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Dear Ewelina and Chris

Approval of the 36th 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

1. Today we approved the above supplemental agreement submitted to us formally on 12 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. This application adds new services for West Wales and for cross-border services. ORR's analysis and subsequent approval of this application means that TfW can provide its timetabled services to 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.
2. This application was submitted 17 days before the December 2024 timetable date. This is significantly late in relation to the publication of timetable and advanced booking opening at 12 weeks, important dates for passengers, as well as the dates set out in our guidance for submitting applications. The application originally omitted important capacity rights which would have meant trains were not able to run as advertised. This is particularly concerning since Network Rail and TfW were following a Network Rail plan, published on 8 August 2024, to make sure that all operators had the necessary rights in place for December 2024. We address these concerns in further detail below in paragraphs 12-17.

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Concurrent section 22A application

3. 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.
4. In reaching a decision on this supported 36th 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 is currently not in a position to reach a decision in relation to the section 22A application. Additionally, Network Rail has not yet completed its analysis. We continue to press Network Rail to complete this as quickly as possible; and
 - Most importantly, the approval of the 36th supplemental agreement ensures that TfW has approved access rights in the December 2024 timetable.

Purpose of 36th supplemental agreement

5. The purpose of the 36th supplemental agreement is to grant TfW the rights necessary to operate its proposed December 2024 timetable. This involves:
 - adding firm rights for Saturday only services from Carmarthen to Milford Haven in service group HL02 (West Wales) 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 HL02, HL03 (Cardiff to Gloucestershire and Ebbw Vale), HL04 (Birmingham to Shrewsbury and beyond) and HL06 (Marches Mainline).
6. The application requests rights commencing from PCD 2024. With the exception of the Carmarthen to Milford Haven right, which will have no presumption of continuity beyond the Contract Expiry Date, the new contingent rights will expire on the Subsidiary Change Date in May 2025.



7. Network Rail noted that it could only agree to the requested additional access rights in service groups HL02, HL03, HL04 and HL06 until the Subsidiary Change Date (SCD) in 2025. It stated this was because of potentially competing applications from other train operators. Therefore, it concluded that there should be no presumption of the continuation of these additional rights beyond SCD 2025.

Industry consultation

8. Network Rail undertook the industry consultation from 28 August 2024. CrossCountry, Transport Focus, West Midlands Trains and Northern Trains all replied to this consultation to note that they had no objections.
9. Great Western Railway (GWR) asked for clarification on the expiry dates and presumption on continuation for the West Wales rights. Network Rail answered these queries to GWR's satisfaction, and it subsequently confirmed its support for the application.
10. Colas raised an objection to the application on the basis that it was requesting additional rights in areas that were already congested. It asked Network Rail to explain how it proposed to introduce the rights into the timetable without adversely impacting on existing services, particularly on the line between Cardiff and Newport. Colas pointed out that the freight industry is tasked with considerably increasing its traffic in future years and that there would need to be "white space" on the network for it to do this. Although it acknowledged that, to date, Colas services had been accommodated in the PCD 2024 timetable, a request to increase service weights and lengths had been rejected due to lack of capacity.
11. Network Rail's Capacity Planning team subsequently engaged with Colas to discuss its concerns and Colas has confirmed it is happy for the application to progress.

ORR review

12. We received the application only three weeks before the rights were due to commence so our review time was significantly shorter than as set out in our guidance. Our review of the application raised no operational, performance or economic concerns. However, TfW had another supplemental agreement (35th supplemental agreement) due to come into effect on PCD 2024 which made changes to some of the same service groups. Our analysis of these applications identified significant issues which had to be resolved before the 36th agreement was formally submitted. As a result of identifying issues in the first review, we asked the parties to the contract to ensure the following:



- a. that the 36th supplemental contained all the necessary rights from the 35th and there were no rights missing, given these two supplemental agreements included changes to the same service groups; and
 - b. that the effective dates and times were arranged so that no amendments in the 36th would cancel out changes from the 35th.
13. Had ORR approved the TfW applications, as submitted, it would likely have placed a number of operational services outside of contractual protections. Without correction this would likely have led to disruption of the planned timetable and potential cancellation of train services, adversely impacting on the passengers intending to use them.
14. We asked Network Rail to resubmit the application twice because on each occasion it either did not contain the correct rights or rights would be “overwritten” which were needed. We asked Network Rail to confirm the application was accurate on 6 December. On 10 December Network Rail stated it had corrected the significant errors we identified.
15. We note that we can only review what is submitted and the parties to the contract should have a more in depth understanding of required capacity. Network Rail is responsible for understanding capacity use on its network so that it can make robust decisions on the allocation of capacity. It is the responsibility then of Network Rail and TfW to ensure applications contain all the rights necessary to run proposed services.
16. We will write separately to Network Rail and TfW on the importance for passengers of application timeliness and accuracy, and the steps we expect them to take.
17. We noted Network Rail’s position on the continuation of additional rights on the West Wales, Cardiff to Gloucestershire and Ebbw Vale, 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 service groups HL02, HL03, HL04 and HL06 beyond SCD 2025.

Our duties under section 4 of the Act and our decision

18. 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

19. 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

20. 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