

**Daniel Brown**  
Director, Economics, Markets and Strategy



10 February 2021

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Dear Mr Yeowart and Mr McMahon,

### **Application for a new track access contract for services between London Paddington and Carmarthen**

1. We have carefully considered Grand Union Train Limited's (Grand Union) application for a track access contract with Network Rail Infrastructure Limited (Network Rail). This was submitted to us under section 17 of the Railways Act 1993 (the Act) in May 2020. ORR has rejected the application. This letter explains the reasons for our decision.

#### **Background**

2. Grand Union applied in May 2020 to run services between London and Carmarthen. The application was for:

- From December 2021, seven return services a day between Cardiff Central and London Paddington, calling at Newport, Severn Tunnel Junction and Bristol Parkway; and
- From December 2023, extending each of these services so that they operate between Carmarthen and London Paddington, with limited stops at Llanelli and Swansea and then calling at Newport, Severn Tunnel Junction and Bristol Parkway.

3. The proposed service would have initially used electric Class 91 locos, Mark 4 coaches and DVTs (existing ECML rolling stock), and then from December 2023 would use new build bi-mode Hitachi Class 802s.

#### **ORR's role and approach**

4. Under the Act we have an approval function in relation to track access contracts between Network Rail and train operators and any amendments to them. If Network Rail and a train operator reach agreement, they jointly submit the proposed contract for our

approval, under section 18 of the Act. If they cannot reach agreement, the train operator can apply under section 17 of the Act and ask us to direct Network Rail to enter into the contract. This application was made under section 17.

5. When we consider track access applications we do so in the manner we consider best calculated to achieve our statutory duties, which are set out mainly in section 4 of the Act. The weight we place on each duty is a matter for us depending on the circumstances of each case. Where the duties point in different directions, we weigh them against each other to help us reach a decision.

6. Although our duties are wide ranging, our experience generally is that a subset tends to be especially relevant to access decisions with the others not pointing strongly one way or the other. In this case we considered all our duties; these were the most relevant:

- promote improvements in railway service performance (which is defined as including in particular, performance in securing (a) reliability (including punctuality), (b) avoidance or mitigation of passenger overcrowding, and (c) that journey times are as short as possible);
- otherwise protect the interests of users of railway services;
- promote the use and development of the network for passengers and goods to the greatest extent that we consider economically practicable;
- promote competition in the provision of railway services for the benefit of rail users;
- enable persons providing railway services to plan the future of their businesses with reasonable assurance; and
- have regard to the funds available to the Secretary of State and [his guidance](#).

7. In this particular application decision, we also consider that the duty to have regard to notified strategies and policies of the Welsh Ministers is relevant.

8. ORR is supportive in principle of open access, by which we mean passenger services provided outside of a franchise or concession. This reflects our duty to promote competition for the benefit of rail users and our recognition that competition can make a significant contribution to innovation in terms of the routes served, ticketing practices and service quality improvements, by both the new operator and through the competitive response of existing operators.

9. But we must also consider our other duties when making access decisions. These include duties to have regard to the funds available to the Secretary of State in relation to railways and to protect the interests of users of railway services, both passengers and freight customers. These require us to consider the impact of new open access services not just on the passengers benefitting directly from those services but all users of railway services.

10. With those issues in mind, our approach is to test whether new services such as these would be “not primarily abstractive” (NPA) as explained in our published guidance. In essence, the NPA test aims to help us balance our duties, in particular those to promote competition for the benefit of users and to have regard to the funds available to the Secretary of State. The extent to which we value the potential benefits competition can bring is reflected in the threshold for the test that we expect new services to reach – we would not expect to approve applications that did not generate at least 30p of new revenue for every £1 abstracted from existing operators (i.e. achieve a ratio of 0.3:1).

11. In addition to the NPA test, our guidance explains the range of other issues we expect to look at, including capacity and performance. We also consider the absolute impact on the funds available to the Secretary of State. In the circumstances of each application, we can decide what particular weight to place on each of these factors. We discuss these later.

12. As part of this application we requested information from the parties in line with the Economic Equilibrium Test (EE Test) as set out in the Railways (Access, Management and Licensing of Railway Undertakings) (Amendment) Regulations 2019 (The Regulations). As explained in our [published guidance on the EE Test](#), a number of the amendments made through the Regulations, including the EE Test, only applied until 31 December 2020. As a result, after 31 December 2020 we cannot carry out the EE Test, or make decisions based on the EE Test, for domestic services. This decision was taken at the ORR Board meeting on 26 January 2021, and as such, we have not considered the EE Test in reaching this decision.

