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Network Rail Representations for the proposed 32nd Supplemental Agreement (renumbered from 29th Supplemental Agreement) to the Track Access Contract between Network Rail Infrastructure Limited and West Midlands Trains Limited dated 15 May 2019

As directed in your letter dated 20 May 2024, Network Rail is making its representations in respect of a Section 22A of the Railways Act 1993 for the 32nd Supplemental Agreement (SA) of the Track Access Contract (TAC) dated 15 May 2019 between Network Rail Infrastructure Limited (Network Rail) and West Midlands Trains Limited. Your letter referred to a 29th Supplemental Agreement, which we have confirmed is now renumbered to 32nd Supplemental Agreement to distinguish it from the separate Section 22 application relating to equivalent rights expiring in December 2024.

In line with ORR's letter of April 24 2024 to the industry on 'Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes', West Midlands Trains Limited submitted this application to the ORR on the 20 May as a S22A

Your letter made clear to industry that "We expect applications received by 20 May 2024 to be of sufficient quality, completeness, and certainty to enable Network Rail, industry and ORR to assess them. A prerequisite for achieving this is that applicants will have discussed their plans with, and sourced information from Network Rail before submission (in line with our guidance)."

It further "...requested that Network Rail produces a high-level plan by 05 June 2024 for ORR and industry. This will set out when it will produce its robust assessment for the applications submitted by 20 May 2024."

Network Rail fulfilled this request on the 5th June 2024 outlining the plan for undertaking capacity and performance assessments to inform both Network Rail and the ORR on the applications received.

That response should be considered alongside this Representation.

In particular, it should be noted as indicated therein that:

- due to the unprecedented scale of 83 unsupported applications received at one point in time, Capacity Planning plan to phase its analysis,
- assessments will initially focus on applications and geography which do not overlap with the ongoing ECML ESG Development work to mitigate the risk of redundant analysis,
- all ECML ESG related applications will be considered following decisions as to the implementation of the ESG Timetable,

As we set out in the High-Level Plan; “Only those rights which potentially interact, contain the required level of information to inform assessments, were discussed with Network Rail and are intended for the next three timetable changes will be considered by Network Rail.” and that “Applications consisting of rights for geography not impacted or for later timetable changes should be considered separately.”

These factors have shaped the anticipated plan for submission of evidence related to this and other applications.

Whilst Network Rail was made aware by West Midlands Trains Limited that they would be applying for the proposed access rights as requested in ORR’s letter, Network Rail has not yet had an opportunity to fully consider its position on this application and whether it can eventually support the proposed access rights.

ORR, in its invitation to NR to make written representations, expects that NR will:

- include all of the necessary information for ORR to take an informed decision; or
- to refer to all of the necessary analysis and the confirmed timelines Network Rail requires to reach its decision on the application. This should include the “5 June 2024 capacity analysis” and any other analysis Network Rail needs to complete;
- recognise which other applications within the published list of “20 May 2024 applications” could interact with each application.
- Confirm any interested persons name(s) or confirm there are no interested persons.

Network Rail can confirm that we will not be able to in this representation provide all the necessary information for ORR to make an informed decision at this point in time. However, in this representation we will address each of the points above as well as provide:

- provide an initial view of the application Form P and supplemental
- where applicable, highlight if Network Rail believes that some of the access rights sought are outside the scope of the ORR’s letter dated 24th April 2024;
- an indication of how Network Rail will be able to provide its final representations and any intermediate representations so that ORR will then have all relevant information from Network Rail to assist ORR in making an informed decision.

Interested Person(s)

Network Rail is not aware of any persons who would fall within the definition of “Interested Person” in paragraph 1 of Schedule 4 of the Railways Act 1993 in relation to the application made by West Midlands Trains Limited.

Keeping you informed

As stated in the letter to the ORR on the 5th June “The plan will need to be flexible and reviewed through the process to consider industry decisions in relation to the ECML ESG along with potentially other changing industry priorities and requirements. For example, recommendations from the East

Coast Task Force may impact on industry resources, in particular timetabling resource. This could require changes to the remaining stages of the plan, including impacting when analysis can be completed.”

Summary of Rights Sought

In their application and as a high-level summary West Midlands Trains Ltd are seeking the following access rights to commence from December 2024 Timetable and expire on the contract expiry date which is the Principal Change Date 2026:

- 1 firm Weekday right Coventry – Birmingham New Street
- 2 firm Sunday rights Worcester Shrub Hill – Birmingham Snow Hill
- 2 firm Saturday rights Birmingham New Street – Great Malvern
- 2 firm Saturday rights Great Malvern – Worcester Shrub Hill
- 1 firm Saturday right Birmingham New Street – Coventry
- 1 firm Sunday right Great Malvern – Worcester Shrub Hill
- 2 firm Sunday rights Northampton – Birmingham New Street
- 1 firm Sunday right Northampton – Coventry
- 1 firm Weekday right London Euston – Milton Keynes Central
- 2 firm Weekday rights Milton Keynes Central – Northampton
- 1 firm Saturday right London Euston – Milton Keynes Central
- 1 firm Saturday right London Euston – Northampton
- 1 firm Sunday right London Euston – Milton Keynes Central
- 1 firm Sunday right London Euston – Northampton

This application is a continuation from the 29th Supplemental Agreement, for which West Midlands Trains currently hold firm rights up until December 2024.

