

**Sam Gibbins**  
**Executive, Track Access**  
Telephone 020 7282 3855  
Fax 020 7282 2118  
E-mail sam.gibbins@orr.gsi.gov.uk

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Neil Kirkwood  
Customer Manager, XC Trains  
Network Rail Infrastructure Limited  
The Mailbox  
100 Wharfside Street  
Birmingham  
B1 1RT

David Judson  
Train Planning Manager  
XC Trains Limited  
4th Floor, Meridian  
85 Smallbrook Queensway  
Birmingham  
B5 4HA

Dear Neil and David

**Approval of the Third Supplemental Agreement to the Track Access Agreement between Network Rail Infrastructure Limited and XC Trains Limited**

1. The Office of Rail Regulation (ORR) has today approved the third supplemental agreement to the track access agreement between Network Rail Infrastructure Limited (Network Rail) and XC Trains Limited submitted to ORR on 15 August 2008 under section 22 of the Railways Act 1993 (the Act). The purpose of this letter is to set out the reasons for our decision.

**Purpose of the agreement**

2. The agreement amends XC Trains' address for the service of notices in Schedule 1. In Schedule 5, Tables 2.1, 4.1 and 5.1 are amended to extend, until PCD 2008, rights to a number of slots granted in XC Trains' first supplemental agreement (SA), which was approved for 90 days under the passenger general approval and expires on 16 August 2008.

**Consultation**

3. Network Rail carried out the industry consultation on this application. We are satisfied that Network Rail consulted all potentially affected operators and other bodies. Network Rail received comments from EWS, Passenger Focus and Transpennine Express (TPE).

*EWS*

4. EWS was concerned that granting additional rights to XC Trains between Birmingham New Street and Manchester on Saturdays would adversely affect Network Rail's ability to accommodate its diverted services. This was because the West Coast

Route Modernisation works necessitate a regular diversion of EWS' freight services via the West Midlands and Network Rail, at the time of its consultation on this application, had not yet confirmed that it could accommodate EWS' diverted services alongside existing trains on the route. Network Rail subsequently confirmed that it could accommodate EWS' services in the revised Period D weekend timetable. EWS confirmed that it had no further issues with the proposed additional rights for XC Trains.

5. EWS also asked why the parties had not listed the Freight RUS as being relevant to their application in section 4.13 of the Form 22. The parties confirmed that the omission of the Freight RUS was an oversight and that they did not consider that the rights proposed were to the detriment of any Freight RUS strategy. EWS was content with this response.

6. We were content with the way Network Rail resolved the issues raised by EWS.

#### *Passenger Focus*

7. Passenger Focus thought that the rights to operate additional services to Newquay, Paignton, Weston Super Mare and Penzance in this agreement should be granted for the duration of the XC Trains franchise rather than until PCD 2008. Network Rail said that it was currently working on a further supplemental agreement that will contain rights to the additional West of England services until the expiry of the XC Trains TAC in 2014.

8. Passenger Focus was supportive of the half-hourly Birmingham-Manchester service on Saturdays but was concerned about the possible effect on capacity for Virgin West Coast services diverted via the West Midlands during WCML blockades during the current timetable. Network Rail said that sufficient capacity existed to accommodate the two XC Trains services and one diverted Virgin West Coast service each hour and that the paths it had offered to both operators were robust.

9. Passenger Focus confirmed that it had no further issues with the application. We were content with the way Network Rail resolved these issues.

#### *TPE*

10. TPE questioned the duration of the agreement as the draft agreement and the Form 22 stated different expiry dates. Network Rail confirmed that the expiry date of the additional rights in Schedule 5 was PCD 2008 but that it was also developing a further supplemental agreement which would contain rights until the expiry of the XC Trains TAC in 2014, on which TPE would be consulted. TPE was content with this response.

#### **Our review**

11. We were content that extending the additional rights in XC Trains' first SA for the remainder of the current timetable did not raise any operational issues. Network Rail has offered XC Trains paths for these services for the duration of the timetable and the relevant services are currently operating.

12. We noted in the draft agreement which the parties informally submitted to us, that the amendments to Table 5.1 in XC Trains' first SA had not been carried forward to this agreement as the amendments to Table 2.2 had been. The parties said that this was because the passenger general approval enabled them to make the amendments to Table 5.1 in the first SA permanently. Although the general approval does permit permanent amendments to Table 5.1, the first SA expires on 16 August 2008. As the parties wished these rights to continue until PCD 2008, they have included the amendments to Table 5.1 in this agreement. We were content with these additional changes.

### **Our conclusions**

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

- (a) protecting the interests of users of railway services (section 4(1)(a));
- (b) promoting the use of the railway network for the carriage of passengers (section 4(1)(b)); and
- (c) enabling XC Trains to plan the future of its business with a reasonable degree of assurance (section 4(1)(g)).

14. Please find enclosed a copy of the approval notice together with a copy of the supplemental agreement. I am copying this letter and both documents to Keith Merritt at DfT. Copies of the approval notice and the supplemental agreement will be placed on our public register and copies of this letter and the supplemental agreement will be placed on the ORR website. I am also emailing this letter without enclosures to Steven Saunders at Network Rail, Nigel Oatway at EWS, Katie Springer at Passenger Focus and George Thomas at TPE.

Yours sincerely

**Sam Gibbins**