#### *Timing of decision*

13. We aim to take decisions on track access applications within six weeks of receiving all relevant information. We informed Grand Union in November 2020 that we would aim to take a decision at our January 2021 Board meeting, following Network Rail’s submission on performance impacts due in December 2020. Grand Union encouraged us to take a timely decision on this application, noting that its costs, including regarding rolling stock, would be increased by any delay.

#### **Industry consultation**

14. In advance of submitting the application to ORR, and in line with our published guidance, Network Rail carried out an industry consultation on behalf of Grand Union in May and June 2020. Several train operators and other stakeholders responded:

- (i) Freightliner, which raised concerns regarding freight capacity on the Great Western Main Line, contractual protections, and economic benefits of the proposals;
- (ii) Great Western Railway (GWR), which raised a number of concerns including capacity, performance and economic impact;
- (iii) MTR Crossrail, which raised a number of capacity concerns;

- (iv) Transport Focus, which noted its presumption in favour of competition, noted the importance of network benefits, and commented that competition must be delivered within the framework of co-ordination, with no significant disbenefit to any existing group of passengers.
- (v) Transport for London, which raised capacity concerns;
- (vi) CrossCountry Trains, which raised concerns over journey time protections applied for.

15. The concerns raised by consultees generally related to the availability of capacity, the effect on performance and impact on existing rail revenues.

16. Further, the Department for Transport wrote to us on 10 August 2020 raising a number of capacity and performance concerns, and concerns relating to the impact on the Secretary of State's funds.

### **Welsh Government support**

17. The Welsh Government supported the application and in particular the proposal to provide a significant increase in services between Carmarthen and London, including additional services at Llanelli, Swansea and Cardiff. The Welsh Minister for Economy and Transport wrote to us in 2019 supporting an earlier version of this application, welcoming 'the operation of a new, fast, high quality service which would provide an alternative option for passengers to travel between the two capital cities while delivering significant benefits to the economy, the environment, and the rail industry'.<sup>1</sup>

18. On 13 January 2021 the Welsh Minister for Economy, Transport and North Wales wrote to us reiterating support for this application, and noted that the proposal fitted with the Welsh Government's aspirations to increase connectivity and service provision on the South Wales Main Line, and the aspirations set out in the recent [South East Wales Transport Commission's Final Report](#).

### **Statutory Consultation**

19. As it did not support the proposal, we consulted Network Rail, as required by the Act, in May 2020. Following a number of further discussions and correspondence with Network Rail, it provided its final response to us on 11 December 2020. We set out further detail on Network Rail's views in the sections on capacity and performance below.

### **Engagement with the parties**

20. In addition to the industry and statutory consultations, when reviewing an application we may hold discussions with the parties, seeking and clarifying the information we need to make our final decision. In this case we have engaged fully with Grand Union and its consultants, and Network Rail, throughout the course of this application.

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<sup>1</sup> Ken Skates AS/MS, Welsh Minister for Economy and Transport, Letter to John Larkinson, ORR – 24 June 2019

21. Grand Union also took the opportunity to provide further detailed submissions to us. In reaching our decision we considered all the material provided by Grand Union and other stakeholders. Further details are included in Annex A.

22. The remainder of this decision is structured in four sections: potential passenger benefits; our analysis of the application (including operational viability, capacity and performance); the NPA test and absolute abstraction; and conclusions.

### **Potential passenger benefits**

23. We have considered that the proposed Grand Union service could bring a number of potential benefits to passengers on the route.

24. Additional services on the route would offer more choice to passengers and potentially differing journey opportunities. Further, the proposal offers certain new direct journey opportunities and potentially faster journey times.

25. In its application, Grand Union argued that its service would bring benefits including price competition to the route, passenger choice and innovation in terms of fares, comfort and customer services. Grand Union also committed to significant investment in new rolling stock and station investment particularly at Severn Tunnel Junction.

26. We recognise that competition can make a significant contribution to innovation in terms of the routes served, ticketing practices and service quality improvements, by both the new operator and through the competitive response of existing operators. However, these benefits need to be offset against any potential negative impact on other passengers and users of introducing a new service.

### **Our analysis of the application**

27. As part of our assessment, we considered the operational viability of the proposed services, any concerns relating to the fair and efficient use of capacity and any impacts on operational performance. We also consider the level of revenue the proposals will generate against what they will abstract from public funds, and the absolute level of that abstraction.