Industry Consultation for this application commenced on 20 May 2024, and concluded on 21 June 2024.

The High-Level plan and Dependencies

The High-Level Plan submitted on June 5, and our additional engagement with Capacity Planning indicates that the following phases may be relevant for this application:

- Phase 1 - Collation and Scoping
- Phase 2 - Risk Identification for application
- Phase 3 - Production Development Period for SCD 2025 aspirations
- Phase 4a – ECML confirmation for December 2025
- Phase 4b – ECML confirmation for May 2025
- Phase 5 – December 2025 Production Period

We are mindful that the High-Level Plan and its analysis, or other issues indicated, may identify dependencies, risks or changes in risk profiles that could require revision or further review of individual responses. We also note the 5th June plan does not guarantee that analysis will not have to continue beyond the timetable development process. Where this is the case we will communicate with the Operator and ORR.

The current number of new applications received at this point in time is unprecedented, with 83 new applications received. Of these, 55 are seeking capacity on NW&C Region. This volume of simultaneous applications on NW&C Region, with this number of interactions to analyse, involves a level of complexity not previously experienced. As we move through the complexities of assessing the applications the plan may necessarily need to be reviewed and revised.

As stated later in this letter, if interactions occur at different points in time, i.e. different Timetable Change Dates then this could have an impact on when Network Rail will be able to submit its position with regards to the application.

Throughout the rights assessment work phases Network Rail intends to communicate with ORR on progress and provide collated information against individual applications as they are assessed through the plan. The intention is to enable decisions during the process, where possible, rather than await a fully completed package of work considering all in-scope applications.

However, this approach will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact.

North West and Central (NW&C) Region has several large enhancement projects taking place including TransPennine Route Upgrade, HS2 and Midlands Rail Hub impacting long term capacity utilisation for which we will give consideration to when reviewing this application once all the necessary assessments have been completed and Network Rail is able to collectively assess the risks and impact this application may have.

In addition to the key interacting locations specified in ORR's letter of 24th April 2024, Network Rail is also aware of other locations for which there are potentially interacting aspirations and capacity constraints. This includes, but is not limited to Manchester and the surrounding area, Crewe, and the Wolverhampton corridor. During our assessment of the applications we will be paying particular attention to both the locations identified in ORR's letter and those named above.

As ORR is aware Birmingham and surrounding area ~~is are~~ one of the key interacting locations highlighted in ORR's letter of 24th April 2024. This application is one of a number of applications seeking additional rights in Birmingham and surrounding areas. It is our intention to develop a strategic plan for passenger services in the West Midlands area in order to optimise capacity in the medium and long term, taking cognisance of the Midlands Rail Hub project in order to realise the investment benefits of this project. We will do this in consultation with all affected operators and stakeholders.

Due to the time required to undertake an industry review and strategic plan and the assessment plan for this application not aligning, whilst considerations and any views will be highlighted when we

provided our outputs of the plan, timescales do not allow the opportunity to provide a long term strategic capacity utilisation assessment

In preparation of the December 2022 timetable, Network Rail formed industry workstreams to undertake a strategic review of capacity utilisation on both the West Coast Mainline South and Manchester area including the Castlefield corridor and Manchester Victoria. A separate industry working group (managed under the governance of the Grand Rail Collaboration) assessed options for the service structure on the Wolverhampton – Coventry route through Birmingham New Street. The timetable today still reflects this structure – and the outputs produced for Dec 2022, which were supported by the industry – remains the strategic plan for capacity utilisation and will help us in assessing this and the other applications.

As ORR is aware passenger flow at London Euston is currently a concern, with the region having been issued an improvement notice in October 2023 in relation to passenger surges and overcrowding. Network Rail therefore intends to undertake an assessment based on the quantum of services within the December 2022 Concept Train Plan. There also remains a restricted number of platforms at London Euston, with no funded plans to re-introduced a 17th and 18th platform. Passenger flow is primarily focused on number of passengers at a station at a given time, with arrivals and departures rather than requiring knowledge of origin or destination. It will therefore be possible to achieve a good understanding of the risk profile based on the quantum of services and associated passenger numbers within the Concept Train Plan, forming a basis which will allow for qualitative assessment of any differences to inform ORR in it's decision.

