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Dear Chris and Chris

Decision in respect of the seventy third supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Arriva Trains Wales/Trenau Arriva Cymru Limited dated 5 February 2004

1. The Office of Rail and Road (ORR) has today issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail Infrastructure Limited (Network Rail) and Arriva Trains Wales/Trenau Arriva Cymru Limited (ATW) (jointly the parties) to enter into the 73rd supplemental agreement to the Track Access Contract between them dated 5 February 2004. The purpose of this letter is to set out the reasons for our decision.

Purpose of the agreement we have directed

2. The purpose of the agreement which we have directed is to extend some off-peak North Wales/Chester to Manchester Piccadilly services to Manchester Airport. The rights will commence on the Subsidiary Change Date in May 2016 and will cease on the Principal Change Date in December 2017.

Industry consultation

3. ATW conducted a 28 day pre-application consultation between 5 November 2015 and 3 December 2015.

4. Comments opposing ATW's application were received from Network Rail, Transport for Greater Manchester, Merseytravel, Northern Rail (outgoing franchise), West Yorkshire Combined Authority and First TransPennine Express (outgoing franchise).

5. On 18 November 2015, the Department for Transport (DfT) wrote directly to ORR setting out their observations on ATW's proposals.

6. Comments supporting the application were received from the Welsh Government, Transport Focus, Cheshire West and Cheshire Council, North Wales Business Council, Rhun ap Iorwerth (Welsh Assembly Member), North Wales Economic Ambition Board and Ian Lucas MP. Great Western Railway commented that they had no objections to the proposals. All these comments are set out in more detail later in this letter.

The application

7. ATW submitted the application to ORR on 12 January 2016. It proposed that a number of weekday and Saturday services, which currently start/terminate at Manchester Piccadilly, extend to/from Manchester Airport. ATW explained that the intention was to offer a regular service throughout the core part of the day on weekdays and Saturdays, to provide the large catchment area of North Wales/Cheshire with a viable rail link to the region's nearest major airport.

8. As required under the Act we sought Network Rail's representations on the application. Details of the representations we received are set out later in this letter.

Industry Consultation responses

Network Rail

9. Network rail considered the proposed increase in services to present a disproportionate level of increased risk to the performance of the network compared to the likely benefit that would be realised by passengers. Their main areas of concern were:

- The overall performance risk associated with operating an increased number of services on an already busy line of the route;
- The ability to recover from operational incidents; and
- The reputational risk to the industry associated with the introduction of new services which may later have to be withdrawn if they are found to be incompatible with wider network proposals for which investment has been committed and other service proposals put forward.

Transport for Greater Manchester

10. Transport for Greater Manchester suggested that there could be a conflict between ATW's proposals and the Northern/TPE franchises and a choice needed to be made between them. They also noted that the application "does not appear to be for time limited rights" and the proposals could potentially conflict with other service changes offering greater benefit.

Merseytravel

11. Merseytravel stated that ATW's proposal is "at best, premature". They noted that, if the new services were introduced, they may have to be "significantly revised and potentially withdrawn in December 2017 when Phase 1 of the Northern Hub programme is completed and revised service patterns and timetables are implemented." They did not consider it was appropriate to grant long term access rights, beyond 2017.

Northern Rail franchise (outgoing)

12. Northern Rail considered that, if ATW's proposals were approved, there would be a detrimental impact on journey times. It said it had serious concerns about the performance impact both during normal running and in the event of disruption. It also believed that the proposals were primarily abstractive and, if introduced, the revenue that the future Northern franchise would lose would be significant.

West Yorkshire Combined Authority

13. West Yorkshire Combined Authority stated that the proposal raised potential concerns from the wider point of network utilisation and that the ability to provide additional ATW services would only exist for a limited time. The proposals would conflict with the Northern Hub. They went on to say that performance in the Manchester Piccadilly area was a serious issue and extending ATW's services as proposed would exacerbate the problem. They considered that the application should not be granted until full details of the Northern and TransPennine proposals were fully understood.

First TransPennine Express franchise (outgoing)

14. First TransPennine Express said that ATW's proposals were fundamentally abstractive in nature and it stood to lose £254,000 annually from them, with total industry revenue being degraded by £25,000. It also expressed concerns about performance between Manchester Piccadilly and Manchester Airport, disagreed with ATW's assertion that unused capacity was currently available and stressed the risk of incorporating additional paths into "arguably the busiest section of an already congested network". It also questioned whether the industry should be seeking to prioritise connectivity between North Wales/Chester and Manchester Airport over and above connectivity from other settlements in the North of England.