28. We have considered these issues against the full access rights held by all operators (and not the reduced timetables currently operating due to Covid-19). Network Rail took a similar approach in its analysis. While there have been initial discussions within the industry about reducing the overall number of passenger services in response to potentially lower passenger numbers in the post-pandemic market, we do not yet know the outcome of this or how long any reduction in services will last. We consider our approach of considering this application against the full access rights held by all operators enables us to consider the long-term implications of approving the services over the length of the access contract, however this analysis is sensitive to future decisions about specification of the Great Western franchise and the recovery profile of passenger demand which we cannot reasonably predict with any certainty.

### *Operational viability*

29. We require applicants to show they are committed to and capable of using the access rights in their application. We consider whether proposals are operationally viable and supported by a plausible delivery plan. Having considered the business plan and the proposed operational strategy, we consider this application meets these requirements.

30. However, we note the current uncertainty surrounding future economic recovery and rail passenger demand. This could pose more significant risks to the success of this specific operation than new open access operators have faced in the past.

### *Capacity*

31. Network Rail identified capacity for six of the seven return services, creating a concept timetable which included 12 of the 14 paths applied for. This included a platforming exercise for the principal termini of the service (in both phases). This verified capacity at these points, along with supporting operational train movements to deliver the train service.

32. Based on our assessment, we were satisfied that there would be sufficient capacity to accommodate six of the seven return services. Grand Union confirmed to us that it would be content to proceed on the basis of six return services and that its business case would still be viable. On this basis we modelled six return services as a key sensitivity test in our economic analysis.

### *Performance*

33. Network Rail submitted its completed performance analysis on the six return services to us on 11 December 2020. It forecasts they would lead to a 0.46% drop in T-10 punctuality for GWR Main Line services, a 0.83% drop in T-5 punctuality for Heathrow Express services, and minimal impacts on other GWR routes and on other operators.

34. Network Rail compared this to the performance impact of the recent timetable change on the route, where it had accepted the introduction of new GWR services. The GWR December 2019 timetable change introduced 89 additional services, and was forecast to lead to a 2.5% drop in T-10 punctuality for GWR Main Line services, compared to the 0.46% drop in T-10 punctuality forecast for the 12 additional Grand Union services.<sup>2</sup> Network Rail therefore concluded that it could not agree to the sale of access rights to Grand Union, as the Grand Union proposal would have a 36% greater impact per train (-0.028% to -0.038%) than the December 2019 timetable change.

35. Network Rail's performance analysis is more detailed than we have received for similar applications in the past and is based on standard and accepted industry

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<sup>2</sup> The underlying report shared by Network Rail explained that a 3.1% drop of T-10 punctuality for GWR Main Line services was more representative of the performance impact of the additional GWR services in December 2019. This is because several performance initiatives had taken place in advance of the December 2019 timetable change which had improved overall mainline service performance on the route. Grand Union calculated that this would equate to a -0.035% impact per path from the additional GWR services in December 2019, compared to the -0.038% impact per path modelled for the Grand Union proposals.

methodology. However, we consider it is a cautious representation of the likely performance impact, and mitigations could reduce the level of negative impact.

36. The introduction of new services into the timetable (be they open access or otherwise) can negatively affect performance, which must be considered carefully against the benefits to customers of introducing those services. The industry has been challenged by Government to maintain the improved levels of performance that have been experienced since the coronavirus pandemic caused passenger numbers and train services to be significantly reduced. In its representations, Network Rail stressed its commitment to ‘building [the level of services] back better’ and embedding improved performance. Equally, the absolute potential performance impact of Grand Union’s proposed service as modelled by Network Rail is less than we, and Network Rail, have accepted for other recent timetable changes on the route which have included greater numbers of additional services. As such, we do not consider that the forecast negative performance impacts alone should preclude approval of this application.

### **The Not Primarily Abstractive (NPA) test and absolute abstraction**

37. New open access services can offer new travel opportunities for users and create competition on existing flows. However, greater competition can also mean a loss of revenue for the services operated by existing operators, for example franchisees. In situations where franchised operators bear revenue risk, this revenue loss is expected eventually to lead to lower premium payments by franchised operators to the Department for Transport (DfT), or higher subsidy payments from DfT to operators. Where the public service’s contracting arrangements mean revenue risk sits with the DfT, the loss of revenue bears more directly on the funds available to the Secretary of State. This may also affect funding available for future investment.

