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3 May 2012

Ian Yeowart
Managing Director
Alliance Rail Holdings Limited
88 The Mount
York
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Dear Ian

Alliance Rail Holdings Limited: application for track access rights on the West Coast Main Line

1. I refer to your application of 7 December 2011, made under section 17 of the Railways Act 1993 (“the Act”), as amended in the terms set out in your letter plus enclosures dated 7 March 2012, for track access rights on the West Coast Main Line (“WCML”).

2. Having considered your amended application, we have concluded that we are unable, at this time, to reach a decision whether or not to approve the rights you have applied for. This is because we do not have the information necessary to give proper consideration to your application in line with our statutory duties and published criteria and procedures. Consequently, we have decided to suspend consideration of your application until we are in a position to make a proper assessment, which will be when Network Rail and the West Coast Event Steering Group (“WCESG”) has produced its analysis on the possible future uses of capacity. This letter sets out the reasons for our decision.

Background

3. On 2 March 2011¹ we issued our decisions on four applications for access rights on the West Coast Main Line – from Grand Central, Alliance, London Midland, and the Department for Transport (“DfT”) applying on behalf of the Inter City West Coast franchisee. Our decision was to reject all applications for additional capacity, only extending the existing rights of the franchise holder (in a significantly less-specified form),

¹ Track Access Rights On The West Coast Main Line <http://www.rail-reg.gov.uk/upload/pdf/wcml-orr-letter-020311.pdf>



because our view was that better use would be made of future capacity if Network Rail undertook a more thorough review of the way it could be used in future timetables.

4. Network Rail is currently engaged with passenger and freight operators, under the auspices of the WCESG, in an effort to ascertain the best future use of capacity, with a view to effecting an incremental series of changes to the current West Coast timetable. The first of these changes, a fairly modest one, will occur in December 2013 but, by the last in December 2016, the cumulative effect will be a thorough recast of the timetable. The relevant outputs from the WCESG are not expected for several months, not least because the announcement of the new InterCity West Coast franchisee has been delayed until August 2012.

Alliance application – ORR review

5. Alliance submitted the present application for access rights on the WCML on 7 December 2011. Following my letter to you of 31 January 2012, this was subsequently amended to the effect that the proposed agreement would commence in May 2015 rather than May 2014, and would run for 15 years rather than for 5 years. While we note that these changes were made in response to our concern that a 5 year agreement could not stand on its own, and that Alliance would not be able to commence operations by May 2014, our 31 January 2012 letter raised other issues as well.

6. As you have noted in your application form, and in your letter to me of 22 February 2012, it has not been demonstrated that the rights you are applying for can be accommodated with the existing rights of other operators.

7. Section 17(1) (b) of the Act prohibits ORR from directing Network Rail to enter into a track access contract if performance of that contract would necessarily put it in breach of a pre-existing access contract. Before issuing directions for any new contract we therefore require assurance that the access rights in the contract could be honoured alongside the existing rights of other operators.

8. In the case of your application, it has so far only been possible to demonstrate that around 65% of the rights you have requested can be accommodated alongside the existing rights of other operators. Even those rights that could be accommodated are not matched or spread in a way that could be used to provide a viable train service.

9. Another important consideration for us when we consider new access proposals is the likely effect on performance. Without a viable indicative timetable it is not possible for us to assess the likely effect on performance of approving these additional rights at this stage.

10. In addition, because it is impossible to model the open access services for which you seek contractual rights, we are unable to run our not primarily abstractive test, and therefore to understand the extent to which the services you propose would generate revenue, as opposed to merely abstracting revenue from other operators. It is vital that we

are able to conduct this assessment in respect of open access applications since we are bound by section 4 of the Act to have regard to the financial position of the DfT, as well as to the ability of incumbent train operators to plan their business with a reasonable degree of assurance.

11. You have suggested that it would be possible for us to issue a 'minded-to' letter in respect of your application, on the same basis as was recently done in the case of the London Midland 30th supplemental agreement. However, the two applications cannot be treated in the same way for the following reasons.

- (a) In the case of the London Midland application, we were satisfied that the rights could be accommodated with very little net increase in the consumption of capacity, subject to their being run at 110mph with the rolling stock that the operator proposed to use. In respect of your application, there is far less clarity as to whether the rights can be accommodated, and no question of their representing anything other than a significant net increase in capacity consumption.
- (b) In the case of London Midland, the operator requested a decision on the application so that an order for the necessary rolling stock could be placed, almost the final piece of the jigsaw. In your case, you say in section 4.8 of the application form that the first rolling stock order will be placed following a positive output from the timetabling process. Even if we were able to approve your application now, you would not be in a position to order new rolling stock until you had certainty that the capacity exists to deliver the rights you seek.
- (c) Since yours is an open access application, unlike that of London Midland, our approval is subject (amongst other factors) to passing the "not primarily abstractive test".

Decision

12. Notwithstanding the prohibition under Section 17(1) (b) of the Act, it would not be sensible or helpful for us to prejudice the work of the WCESG by approving additional access rights at precisely a time when work to ascertain the nature and amount of available capacity is still on-going. Once the outputs of the WCESG are known, we will be able to conduct a proper assessment of competing aspirations for the available capacity on the WCML. This will include the way in which the access rights you seek could be timetabled, the likely effect on performance, and the likely effect in terms of revenue generation and abstraction.

13. At this stage, we are unable to assess whether your proposal is capable of being delivered and, if it were, whether it would constitute the best use of that capacity and to make that judgement in a way that is consistent with our statutory obligations to have regard to the interests of passengers, other train operators, and the financial position of the DfT. We will therefore now suspend our consideration of your application until such time as that assessment can be made.



14. I am copying this letter to Martin Hollands at Network Rail. A copy will also be published on our website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Robertson', is written over a horizontal line. The signature is stylized and cursive.

David Robertson