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28 June 2024

Network Rail Representations for the proposed 11th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and Trenitalia West Coast Limited dated 01 December 2022.

As directed in your letter dated 30 May 2024, Network Rail is making its representations in respect of a Section 22A of the Railways Act 1993 for the 11th Supplemental Agreement (SA) of the Track Access Contract (TAC) dated 1 December 2022 between Network Rail Infrastructure Limited (Network Rail) and First Trenitalia West Coast Limited.

In line with ORR's letter of April 2024 to the industry on 'Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes', First Trenitalia West Coast Limited submitted this application to the ORR on the 17 May as a S22A.

Your letter made clear to industry that "We expect applications received by 20 May 2024 to be of sufficient quality, completeness, and certainty to enable Network Rail, industry and ORR to assess them. A prerequisite for achieving this is that applicants will have discussed their plans with, and sourced information from Network Rail before submission (in line with our guidance)."

It further "...requested that Network Rail produces a high-level plan by 5 June 2024 for ORR and industry. This will set out when it will produce its robust assessment for the applications submitted by 20 May 2024."

Network Rail fulfilled this request on the 5 June 2024 outlining the plan for undertaking capacity and performance assessments to inform both Network Rail and the ORR on the applications received.

That response should be considered alongside this Representation.

In particular, it should be noted as indicated therein that:

- due to the unprecedented scale of 83 unsupported applications received at one point in time, Capacity Planning plan to phase its analysis,
- assessments will initially focus on applications and geography which do not overlap with the ongoing East Coast Mainline (ECML) Event Steering Group (ESG) Development work to mitigate the risk of redundant analysis,
- all ECML ESG related applications will be considered following decisions as to the implementation of the ESG Timetable,

As we set out in the High-Level Plan; “Only those rights which potentially interact, contain the required level of information to inform assessments, were discussed with Network Rail and are intended for the next three timetable changes will be considered by Network Rail.” and that “Applications consisting of rights for geography not impacted or for later timetable changes should be considered separately.”

These factors have shaped the anticipated plan for submission of evidence related to this and other applications.

ORR, in its invitation to NR to make written representations, expects that NR will:

- include all of the necessary information for ORR to take an informed decision; or
- to refer to all of the necessary analysis and the confirmed timelines Network Rail requires to reach its decision on the application. This should include the “5 June 2024 capacity analysis” and any other analysis Network Rail needs to complete;
- recognise which other applications within the published list of “20 May 2024 applications” could interact with each application.
- Confirm any interested persons name(s) or confirm there are no interested persons.

Network Rail can confirm that we will be able to in this representation provide all the necessary information for ORR to make an informed decision for this application.

Interested Person(s)

Network Rail is not aware of any persons who would fall within the definition of “Interested Person” in paragraph 1 of Schedule 4 of the Railways Act 1993 in relation to the application made by First Trenitalia West Coast Limited.

Allowing business continuity while preserving freedom of action for ORR in taking its decision

Our letter of 5 June 2024 stated that in this interim period Network Rail will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact.

We note that some operators have split their applications across different timetable periods, which already provides ORR with the ability to deal specifically with the nearer-term applications now, whereas others have combined different timetable periods in a single application.

Should ORR wish to make a single decision on each application it has received, without breaking that application into parts, then, where a single application has been made relating to multiple timetable periods, there is a risk that rights might not be available in time for an operator to commence

services as early as it would like, given the need for all of the information set out in our plans to be available in order for decisions to be made relating to those future timetables.

Where paths associated with some of the quantum rights in this application are included in a New Working Timetable issued under the Network Code Part D process, then Network Rail proposes to work with the applicant on these elements of the application. Our aim, subject to normal governance processes, would be to potentially agree a new s22 application for contingent, time-limited rights for that timetable period with no presumption of continuity – in line with the approach that ORR has supported for applications on the East Coast Main Line in recent years.

This would enable you to reserve your position on future capacity choices, allowing decisions that relate to a later timetable period to be made simultaneously, while making effective use of the railway network in the earlier timetable periods.

Summary of Rights Sought

In their application and as a high-level summary First Trenitalia West Coast Ltd are seeking the following firm access right changes to commence from the December 2024 Timetable (for one timetable only i.e. up to the start of the May 2025 SCD Timetable Change date):

Please note extracted exactly as stated in the Form P for this 11th SA via S.22A:
 “Weekdays

An additional new service – 0700 Manchester Piccadilly to London Euston calling at Stockport” and

“Sundays

An additional (0943) Liverpool Lime Street to Birmingham New Street passenger train slot (part of additional 0943 Liverpool Lime Street to London Euston which already has firm rights using those of 1253 Wvh-Eus)”.

Below we have expressed the aspiration for the access rights in a table.

