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Dear Ewelina and Chris

Approval of the 35th supplemental agreement to the track access contract (TAC) between Network Rail Infrastructure Limited (Network Rail) and Transport for Wales Limited (trading as Transport for Wales (TfW)) dated 6 August 2020

We have today approved the above supplemental agreement submitted to us formally on 10 December 2024 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. ORR's approval of this application will add new services throughout the network covered by TfW and ensures that TfW can provide its timetabled services to its passengers from the Principal Change Date (PCD) in December 2024. This letter explains the reasons for our decision. It also explains ORR's position on the concurrent application that TfW has submitted in accordance with section 22A of the Act.

Concurrent section 22A application

On 24 April 2024 ORR [wrote to industry](#) to set out a process for access applications for the December 2024, May 2025 and December 2025 timetable changes. In that letter we asked industry to comply with a deadline of 20 May 2024 for applications for additional rights (or amended rights that change capacity parameters) for these timetable changes that met specific criteria. TfW submitted such an application on 20 May, the 28th supplemental agreement.



In reaching a decision on this supported 35th supplemental agreement, it is important to clarify that:

- ORR has reached its decision in the full knowledge of TfW's concurrent section 22A application;
- TfW's section 22A application remains "live" and we continue to try to progress it. However, ORR cannot reach a decision on that application as Network Rail has not yet completed its analysis. We continue to press Network Rail to complete its analysis as quickly as possible; and
- most importantly, the approval of the 35th supplemental agreement ensures that TfW has approved access rights in the December 2024 timetable.

Purpose of 35th supplemental agreement

The purpose of the 35th supplemental agreement is to grant TfW the rights necessary to operate its proposed December 2024 timetable. This will involve:

- adding firm rights to service groups HL02 (West Wales), HL07 (North Wales Branches) and HL08 (North Wales Interurban);
- adding one firm right for a weekday service from Carmarthen to Milford Haven in service group HL02 until the TAC expiry date (1 August 2025) with no presumption of continuity; and
- adding contingent rights for one timetable period only for service groups HL04 (Birmingham to Shrewsbury and beyond) and HL06 (Marches Mainline).

This application also seeks changes to the timing loads throughout Schedule 5, mainly to replace Class 142 and 175 vehicles which are no longer in TfW's fleet with other timing loads including TfW's new Class 197s.

ORR notes that TfW has another supplemental agreement (36th SA) that is due to come into effect on PCD 2024, and which makes changes to some of the same service groups. We have asked the parties to the contract to ensure that all the changes made by that supplemental agreement have been incorporated into this 35th SA, and that the effective dates and times are arranged so that no amendments are cancelled out by others.



The rights are to commence on PCD 2024. The new firm rights will expire on the Expiry Date or earlier termination of TfW's track access contract, with the exception of the Camarthen to Milford Haven right, which will have no presumption of continuity beyond the Expiry Date. The new contingent rights will expire on the Subsidiary Change Date in May 2025.

Network Rail noted that it could only agree to the requested additional access rights in service groups HL04 and HL06 until the Subsidiary Change Date (SCD) in 2025 due to potentially competing applications from other train operators, and that there could be no presumption of the continuation of these additional rights beyond SCD 2025.

Industry consultation

Network Rail undertook the usual industry consultation from 28 August 2024. CrossCountry replied to this consultation to note that it had no objections.

Northern Trains responded to note that East Didsbury and Newton-le-Willows had been omitted from the calling patterns on the application. Network Rail confirmed that this was a drafting error, and stated that it would amend the application accordingly.

Great Western Railway (GWR) asked for clarification on what additional services would be introduced in the West Wales area, as there was potential for a clash with some of its future aspirations. It also requested that the Camarthen to Milford Haven service should be limited to the end of TfW's current TAC, with no presumption of continuity, in accordance with rights granted to GWR in that same area. Network Rail answered these queries to GWR's satisfaction and it subsequently confirmed its support for the application.

Because of the omission of important calling points from the initial application, Network Rail amended the documentation and sent it out for a further, shorter consultation period starting on 12 November. No queries or objections were received; expressions of support were received from GWR, Transport Focus and CrossCountry.

ORR review

Our review of the application raised no operational, performance or economic concerns. We noted that some of the timing loads in Schedule 5 of the contract were still showing some now-obsolete rolling stock, and Network Rail indicated that this would be amended in a future SA. We also identified some drafting issues which were resolved prior to the agreement's formal submission.



We noted Network Rail's position on the continuation of additional rights on the Birmingham to Shrewsbury and Marches Mainline lines beyond SCD 2025 due to competing aspirations from other train operators. In light of this, our usual policy of a strong presumption of the continuation of existing rights will not apply for additional service groups HL04 and HL06 beyond SCD 2025.

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)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

Conformed copy of the track access agreement

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 the Train Operator. Please send the conformed copy to me at ORR.

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

Louise Beilby