

11th March 2024**Louise Beilby**Senior Access Executive
Office of Rail and Road

Via email

XCTL Section 17 Application
Response to NR Representations

Dear Louise,

This letter constitutes the XC Trains Limited (XC/we) response to representations from Network Rail Infrastructure Limited (NR) dated 16th February 2024 regarding the Section 17 Application for a new Track Access Contract (TAC) submitted by us on 25th January 2024. We have focused our response on what we understand to be the key substantive points and topics raised in NR's representations to assist ORR in resolving the application efficiently. We have not provided an exhaustive point-by-point reply dealing with several relatively minor and/or administrative points raised by NR – those points can be dealt with straightforwardly if ORR wishes us to address them in due course.

We remain committed to working collaboratively with NR, including in relation to our parallel Section 22 Application, in the hope that we can reach agreement on a TAC extension beyond SCD 2024. This is necessary to meet the commitments contained in our recently signed National Rail Contract (NRC) with the Department for Transport (DfT). The DfT has reiterated the importance it places on those timetable commitments being fulfilled. NR was engaged in assessing the NRC obligations during the negotiation period and the output of the advanced work on our NRC was included in the original Section 17 application, titled "XC-NRC-performance_assessment". NR did not raise significant concerns at that time.

Our application for a Section 22 extension of our TAC and uplift in rights to deliver our committed obligations was submitted to NR on 2nd October 2023 and was at the earliest practical opportunity given that the NRC negotiations were ongoing until mid-September 2023. Submitting before the negotiations had concluded could have potentially wasted both parties' time given previous indications from NR that only a short extension of the TAC would be possible for the current services in operation until the XC NRC was signed. This submission date is in line with the published timeline on NR's website, detailing complex submissions for May 2025 should be submitted ahead of the Sale of Access Rights (SoAR) panel date of 29th January 2024. Approaching this application in a piecemeal manner (rather than a "pragmatic" manner as NR describes it) in submitting an extension only application followed by subsequent applications for additional rights was considered to be inefficient and not seen as necessary given the early submission date and advanced work carried out by NR ahead of the NRC being signed. NR did not suggest such an approach would be required at that time but has since raised this point in the past few weeks.

Detailed timetable and performance work has continued between XC and NR on the future rights aspirations for PCD 2024 and SCD 2025 timetables to help inform and assure both parties that the paths are compatible with the post COVID timetables and aspirations of existing Operators. The ECML and WAML ESG base specifications and timetable plans contain the train paths we are seeking rights for from May 2025 and the NRC ATT (Advanced Timetable Team) work has found potential solutions to pathing issues for PCD 2024 and SCD 2025 that are not covered by the 2 ESGs. Subsequent performance modelling by the ESGs and NR Performance and Simulation Team (P&ST) have not demonstrated any significant issues. At no point through any of this complex and detailed



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work has NR described any constraint on capacity for any of the routes we are applying for additional services with dated rights for from May 25 and it is disappointing to see that their support has regressed, with the reasoning for this regression changing on several occasions, as the timetable and performance work has moved forwards.

Form P Application

NR suggests as part of the application that TP-HAZID hasn't yet taken place for May 25. While this is factually correct, we consider it irrelevant in the case of rights applications. The TP-HAZID timeline does not align with NR's published timeline of submission of access rights applications. The same can be said for timetable validation work. Rights applications should be submitted ahead of the timetable preparation period, as detailed by NR's published timeline, which we have sought to progress our applications in accordance with. An expectation of fully validated timetables to answer questions concerning capacity and rights allocation will lead the industry into a situation where multiple applications, particularly for complex timetable changes, are submitted very late in the process.

Under Section 3.4, NR asserts that we do not undertake the activity of joining trains at Birmingham New Street. There are 50 planned coupling moves (not including de-coupling) that occur at Birmingham New Street each week in our LTP timetable, not including ad-hoc moves, and many other coupling moves between our trains elsewhere on the network. Most of the coupling moves at Birmingham New Street are terminating services joining to run ECS to depot with a few planned strengthening moves where an ECS couples to an in service passenger train. The coupling of units together at Birmingham New Street is well practiced within XC, with a detailed Method of Working and appropriate allowances planned into the timetable in accordance with the Train Planning Rules (TPRs).

