

LONDON ST PANCRAS – SECTION 17 APPLICATION

TABLE OF MML COMMENTS TO THIRD PARTIES' REPRESENTATIONS

Third Party Responses	Midland Main Line Limited ("MML") Comments
A. London Underground Limited – Malcolm Grant	
<p>I have reviewed the papers including the draft Access Agreement. They are relevant to London Underground Limited as LUL was liable to pay compensation for starting its works in advance of the main CTRL works and is liable for any future changes, although such liability is very small compared with the totality of that payable under LCSP obligations.</p> <p>Clearly the compensation provisions for MML need to be fair and reasonable given their business risks and disturbance involved. However I understand that LCSP are attempting to renegotiate some of the compensation provisions and delete others. If this aim is achieved, while balancing the need for fairness and equity for MML, LUL would support such re-negotiation as it means by inference that any future LUL liability is also likely to be reduced.</p>	<p>MML note that LUL acknowledge that MML will suffer business risks and disturbances as a result of the CTRL Works.</p> <p>MML agree with LUL's overall point that compensation for such business risk and disturbances should be fair and reasonable and submit that the compensation agreed in 1996 and contemplated by all parties to last throughout the CTRL Works period is fair and reasonable.</p> <p>MML note the LUL statement that the compensation regime is relevant to LUL on the basis that LUL is liable to pay compensation for starting its works in advance of the 'CTRL Main Works'.</p> <p>MML is not a party to any agreement with LUL and cannot comment on LUL obligations to pay compensation in relation to its works (it is presumed that such compensation is payable to LCSP). Nor can MML comment on the timing of the CTRL Works programme as it is not responsible for such programme.</p> <p>MML note that LUL appear to support a re-negotiation of the compensation regime on the sole basis that it may result in LUL obtaining the benefit of being able to pay less compensation. MML note that no justification is given for such re-negotiation save for the opportunity for LUL to reduce the compensation payable by LUL.</p> <p>MML note that LUL consider that LUL could only support any such re-negotiation if it could achieve fairness and equity for MML.</p>

With the complexities and funding issues surrounding this project LUL's part is small but integral, and we would be grateful to be kept informed of the outcome of this contractual debate.	Noted.
B. Eurostar (UK) Limited – Tony Deighan	
I apologise for the late submission of this notice. For the record, Eurostar (UK) Limited has no submission to make on this matter.	Noted.
C. Transport for London – Janet Archer	
<p>Thank you for including Transport for London in the consultation regarding the "Application by Midland Mainline Ltd for Directions Under Section 17 of the Railways Act 1993 to London & Continental Stations & Property Ltd To Enter Into A Station Access Contract.</p> <p>On this occasion we have no comment to make on the consultation.</p>	Noted.

D. Health & Safety Executive – Allan Spence	
<p>The issues associated with the current and future changes at St Pancras will affect the Railway Safety Cases of both the station and train operators. The extent to which any changes materially affect those safety cases and the risks they address must be determined by the dutyholders. Where those changes do make a material difference, they must seek our acceptance before the change occurs. In cases of doubt, we will advise on materiality but look to duty holders to flag up the key issues rather than simply present raw information.</p> <p>We are dealing with the submission made by the station operator to bring their safety case into compliance with the Railway (Safety Cases) Regulations 2000 and have very recently carried out an inspection to determine whether the current work at the station is materially affecting risk to passengers and staff, for example in the event of evacuation being necessary</p> <p>I have interpreted your paragraph 6 as implying that reduced platform availability will involve permissive working for other than shunting/coupling purposes. If that is so, I would wish to see Railtrack's specific risk assessment and proposals for moves to be adequately signalled.</p>	<p>Noted.</p>
E. Rail Passengers Committee for the Midlands (“Midlands RPC”) – Lee Newman	
<p>The committee agree that a New Agreement between Midland Mainline and London & Continental Stations & Property should continue in force under the general terms of the existing Agreement until the first fare-paying international trains leave St. Pancras, anticipated to be in early 2007.</p>	<p>MML note that Midlands' RPC support MML's view of a continuation of the general terms of the Existing Agreement.</p>