Associated Passenger Train Slot	Days	Additional Firm Right Required	Timing Load
07:00 Manchester Piccadilly to London Euston	Weekdays	Plus 1 (HF03.5 +1 in peak & weekday total)	390
09:43 Liverpool Lime Street to Birmingham New Street	SUN	Plus 1(HF04 via Coventry)	390

The High-Level plan and Dependencies

The High-Level Plan submitted on 5 June 2024, and our additional engagement with Capacity Planning indicates that the following phase may be relevant for this application:-

- Phase 1 - Collation and Scoping

This, along with the interacting applications matrix in Annex A, should support Network Rail in considering application and interacting location dependencies.

As stated later in this letter, if interactions occur at different points in time, i.e. different Timetable Change Dates then this could have an impact on when Network Rail will be able to submit its position

with regards to the application.

Network Review of Form P and associated documents

Network Rail has performed an initial assessment of the Form P and associated documents submitted with this application and as stated below Network Rail has highlighted potential issues with the expression of quantum of access rights.

Network Rail's Position on the Access Rights Sought

Network Rail does not support this application as submitted, because the sale of firm rights for the period implies a presumption of continuity into the next timetable period which would potentially interact with other applications submitted by the 20 May 2024 and require further assessment.

Network Rail would however, support the quantum rights sought in this application as contingent rights from December 2024 for 1 timetable period only and with no presumption of continuity, in line with the paragraph earlier in this letter titled "Allowing business continuity while preserving freedom of action for ORR in taking its decision". In addition as stated earlier from the extract from the Form P for this application the additional quantum for Sundays is an "...additional (0943) Liverpool Lime Street to Birmingham New Street passenger train slot (part of additional 0943 Liverpool Lime Street to London Euston which already has firm rights using those of 1253 Wvh-Eus)".

Therefore, we would expect any decision on this application to take into account Network Rail's view that specific clarity is required by inserting a footnote in table 2.2 of Schedule 5 of the Track Access Contract (if the rights were to be directed as contingent in line with Network Rail's view in this representation), that the contingent right should be operated as a through service, with one of the quantum rights for Wolverhampton to Euston in Service Group HF04 in table 2.1 of Schedule 5 of the Track Access Contract.

Paths associated with the rights sought in this application were included in the New Working Timetable offered on 14 June 2024 and the normal assessment processes were undertaken prior to that inclusion.

The reason why Network Rail is able to provide qualified support for the aspirations in this application, is that First Trenitalia West Coast Limited has submitted a separate unsupported application which includes the same rights from May 2025 (17th Supplemental) which is the subject of a separate statutory consultation and a separate representations response. The 17th Supplemental also includes some other aspirations which will be commented on in that relevant representation.

The paths associated with the rights sought in this application have been included in The New Working Timetable issued on 14 June 2024. This letter is our final position on this application.

- No safety risks have been identified as part of the application (through the TP-RAM process for December 2024).
- Capacity work has been undertaken to accommodate and these paths have been included in the New Working Timetable as paths allocated to First Trenitalia West Coast. Network Rail has assessed the performance data and concluded that the performance risk is acceptable. Performance data is available should the ORR require it.

The power supply risk has been assessed through the normal timetable assessment process for the December 2024 timetable and concluded that the risk can be accepted for this timetable. The rights that First Trenitalia has applied for would be running empty as ancillary moves even if these rights

were not approved.

Industry Consultation concluded on Monday 24 June 2024. Consultation responses are being shared with the ORR separately.

Possible Interactions with Other Applications from 20th May 2024

Paths associated with the rights sought in this application were included in the New Working Timetable offered on 14 June 2024. Annex A shows that this application interacts with a number of Freight applications within the December 2024 Timetable Period, but where paths have been applied for in accordance with Network Code Part D either in expectation of rights at the Priority Date, or through a Train Operator Variation, any interactions have already been identified and resolved through application of the Decision Criteria. There are no other applications interacting with this one so long as there is no presumption of continuity of the rights beyond the expiry date proposed. Network Rail is mindful that there are future interactions with these rights from May 2025 for which First Trenitalia West Coast Limited has submitted a 17th Supplemental containing the rights contained within this supplemental. Network Rail will submit a separate response to the ORR for this application.

Conclusion

If ORR in its decision proceeds to direct the parties to enter into this Supplemental Agreement, Network Rail would like the ORR to consider in its decision Network Rail's view set out in this letter, that the quantum access rights should be contingent, expire at the Subsidiary Change Date in 2025 and have no presumption of continuity, as well as consideration to the expression of quantum of rights where only part of the rights is additional.

Yours sincerely

Paul Harris

Avanti Franchise & Access Manager

Annex B - Plan for Information / Analysis / Assessment