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**Senior Executive, Access and Licensing**  
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14 May 2019

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Director  
Hull Trains Company Limited  
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Dear [Redacted]

## **Approval of the eleventh supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Hull Trains Company Limited**

1. We have today approved the eleventh supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Hull Trains Company Limited (Hull Trains), submitted to us formally on 8 May 2019 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to explain the reasons for our decision.

### **Purpose of the agreement**

2. This agreement allows one of Hull Trains' existing weekday Hull to London King's Cross services to start from Beverly in the morning and one of its existing London Kings Cross to Hull weekday services in the evening to extend to Beverley. This is in addition to one of its existing services in each direction which currently serve Beverly. The rights extend from the Subsidiary Change Date on 19 May 2019 to the end of the contract in December 2026.

### **Consultation**

3. Network Rail undertook an industry consultation from 8 March to 5 April 2019. London North Eastern Railway and Great Western Railway confirmed that they had no objections. West Yorkshire Combined Authority confirmed it had no comments to make. Govia Thameslink Railway requested clarification about certain aspects of the application but did not offer any further comment. Transport Focus supported the application.

4. Arriva Rail North (ARN) objected to the application. ARN said that the proposed extensions would significantly abstract revenue and questioned if they would meet ORR's Not Primarily Abstractive (NPA) test. All new open access services are required to pass this test by generating at least 30p of revenue for every £1 of revenue abstracted from incumbents.

### **ORR review**

5. We reviewed the application and it did not raise any operational concerns.

6. We asked ARN to explain the effect Hull Trains' proposal would have on its revenues and to supply whatever information it felt supported its case. We also queried why ARN had not objected to previous applications for extensions to Beverley. ARN provided details of the estimated revenue abstraction and said it had not objected to previous applications as the revenue impact was marginal at that point.

7. Hull Trains provided its own analysis of forecast generation and abstraction.

8. We considered the information provided by both parties. Our own analysis suggested a generation to abstraction ratio around 0.57:1 i.e. that they would generate around 57p for every £1 of revenue abstracted from other operators. We were therefore satisfied that the proposed new services were not primarily abstractive. We also considered the total revenue abstraction which was very low, accounting for less than 1% of each of ARN and LSER's annual revenues, the two incumbent operators most affected.

9. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. Taking into account the benefits to passengers of the additional direct journey opportunities from Beverly to London and other stations served by Hull Trains; that the application comfortably passed the NPA test; and the revenue impact on other operators is marginal, we have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of railway services
- promoting the use of the railway network for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;
- promoting competition in the provision of railway services for the benefit of users of railway services;
- having regard to the interests, in securing value for money, of the users or potential users of railway services, of persons providing railway services or of the persons who make available the resources and funds and of the general public;

- and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance.

10. 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. ORR's copy should be sent for my attention.

11. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

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