Welsh Government

15. The Welsh Government said that improving access to the Airport and the surrounding area was one of their priorities. International connectivity was an important means by which transport infrastructure would contribute to national economic performance.

Transport Focus

16. Transport Focus made a number of general comments and noted that passengers have for years aspired to have through services between the North Wales Coast and Manchester Airport.

Chester West and Chester Council

17. The council made some general comments about the wider economic, social and environmental benefits the ATW proposals would introduce.

North Wales Business Council

18. North Wales Business Council stated that one of their key targets was a drastic improvement of access to Manchester Airport by rail. It also said that current rail services to the Airport were wholly impractical, which led to over reliance on road travel.

Rhun ap Iorwerth, Welsh Assembly Member

19. Said that public transport in North Wales for accessing Manchester Airport was inadequate. He also said that transport connectivity was essential to reducing the regions' peripherality and ATW's proposals would hugely benefit the region's connectivity.

North Wales Economic Ambition Board

20. The Board stated that connectivity to the airport was a long held aspiration. They considered that the performance risks referred to by Network Rail seemed unquantified. They said that, if there was spare capacity, this should be utilised now rather than being lost. North Wales and also Cheshire West and Chester was an untapped market of one million people. The proposed ATW services (which they described as a "low cost/zero cost improvement") would confer significant economic and transport benefits for North Wales and the wider economy.

Ian Lucas MP

21. Mr Lucas said people should be encouraged to use public transport, given the congestion on the roads, and this proposal would help with that. It would also help holidaymakers and boost links between international employers in North East Wales.

Statutory Consultation

22. As required under the Act, on 15 January 2016, we sought Network Rail representations on the application and it replied on 4 February 2016. We forwarded these representations to ATW, on 4 February 2016, and asked for its comments. ATW provided comments on 16 February 2016.

Network Rail's representations

23. Network Rail said that it still did not support the application. It did not consider the proposals to be aligned with its future plans for the route nor was it satisfied that its concerns about performance had been met. It said that ATW's proposals were not consistent with the Northern Rail Utilisation Strategy (RUS) (which refers to the Northern Hub project – aiming to enable a new service to run between the Calder Valley Route and the Airport via the Ordsall Chord). Network Rail provided a performance analysis which it said confirmed their concerns about worsening performance, if the ATW proposals were approved.

24. Network Rail noted that if ORR directed the parties to enter into this agreement, they requested that the rights should apply for a limited period only and that any future rights should be considered on the basis of emerging performance.

ATW's comments

25. ATW said that a RUS was a guide to funders and not statement of future access and that the Northern RUS was naturally focused on flows within the Northern area. ATW also noted that Network Rail had not undertaken any performance modelling but had only relied on data analysis. However, ATW agreed with Network Rail's suggestion that the continuation of the rights beyond the first year should be subject to a review of the performance of services.

Other information

Arriva UK Trains Ltd

26. Given that, in December 2015, the Northern franchise was awarded to Arriva UK Trains Ltd from 1 April 2016, we sought its view on the application and, specifically, if ATW's proposals and the proposals for the new Northern franchise were compatible.

27. Arriva UK Trains Ltd replied on 8 March 2016 saying it had examined the feasibility of ATW's services continuing to Manchester Airport and concluded that pathing of these services would be viable. It also considered that the impact on performance of ATW's service continuing to Manchester Airport was unlikely to be materially different than current arrangements.

Department for Transport

28. The letter from DfT we received in December 2015 did not refer to any potential financial impact on the funds available to the Secretary of State if we were to approve ATW's application. We, therefore, asked if it considered there to be any financial implications and, if so, provide details.

29. In response DfT said that there were no potential impacts on the Secretary of State's funds during the currency of the Northern and TPE franchises, as those franchises were on risk for delivering the additional services and capacity into Manchester Airport that they have committed to.

ORR review

Performance

30. Our understanding is that the current ATW services terminate at Manchester Piccadilly and then shunt into the Mayfield Goods Loop before their return journey to North Wales. Under these proposals, trains to Manchester Airport Station would continue up the Up Slow Line and cross to the branch at Slade Lane Junction. This means that there will be no additional crossing movements in this area over those undertaken by the existing terminating service. Those that will still occur will do so at a higher speed, reducing the time during which conflict occurs.

31. In addition, the proposals should result in any bottlenecks at Manchester Piccadilly being cleared immediately the Up Slow Line is clear. This is in contrast with the present arrangement, where the train cannot depart the platform until the route is set across the Down Slow Line into the Mayfield Goods Loop.

