

Richard Carter
Director, Rail Strategy and Security
Rail Group
Department for Transport

By email

17 July 2017

Dear Richard,

Alliance GNWR: Euston – Blackpool services
West Coast Trains: Euston – Blackpool services

Thank you for your letter dated 6 July which contained the Department's response to both of the above consultations.

Policy context and summary position

I am slightly confused by your comments in the paragraphs where you recognise the important role open access can play in delivering services, but you then appear to link 'safeguards' required to protect Government's ability to support 'vital social services'. I was not aware that the Department's role had expanded to this area, and would be pleased for clarification on what is actually meant.

You also comment on the Periodic Review, and your desire to see all operators pay fixed track access charges. As you will be aware the issue of fixed track access charges for open access operators was tested in the High Court in 2006, with the

ORR's position on charging supported completely by the Court decision. The reason the Court stated that open access operators cannot pay the fixed charge was determined not only by their limited access in the 'upstream market' (the market for access), but also by the many additional protections enjoyed by franchised operators over open access operators. It is open access operators that require a level playing field.

It is pleasing to note that the Department has recognised that Blackpool is poorly served and that new services could deliver significant passenger benefits. Network Rail has recently spent over £250 million of taxpayers money to fund capacity improvements with the Stafford Area Improvements Programme¹, it is therefore surprising that the Department states it is still uncertain over available capacity on the West Coast Main Line (WCML).

We note that the Department supports the service proposed by Virgin, stating that if any material performance issues were to arise from the franchisee they could 'discuss' how this might be rectified. According to the Form P [4.6] the services proposed are not franchise obligations. They are clearly commercial services, and the legal position on the use of franchised assets to operate such services needs to be determined, particularly in light of the illegal state aid argument. They are not Public Service Obligation (PSO) services, nor should they need to be as Alliance is seeking to operate Blackpool services without the need for Government specification².

The issue of performance is rather disingenuous, suggesting, as it does, that open access operators are somehow inferior in this regard. In reality of course open access operators rely entirely on the support of their passengers to survive, and performance and value for money are extremely high on the agenda. All open access operators contribute significantly and endorse a reliable and improving railway.

¹ Network Rail Media release LNW route 1 Oct 2015: A new section of railway line and eleven new bridges are being built to create a flyover at Norton Bridge and remove a bottleneck on the existing network. The work will improve performance and reliability and deliver the capability to run more passenger and freight trains.

² Many stations in the North of England, Hull, Sunderland, Hartlepool, Teesside, Bradford, Halifax and Huddersfield (at Brighouse and Mirfield) enjoy inter-city services that are not specified by Government.

Alliance Rail Holdings

88 The Mount, York, YO24 1AR

Tel: 01904 628904 – email: info@alliancerail.co.uk – Website: www.alliancerail.co.uk

Registered Office: Admiral Way, Doxford International Business Park, Sunderland, SR3 3XP

Registered in England Number: 07026295

The issue of power supply on the East Coast Main Line (ECML) has been known for some time, but that has not stopped the specification of more electric services on the route by the Department which are, unfortunately, unable to use the infrastructure until much needed upgrades are undertaken. While this will have on-going timetable implications for the ECML, this is not an issue on the WCML, and indeed the Alliance application only seeks to replicate the access rights it had been granted previously, but with differing rolling stock. No additional services are proposed.

West Coast and HS2 context

It is to be hoped that the significant investment in HS2 will indeed transform rail travel as the Department hopes. It is noted that the initial trains are to be classic compatible, and in this context they are unlikely to be able to tilt. Alliance is aware of the need for careful planning, and has been instrumental in identifying capacity and performance improvements elsewhere on the network, notably the ECML, in the past. The quantum of services proposed by Alliance is exactly the same as those initially approved by the ORR, and Alliance has also been involved in various meetings and steering groups in relation to access at Euston for services during the phased build of HS2.

The applications

There is no change in the quantum of services proposed by Alliance, but clearly the rolling stock and [reduced] calling pattern are different. Reduced running speeds and calls will of course also reduce the amount of any abstraction that might be experienced by the franchisee, so in this respect this application is a significant betterment for the Department.

