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**APPLICATION BY MIDLAND MAIN LINE LIMITED ("MML") FOR  
DIRECTIONS UNDER SECTION 17 OF THE RAILWAYS ACT 1993 TO  
LONDON AND CONTINENTAL STATIONS AND PROPERTY LIMITED  
("LCR") TO ENTER INTO A STATION ACCESS CONTRACT**

I refer to your letter to Richard Bowker dated 22 October 2002 regarding the above application made by MML pursuant to section 17 of the Railways Act 1993 (the "1993 Act"). As requested, I am writing to set out the SRA's response to the issues raised by that application.

**Legislative and Regulatory Framework**

In formulating its response to MML's application, and indeed any application for access rights, the SRA will need to have regard to the legislative and regulatory framework within which it is required to operate and in particular its prescribed purposes, duties and objectives.

The SRA's statutory purposes, as specified in section 205 of the Transport Act 2000 (the "2000 Act") are:

- (a) Promoting the use of the railway network for the carriage of passengers and goods;
- (b) Securing the development of the railway network; and
- (c) Contributing to the development of an integrated transport system for passengers and goods.

Furthermore, under section 207 of the 2000 Act, in furthering its purposes the SRA must act in the way best calculated to:

- (d) Protect the interests of users of railway services;
- (e) Contribute to the achievement of sustainable development;
- (f) Promote efficiency and economy on the part of persons providing railway services;
- (g) Promote measures designed to facilitate passenger journeys involved in more than one operator (including, in particular, arrangements for the issue and use of through tickets);

- (h) Impose on operators of railway services the minimum restrictions consistent with the performance of its function; and
- (i) Enable providers of rail services to plan their businesses with a reasonable degree of assurance.

The SRA is required to formulate strategies to enable it to further its purposes and it must comply with any directions guidance and objectives set for it by the Secretary of State. It has published its Strategic Plan and expects to publish further strategies in due course. Section 206(4) of the Transport Act 2000 requires the SRA to formulate a strategy relating to services in various parts of Great Britain for facilitating the carriage of passengers or goods by rail by way of the Channel Tunnel. While it has yet to publish such strategy, the SRA fully recognises that its purposes cover the development of international passenger traffic, as well as domestic passenger services.

In addition, the Secretary of State has issued directions and guidance to the SRA. Those directions and guidance make it clear that the SRA should provide a clear strategic direction for rail transport in Britain, promote rail passenger and freight transport and encourage private investment in the rail industry. They also state that the SRA's primary objective is to work within its statutory framework to deliver the government's key targets for the railway, which include:

- (j) The increase of rail use in Great Britain (measured in passenger kilometres) from 2000 levels by 50% by 2010, with investment in infrastructure and capacity, while at the same time securing improvements in punctuality and reliability;
- (k) Reducing overcrowding in London to meet SRA standards (no passengers standing for journeys of more than 20 minutes; no more than 30% standing for shorter journeys) by 2010; and
- (l) A significant increase in rail freight's share of the freight market by 2010. The Government believes it ought to be possible to achieve up to an 80% increase in rail freight by 2010; and also
- (m) to work with the rail industry to achieve substantial lasting improvements in performance.

The directions and guidance specify a number of subsidiary objectives for the SRA which include the development of a policy for the utilisation of capacity among users with a view to the achievement of the growth targets for both passenger and freight rail services. The directions and guidance state that whilst ideally sufficient capacity would be available for all users this may not be achievable in practice so that there will be a need to identify priorities and that the SRA's policy should therefore be designed to inform operators and assist the Regulator in his consideration of proposed access agreements.

The directions and guidance recognise that the desired growth of 50% in rail passenger traffic and of up to 80% in rail freight will require substantial capital investment and states that the government will look to the SRA to take the lead in planning and procuring enhancement of the network to deliver the targets on a basis which is both value for money and affordable.

The SRA also has a duty to work within the resources allocated to it and to secure value for money from its expenditure.

The SRA notes that the Regulator has received guidance from the Secretary of State for Transport under Section 4(5)(a) of the Railways Act 1993, as amended by Section 224 of the Transport Act 2000, as to the manner in which the Regulator is to work with the SRA and the Health and Safety Executive.

### **Relevant Considerations to the Grant of Access Rights**

In light of its purposes, duties and objectives and strategies, the SRA would expect to have regard to the following considerations in relation to any application for access rights:

- (a) the nature and extent of the rights granted should take into account the SRA's strategies, reflect an appropriate balance between their respective objectives and promote their implementation accordingly;
- (b) the nature and extent of the rights granted should reflect what the relevant operator might reasonably require and what Railtrack (as a responsive, competent and knowledgeable network operator) might reasonably be expected to provide in light of the need to promote growth and investment in the railways and to enable providers of rail services to plan their businesses with a degree of certainty and should reflect the particular needs of the operation.
- (c) the rights granted should not discriminate in favour of the relevant operator such that the development of new and expanded services by other operators in both the passenger and freight markets, and therefore the achievement of the desired growth targets and of the objectives set out in the SRA's strategies, is prejudiced;
- (d) similarly, the nature and extent of the rights granted should not be drafted so rigidly that they ossify capacity on the network, whilst at the same time meeting essential customer requirements. This requires that an adequate balance be struck between flexibility (within reasonable parameters) so as to facilitate adjustments in the allocation of capacity to reflect emerging demand and policy and the need of the operator to have certainty;
- (e) the drafting of agreements should reflect agreed industry standards (including any published model provisions and the Network Code) unless departures from those standards can be justified by reference to criteria which balance the legitimate interests of the operator against those of other operators, Railtrack and the SRA; and
- (f) due regard should be had to the impact of the proposed agreement on Railtrack's financial position and their effect on the SRA's budget.

## **THE MML APPLICATION**

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 directions under Section 17 has merit. The SRA's reasons are:

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 projects, 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;
2. 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;
3. 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 the view of the SRA, little obvious economic benefit to the parties.

The SRA has yet to hear any counter-balancing arguments.

The SRA would wish to attend, and speak at, any hearing on this application.

**Philip O'Donnell**