38. The ‘**Not Primarily Abstractive**’ (NPA) test, defined in ORR guidance, is the key criterion we use to evaluate this trade-off<sup>3</sup>. It informs whether new revenue expected to be generated (a proxy for consumer benefits) is sufficient to compensate for the impact on the Secretary of State’s funds. The latter is approximated by using the revenue abstracted from franchised operators minus any Infrastructure Cost Charge (ICC) payments to Network Rail from the open access operator. Our policy is to reject applications that generate less than £0.3 of new revenue for each £1 of net revenue loss to tax-payers. Conversely, passing this test at a level above £0.3 is a necessary but not sufficient criterion for approval, as we must consider all factors and ORR duties together.

39. In addition to the NPA test, ORR guidance also sets out that we may decide to decline a track access application should we deem the **absolute level of revenue abstraction** to be too great<sup>4</sup>. This gives ORR the ability to give greater weight to the impact on Secretary of State’s funds than is implicit in the NPA test. We consider these

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<sup>3</sup> Our [NPA test guidance](#) notes, however, that “there will necessarily be a large degree of judgment involved in this decision” and that “we will need to strike a balance between a number of our statutory duties, in particular to promote: the use of the railway network; competition for the benefit of rail users; whilst enabling persons providing railway services to plan with a reasonable degree of assurance and having regard to our duties in relation to funders”.

<sup>4</sup> This was originally set out in Office of the Rail Regulator (2004), *Moderation of Competition: Final Conclusions*, 3.18(c), available [here](#). More recently, this was given as one of the reasons for rejecting GNER’s application to run services between Cleethorpes/West Yorkshire and London in May 2016.

issues in the round, alongside other factors such as potential passenger benefits and the impact on performance.

*Our central NPA test ratio forecast*

40. Our central generation:abstraction ratio forecast, summarised in Table 1 below, is 0.42:1. We forecast Grand Union's services will abstract revenue of £34.2m per annum predominantly from GWR. The reference year for our central case forecast is financial year 2025/26. This is the year we expect earnings from Grand Union's new services to be fully established and Grand Union to be paying full rate ICC<sup>5</sup>. It takes account of the full rate ICC payments of £3.4m per annum, resulting in net abstraction of £30.8m per annum. The ratio is based on the net level of abstraction. Our forecast is based on the full May 2020 timetable as would have run absent of COVID, and is based on Grand Union's full application for seven return paths.

*Table 1: ORR's central generation:abstraction ratio forecast. Based on May 2020 timetable (2019/20 prices).*

	Generation (£m)	Gross Abstraction (£m)	Abstraction net of ICC (£m)	NPA test ratio
ORR's central generation: abstraction ratio forecast	£13.0m	£34.2m	£30.8m	0.42

41. Grand Union's own central generation:abstraction ratio forecast is 0.48:1. Its abstraction forecast matches our own, but it forecasts higher generation of £14.8m per annum. The principal cause of the different generation:abstraction ratio forecasts relates to differences in the way we and Grand Union forecast generation at the three key stations where Grand Union proposes to offer significant new direct service opportunities between Carmarthen and London, namely Carmarthen, Llanelli and Severn Tunnel Junction.

42. We also undertook a number of sensitivity tests including one for six daily return paths, which shows a NPA ratio of 0.45, a gross absolute abstraction of £28.6m per annum, which net of £2.9m ICC payments per annum would result in net abstraction of £25.6m per annum.

43. Taking together our central generation:abstraction ratio forecast and the impact of various sensitivity tests on our central forecast including for six return services, we consider that – on the basis of the available evidence and our assessment - the application passes the NPA test.

*Absolute level of abstraction*

44. In addition to the assessment of the relative benefits and costs of the new services under the NPA test, the absolute level of abstraction is relevant in weighing our Section 4 duty to have regard to the funds available to the Secretary of State and [his guidance](#).

45. We forecast Grand Union services will abstract £28.6m or £34.2m of revenue per annum, based on six or seven daily return paths respectively, predominantly from GWR.

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<sup>5</sup> ICC payments for new open access services are phased in over the first five years of operation, starting at zero rate for the first two years and then increasing over the next three years to 25%, 50% and 100% of the full payment rate.



Net of annual ICC payments of £2.9m per annum for 6 return paths and £3.4m per annum for seven return paths, this will impact on government funds by £25.6m or £30.8m per annum.

46. ORR has no pre-set limit on an acceptable level of absolute abstraction. Past decisions have been made on a case by case basis, taking account of the circumstances surrounding each application. Grand Union's forecast abstraction of £25.6m per annum for six return services or £30.8m per annum for seven return services is at the higher end or above the level at which we have approved previous applications. However, it is also significantly below the level at which we have previously rejected applications solely due to the absolute level of abstraction.

