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2 April 2013

Mr Peter Craig
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By e-mail

Dear Peter

Approval of track access rights on the West Coast Main Line (WCML) and other routes

1 I am writing to let you know how we are now considering and dealing with applications sent to us for new Level 1 track access rights for freight operators on the West Coast Main Line (WCML). I also explain how we will consider and deal with similar applications for Level 1 track access rights on other major routes on the network.

2 You will probably be aware that we are meeting with Carl Kent, Pawel Novak and Nigel Oatway on 3 April 2013 to discuss the way in which we have been dealing with recent DB Schenker Rail (UK) Limited (DBS) supplemental agreements (SAs) submitted to us. As you know, we have the opportunity to provide our initial comments on proposed new access rights and amendments to existing access rights at Network Rail's consultation stage and respond more formally to the parties to SAs once it is informally submitted to us. I understand that one of the main concerns which DBS has relates to comments we have made on the proposed 66th SA (Royal Mail services) which has been informally submitted to us and which is why Nigel and Pawel (and Carl) want to meet us. A copy of our letter of 8 March 2013 outlining our position is attached.

Background

3. You will be aware that following the Rail Value for Money Study (the RVfM Study), we wrote to Network Rail Infrastructure Limited (Network Rail) all train operators and funders on [23rd September 2011](#) explaining our view that ...



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“.....it would be premature to grant extensions to the rights that train operators currently enjoy in their TACs beyond December 2013 *in their current highly prescriptive form* until we:

- (a) have had an opportunity to consider the options going forward; and
- (b) have consulted the industry and given it an opportunity to comment.”

4 It is worth pointing out that we also said in that letter in relation to approving access rights on the WCML;

“In deciding our approach, we are also conscious of our ‘minded to’ decision letter of [2 March 2011](#), in respect of the proposed extension of the rights of the long distance franchised operator on the WCML. Since that letter we have approved access rights which are considerably less specific than those previously approved. Indeed, from December 2013, the TAC provides for quantum rights only. There were a number of reasons for this decision, including anticipated changes in infrastructure (essentially North West Electrification), which will require a recast of the timetable to take advantage of the enhancements. As Network Rail would need to work on this timetable recast (work which is now under way) we concluded that it would not be sensible for the new franchisee to have highly specified access rights relating to the existing timetable.”

5 We subsequently introduced (what we called) an ‘interim policy’ for the approval of freight access rights whereby we were content to approve new Level 1 rights, being the most highly prescriptive freight track access rights, up to the PCD 2013 and as Level 2 rights thereafter. We were content to do this because Level 2 rights, which are also ‘Firm Rights’, have a lesser prescription, given they are for a quantum of rights. It soon became clear to us that the industry did not fully support a move to change to the lesser prescription of new access rights or those renewed, effectively, by extension of an access contract. As such, we have been considering, on a case-by-case basis, freight SAs sent to us for approval which include new or amended Level 1 access rights. In making our decisions we have been particularly mindful of the restrictions we have imposed on granting passenger train operators highly prescriptive access rights. This is discussed further below.

6 It’s worth mentioning that the approach we took under our ‘interim policy’ has now, effectively, ‘timed-out’ given that approving access rights as Level 1 up to PCD 2013 at this stage will give the operator no priority over Level 2 rights. This caused us to reconsider how we would deal with applications made to us for approval of Level 1 rights. So, more recently, our approach has been to carry out extensive reviews of Rights Tables proposed in SAs in respect of changes to existing Level 1 rights and new Level 1 rights.

7 In considering each SA we have taken into account:

- (a) the number of Level 1 Rights (being Firm Rights) sought;
- (b) the timing, operation and routing of the proposed services;
- (c) the effect they could have on future timetable changes;

- (d) implications of major projects that are, or will be, underway in this timescale; and
- (e) the extent to which the changes to the Rights Table use additional capacity, or simply make different use of existing capacity.

8 For applications where we were content to approve Level 1 rights, we did so on the basis that those Level 1 rights would have minimal impact on capacity utilisation, namely:

- (a) the rights, as amended, involved only minor timing changes or minimal revisions to contract miles;
- (b) new rights where services were timed to operate 'overnight' when freight trains tend to operate in isolation; and
- (c) those rights related to new services that run either during quieter periods e.g. weekends or over shorter distances or, on occasion, contra-peak.

We have recorded in our more recent freight SA decision letters how we have decided to approve Level 1 access given these circumstances.

Network Rail's ability to make better use of its network

9 We have also been mindful of the consequence that approving Level 1 access rights could have on Network Rail's ability to make best use of additional capacity or capability to be realised from the completion of major works which are planned on parts of the network. The industry is well aware that as part of our work relating to 'Industry reform - review of access contractual and consultation arrangements' we have been considering the inclusion of what was referred to as a 'major projects' re-opener¹ which is intended to allow Network Rail to propose changes to access rights and make best use of capacity once such projects have been completed. Whilst we have yet to finalise the reopener provision we have developed a preliminary provision which allows us to insert the reopener provision in access contracts once it has been developed. Such a preliminary provision has already been incorporated into three passenger operators track access contracts (Northern, FKT and EMT) and we propose to include it in two long-term freight track access contracts we are considering.

