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22 February 2017

Dear David,

Alliance comments on the DfT response to the ORR of 20 December 2016

During a recent telephone conversation you had with Jonathan Cooper you asked if we would comment on the DfT response to the Alliance Section 17 Application for London to Southampton services that the DfT sent to the ORR. This letter is our response to that request.

We note that the DfT response to the application was not within the established industry timescales. The consultation response was 12 days late. Although the DfT explained that it did not know when it would respond, it did not request any extension to the consultation period. We feel this somewhat devalues the DfT's response.

Alliance is delighted that "*The Government is fully committed to putting the interests of passengers at the heart of the railway and believes strongly in the importance of competition*". It is disappointing therefore that, despite this clear and long-standing Government commitment, the DfT continues its objection to any form of open access competition on the UK rail network, even though open access operators regularly top surveys of passenger opinions.

Alliance notes the DfT refers to "*the limited information*" in the consultation, but would advise that at no time has the DfT sought any further information from Alliance, either during or after the official consultation period. We will provide any reasonable and appropriate information if the DfT can be specific about what it wants.

The DfT then state that any ORR decision should await the letting of the South Western franchise, although of course the application from Alliance was to ensure that bidders for the franchise had visibility of potential open access competition before contractual commitment, even though it exposed our plans to the threat of plagiarism, a situation that has happened previously, and on more than one occasion.

The timing of the application is exactly in line with output from the CMA Policy Document where Stagecoach/Virgin¹ on the ECML stated they were particularly concerned about open access where there was no visibility at the time of bidding. The CMA also noted that there was limited empirical evidence² that on rail competition had a negative impact on franchise awards.

At the time of the Alliance application the award of the new franchise was expected to be made in February 2017. Since then the date has been put back to April 2017. It is possible that this date might slip further. We would not expect the ORR to delay beyond April in making a judgment on the Alliance application.

The DfT briefly refers to the impact on the Secretary of State's (SoS) funds from the threat of this application. However, no evidence has been put forward by the DfT to support its view. The impact on the SoS's funds, for this application, if indeed there is any, would be very small when compared to previous open access approvals for rights. In addition, the ORR will be aware that the DfT has never been able to provide any evidence that previous rights granted to open access operators have adversely impacted the SoS's funds. Indeed, there is clear evidence that the opposite is the case. The CMA found that where

¹ Competition in passenger rail services in Great Britain (CMA Policy Document) – 5.94

² CMA Policy Document 5.87

competition existed³ journeys for both the franchised operator and the open access operator increased at a faster rate than where no competition existed, and that despite the presence and growth of open access franchise premiums have continued to rise.

The threat of competition is always there and bidders will always take this into account, whether explicitly or implicitly. Alliance notes also that this objection is rather disingenuous as the DfT has been happy to see the incumbent operator, South West Trains, commence its own open access services operating via Westbury to Yeovil. It is unclear why a state-backed open access service is acceptable to the DfT but not competition from a non-franchise operator.

Policy content and consistency of the proposed services with the CMA 'position'

It would be quite difficult to think of a more dynamic and innovative approach from operators than those provided by open access operators. If they do not meet the needs of their passengers they do not survive, and they do not have the luxury of the taxpayer standing by to fund or bail out poor business decisions.

A fuller reading of the CMA Policy Document makes it clear that any PSO levy would be accompanied by easier access to the network for open access operators. We would also point out that a PSO levy must be raised on all commercial operators, and not just targeted at open access operators as is suggested, as this would be clearly illegal. It would appear the DfT position is not to "*create a more sustainable approach to competition*" but to raise a penalty against open access operators and attempt to stifle that competition.

The issue of charging, particularly the fixed charge was dealt with fully in GNER v ORR and others in 2006. It was clearly established that accessing the upstream market was

³ CMA Policy Document 3.28-3.40 Ove Arup (for ORR) and AECOM

totally different for franchises to open access, and that the current charging regime correctly reflected this as franchises have many advantages over open access operators. The DfT is due to consult on the raising of a levy, and we note that UK legislation will need to be enacted to facilitate this charge.

