

Louise Beilby
Senior Access Executive

Telephone: [REDACTED]

E-mail: [REDACTED]

22 January 2025

Lysette Rowley
Franchise and Access Manager
Network Rail Infrastructure Ltd
Baskerville House
Centenary Square
Broad Street
Birmingham
B1 2ND

Kate Oldroyd
Track Access Manager
Northern Trains Ltd
George Stephenson House
Toft Green
York
YO1 6JT

Dear Lysette and Kate

57th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and Northern Trains Limited (trading as Northern) dated 3 March 2016

Today we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and Northern (jointly the 'parties') to enter into the above supplemental agreement. The approval of this application will ensure continuity of service for passengers using the local service between Leeds and Huddersfield and will give the train operator certainty for the purposes of planning its business. This letter explains the reasons for our decision.

Application

The purpose of this supplemental agreement is to grant Northern the rights necessary to operate part of a local stopping service between Leeds and Huddersfield. This service was previously operated solely by TransPennine Trains (TPT), which has now surrendered the relevant rights. Northern applied to operate these rights instead, so that the total quantum of rights remains unchanged, and operation of the services is now shared between the two operators. Given this surrender of and application for the same rights takes place between



two operators with the same funder, the ORR has considered whether this application gives rise to any competition concerns, and we are satisfied that it does not.

Network Rail proposed to grant Northern the rights sought in this application for one timetable period only on a contingent basis with no expectation of continuity. In order to maintain service continuity, the rights were granted on this basis as part of the agreed S22 62nd supplemental agreement, but Northern has maintained its application to hold them on a firm basis to the end of its contract.

The rights are to commence on a firm basis upon the date that the supplemental agreement is entered into by the parties and will expire on the Principal Change Date (PCD) 2027 or earlier termination of Northern's track access contract.

Industry consultation

Network Rail undertook an industry consultation for one month from 22 May 2024, noting that the application at that time included a wider range of rights across Northern's operated network, most of which have since been separated into an agreed application (the 62nd supplemental agreement) and approved for one timetable period only on a contingent basis. Comments in support or raising no objection were received from Transport Focus, Great Western Railway, DB Cargo and Amey.

West Yorkshire Combined Authority asked for some clarification on the performance impacts of the proposed amendments, which Network Rail provided to its satisfaction.

Grand Central stated that it had no objection to the extension of contingent rights or conversion to firm where services were already operating within the current timetable, were planned to operate in December 2024 and are accommodated with the East Coast Main Line (ECML) ESG timetable. Network Rail has confirmed that this is the case for the rights that are the subject of this application.

Avanti West Coast (AWC) requested some further details as to the rights changes that impacted on the North West and Central Region. "Train prints" were provided, which showed outputs of the recently validated and offered timetable for PCD 2024. No further response was received from AWC.

XC Trains objected to this application on performance grounds and because it was unable to see the peak additional trains in the database for Leeds. Northern confirmed that they were in the PCD 2024 timetable which has since been validated and offered by Network Rail. Network Rail route performance had not raised any concerns with the application. No further response was received from XC Trains.

GB Railfreight (GBRf) and Freightliner (FL) both stated that they were unable to support this application due to the ongoing work with the ECML ESG. They also stated that, due to the volume of applications received in May 2024, they were unable at that point to assess

how the requested rights may interact with GBRf's and FL's applications. Northern has stated that it is not aware of any issues that the existing services have caused trains operated by GBRf or FL, bearing in mind that the services covered by these rights are already operating under TPT in the current timetable.

Statutory Consultation

As required under the Act, on 30 May 2024, we sought Network Rail's representations on the application and it replied on 28 June 2024. We forwarded these representations to Northern on 3 July 2024 and asked for its comments. Northern provided comments on 22 July 2024. As with the industry consultation, these representations and comments reflected the fact that the application at that time included a wider range of rights across Northern's operated network. Therefore, much of Network Rail's response related to elements that have since been removed from the application. Following the separation of these elements into an agreed application, ORR requested confirmation of Network Rail's position on the Leeds-Huddersfield rights that remained in the 57th supplemental agreement and received this on 22 November 2024.

Network Rail's representations

Network Rail stated that it was unable to support the application at that time because it requested firm rights at Leeds which, as part of the ECML, was one of the 10 interacting locations identified by Network Rail as containing competing aspirations and subsequently listed by ORR in its letter of 24 April 2024. There are other applications which impact on both the ECML as a whole and Leeds specifically. It stated that to support these rights for the duration of the contract could be perceived as unduly discriminating against other operators.

Network Rail additionally stated that it would ordinarily expect to see amendments to Schedule 8 parameters and benchmarks, and the 57th supplemental agreement does not include any such amendments. These have, however, since been submitted to ORR and approved as the 63rd supplemental agreement.

Northern's comments

Northern stated that, as TPT has proposed to relinquish the same number of access rights that Northern has applied for, the amendment would mean no change in the quantum of services between Leeds and Huddersfield. This change in service provision has been directed by Rail North Partnership (RNP) and the Department for Transport.

TPT held firm access rights to operate the service until SCD 2028 in line with its current contract expiry date. Northern's current contract expires in PCD 2027; therefore, Northern is not seeking access rights for a period of time longer than that which is already in place. Northern stated that the presence of these rights has always been factored into any capacity work for the Leeds area as part of the ECML ESG workstream.



It further argued that granting the rights on a longer-term, firm basis would provide both Northern and TPT with business, commercial or operational stability or certainty, and their passengers with service continuity. Northern is not aware of any other operator proposing to commence running services between Leeds and Huddersfield, nor has any operator applied for access rights to operate a new service on this line of route from 20 May 2024.

ORR review

We consider our independent assessment and consideration of our competition powers addresses Network Rail's concerns that if it supported firm rights for one operator on the ECML it may be perceived as being discriminatory. Also, we do not believe that Network Rail has provided sufficient explanation of why this is the case for these particular rights, or why selling these rights to Northern would be discriminatory (i.e., against whom). The services are already being operated as firm rights by TPT and there is no increase in service quantum and, further, they are accounted for in the current and future ECML ESG timetable. We therefore see no reason why Northern should not be granted the access rights on the same basis as they have been running. We note that Northern's current track access contract expires before that of TPT and the award of rights would not extend them beyond the period for which they are currently held.

We have made this decision while Eastern region is under additional regulatory scrutiny for the punctuality and reliability of train services. Not least because the services relating to these rights are already in operation and are planned into future timetables, we have assessed that this decision does not materially change the nature or content of the performance improvement activity required.

Our duties under section 4 of the Act and our decision

We have considered the supplemental agreement in light of our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with the discharge of our statutory duties; in particular, those relating to promoting improvements in railway service performance (section 4(1)(b)), 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)).

We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should approve the application.

Conformed copy of the track access contract

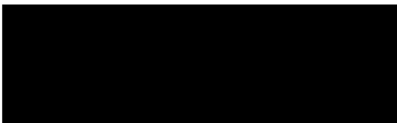
Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and Northern. ORR's copy should be sent for my attention.



Public register and administration

Electronic copies of this letter, the approval notice and the agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. 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



Louise Beilby