<p>The Committee consider that passengers interests should be paramount at all times and nothing has changed since the original Agreement was reached to suggest that any material changes to the terms, conditions and compensation levels should be allowed.</p> <p>The Committee supports the Midland Mainline view that compensation for 'general damage to business' should continue and reflect the increase in passenger numbers since 1996. The Committee also supports the Midland Mainline view that provisions for compensation for failure to provide reasonable facilities should continue.</p>	<p>MML note Midlands' RPC's support for a continuation of the current compensation levels. MML further note that Midlands' RPC consider that general damage compensation should increase in line with passenger numbers. MML would point out that this is something that they have not, to date, requested.</p>
<p>The Committee notes that the existing Agreement is due to expire on 28 April 2003 by when works were expected to have been completed. The Committee also notes that the 'Channel Tunnel Rail Link Implementation Date' for works was 6 June 2000. However, the impact on Midland Mainline and its passengers of the works was minimal before the first weekend blockade of St Pancras which occurred in October 2001, although it has been substantial ever since.</p> <p>Therefore, the additional compensation payable from 2003 to 2007 may be offset against any compensation received between 6 June 2000 and an agreed date in mid 2001.</p>	<p>MML do not agree that a retrospective refunding of compensation paid under the Existing Agreement is fair or appropriate. Disruption to MML's business did commence from the CTRL Implementation date. The package of compensation was intended to provide certainty and (in the case of 'general damage' compensation) be a constant factor payable, that would average itself out over the compensation period.</p>

<p>The Committee is keen to see that this compensation reaches the passengers concerned. Given the difficulties in identifying the passenger group, the Committee suggest that whatever sum of appropriate compensation be determined should be ring fenced to produce a package of passenger benefits. These benefits to be identified jointly between the SRA and relevant parties, including the RPC network and LTUC.</p>	<p>Under the terms of MML's franchise agreement MML is obliged to provide services and there are additional terms in respect of the provision of additional passenger benefits. The funding for such provision of services and benefits is derived from the revenue MML obtains from the provision of the services. The compensation payable under the Station Access Agreement is calculated in the main as compensation for loss of such revenue.</p> <p>Whilst MML considers itself to be in the forefront of the provision of added passenger benefits (including investments in stations, doubling of train services, operation of 17 new trains and ordering additional Class 222 Meridian Trains) MML does not consider it to be equitable for the compensation to be ringfenced as a source for additional passenger benefits. The compensation is being paid to help MML continue its existing programme of passenger benefits.</p>
<p>F. LTUC – Rufus Barnes</p>	
<p>1. As you will doubtless be aware, train operators being compensated for disruption during engineering/modernisation work is becoming an issue in the question of why rail projects costs so much. There is a case for saying that the works ultimately benefit the operator, so disruption should be taken as swings and roundabouts and no compensation paid.</p> <p>2. There are pros and cons to this argument, particularly where a franchise has a short term to run. In this case MML will have roundly a year to go (to April 2008) after CTRL 2 opens to St Pancras, so although they will undoubtedly benefit from the new facilities and the extra demand for travel to St. Pancras to connect with Eurostar and domestic CTRL services, it may not be long enough to compensate for 4 years disruption.</p> <p>3. In this instance we are therefore sympathetic to the case for London & Continental being require to pay compensation for the disruption its works will cause.</p>	<p>MML note that LTUC do not consider that the benefits of the new station should be taken into account when deciding compensation levels as MML's franchise ends shortly after completion of the CTRL works. MML would add that these benefits will be paid for at the time of receipt, through the new station access charge. MML need to cover their losses when they occur and will pay for any benefits when received.</p> <p>MML note LTUC's support for LCSP to pay MML compensation for disruption caused by the CTRL Works.</p>

<p>4. However, while MML will lose because some passengers will not travel with them while St. Pancras is a work site, the biggest losers will be the vast majority of their passengers who continue to use the Station. LTUC therefore considers that MML's passengers should receive a proportion of the compensation.</p> <p>5. Ideally this should take the form of a direct rebate to actual users of St. Pancras during the period in question. However, given the complexities of the railway ticketing system, we see no way of doing this through the medium of fares reductions or rebates and any other means of direct reimbursement would be open to fraud.</p> <p>6. LTUC therefore believes that a proportion of the compensation received by MML should be ring-fenced and be spent by agreement with the SRA on MML passenger benefits over and above their franchise commitments.</p>	<p>MML note LTUC's statement that 'MML will lose because some passengers will not travel with them whilst St. Pancras is a work site'.</p> <p>As to the proposal of 'ring fencing' compensation, see the comments made for Midlands' RPC in Section E above.</p>
<p>7. We note this consultation has also been sent to the Rail Passengers Committees for Southern England (RPC S) and for the Midlands (RPC M). We have confirmed with the secretary of RPC S that, as his committee has no locus in the matter, they should be removed from this mailing list. In respect of RPC M, as a high proportion of the passengers using MML train to St. Pancras originate in their area, we have discussed the matter with their secretary and he concurs with our view as stated in para. 6 above.</p> <p>LTUC would wish to attend any hearing to be held on this matter.</p>	<p>Noted.</p>