A key consideration included in the plan within Annex A is regarding power supply on NW&C. As previously informed, NW&C has several areas of concern with regards to power supply. For any application utilising electric traction, it is our intention to model the outputs of the capacity assessment to understand the power supply risk both during normal working and in N-1 conditions. In carrying out traction power modelling, NW&C region adheres to the requirements stipulated in NR/L1/ELP/27000 "Policy Requirements for Electrical Power Assets". This policy states that the electrical power supply system shall have sufficient redundancy to support the peak timetable with one key piece of equipment out of service (known as N-1). In addition to fulfilling Network Rail policy requirements, maintaining the required N-1 redundancy levels in the traction power network supports adherence to contractual, performance and safety targets. As you can see from the plan contained in Annex A this does add significant time into the plan.

In order to accurately assess power supply it is key that we understand any Empty Coaching Stock moves. We will be requesting this information separately from operators if it was not previously supplied as part of the 20th May applications.

We will undertake internal consultation of the application following our usual business practices however as a result of ORR letter of 24 April 2024 NW&C has 55 application which it must consider. Therefore our internal consultation will be over a longer period of time, and this has been allowed for in the plan.

Common route / regional identified considerations / constraints

This request for rights covers a point in the network where it has been identified at a regional level that more than one applications should be considered by ORR at the same time as any one decision would restrict the ability to accommodate other requests due to capacity constraints in and around of Birmingham New Street and the West Coast Main Line in December 2024, May 2025 and December 2025. The other affected operators' applications are listed in Annex B and our plan for providing these is as set out in Annex A.

OBJ

Network Rail Review of Form P and associated documents

Network Rail has performed an initial assessment of the Form P and associated documents submitted with this application. The Form P is numbered 29th Supplemental Agreement and we understand that this application has subsequently been renumbered to 32nd Supplemental Agreement to differentiate it from the separate Section 22 application relating to equivalent rights expiring in December 2024.

Network Rail would like to highlight the following:

- In Section 3.2 of the Form P it has been highlighted that no safety risks have been identified as part of the application, Network Rail will be undertaking due diligence and necessary assurance to assess any safety risks associated with the proposal.
- In Section 4.2 of the Form P, it has been highlighted that capacity work is currently being undertaken to accommodate the new services at Birmingham New Street and services running along the West Coast Mainline. Network Rail has undertaken validation work on this proposal, and power supply and platform availability have all been factored into the proposal before a decision is made on what we are able to support.
- In Section 4.3 of the Form P it has been highlighted that TOC performance measurement data (T3 and T15) are good when measuring between the May 2023 and December 2023 timetable. However we have noted On-Time generally isn't good, and Network Rail's performance team were minded to only accept these continued levels on the basis of time dated rights being granted in the initial application for these rights (29th Supplemental Agreement). We have therefore committed to working with West Midlands Trains in order to review performance trends within these sections to ensure On-Time performance isn't seeing a downturn whilst an extension of these rights is being considered.

Furthermore work has been ongoing with West Midlands Trains in order to ascertain how the rights changes that are being requested align with specific services. Despite requests for further information being sent to West Midlands Trains on 28 May and discussed in subsequent contract meetings, they had advised Network Rail that, due to the unique nature of how the services had been identified as running without rights in the first instance, it would be difficult for them to obtain singular head codes for the services in question. This therefore impacts Capacity Planning's ability to provide a fully informed view on the interactions with other applications, and therefore a caveat against other interacting applications will need to be applied when analysis work is undertaken in Phase 2 of the plan.

Network Rail's Initial Position on the Access Rights Sought prior to necessary assessments being completed in line with the plan

Network Rail has made every attempt in their initial assessment of the Application received to be able to inform the ORR of any early positions it might have on the access rights sought. In this instance it will not be possible in this representation for us to give an initial view, but we have outlined later in the letter the necessary assessments / analysis that need to be undertaken to inform a view.

Possible Interactions with Other Applications from 20th May 2024

As requested in ORR's invitation for NR to make written representations to this application, Annex B to this letter shows where this application could interact with each of the "20 May 2024 Applications" at the previously identified locations.

Please note if the interactions occur at different points in time, i.e. different Timetable Change Dates, then this will have an impact on the dates that Network Rail will be able to submit its position with regards to the application. I.e. if the application submitted for Operator A is to commence December 2024 and there are no concerns or conflicts that does not mean that when Operator B's aspirations are considered which start in May 2025 that both will be able to be accommodated and therefore Network Rail will have to see the outputs of the capacity assessments for the May 2025 Timetable for Operator B before they can give a final position on Operator A's application.

Allowing business continuity while preserving freedom of action for ORR in taking its decision

Our letter of 5th June stated that in this interim period Network Rail will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact.

We note that some operators have split their applications across different timetable periods, which already provides ORR with the ability to deal specifically with the nearer-term applications now, whereas others have combined different timetable periods in a single application.