32. We, therefore, consider that ATW proposals are likely to reduce performance issues between Manchester Piccadilly and Slade Lane Junction.

33. There will be additional crossing movements at Heald Green North and West Junctions and in the throat of Manchester Airport Station. However, we consider that the number of conflicting movements at these locations is manageable with the provision of an extra platform at Manchester Airport, complete with an extra crossover, so that the performance risk is minimal. The risk will also probably be balanced by the better performance to be expected from the removal of the shunt at Manchester Piccadilly. We acknowledge that the proposals will lead to some reduced turnaround times at Manchester Airport.

34. We have carefully considered the performance issues raised by Network Rail and others and, on balance do not consider that these proposals will introduce a significant risk to performance such that we should reject the application, at least in the short term.

Consistency with the Northern Hub, RUS and franchise proposals

35. We have also considered the concerns raised by Network Rail and others that ATW's proposals were not consistent with the RUS, Northern Hub project and requirements of the Northern and Transpennine franchises from December 2017.

36. As ATW pointed out, the Northern RUS was naturally focused on flows within the Northern area and while ATW's proposals are not reflected, in our view, they are not necessarily inconsistent with it either.

37. We note that whilst the previous Northern franchisee raised concerns about ATW's proposals the new franchisee (whilst noting that it is part of the same owner group) does not.

Generation/Abstraction

38. Our analysis shows that ATW's proposed service extensions to Manchester Airport deliver clear passenger benefits, in particular by removing the need for passengers travelling from North Wales and to the west of Chester to change trains. We recognise the services will abstract revenue from other operators, in particular TPE and Northern but the amount represents only a very small proportion of their total revenues. ATW has supplied evidence that the new services are generative to rail by attracting airport users who currently travel to the airport by road. Our own assessment is that the new services would generate new revenue to rail with only a relatively small shift by airport travellers from road to rail. Given that DfT confirmed that there were no potential impacts on the funds available to the Secretary of State and the clear passenger benefits the services offer, we do not consider it proportionate to undertake further detailed analysis.

ORR's Decision

39. Having considered all the issues raised by this application, the one that remains is the potential conflict with other service proposals from December 2017 when Phase 1 of the Northern Hub programme is completed and revised service patterns and timetables are implemented. Although we are aware of the proposal for the Northern and TPE franchises we will not have sufficient clarity to determine whether they can be accommodated alongside those of ATW until Network Rail undertakes the necessary timetabling work.

40. We also note ATW's agreement to Network Rail's suggestion that the continuation of the rights beyond the first year should be subject to a review of the performance of services.

41. We have therefore decided that we will approve the rights requested by ATW until the Principal Change Date in December 2017. We will consider any request for a continuation of the rights beyond that date alongside the applications for Northern and

TPE franchisees when the Ordsall Chord is complete and things are clearer regarding the “Northern Hub” infrastructure.

Our duties under section 4 of the Act and our decision

42. We are required to reach a decision on any track access application based on our statutory duties under section 4 of the Act. The following duties are of particular relevance to this application:

- promoting improvements in railway service performance (section 4(1)(zb));
- protecting the interests of users of railway services (section 4(1)(a));
- promoting the use of the railway network in Great Britain for the carriage of passengers...(section 4(1)(b));
- promoting efficiency and economy on the part of persons providing railway services (section 4(1)(c));
- enabling persons providing railway services to plan the future of their businesses with a reasonable degree of assurance (section 4(1)(g));
- having regard to any general guidance given to ORR by the Secretary of State about railway services or other matters relating to railways (section 4(5)(a)); and
- having regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways and railway services (section 4(5)(c)).

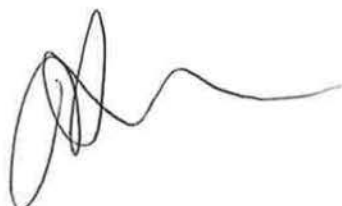
43. We have looked very closely at all the evidence submitted from the parties and consultees. We have considered the concerns of Network Rail regarding the potential risks to the network and other consultees on the possible impacts on performance. We have also considered the potential benefits of the proposals which have been set out by ATW and other consultees.

44. On a balance of our duties we have concluded that in the overall public interest we should approve the application for extensions to/from Manchester Airport until the principal change date in December 2017.

Copies

45. Copies of this letter will be sent to Peter Craig at Network Rail and Keith Merritt at the Department for Transport. A copy will also be placed on our website together with a copy of the directions and the directed agreement. The directions and the directed agreement will also be placed on our public register.

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Jonathan Rodgers