Performance analysis for 2023-2024 performance year to date shows the performance risk of the coupling move is negligible. There have been 25 incidents causing 546 minutes in total (not all PfPI [Process for Performance Improvement] minutes) at Birmingham New Street for coupling moves in the current performance year when excluding ad-hoc moves. This equates to 2 incidents and 45 minutes (not all PfPI) on average for 200 planned coupling moves per period at Birmingham New Street.

NR states that our application to use our existing rights to achieve a week day through service between Cardiff and Edinburgh and return constitutes an application for new rights and that we do not have rights to join services together in such a way. Our current TAC provides contingent rights to join our services together at Birmingham New Street to form through services in Schedule 5, table 2.3. Given there is no increase in the use of capacity except for an additional Derby – Birmingham right included in the application, we disagree with NR's statement. This is an adjustment to the existing rights that are held in our current TAC and these are not new train paths, nor do they use additional capacity. The outward service from Penzance is currently strengthened from Plymouth, rather than Birmingham as it will be to deliver this service. The return service from Edinburgh to Cardiff involves units splitting at Gloucester, a train move that has existed in the timetable for over 10 years. NR has not articulated any capacity concerns in relation to the different use of existing rights and the NRC ATT work and performance summaries do not demonstrate any significant issues. On this basis XC does not understand the refusal of NR to consider the continuation of firm rights for these services via the Section 17 application and our 30th supplemental.

We have openly discussed the amendments to the rights table with NR throughout our applications. The changes brought about by the rights table audit ahead of the S17 application were declared to NR in a fully transparent manner. This did not impact any of the assessment work being carried out as it was the rights table that was incorrect, not the timetable detail that was being used by the ECML and WAML ESGs and the NRC ATT and P&ST work. What had been and is being worked on in these groups has not changed. Reference to a singular Saturday train being incorrect is born of NR's data held in the ECML ESG database being incorrect, not because of anything submitted by us as part of any application. It should be noted that XC did not have access

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to the database used by NR during the majority of the ECML development because this is contained in a software system that XC did not have access to.

The 14 part rights that have been through a General Approval and are going through the 32nd SA are for services currently operating that will continue to operate throughout the duration of the proposed TAC, hence why they were included in the S17 application as firm rights. NR has not stated in any correspondence why it believes capacity doesn't exist to sell these rights as firm rights from PCD 2024 given they are existing services operating today and that will continue to operate for the foreseeable future. The majority of changes to these 14 part rights are related to routing amendments and extensions to services that have operated for many years.

Track Access Contract

As detailed in the Rights Table Commentary submitted with S17 applications, table 2.1 has had extensive work carried out on it to make it easier to read and correct historic issues. A full, detailed explanation of every amendment applied to Table 2.1 was included to assist in evaluating exactly what had been amended in the rights table. Given the extent of the changes, a marked up version of table 2.1 was difficult to read or understand and XC deemed the commentary a more pragmatic solution to detailing the changes.

Table 2.3 was removed as part of the exercise around simplifying our rights tables. We have held firm rights to combining services together in this prescriptive manner for a long time. At no point in recent history has this rights table been called into action through the lack of delivery of rights for through services as part of any timetable development process. It was deemed overly prescriptive (and extremely out of date) so its removal was viewed as a pragmatic way to simplify our rights, with a singular comment about having contingent rights to through services by "stitching together" rights detailed in Table 2.1 serving the same purpose going forward. If NR would prefer to keep Table 2.3 in operation, then we are happy to review and submit a revised Table 2.3 to match the current and future service levels although we would question whether this and a continuation of table 2.3 is necessary. The wording included in the draft TAC under Table 2.1 and numbered 2.11 and 2.12 was suggested wording and we're happy to work through exactly how this should be worded that matches the model TAC and / or other Operator's TACs that achieve this purpose and to provide consistency.

