

Brian Kogan
Deputy Director, Railway Markets and Economics
Telephone 020 7282 2097
Fax 020 7282 2118
E-mail brian.kogan@orr.gsi.gov.uk



31 July 2013

Richard Miller
Head of Infrastructure Contracts
West Coast Trains Limited
Room 33, North Wing
Euston Station
London
NW1 2HS

Dear Mr Miller,

West Coast Trains Limited 4th Supplemental Agreement: Proposed Blackpool and Shrewsbury Services

1. The Office of Rail Regulation (“ORR”) has decided to reject the 4th supplemental agreement to the track access contract between Network Rail Infrastructure Limited (“Network Rail”) and West Coast Trains Limited (“Virgin”) submitted to us under section 22A of the Railways Act 1993 (“the Act”) on 24 May 2013. The purpose of this letter is to set out the reasons for our decision.

Summary

2. Virgin applied for access rights to run two return services Monday to Saturday and one return service on Sunday between London Euston and each of Blackpool and Shrewsbury from December 2013 until the expiry of its track access contract in December 2022. The application was submitted under section 22A of the Act as Network Rail was not prepared to agree the necessary access rights because:

(a) it said it could not accommodate all the proposed services alongside the existing services of Virgin and other operators; and

(b) it considered that those it could accommodate would have an unacceptable negative effect on performance.

3. We have reviewed Network Rail’s and Virgin’s evidence and a wide range of previous capacity and performance analysis relating to the routes and agree with Network Rail’s conclusion that these services should not be introduced at this time. Our reasons for reaching this conclusion are explained in detail in this letter.



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ORR's role and the approval process

4. Under the Act we have an approval function in relation to all track access contracts between Network Rail and train operators and any amendments to them. If Network Rail and a train operator reach an agreement, they jointly submit the agreement for our approval. If they cannot agree, the train operator can submit its proposed agreement to ORR and ask us to direct Network Rail to enter into it under the provisions of section 22A of the Act.

5. When such an application is submitted, we send it to Network Rail, asking it to make representations to us explaining its position. We then provide the applicant with an opportunity to respond to Network Rail's arguments. We may also hold discussions with the parties, seeking and clarifying the information we need to make our final decision. In addition, a wider consultation of industry stakeholders is carried out, either by the applicant (as in this case), by Network Rail or by ORR.

6. When we consider track access applications we must do so in accordance with our statutory duties, which are set out primarily in section 4 of the Act. These include protecting the interests of users of railway services, promoting the use of the network for passengers and goods, promoting competition for the benefit of rail users, having regard to the funds available to the Secretary of State for Transport and promoting improvements in railway service performance. Where these duties do not point in the same direction we must balance them so that we reach a result that is in the overall best public interest.

Background to the application

7. In March 2011 we rejected applications from a number of train operators for additional services on the West Coast Main Line ("WCML") as we considered that, due to the limited available spare capacity on the route, the proposals could only be accommodated if there was a complete recast of the timetable. Such a recast would have to be carried out incrementally from December 2013 and succeeding timetables, in order to make best use of a number of infrastructure enhancements due to be completed during that time, leading to a thorough recast for December 2016. We charged Network Rail with leading the industry in this work. To this end, Network Rail established the West Coast Event Steering Group ("WCESEG") which includes all potentially affected train operators, in order to help manage this timetable development process.

8. In December 2011 Alliance Rail Holdings Ltd ("Alliance"), an aspiring open access operator, applied under section 17 of the Act for access rights to run services between London Euston and Leeds, Bradford, Blackpool and Carlisle using the WCML. Alliance needs two to three years from a positive decision in order to obtain the necessary rolling stock and mobilise. In May 2012 we suspended Alliance's application until Network Rail,

aided by the WCESG, produces its analysis of the future possible uses of capacity. Network Rail is due to produce its capacity and performance report for the December 2016 timetable by September 2013 so that we can reach a decision on Alliance's application by the end of the year. If that decision were positive, this would allow Alliance to start operating from December 2016.

