Western route. At the time when the concept train plan was developed it was clear that there would be an increase in freight services in future years due to HS2 construction traffic and broader market growth. Network Rail state that this was regularly discussed at the relevant ESG which had oversight of the concept train plan. Freight paths are constrained by the need not to conflict with peak MTR services, which allows for more freight services in the shoulder peaks.

39. Network Rail has confirmed that MTR has no unexercised rights on the Western route remaining from its Crossrail Track Access Option contract. The May 2023 timetable introduced the full Elizabeth Line service and is in line with the concept train plan.

Validity of the industry consultation

40. MTR questioned whether the industry consultation responses are still valid from December 2022 as there have been significant timetable changes made since and further future changes now on the horizon including the Mendip recast (FLHH 18th). MTR was the only stakeholder to raise concerns during the industry consultation and the application has received no further comments since the submission documents were published on ORR's website on 14 September 2023.

41. Although it is regrettable that a significant time has passed between the consultation running and submission to ORR, reasonable effort has been made during this time to resolve MTR's objections. We ask Network Rail to try and avoid long delays following industry consultations.

ORR conclusions

42. The Great Western Main Line (GWML) is a busy mixed-use railway. Although the relief lines are frequently used by MTR for its peak services, it is also important to note that there are wider commercial and timetable considerations, which means that there is a requirement for freight services to run during these times too. ORR also notes that the traffic is of significant importance to the UK's construction industry and to the economy.

43. Although this is an application for new firm rights, FLHH's services (included within the amended rights table) have been running for many years and pre-date MTR's operation on the GWML relief lines. This application needs to be considered on its own merits.

44. As Network Rail notes in its representations, the train slots included in the SA all have validated paths in the existing Working Timetable and continue to do so in the May 2023 Concept Train Plain. Network Rail added that FLHH has been supportive of the inclusion of additional MTR rights on this corridor on the basis that both freight and passenger services should co-exist.

45. MTR may have concerns on the management of traffic in the Thames Valley however this should not necessarily prevent FLHH (or any other operator) from converting long-standing traffic flows to firm access rights. A full performance modelling exercise is not always required, and Network Rail maintains that these services perform well.
46. Although MTR has concerns around its aspirant services, Track Access Option contracts do not necessarily fix services permanently into the timetable, and Network Rail's assessment is that they are not conflicted by services in this SA.

Our duties under section 4 of the Act and our decision

47. We have concluded that approval of this SA strikes the appropriate balance in discharging our statutory duties under section 4 of the Act; in particular, those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network in Great Britain for the carriage of passengers and goods (section 4(1)(b)), contribute to the development of an integrated system of transport of passengers and goods (section 4(1)(ba)), and enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance (section 4(1)(g)).

Conformed copy of the track access agreement

48. 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 FLHH. ORR's copy should be sent for my attention.

Public register and administration

49. Electronic copies of this letter, the approval notice and the agreement will be sent to Network Rail's Policy and Access Team. 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

Ryan Holt

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