The CMA Policy Document looked at consideration of changing open access going forward, with some high level suggestions on how this might be undertaken. More importantly, it also made it quite clear that it encouraged the industry⁴ to consider the benefits that on rail competition brings and consider further ways in which opportunities to expand it for the benefit of passengers and the UK.

The DfT is therefore plainly incorrect to state the CMA did not include increasing open access in this (commuter) area – it just focused on the inter-city franchises (ECML/GWML/WCML) where it believed there were the greatest opportunities. The CMA did however note that "*On commuter routes, operators may have less incentive to deliver service quality and innovation*" - a position I am sure many commuters concur with.

Whilst our proposals do indeed benefit commuters as well as business and leisure travellers, the Wessex route beyond Woking is not really a 'turn up and go' service. A better comparison would be with the WCML, where Milton Keynes (50 miles) and Basingstoke (48 miles) have much in common: but Milton Keynes is served by competing operators, albeit franchised ones. The off-peak standard day return fare from Milton Keynes is around £16 compared with £24 from Basingstoke. This is what is really meant by putting the needs of the passenger at the heart of the railway. Our proposal is to not only offer some choice and price competition, but to also address known overcrowding problems on this route by offering a limited additional service in the peak.

⁴ CMA Policy Paper 7.4 7.78

The DfT state “...an open access proposal may make elements of the base franchise specification undeliverable”. Alliance took care to ensure that its proposal did not compromise the base service requirement as outlined in the ITT. The proposed additional peak trains are contingent on the availability of platform capacity at Waterloo, which we believe will be improved by the end of 2018. The peak service is currently 24 tph, whilst the existing TPR allows for 25 tph. It is entirely possible that bidders have included options that compete directly with our own proposals. If so, it will be for the ORR to decide which is the best use of capacity, bearing all other factors in mind.

Peak capacity: Alliance is surprised that the DfT considers that “*there will be no spare capacity in the high peak hours for extra trains over and above those in the TSS.*” Whilst we acknowledge that reopening the former Waterloo International platforms is aimed mainly at expanding Windsor Line capacity we understand that one of the other benefits is to increase availability of platforms accessible from the Main Line. We are engaging with Network Rail to understand this better.

Journey times: the DfT state that “... *the SW franchise specification calls for significant improvements in journey times.*” Whilst this is no doubt an aspiration for passengers, bidders and the DfT alike, we can find no requirement in the ITT for improved journey times on Main Line services. Instead, Attachment A to DP2.1 states only that “*The Department is not specifying any new maximum journey times on any Main Line route but bidders may not increase the current fastest standard hour off peak journey time between London Waterloo and each of Guildford; Portsmouth Harbour; Alton; Southampton Central; Bournemouth; Weymouth; Salisbury; and Exeter St Davids.*”

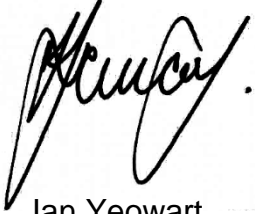
Level of service: Please would you explain what type of competition constitutes ‘sustainable’ in the DfT’s eyes? We have yet to come across any application for open access services that the DfT has welcomed - even half-heartedly. It is hard to argue that the competition enjoyed by passengers on the ECML is anything but sustainable.

We believe we have explained in our application how our proposals will benefit passengers, not least through fares competition and increasing seating capacity, and that

there is no risk that they will detract from the current franchising process, given that the projected revenue of Grand Southern is significantly less than that currently earned by the successful operators on the ECML. Even so, a substantial proportion of that revenue will be from newly generated business.

Stabling capacity: Alliance's trains will be stabled overnight at Arriva Traincare's Eastleigh TMD. There is plenty of capacity for this, and no impact on existing operators' stabling.

Yours sincerely



Ian Yeowart

Managing Director