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Dear Mark and Chris

## **Decision on the 18th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Grand Central Railway Company Limited**

We have carefully considered Grand Central Railway Company Limited's (Grand Central's) application for a supplemental agreement to its track access contract with Network Rail Infrastructure Limited (Network Rail). ORR has approved the application. This letter explains our consideration of the application and the reasons for our decision. Our approval means Grand Central can begin offering services that call at Peterborough, offering more journey opportunities and choice to passengers.

### **Purpose**

The purpose of this application is to provide Grand Central with contingent rights to one call per day at Peterborough in each direction in each of its two service groups Monday-Saturday. Grand Central currently holds no access rights to stop its services at Peterborough.

### **Industry consultation**

Network Rail undertook the usual industry consultation in September and October 2022. The proposal consulted on was a Section 22A application, indicating the two parties had not reached agreement, for two calls per day at Peterborough in each direction in each of Grand Central's two service groups. Following discussions with Network Rail, the proposal was reduced to one call per day in each service group, and Network Rail then decided to support the proposal as a Section 22 application.



In line with Network Rail's East Coast Main Line access rights policy, it is currently only willing to support the inclusion of the additional services until the Subsidiary Change Date in June 2024.

Transport Focus, CrossCountry and First Great Western Railway supported the proposal. West Yorkshire Combined Authority raised questions regarding performance and extended journey times for West Yorkshire-London services. Grand Central explained that the services would make use of 'slack' in the timetable and there would be limited impact on journey times.

LNER, who would compete with Grand Central for passenger revenue at Peterborough, responded to the consultation opposing the supplemental on the basis of revenue abstraction. Separate to the industry consultation, LNER supplied its own economic modelling to ORR to review. Further detail on ORR's economic review of the application is included below.

The Department for Transport did not provide a response to the application through the industry consultation or separately to ORR.

### **ORR review**

Our review of the application raised no operational or performance concerns. The service already passes through Peterborough station, and indeed sometimes stops there without being permitted to allow passengers to board or alight, therefore most operational requirements are already in place and performance is unlikely to be adversely affected. We met with Grand Central to discuss the operational aspects of the proposal and Grand Central's performance plans.

Although the proposal represents a small increase in service provision, ORR policy sets the expectation that we will conduct an economic review on any new open access services which would compete with franchised services and so may impact on the public sector funder's budget.

New open access services can offer new travel opportunities for users and create competition on existing flows. However, greater competition can also mean a loss of revenue for the services operated by existing operators, for example public service operators. In situations where public service operators bear revenue risk, this revenue loss is expected eventually to lead to lower premium payments by public service operators to the Department for Transport (DfT), or higher subsidy payments from DfT to operators. Where the public service's contracting arrangements mean revenue risk sits with the DfT, the loss of revenue bears more directly on the funds available to the Secretary of State. This may also affect funding available for future investment.



The Not Primarily Abstractive (NPA) test is the key criterion we use to evaluate this trade-off. It informs whether new revenue expected to be generated (a proxy for passenger benefits by providing additional or better services for passengers) is sufficient to compensate for the impact on the Secretary of State's funds. The latter is approximated by using the revenue abstracted from public service operators minus any Infrastructure Cost Charge (ICC) payments to Network Rail from the open access operator. The services in this application would not be liable to pay the ICC. Generally, we would not expect to approve applications that generate less than £0.3 of new revenue for each £1 of net revenue loss to taxpayers. Conversely, passing this test at a level above £0.3 is a necessary but not sufficient criterion for approval, as we must consider all factors and ORR duties together. Our [NPA test guidance](#) makes it clear that "there will necessarily be a large degree of judgment involved in this decision" and that "we will need to strike a balance between a number of our statutory duties, in particular to promote: the use of the railway network; competition for the benefit of rail users; and having regard to our duties in relation to funders".

As part of our assessment of the NPA test on this application, we reviewed revenue modelling submitted by both LNER and Grand Central, and met with both parties to discuss their submissions. In addition, we engaged an independent economic consultant to review the use of elasticity modifiers<sup>1</sup> in Grand Central's submission. As guidance on the application of elasticity modifiers is unclear and because LNER disputed their application we modelled their impact as a sensitivity to our central forecast. Including modifiers as a sensitivity produces a wide range between upper and lower NPA ratio estimates (as illustrated in the table below). However, the very low level of total abstraction involved in this specific application means that the material difference between the upper and lower range generation forecasts is only £65,000. As such, we did not consider it proportionate to commission further work to refine this range into a central forecast in order to inform our decision-making.

Scenario	Total Revenue	Generation	Abstraction	Ratio
Without elasticity modifiers	£1,085	£187	£897	0.21:1
With elasticity modifiers (Sensitivity)	£1,088	£252	£835	0.30:1

Following completion of our review of the proposal, we concluded that the application has a generation:abstraction ratio in the range 0.21:1 to 0.30:1, with an absolute abstraction of between £0.835m and £0.897m per annum.

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<sup>1</sup> Elasticity modifiers are used to adjust Passenger Demand Forecasting Handbook (PDFH) recommend fares elasticities in line with an operator's average fares. In the case of Grand Central, because its fares are generally lower than LNER's, this has the effect of increasing its fares elasticities.



As the application could pass the 0.3 NPA ratio threshold only at the highest end of the range, we considered if there were other aspects of the application relevant to our statutory duties that should lead to us approving or not approving the application.

We consider that the absolute level of abstraction, of between £0.835 and £0.897m per annum, is a small amount compared to the value of abstraction we have accepted for previous applications and to LNER's total overall fare income of £470 million in 2021/22. The material difference in revenue generation between the worst and best case generation:abstraction scenarios equates to a forecast of £65,000 annually (i.e. 6 passengers per day paying the average off-peak fare across all Grand Central calls to and from London). In addition, we note that due to the nature of the public service contract LNER holds, this abstraction will be passed through to the Department for Transport, which did not object to this application. We viewed these as relevant considerations, as the NPA test is designed to inform our duty to consider the funds available to the Secretary of State.

Grand Central argued that allowing these additional station calls would promote an efficient use of capacity. These station calls would utilise spare pathing time already built into the timetable and Grand Central advised that in some cases its current services already stop in the Peterborough platform (without allowing passengers to board). Grand Central argued that this causes significant passenger disbenefits and potential safety concerns.

We considered that it is in line with our statutory duties to encourage services that have sufficient pathing time or that already stop at station platforms to allow passengers to be better served and to attract new passengers to the railway. We viewed this as particularly relevant to our duties to “promote the use of the railway network in Great Britain for the carriage of passengers ... to the greatest extent that it considers economically practicable” and “promote efficiency and economy on the part of persons providing railway services”.

Having taken consideration of these additional factors, we view that when considered against all our relevant statutory duties, we should place a greater weight on the passenger benefits and improved use of capacity represented by this application than on the small abstractive impacts on the funds available to the Secretary of State and approve this application.

#### **Our duties under section 4 of the Act and our decision**

We have concluded that approval of this supplemental agreement 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 for the carriage of passengers (section 4(1)(b)), promoting efficiency and economy on the part of persons providing railway services (section 4(1)(c)); promoting competition in the provision of railway services for the benefit of users of railway



services (section 4(1)(d)), enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)), and having regard to the funds available to the Secretary of State (section 4(5)(c)).

**Public register and administration**

Electronic copies of this letter will be sent to the Department for Transport, Network Rail and LNER. A copy of this letter will be placed on the public register and ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Reed', written in a cursive style.

**David Reed**