Alliance's failure to secure the necessary derogations for a new build of Class 390 also means no further tilt trains can be secured for further operations on the WCML,

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so without tilt operation the future development of the route is curtailed until the introduction of HS2 circa 2027. This will not meet the growth targets of the Department and others in the intervening years – a point made at various HS2 meetings by Virgin³.

- **Performance and reliability** – The significant taxpayer spend of £250 million in the Stafford area was to increase capacity and improve resilience. Alliance is not proposing any increase in the number of services that it would operate from its now lapsed contract, although its trains will have an increased seating capacity. The route is already a mixed railway, but with a number of line-speed increases on the slow lines Alliance will offer some attractive end to end journey times, as well as some overdue competitive pressure on fares.
- **Euston works** – We concur with the Department on the need for careful planning at Euston, and all stations of course see increased pressure during times of disruption. The Department keeps referring to Alliance wishing to run more trains, but we only seek to replicate the quantum initially approved. It is Virgin who seek to run more trains. The issue of ‘step up’ during delays is one already faced and dealt with by open access operators on the ECML, and the stepping up of a mixed fleet of 9 and 11 car Class 390s brings with it its own significant challenges.
- **HS2 construction** – There is no change and no further impact on the construction plans at Euston with the Alliance proposal as it plans to operate the same quantum of trains as in its initial approved application (which had contingent rights to operate to Euston). The additional services are those proposed by Virgin, and indeed their longer trains provide less flexibility for platforming at Euston.

³ In relation also to Euston during the station re-build.

- **Rolling stock** – The rolling stock proposed is only slower due to the current EPS nature of the route⁴, and Alliance is working with Network Rail (as has HS2 previously) in identifying operational solutions to restrictions on sections of the route that should not be restricted. Obviously it would not be possible to use the stock without route clearance, which will be addressed. Alliance fully acknowledges the original ORR decision on the use of tilt stock in its original contract, and that is why we did not try to amend that contract but instead sought to seek new rights. The ORR was kept up to speed with our work with Alstom in trying to secure the necessary derogations, and despite reducing the 120 derogations given for the previous build (4 x new train sets and additional trailers to make 11 car sets) down to 17, it was not possible to secure the necessary approvals to make the small build cost effective. Despite this, Alliance is on record in thanking both Alstom and the Department for Transport in their efforts with the European Union.
- **Secretary of State's funds** – The proportion of funding for the rail industry that comes from Government has been steadily declining, falling from 49% in 2006/7 to 29% in 2013/14⁵. On track competition has clearly been shown to increase rail revenue, and at a time of potential slowing of growth, would add an impetus that is missing on the WCML so improving the position. The ORR has done much work identifying the correlation between increased patronage and lower yield growth and lower fare rises where on-track competition is in existence. The Alliance application has reduced abstraction and so has a smaller impact on the Secretary of State's funds than the initial Alliance approved application.
- **Failure of the previous GNWR application** – Nobody is more disappointed than Alliance about our inability to secure the necessary rolling stock to deliver the new service. Alliance would concur with this point from the Department, and no doubt the residents of Lincoln, Bradford and Skipton would also wonder why previously

⁴ Class 91s have a design speed of 140 mph and currently have an operational line speed of 125 mph

⁵ Realising the potential of GB Rail Final Independent Report of the Rail Value for Money Study and GB rail industry summary – ORR 31 Dec 2015

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specified services were never delivered from the 2009 franchise award. Some are due to be delivered during this franchise term, but we understand there may now be a threat to further services to Harrogate. Alliance has made its revised application immediately as its initial contract was due to lapse, and is seeking the same quantum rights as previously awarded.

The challenges faced are generally the same for all operators, and the issue of using cascaded high quality rolling stock, and seeking route acceptance (for a route the trains have operated over before) is something the industry deals with on a fairly regular basis. It is rather disappointing that despite the response referring to both applications the Department has not highlighted the 'difficulties' arising from Virgin proposing to operate its long trains at Poulton-le-Fylde and Kirkham and Wesham.