9. In October 2012 we asked Network Rail to look at the options for introducing services to Blackpool for the proposed InterCity West Coast franchisee and/or Alliance from December 2013. In its capacity and performance report of December 2012¹, Network Rail concluded that, due to the complexity of the timetabling issues, the performance issues and issues related to the power supply and asset reliability, it would be inappropriate to sell any further access rights on the south end of the WCML at that time.

10. We generally accepted Network Rail's findings and, in a letter dated 29 April 2013, concluded that we could not support the provision of any significant number of additional services over substantial parts of the south end of the WCML prior to the December 2016 rewrite of the timetable; however, we said we would consider any individual proposals, on their merits.

Pre-application stakeholder consultation

11. In advance of submitting the application to ORR, and in line with our criteria and procedures for the approval of track access contacts, Virgin carried out an industry consultation and a number of responses were received from train operators and stakeholders.

12. Alliance noted the continuing issues with performance on the WCML. It said that, if granted, the Blackpool rights should be contingent, quantum only, and only run until the end of the current franchise management contract in November 2014. At this stage, they should certainly not be approved beyond December 2016 as Alliance has an outstanding application for WCML access rights from that date and capacity post December 2016 is being dealt with by the industry under the WCESG (which had not had sight of the Virgin proposal). It strongly objected to the Shrewsbury services running via Rugby and Stafford due to capacity and performance constraints, arguing that these should only be approved as extensions to existing Euston-Wolverhampton services (and subject to the same conditions as noted above for the Blackpool services).

¹ Available at <http://www.rail-reg.gov.uk/upload/pdf/nr-capacity-report-201212.pdf>

13. In response to Alliance, Virgin said that the proposed paths were via Stafford because in its judgement this offered the best capacity utilisation for 125mph services, and because the route via the West Midlands is congested. In terms of duration, Virgin noted that while it had applied for rights until the end of its track access contract in 2022, and while it believed that DfT saw the services as a permanent addition to the franchise, ORR may still take other factors into account in making its decision, including the work of the WCESG, and could potentially award temporary rights on that basis.

14. DB Schenker Rail (UK) Limited raised concerns regarding the potential impact on both current and future freight services on the WCML. For the same reasons, Freightliner said that it could not support the proposal. First Group said that it was not clear that the conclusions of Network Rail's capacity and performance study on access rights on the WCML post-December 2013 (produced in December 2012) supported the rights that Virgin was now seeking. Northern Rail Limited raised the concern that the proposed services potentially clashed with its own empty coaching stock moves. Centro and Passenger Focus welcomed the proposal.

15. In response to DB Schenker, Freightliner and First Group, Virgin said that it believed that the rights it was seeking could be accommodated alongside the firm rights of other operators. In response to Northern, Virgin said that its operational planning for the proposed services would prevent the clashes which Northern was concerned about.

16. The concerns raised by consultees are generally about the about the availability of capacity and the effect on performance. These are the key issues raised by this proposal and are dealt with in the remainder of this letter.

17. Additionally, Alliance's view was that, if approved, the rights should run only to the end of Virgin's management contract in November 2014 but should certainly not run beyond December 2016 as it had an outstanding application for services on the WCML from that date. As explained in paragraph 8, we have suspended Alliance's application until Network Rail, aided by the WCESG, produces its analysis of the future possible uses of capacity from December 2016 onwards. We therefore consider that at this time we should only consider this application in relation to the period between December 2013 and December 2016. We will consider any proposals on behalf of the franchise from December 2016 alongside the application from Alliance.

Virgin's application

18. Virgin submitted its application to ORR on 24 May 2013. In accordance with the statutory process for dealing with such applications we copied the application to Network Rail asking for its representations. Network Rail undertook some further analysis of Virgin's proposals and submitted its representations in a report dated 20 June 2013.

We sent the report to Virgin who provided its response on 4 July 2013. We sought further information from Virgin in support of its response which was supplied on 10 July 2013.

