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Dear Catherine and Shona

Approval of the sixty fifth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Arriva Rail London Limited (ARL)

1. On 13 December 2019, we approved the above supplemental agreement submitted to us formally on 13 December 2019 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains the reasons for our decision.
2. This agreement provides ARL with amended access rights for it to operate its December 2019 timetable. The proposed rights were for an increase from 8 tph to 10 tph on the North London Line (NLL) between Stratford and Richmond/Clapham in the peak only. It was proposed that these rights, set out in Service Group EK01 were to be effective from Principal Change Date (PCD) 2019 until PCD 2025, the current expiry date of the contract.
3. The application explained that the increased timetable to 10 tph on the NLL was originally planned for the May 2018 timetable change in line with a cascade of Class 710 rolling stock to improve services for passengers across the route. Delays to the roll out of Class 710 had resulted in a delay to the planned increase in access rights until this timetable.
4. The application also explained that the full timetable for the planned increase had been fully validated by the Network Rail System Operator and reviewed by three Timetable Change Risk Assessment Group (TCRAG) processes. All risks highlighted had been reviewed and mitigated.

5. The agreement also sought to extend existing firm access rights for the Watford Junction to London Euston line from Subsidiary Change Date (SCD) 2020 to SCD 2021. Performance concerns at the time of the previous application for these rights which had led to them being sold on a temporary basis. The performance concerns have now been addressed through joint working by Network Rail and other operators to implement performance improvement initiatives. The services have also been validated by the System Operator and the route, via the TCRA process.
6. Overall, these NLL timetable changes are intended to satisfy passenger demand and to realise the benefits of the new rolling stock. The changes will alleviate gaps in the current timetable to provide better service intervals for passengers and reduce crowding issues (which in turn contributed to poor performance due to increased station dwell times).
7. Network Rail undertook the usual industry consultation between 19 August and 16 September 2019. One response was received on 16 September 2019, from GB Railfright (GBRf), about what it felt were discrepancies between the number of firm rights being quoted in the application compared to what was in the December 2019 timetable. These concerns related to the NLL services only, no concerns were raised about the Watford services. Network Rail responded on 16 October 2019, with confirmation that the rights proposed had been ratified against the timetable. The application was informally submitted to us on 16 October 2019.
8. Following our initial review of the application, we asked Network to contact GBRf to confirm if they had any remaining concerns.
9. GBRf replied on 8 November 2019 and confirmed it still had concerns. It said that given the lateness of the application, the access rights should be time limited until PCD 2020 and on a contingent basis. It also said that there were still discrepancies between the rights sought and the slots in the December 2019 timetable. It also expressed concern about the capacity available for freight services, the performance impact and headway compliances between Gospel Oak and Willesden Junction.
10. Network Rail responded on 14 November 2019, explaining the parties' position on the lack of perceived benefits of the service increases to other operators, the performance concerns and the concerns regarding "non-compliant" timetable paths. GBRf replied to this on 18 November 2019 and provide some comments regarding the points made which it did not agree with. Network Rail then provided its final response on 5 December 2019 and said it would continue to work with GBRf via relevant industry forums to resolve issues as they arise.
11. Our review of this application was constrained by the late submission and the fact that discussion regarding the GBRf concerns were ongoing at submission and continued until a few days before the December 2019 timetable change date. In John Larkinson's letter to the industry of 30 May 2019, we expressed our concerns about track access applications being submitted at a late stage, which limited our ability to review them, carry out our own assessment of the impact and consider fully any representations made by

third parties. We also said that this meant that we have limited options but to approve an application for at least an initial period, even where concerns regarding performance and capacity are not fully resolved. This is exactly the situation we were placed in regarding this application. Taking this into account, we advised the parties that we would approve the NLL rights for a year until PCD 2020 (rather than PCD 2025) and asked them to amend the agreement to reflect this. Although the rights are included in Table 2.1 of Schedule 5 of the contract, they do not have first order priority in the December 2019 or May 2020 timetables as they were not in place on the relevant Priority Dates for the those timetables. The Watford rights were approved for the requested period (until SCD 2021).

12. The approval for a short time period will allow further time for consideration of the NLL access rights and further opportunities for engagement with GBRf. We will consider any request to extend these rights in light of our statutory duties and the information available at the time. Our usual presumption in favour of the extension of existing access rights should not be assumed.

13. When we consider access applications, we must do so in a way which we consider best fulfils our statutory duties which are set out in section 4 of the Railways Act 1993. The duties we consider most relevant in this context are to:

- protect the interests of users of railway services;
- promote the use of the railway network in Great Britain for the carriage of passenger and goods, and the development of that railway network, to the greatest extent that it considers economically practicable;
- promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator; and
- enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

14. 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.

15. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and to Peter Craig at Network Rail. 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

A handwritten signature in black ink, appearing to be 'D. ...', written in a cursive style.



Jonathan Rodgers