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Dear Robert and Chris

Approval of the twenty sixth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and First TransPennine Express Limited (FTPE)

1. We have today approved the above supplemental agreement (SA) submitted to us formally on 22 October 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. The agreement gives FTPE access rights for three services per day between Newcastle and Edinburgh until December 2019. These services are in advance of the planned introduction of an hourly service from December 2019 which we are currently considering (the proposed 28th SA). They will be combined with existing FTPE services between Liverpool and Newcastle which FTPE says will provide increased journey opportunities and vital connectivity across the north of England into Scotland.
3. The proposed services were initially contained in the 23rd SA relating to the May 2019 timetable changes. They were separated out from that application as they were not due to begin operating until September 2019. The service start date was subsequently postponed to late October 2019.

4. Network Rail undertook an industry consultation, for the 23rd SA (and two other SAs), from 23 December 2019 until 24 January 2019. There were a number of supportive responses. Cross Country raised some queries regarding the detail of the application to which FTPE responded. Cross Country did not raise any further queries.
5. The DfT noted that FTPE was seeking track access rights in accordance with its Franchise Agreement obligations. It also noted that there were power supply constraints at two locations on the East Coast Main Line (ECML), which limited the number of electric services that could be operated through the affected route sections until scheduled power supply upgrades were delivered. It further noted that London North Eastern Railway (LNER) possess firm rights for extending its existing ECML services through to Edinburgh and there was a need to ensure that LNER's ability to implement these would not be affected by FTPE's application.
6. LNER responded to the consultation, on 11 February 2019, saying it had serious concerns and objected to the proposed Newcastle to Edinburgh services. It queried if there was sufficient capacity for the services and, given the power supply constraints, if there was sufficient power for the FTPE services to run in electric mode. It also considered that new services would add a performance risk.
7. Network Rail replied, on 18 February 2019, and said it was satisfied that there was adequate capacity for this small number of services. FTPE replied to LNER on the same day and noted that, as FTPE were planning to use either diesel or bi-mode units for these services, there was some flexibility regarding the power constraint issues that LNER had highlighted. The response also provided more information regarding the performance concerns raised.
8. LNER responded again to FTPE and Network Rail in separate letters on 26 February 2019. It continued to express concerns about capacity on the ECML and performance risk. Further to this exchange of letters between the parties and LNER, there were a number of industry discussions, which have resulted in the FTPE services being required to run in diesel mode on certain parts of the route (Chathill and Longniddry) unless expressly agreed by Network Rail prior to operation.
9. Our own review did not identify any concerns with this application. We consider that the parties have provided reasonable responses in addressing LNER's concerns.
10. 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. 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 (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)).



11. 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.

12. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport 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 read 'Jonathan Rodgers', is positioned below the closing text. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jonathan Rodgers