The availability of capacity

19. In its representations Network Rail explained that it had been working jointly with Virgin since January 2013 to identify potential timetable paths for these proposed services. Network Rail's conclusion was that out of the eight proposed services (four each way) Monday to Friday, it had identified seven potential timetable paths which were compliant with the timetable planning rules and the existing services and access rights of other train operators. Of the eight proposed services requested on Saturdays, it had only been able to identify one compliant timetable path. It had identified compliant timetable paths for all four services (two each way) on Sundays. It had been unable to identify compliant timetable paths for one weekday service and seven Saturday services.

20. In its response, Virgin argued that it was concerned that Network Rail's approach had been driven by its position set out in its WCML capacity report of December 2012 (see paragraph 9) which stated that no further capacity should be allocated until the WCESG has concluded its work for the December 2016 timetable recast. Virgin considered that Network Rail had not devoted the same amount of diligence, time and effort to these proposals as it has to other, more challenging aspects of the December 2013 timetable. Network Rail refuted this accusation.

21. Virgin acknowledged that a compliant timetable path had not been identified for one of the weekday services due to a clash with a Freightliner service but said it believed a mutually acceptable solution could be found through continued dialogue. Whilst this may be possible, we note that at the current time no solution has been identified and Freightliner's objection to Virgin's proposal, supported by firm access rights, still stands.

22. In relation to the proposed Saturday services, Virgin said it was surprised that Network Rail had not been able to identify compliant timetable paths. Virgin's assessment was that as the services could be accommodated on weekdays, they should be able to be accommodated on Saturdays as there are fewer trains on the network. Virgin considered that Network Rail had not undertaken the substantive timetable development work necessary to support the conclusion it had reached.

23. Network Rail again refuted this allegation. It explained that although Virgin's Saturday services are almost the same as its weekday services, other operators' Saturday services are different so the interaction between services on that day is completely different.

24. In addition to identifying compliant timetable paths, Network Rail should only include trains in the timetable (if they are not supported by firm rights in an access contact) if it believes it is right to do so in accordance with the Decision Criteria set out in the timetabling process in Part D of the Network Code. Because of the effect that it considered including these services in the timetable would have on network performance, Network Rail concluded that, on the balance of the Decision Criteria, they should not be.

Performance on the WCML

25. Performance on the WCML has been persistently disappointing ever since the Virgin High Frequency (“VHF”) timetable was introduced in December 2008. The main reasons for this have been poor infrastructure reliability and external events, rather than the matters that are the responsibility of Virgin. The wide range of services, both passenger and freight, using the WCML and the generally congested nature of the route have meant that issues of TOC-on-TOC delay and relatively high levels of reactionary delay are a continuing problem. Despite continual attention to unreliable components, various management initiatives, the normal JPIP² process and some success in tackling external challenges such as cable theft, the Public Performance Measure³ (“PPM”) score has not improved materially for the past seven years. In Network Rail’s original CP4 Performance Delivery Plan, PPM MAA for Virgin services was supposed to reach 90.9% by P13, 2013-14. PPM for Virgin services is the lowest of the franchised TOCs, with an MAA to the end of period 3 (ending 22 June, 2013) of 83.4% and on a falling trend.

26. Virgin services are used by over 30 million passengers per year. The current PPM figures mean that around 5 million journeys are being materially disrupted whereas the expectation was that this figure would be around 3 million. Many other passengers on other operators’ services on the WCML have also been suffering from the effects of generally poor performance.

27. We have recently carried out a performance investigation into a potential breach of Condition 1 of Network Rail’s network licence; looking at whether Network Rail has done everything reasonably practicable to achieve its regulated outputs for performance in the Long Distance sector in 2012-13⁴. We will be confirming our decision shortly. Under a

² The Joint Performance Improvement Plan (JPIP) process is specified in Part LA of the Network Code.

³ The Public Performance Measure counts the percentage of services reaching their final destination within 10 minutes of the public schedule for long distance services (such as Virgin’s), having made all scheduled calls en-route. Shorter distance services are measured to within 5 minutes of schedule

⁴ Performance 2012-13 investigation case to answer letter available at <http://www.rail-reg.gov.uk/upload/pdf/nr-condition-1-breach-2013-06-28.pdf>

performance order which we issued in 2012⁵, Network Rail already faces a substantial financial penalty if it fails to deliver its 2013-14 punctuality target for long distance services of at least 92% PPM for the year 2013-14.