Interacting Applications

Throughout NR's representations reference is made to further work being carried out by NR in connection with other applications made and aspirations held by other train operators. While we are aware of some of these applications, evaluating them in any meaningful way is difficult without sight of any detail. We have responded to the Grand Union Trains (GUT) S17 application for Cardiff to Edinburgh services and Hull Trains 22A application for services to Sheffield. Meaningful capacity analysis on the GUT application is impossible for us without any detail on train paths, operating characteristics and stabling arrangements, which have not been shared with us. The Hull Trains application contained train paths that conflict with the ECML ESG timetable, and the proposed times at Sheffield, where they would interact with our services, are unachievable and therefore it is difficult to evaluate capacity at Sheffield around these services.

NR mentions other Operator's "*aspirations*" (which do not yet constitute actual applications) but has not shared any detail of these, not even which Operator's aspire to amendments to services or additional services. Given the length of time our application has been under review and given the timeline in NR's representations of work completing in May 2024 on these applications and unknown aspirations, we question when a final decision will be made, especially if further applications and aspirations are put forward in the next 10 weeks or so. NR's published deadline for submission of complex applications for May 25 TT is to achieve a SoAR panel in January 2024 yet our application, submitted in good faith and in good time, now won't have a decision until May 2024 at the earliest. NR's approach to our applications continues to create significant uncertainty for XC.



Capacity

NR refers in some detail to the work carried out collaboratively to review the future train paths and find workable solutions to create validated and robust train paths. This work has demonstrated that capacity exists for these services, though some amendments and flexes to achieve validated timetable paths are still required. This is to be expected and there is nothing outstanding in this work that is sufficiently material to prevent resolution through the production cycle of The New Working Timetable for Dec 24 and May 25. The ECML ESG TT contained significantly more timetable issues than the advanced work on our future paths, yet NR deemed that an acceptable position to recommend putting the ECML ESG TT into production.

At no point throughout this section and throughout our applications, either the 30th SA or this Section 17 application, has NR detailed where capacity is constrained for any of the rights included in our applications for either the Dec 24 or May 25 timetable. No specific comments are made for any of the rights requested on any specific route or area regarding capacity. NR has continued to view our applications for capacity, specifically the additional rights for May 25 and now the 14 part rights contained in the 31st and 32nd supplemental agreements, as singular, collective applications, approving or supporting all the rights or not supporting any of them, with no discussion, opinion or decision on individual rights and where capacity may be constrained and why. XC's position is that this "all or nothing" approach is unreasonable, inefficient and impractical. Given the journey length of some of our services and the number of routes they travel across, we find it difficult to comprehend that capacity is constrained for all the additional rights we are applying for.

Performance

The performance modelling carried out by the NR P&ST following the detailed timetable work has not highlighted any significant performance risks other than the slight detriment that is to be expected with the addition of extra services. The ECML ESG Performance Modelling also shows no significant issues that should restrict the sale of access rights. NR and the ECML Programme Board have recommended the ECML ESG TT is taken forward to production, and no caveat was made that this should not include the XC services that are included in the base spec of the ESG that are the subject of this application and the 30th supplemental.

NR's approach to XC's applications

XC has sought to progress its applications efficiently, collaboratively and proactively and is committed to continuing to do so, including via continued discussions with NR. While XC acknowledges that this is a complex process involving several competing factors, we have found the process in relation to these applications to have been significantly more challenging than usual because of the approach taken by NR.

While XC has sought to raise and progress its applications at the earliest possible stage, NR's approach has been, in our view, to unnecessarily postpone making a decision on our applications on several occasions. The rationale given by NR has been unclear and has fluctuated, with new points being raised at relatively late stages of the process. NR has not articulated any capacity-based concerns in appropriate detail. This has made it difficult for XC to understand and address NR's concerns.

The rights sought by XC are necessary to meet its NRC timetable commitments. The DfT has reiterated the importance it places on these commitments being fulfilled. NR was involved in and sighted on the NRC process at the time and did not raise any significant concerns. It is unfortunate and disappointing that NR is raising these concerns now for the first time.

NR's approach has created significant and ongoing uncertainty for XC necessitating our current direct application to the ORR. We hope that this will be a more effective and constructive process.

Please let me know if any further information is required.



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Yours sincerely

Lee Tuttle
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