Should ORR wish to make a single decision on each application it has received, without breaking that application into parts, then, where a single application has been made relating to multiple timetable periods, there is a risk that rights might not be available in time for an operator to commence services as early as it would like, given the need for all of the information set out in our plans to be available in order for decisions to be made relating to those future timetables.

Where paths associated with some of the quantum rights in this application are included in a New Working Timetable issued under the Network Code Part D process, then Network Rail proposes to work with the applicant on these elements of the application. Our aim, subject to normal governance processes, would be to potentially agree a new s22 application for contingent, time-limited rights for that timetable period with no presumption of continuity – in line with the approach that ORR has supported for applications on the East Coast Main Line in recent years.

This would enable you to reserve your position on future capacity choices, allowing decisions that relate to a later timetable period to be made simultaneously, while making effective use of the railway network in the earlier timetable periods.

Conclusion

Network Rail is aware that this representation letter does not contain all the information needed for this application for the ORR to make a decision.

As explained in our letter of 5th June, these representations letters were mostly expected to reserve our position pending the outcome of the capacity and performance assessments. We are also mindful that the plan and its analysis may identify dependencies, risks or changes in risk profiles that could require revision or further review of this response. However, we hope that the plans we provided give you the reassurance that we will assess this application to inform Network Rail's position in a later representation in line with the plan and letter. In addition, Network Rail wants to give the ORR the confidence that we have made every effort in this letter to give any initial views where we can.

Network Rail asks that while we carry out our assessments, ORR progresses with its own assessments wherever possible to assist in making early decisions/ descoping the scale of applications requiring assessment from Network Rail. Additionally, where we have deemed an application for December 2024 or May 2025 to be unready in the initial representations in this letter, we ask that this be descoped from the analysis requirements as quickly as possible.

Network Rail will continue to keep ORR sighted on the progress of the plan for this application.

Yours sincerely

Akaash Bhandari

Franchise & Access Support Manager

Annex A – Plan for Information / Analysis / Assessment

TASK	ASSIGNED TO	
Capacity Assessment		
High Level Plan provided 05 June 2024		
Collating & Scoping	System Operator - CP	Please see June 5 letter for details
Phase 2 Timetable Risk Identification May'25	System Operator - CP	Please see June 5 letter for details
Phase 3 May'2025 Production Development Period	System Operator - CP	Please see June 5 letter for details
Phase 4a ECML confirmed Dec'25 Dec'25 assessment against May'25	System Operator - CP	Please see June 5 letter for details
Phase 4b Dec'25 assessment ECML confirmed May;25	System Operator - CP	Please see June 5 letter for details
Phase 5 december 2025 Production period	System Operator- CP	Please see June 5 letter for details
Other Capacity assessment		
2022 Strategic plan capacity assesment	Regional Timetable Team	
Risk Identification		
May'25 TP-Hazid passenger applications	Regional Timetable Team	
TP-Hazid Upto and including May'25 freight applications	Regional Timetable Team	
May'25 TP RAM - all applications	Regional Timetable Team	
Dec'25 TP Hazid - all applications	Regional Timetable Team	
Dec'25 TP -RAM - all applications	Regional Timetable Team	
Internal consultation of applications	F&A Team	
Planned Assessments		
Ped flow assessment of Euston Station	Station Capacity Team	
Level Crossing assessment		
Mapping of number of services to each ELR	Regional Timetable/F&A team	
ALCRM modelling/assessment	LCM	
ALCRM modelling/assessment - May'25	LCM	
ALCRM modelling/assessment - Dec'25	LCM	
Power Supply Modelling		
Phase 1: Build baseline model		
Phase 2: Navitas provide modelling for baseline model	Asset Management	
Phase 3: Assess baseline + Proposed services	Asset Management	
Phase 4: May'25 Production Development Timetable	Asset Management	
Phase 5:N-1 assessment	Asset Management	
Phase 6: Impact assessment + mitigation assessment	Asset Management	
Phase 6: Re-create modelling CIF file based on Dec'24 actuals	Asset Management	
Phase 7: Dec'25 Production Development Timetable	Asset Management	
Phase 8:N-1 assessment	Asset Management	
Phase 9: Impact assessment + mitigation assessment	Asset Management	
Performance Analysis		
Phase 1: Internal review of existing data	Route performance teams	
Phase 2: Performance assessment of May'25 decisions	Route performance teams	
Phase 3: Performance assessment of Dec'25 decisions	Route performance teams	
Governance		
Potential representations for Dec'24		
Draft Letter	F&A team	
Internal Review	F&A Team	
SOAR review and approval	F&A Team	
Submit to ORR	F&A Team	
Final representations:		
Draft letter	F&A team	
Internal Review	F&A team	
Internal Consultation	F&A team	
SOAR review and approval	F&A team	
Submit to ORR	F&A team	