28. We are aware that comprehensive performance modelling of the entire WCML has never taken place and is beyond the capability of any currently available modelling tools. The work that has been done has focused on the southern end of the route. The December 2013 timetable is planned to include further changes such as significantly revised TransPennine Express services between Manchester and Scotland, additional calls at Crewe in Virgin's off-peak Euston-Liverpool services and transposition of calls at Milton Keynes and Watford Junction between various Euston-Birmingham (-Scotland) services. Any view of the likely performance outcome must rely heavily on professional judgement.

29. Network Rail's capacity and performance report of December 2012 noted that there will be significant project work on the route over the next few years. This includes: re-signalling and renewal in the Watford Junction area; re-signalling and renewal in the Stafford area; construction of a new flyover and junction re-modelling at Norton Bridge; and Northern Hub/North West Electrification works. The Stafford and Norton Bridge works were always envisaged as being the key to supporting the capacity for additional off-peak paths between Euston and the North West through the area. The expenditure of £250million on these projects has been justified on the basis that reliable capacity does not exist at the moment.

30. Following completion of the WCML upgrade and major enhancements at Milton Keynes, Rugby, Nuneaton, and along the Trent Valley, Stafford and Norton Bridge remained virtually un-modernised. In a typical off-peak hour there are ten passenger trains each way per hour in this area – five to/from Euston and five to/from Birmingham – and a significant volume of freight and infrastructure traffic. The upgrade scheme will allow 100mph running on the Slow Lines between Stafford and Crewe, and allow three trains per hour each way to/from Stoke on Trent to cross the Fast Lines via the new flyover, greatly reducing the number of conflicting movements and hence reactionary delay.

Network Rail's comments on performance

31. Besides a detailed consideration of how the additional services could potentially be timetabled, Network Rail's report describes how the well-established TRAIL performance simulation model was applied to the current timetable and with the addition of the

⁵ Available at <http://www.rail-reg.gov.uk/upload/pdf/290512-performance-breach-letter.pdf>

proposed Shrewsbury and Blackpool services. This work was only undertaken in relation to the congested south end of the WCML between Euston and Coventry-Nuneaton. It showed a 0.5% decline in PPM, from 85.7% to 85.2% with the additional services.

ORR's view

32. The TRAIL model has been used in relation to the WCML for several years, dating back to VHF timetable in December 2008. Earlier modelling of the effect of additional services south of Rugby has also been undertaken using the rather different RailSys model. (This is better at understanding how resilient a timetable is at recovering from particular incidents.) Although the RailSys work was undertaken on an older version of the WCML timetable, before the introduction of an additional hourly off-peak London Midland 110mph service on the fast lines, this also demonstrated that additional trains would substantially increase the extent of disruption from major incidents as there was so little spare capacity. We see no reason to disagree with the conclusion in the most recent Network Rail work that even relatively few additional services will cause a further material worsening in PPM.

Virgin's comments on performance

33. On 4 July 2013 Virgin responded saying it disagreed with Network Rail's analysis and that its own analysis showed an improvement in PPM of 0.51%. We asked for details of its analysis and further information was supplied on 10 July 2013. We held a telephone conference with Virgin on 12 July 2013 to ensure we had a full understanding of the analysis.

34. Virgin's analysis does not relate directly to the proposed Blackpool and Shrewsbury services. It considers other timetable changes from December 2013 that will combine some Birmingham-Scotland trains with Euston-Wolverhampton services. These are subject to a separate application which has not yet been submitted to ORR. This will reduce the number of services on the busy multi-user route between Birmingham and Wolverhampton by one per hour each way and provide some additional resilience through some extended scheduled dwell times at Birmingham and Wolverhampton. One train in each direction between Euston and Birmingham will be withdrawn entirely but at times unrelated to the proposed Blackpool and Shrewsbury services.

