

**David Reed**  
**Senior Executive, Access and Licensing**  
Telephone: 020 7282 3754  
Email: david.reed@orr.gsi.gov.uk



OFFICE OF RAIL AND ROAD

1 December 2017

Janet Turlington  
Customer Manager  
Network Rail Infrastructure Limited  
George Stephenson House  
Toft Green  
York  
YO1 6JT

Phil Dawson  
Regulation & Track Access Manager  
East Coast Main Line Company Limited  
25 Skeldergate  
York  
YO1 6DH

Dear Janet and Phil,

## **Approval of the sixth supplemental agreement to the track access contract between Network Rail Infrastructure Limited and East Coast Main Line Company Limited**

1. The Office of Rail and Road (ORR) has today approved the sixth supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and East Coast Main Line Company Limited (Virgin Trains East Coast "VTEC"), submitted to us formally on 1 December 2017 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 set out the reasons for our decision.

### **Purpose of the agreement**

2. This agreement provides VTEC with the necessary rights to extend one Sunday evening King's Cross to Doncaster service to York, from the Principal Change Date in December 2017 to the Subsidiary Change Date in May 2019.

3. Network Rail has only been willing to support these incremental rights on a timetable by timetable period basis, due to uncertainty as to the timing and effect of projected capacity enhancement schemes on the East Coast Main Line (ECML).

### **Consultation**

4. Network Rail consulted the industry on this proposal in September and October 2017. Transport Focus supported the application, and Great Western Railway noted it had no objection to the proposal.

5. Alliance Rail responded on behalf of Grand Central. Alliance noted that it recognised the passenger benefits that such a service could bring, but had concerns that the service was an open access service operated by the franchise, and would not be liable for fixed track access charges under the current regime. Alliance is concerned that VTEC is using franchised assets to provide a service that is not a Public Service Obligation and to gain an unfair competitive advantage over Grand Central. VTEC responded to Alliance Rail; VTEC does not accept that the service is an open access service, advised that it is liable for fixed track access charges, and that the service will be operated by VTEC using franchised assets as “Franchise Services” as defined by its Franchise Agreement.

### **ORR’s review**

6. We reviewed the application and it did not raise any operational, performance or economic concerns.

7. We have considered the points raised by Alliance Rail in relation to previous decisions, in particular VTEC’s 57<sup>th</sup> supplemental agreement. In general, our view is that the definition of Public Service Obligation services is a matter for DfT, not for us, as regulator. The charging regime for franchise and open access operators on Network Rail is being considered through the 2018 Periodic Review of Network Rail (PR18), and comments from operators will be considered where they are raised in the relevant consultations. Additionally, we are not clear why using the assets required to discharge the franchise obligations for the provision of other services would necessarily distort competition, or otherwise constitute prohibited conduct under competition law.

### **ORR’s conclusions**

8. Following our review of the application, we are content that there are no operational, performance or economic concerns which should preclude our approval.

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. We have concluded that approval of this agreement is consistent with our section 4 duties, in particular those relating to:

- protecting the interests of users of rail services;
- promoting the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of the railway network, to the greatest extent that ORR considers economically practicable;
- contributing to the development of an integrated system of transport of passengers and goods;
- promoting competition in the provision of railway services for the benefit of users of railway services; and

- enabling persons providing railway service to plan the future of their businesses with a reasonable degree of assurance.

### **Conformed copy of the track access contract**

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

### **Public register and administration**

11. In accordance with section 72 of the Act, we will place a copy of the approval notice and the agreement on our public register. The parties have not asked us to redact anything (as provided for by section 71(2) of the Act) prior to placing it on the register.

12. Copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at the Department for Transport. Copies of this letter and the agreement will be placed on the ORR website. I am also copying this letter without enclosures to Peter Craig at Network Rail and Jonathan Cooper at Alliance Rail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Reed', written in a cursive style.

**David Reed**