10 However, we now feel that developing a provision for inclusion within Part J of the Network Code to allow Network Rail such flexibilities is a better option. Once incorporated, it would have the advantage of applying to all train operators simultaneously. It would also meet the legal requirement in Regulation 18(5) of The Railways Infrastructure (Access & Management) Regulations 2005 which requires Framework Agreements (track access contracts) to contain a provision to allow access rights to be modified to enable "better use to be made of the railway infrastructure" by the Infrastructure Manager (Network Rail)².

¹ <http://www.rail-reg.gov.uk/server/show/nav.2747>

² See David Robertson letter to the industry dated 20 December 2012
<http://www.rail-reg.gov.uk/server/show/nav.2747>

Even though we intend to propose a change to Part J of the Network Code to achieve this, we do not think it appropriate to approve prescriptive access rights (Level 1s for freight) now which are likely to need revision at a later date.

West Coast Main Line

11 The WCML is operating close to the limits of its capacity on many sections of the route and timetabling is extremely complex. It is a key route for many service groups, both on the north - south corridor and for east - west journeys. Our approach - and our duty as regulator - is to make sure that the use of capacity is optimised. It is in the interests of the industry as a whole, and the railway's users, that we do so.

12 As you will be aware, the WCML timetable is to undergo a number of changes over the next few years with a more significant recast planned for December 2016. The West Coast Event Steering Group, which has representatives of all interested parties, has been set up in order to help Network Rail achieve this.

13 Since we approved the new track access contract for Virgin in August 2011 with quantum only rights from December 2013, we have only approved a very limited specification of access rights on the WCML. This is in order not to frustrate the future development of the timetable on the WCML

14 We have adopted this approach consistently with passenger operators on the WCML for some time now. FKT's new contract from December 2013 contains quantum only rights and the extension of Northern's contract from December 2013 to December 2014 reduces all its rights over the WCML to quantum only. When we recently extended EMT's contract from December 2013 to December 2016, rights for those services impacting on the WCML were also made quantum only.

15 In considering our approach to approving new access rights for freight operators on the WCML, the reasons for not approving highly specified rights for passenger operators holds equally true for freight operators. Therefore, we have decided, in principle, that we should not approve Level 1 access rights on the WCML.

16 However, we have identified particular circumstances which we will want to take into consideration when deciding to approve (or not) certain new WCML Level 1 rights. We acknowledge that the flex provision for Level 1s has a default value of +/- 30 minutes which provides Network Rail with an 'in-built' timetabling flexibility. This alone makes Level 1 rights slightly different to prescriptive access rights sought by passenger operators whose access rights do not tend to have such large flex provisions. However, given the nature of changing freight customer requirements and to incentivise freight operators to update and revise their access rights requirements, we have decided that we will take these factors into account along with those mentioned in paragraph 7 in considering approving new Level 1 rights. And we will take into account when considering approving

certain new or significantly re-timed day-time WCML Level 1 rights, whether the capacity-take implications are counterbalanced by the surrender of a number of similarly timed services. This means that we will need to consider each application on a case by case basis. Where we decide not to approve WCML day-time Level 1 rights for the reasons mentioned in paragraph 15 above, we will propose approving Level 2 rights instead.

All other routes

17 For Level 1 rights which do not interact with the WCML, we will continue to consider them in accordance with the process we have identified in paragraph 7 above. However, in some instances we will be seeking confirmation from Network Rail that it is content to agree to sell highly prescriptive rights across its network where there is likely to disruption caused by the implementation of major projects, such as those planned on the East Coast Main Line, Great Western Main Line, Midland Main Line and the South West Main Line. We have already started to seek such confirmation from Network Rail for some applications sent to us.

Conclusion

18 We therefore consider that our approach to approving only certain Level 1 rights for freight operators the WCML is consistent with the approach we are taking for passenger operators and adequately addresses our aims to enable Network Rail to undertake the WCML timetable rewrite for 2016 without restrictions that highly prescriptive access rights might cause it. We anticipate that Network Rail will support this position and we are content to discuss any of these issues.

19 For information, we are copying this letter (without attachments) by e-mail to the freight operators on the attached list. Please could we ask you to share this letter with colleagues at Network Rail, as appropriate.

Yours sincerely

Bill Hammill

Lindsey Durham
Freightliner Limited/Freightliner Heavy Haul Limited

Ian Kapur
GB Railfreight Limited

Nigel Oatway
DB Schenker Rail (UK) Limited

John McGuinness
Direct Rail Services Limited

Simon Ball
Colas Rail Limited

Steve Gear
Harsco Rail Limited

James Shuttleworth
West Coast Railway Company Limited

Pascal Sanson
Europort Channel SAS

G Hanson
Devon and Cornwall Railways Limited