35. Virgin's analysis did not include timetable modelling; rather it considered avoidance of primary delays from train mileage no longer operated and reduction of reactionary delays from greater resilience. The reduction in delay was then converted to an estimated improvement in PPM using recent delay minute-to-PPM correlation data.

ORR's view

36. As mentioned in paragraph 34, Virgin is proposing to combine a number of services in the West Midlands. These currently have differing levels of performance, with the Euston-Birmingham-Wolverhampton group generally delivering higher PPM than the Birmingham-Glasgow/Edinburgh group. Whilst this proposal and the proposed Blackpool and Shrewsbury services are unrelated, the overall effect will be to reduce the number of trains reported in PPM statistics. It is possible that this combination and reduction in train numbers could have a beneficial or neutral effect on performance, but this is by no means certain. Although it is plausible that the changes in service pattern in the West Midlands will reduce delays, we are not convinced that the method of conversion to PPM is particularly robust.

37. Virgin did not contest that the additional Blackpool and Shrewsbury services would increase congestion but felt that the changes in the West Midlands would create a balancing improvement. We are not convinced by the fairly limited analysis which Virgin has undertaken.

Conclusions

38. It is clear that despite a considerable amount of work on the part of Network Rail, it has not been able to identify sufficient capacity for all the services requested. Virgin suggests that Network Rail has not done enough and with further work all the necessary compliant timetable paths could be found. However, it has not provided sufficient evidence to support this contention.

39. Under section 17(1)(b) of the Act ORR is prohibited from issuing directions to Network Rail if the result would necessarily put it in breach of an existing access contract. Whilst it may be possible, with some further timetable work, to find more compliant timetable paths, we believe the evidence provided by Network Rail demonstrates that it is unlikely that all the conflicts it has identified could be resolved within the existing rights of other operators and/or their existing resources. We are therefore prohibited from approving those access rights.

40. Even if further compliant paths could be found, we have serious concerns about the impact these services would have on performance. Performance on the WCML has been poor for several years and shows no signs of significant or sustained improvement. Our assessment is that even the relatively small number of proposed additional services to Blackpool and Shrewsbury are likely to cause a further material deterioration. At best, it would reduce any improvement that Network Rail and operators were able to achieve. We have therefore concluded that we should not approve the rights for the services requested by Virgin in this application.

41. In reaching this decision we have had to balance our duties under section 4 of the Act. Of particular relevance are our duties to protect the interests of users of railway services, promote the use of the network for passengers and goods, promote competition for the benefit of rail users and promote improvements in railway service performance. Whilst direct services to Blackpool and Shrewsbury would obviously be of benefit to the passengers making those journeys without having to change trains en route, as evidenced by the public support shown for these proposals, we believe this benefit is outweighed by the effect that these services would have on the punctuality and reliability of the existing services and large number of passengers using the WCML.

42. We regret that it has been necessary to reach this decision but, as noted, we and the industry have serious concerns over performance on the WCML. We feel strongly that it would be wrong to approve the rights to these services at this time since doing so would be likely to make this unacceptable situation worse.

43. Nevertheless, we are conscious that Network Rail is making considerable efforts, in co-operation with train operators, to improve performance to an acceptable level through timetable improvements and infrastructure enhancements. In its December 2012 capacity report, Network Rail anticipated that the timing of the various projects (referred to in paragraph 29 above) meant that no significant new services could be accommodated before a major timetable recast in December 2016. More recently, because of the urgent need to take action to improve performance on the route, we understand that Network Rail is investigating the scope for bringing forward some of this work, together with associated timetable improvements perhaps as early as December 2014. We strongly welcome this and want to make it clear that once Network Rail can demonstrate that performance can be raised and sustained at committed levels, we would be prepared to consider applications for the use of any capacity which may be available.

44. I am copying this letter to Darren Horley at Network Rail and Roger Jones at the Department for Transport. A copy will also be placed on our website.

Yours sincerely

A handwritten signature in black ink that reads 'Brian Kogan' in a cursive, slightly slanted script.

Brian Kogan