G. Thameslink Limited – John Beer	
<p>Although the current state of the Channel Tunnel Rail Link (CTRL) construction works physically prevent our use of St Pancras, we remain a beneficiary under the terms of our existing Station Access Agreement. Under the current plans, when Kings Cross tunnel reopens the concrete box for the new Kings Cross/St Pancras “Thameslink 2000” station will be just that. Fitting out as a station will be undertaken when the phasing and extent of the Thameslink 2000 project has been determined. Adequate facilities at St. Pancras for Thameslink for use during both pre-planned and emergency blockages of our central core route will therefore be essential. So will the protection of our right to adequate amenities and services and compensation for the effects upon the Thameslink business in the event of these being denied.</p> <p>We recognise the need for Midland Mainline business at St. Pancras to enjoy similar protection.</p>	<p>MML note Thameslink’s support for continuing the protection afforded to MML by the Existing Agreement.</p>
<p>Whilst much has changed in the railway industry since the calculation of the “general damage” compensation clause in Midland Mainline’s existing proposed Station Access Agreements, we are unaware of any rigorous rationale behind London & Continental Stations & Property Limited’s proposed reductions in the compensation provisions.</p>	<p>MML note Thameslink’s consideration that they are unaware of any rigorous rationale behind LCSP’s proposed reduction in compensation provisions. MML are also unaware of the same.</p> <p>MML would further add that, in the absence of any such rationale, and in the interests of certainty, good business planning and saving of costs, the existing compensation provisions that were always contemplated to apply throughout the period of the CTRL Works should continue.</p>
<p>We therefore fully support the principles behind the Midland Mainline’s application for your directions under section 17 of the Railways Act.</p>	<p>Noted.</p>
H. The Department for Transport – Andrew Murray	

I am afraid that in the time available our researchers have failed to track down any insights into the Department's apparent involvement in the negotiation of the existing agreement. We are unable, therefore, to comment on the rationale for the original compensation provisions, or on how the parties may then have envisaged that such provisions might be applied in any subsequent agreement.	Noted.
The Department's concern in relation to the current application is, put simply, to ensure that the outcome neither impedes the continued implementation of the CTRL development agreement nor threatens the continued operation of the MML franchise. On the information currently available to the Department, it does not appear that MML's application is likely to result in either outcome. Beyond that, the Department has no grounds for offering a view on the basis on which ORR should determine the application.	MML note the Department for Transport's view that it does not appear that MML's Application is likely to impede the continued implementation of the CTRL development agreement or threaten the continued operation of the MML franchise.
Finally, I should say that the Department for Transport does not at present see a need to speak or be represented at the formal hearing.	Noted.
I. The SRA – Phillip O'Donnell	
The SRA notes that MML states in its application that the only issue on which it has not been able to reach agreement with LCR is on the treatment of compensation for disruption due to the CTRL construction work at St. Pancras. Therefore, the SRA assumes that other than this matter the Regulator would have been asked to approve an extension to the current agreement. On this basis, the SRA considers that MML's application for direction under Section 17 has merit. The SRA's reasons are: <i>[set out below]</i>	MML note that the SRA consider MML's Application 'to have merit'

1. that MML should be enabled to plan its business with a reasonable degree of assurance. The CTRL compensation provisions were drawn up at a time when both the competitions to select the nominated undertaker for the construction and operation of CTRL and the MML franchise competition were underway. As such, the provisions represent an agreed allocation of risk as between MML and LCR in relation to the acknowledged risk of disruption due to CTRL construction, on the basis of which both parties priced their bids in their respective competitions. As is not unusual with major project, construction of CTRL has been delayed beyond the original expectations. This does not seem to the SRA to be a good reason for seeking to disturb the original compensation arrangement;	<p>MML fully agree with the SRA that the compensation regime represents an agreed allocation of risk between MML and LCR (of which account has been taken by both parties).</p> <p>MML also fully agree that the delay in construction of CTRL is not a good reason to alter this allocation, particularly as MML had no control or say in such delay.</p> <p>MML would further add that the allocation should not be altered in order to:</p> <p>(a) save costs (see point 3 below); and</p> <p>(b) provide certainty.</p>
the Regulator did not seek in his 2000 Charges Review to disturb the CTRL compensation provisions in the track access agreement of those operators which are affected by the construction of CTRL; to leave compensation terms unchanged in this case would therefore be consistent with regulatory precedent;	MML agree with this statement.
The existing compensation arrangements are of considerable complexity. We suspect that to negotiate a revision to such arrangement would itself involve considerable effort, with negligible, if any, benefits to passengers and, in view of the SRA, little obvious economic benefit to the parties.	MML fully agree with this view, especially in light of the time, effort and cost spent in negotiating the Existing Agreement.
The SRA has yet to hear any counter-balancing arguments.	Noted.
The SRA would wish to attend, and speak at, any hearing on this application.	Noted.
	MML consider the SRA response to be of particular importance given the significant position of the SRA within the rail industry.