Alliance would expect any future changes to the charging regime to be robust, and the Department appears to suggest that any 'protection' for open access is unwarranted. Alliance believes the ORR is best placed to make those judgments, balanced alongside the many protections afforded to franchised operators as outlined in the Court decision in 2006.

Alliance would expect the ORR to work closely with Alliance and the leasing company on the deliverability of its rolling stock.

There has never been an expectation of rolling over of rights, and this applies equally to franchised services within the legal framework. It is however, rather contradictory to complain about non-delivery of services (last bullet point), and then to suggest that it is OK for (what would be) an established service to be withdrawn.

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Annex – further detail on specific areas of the applications

- **Performance and reliability** – The route underwent a £9 billion upgrade and a recent £250 million improvement to increase capacity and resilience. Alliance is seeking no additional capacity over that which it was awarded in its previous contract. The planning of trains operating at different line-speeds is par for the course for professional railway planners, and just because Virgin propose increasing their utilisation does not necessarily make the timetabling process any easier.
- **Rolling stock** – Having made the point about ‘slower’ trains in the previous bullet, it seems counter-productive to suggest that 110mph trains should be penalised if line-speeds are raised. Indeed it would be questionable if such a move would be legal. Alliance was previously approved at 125mph operation, and the abstraction arguments were dealt with at that time. At 110mph operation the abstraction impact is lower, and even with line-speeds raised the Department would be in no different a position than if Alliance’s initial contract was delivered.

Alliance is very aware of the need to engage with Network Rail on any proposed changes to its train consist. The relevance of course would be to strengthen trains if necessary, but this could not be done on an ad-hoc basis.

The relevance of 140mph design speed is no different to the relevance that a Class 390 has a 140mph design speed. Neither train can operate at its design speed on the UK rail network, and Alliance is very clear about its operating speed [currently] on the WCML.

- **Pre-2026 off-peak capacity** – It is pleasing to note that the Department recognises the availability of capacity on a route that has seen significant taxpayer investment. That was the basis of the original Alliance application,

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and no changes to quantum have been proposed. Alliance would not agree that only one application should be approved, there is ample capacity for both, and Alliance is supportive of on-track competition. Passengers would have a choice from two operators, not only on price, quality and timings, but also on rolling stock type, one with tilt, one without. In addition, apart from the Blackpool branch, the stopping patterns for both services are different, so there are a number of new journey opportunities to more destinations than previously.

- **Length of access rights** – Alliance is pleased that the Department is supportive of Alliance’s proposed access term for these services.
- **Post-2026 off-peak capacity** – As mentioned earlier Alliance does not presume roll over of rights, and indeed the legal framework applies to all operators, not just open access.
- **Franchise value** – The suggestion that this means lower revenues for Government has never been supported by any evidence, despite the fact open access operators have been operating since 1999. Indeed on each occasion the ECML franchise has been awarded the premiums offered have gone significantly upwards. The real value within the franchise revolves around the strength and number of the bidders, and that is true of any similar process.

The Department also suggests this is only relevant to the Alliance services, but the status of the Virgin services is that these are commercial services (in the same way that Alliance proposes commercial services) and form no part of the franchise obligations (Form P 4.6). In the past, these types of services have been determined as open access services, and the question of use of franchised assets (which raises the issue of illegal state aid) needs to be addressed.

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Overall, Alliance is supportive of on-track competition, and there is significant evidence to show how such competition supports growth beyond the norm, whilst also offering improvements and opportunities to economically deprived areas. Ironically it is these areas that should be more subject to the specification of PSO services within a publicly specified contract (PSC).

There is no suggestion from any other party who has responded to the Alliance consultation that there is insufficient capacity on the WCML, and Alliance believes there is sufficient capacity for both the re-applied for services of Alliance, and the new services proposed by Virgin. A very different situation than has been faced previously on the ECML.

Yours sincerely



Ian Yeowart
Managing Director