#### *Uncertainty over future industry revenue post-COVID*

47. There is a high degree of uncertainty over future rail demand following the shift towards home working that has taken place as the result of COVID. Based on recent surveys, we expect there to be a material and permanent reduction in the number of short to medium distance commuting journeys by rail. However, it is too early to say anything definite about the scale of that reduction. It is unclear whether there will be a lasting effect of the pandemic on business, leisure, education or longer distance commuting journeys by rail.

48. However, we considered that *any* level of abstraction would be felt more sharply by the DfT against a background of significantly lower overall industry revenues and hence more constrained budget position. DfT specifically noted in response to this application that in ORR's consideration of our relevant duties it "would advocate a particular focus to have regard to the funds available to the Secretary of State, especially in light of the unprecedented effect COVID-19 has had on the rail sector and the UK economy as a whole". We also considered the Secretary of State's [guidance](#) to us, which notes he is "supportive of open access in particular circumstances where these do not significantly impact on affordability or the value for money from public investment". The uncertainty over future rail demand is therefore something we took into account in consideration of the absolute level of abstraction.

#### **Conclusion**

49. We decided this application in light of (a) ORR's policies and (b) ORR's statutory duties. None of the duties have higher priority than the others in the legislation. It is for the ORR to decide, first, which duties are relevant to this application, and secondly, where the relevant duties point in different directions, it is for ORR to give each of them the weight it considers most appropriate. We have identified below, those duties we consider are relevant to this application.

#### *Summary of our assessment against our policy:*

50. **Operational viability:** Having considered the business plan and the proposed operational detail we consider this application meets our requirements for operational viability. However, we note the current uncertainty surrounding future economic recovery and rail passenger demand. This could pose more significant risks to the success of this specific operation than new open access operators have faced in the past.

51. **Capacity:** There are no major capacity concerns outstanding. Based on our assessment, we are satisfied that there is sufficient capacity to accommodate six return services. Grand Union confirmed to us that it would be content to proceed based on six return services.

52. **Performance:** Network Rail and some stakeholders have highlighted concerns over the performance impacts of this application. Network Rail's modelling shows the introduction of six daily return Grand Union services could lead to a 0.46% drop in T-10 punctuality for GWR Main Line services and a 0.83% drop in T-5 punctuality for Heathrow Express services. However, we consider these modelled impacts may be cautious, and mitigations could improve these forecasts. The industry has been challenged by Government to maintain the improved levels of performance that have been experienced since the coronavirus pandemic caused passenger numbers and train services to be significantly reduced and Network Rail has stressed its commitment to embed improved performance. Further, the absolute potential performance impact of Grand Union's proposed services modelled by Network Rail is significantly less than we, and Network Rail, have accepted for other, albeit larger, recent timetable changes. We considered here the potential trade-off between the benefits to customers associated with the proposed additional services (including new journey opportunities) and the protection of user interests in good performance. We do not consider that the forecast negative performance impacts alone should preclude approval of this application.

53. **NPA test:** Our published approach emphasises the role of the NPA test as a necessary (but not sufficient) condition to approving an open access application and as our main analytical tool for helping us weigh some of the duties we have found especially relevant in open access decisions.

54. Our assessment is that the generation:abstraction ratio of the full application of seven daily return paths is 0.42:1, and for six daily return paths is 0.45:1. We therefore consider it passes our NPA test based on pre-COVID industry data, which may provide a long-term view of actual abstraction. We were mindful of the uncertainty of this analysis should the service levels and passenger demand recover to levels dissimilar to past levels.

55. **Absolute abstraction:** We forecast Grand Union services will abstract £28.6m or £34.2m of revenue per annum (based on six or seven daily return paths respectively), predominantly from GWR. Net of annual ICC payments of £2.9m for six return paths or £3.4m per annum for seven return paths, this will impact on government funds by £25.6m or £30.8m per annum.

56. Our forecast that Grand Union's services will abstract £25.6m or £30.8m of revenue per annum is at the higher end or above the level at which we have approved previous applications. However, it is also significantly below the level at which we have previously rejected applications solely due to the absolute level of abstraction.

#### *Weighing ORR's duties:*

57. The NPA test informs the overall assessment of the application in respect of the weighing of potentially competing duties, in particular (i) to promote the use of the railway network; (ii) to promote competition for the benefit of rail users; (iii) to enable persons

providing railway services to plan with a reasonable degree of assurance; and (iv) to have regard to the funds available to the Secretary of State.

58. We consider that balancing these duties is harder in the case of this application than previous applications, due to the impact of COVID on the rail industry and the current exceptional state of rail industry finances. We must also have regard to any notified strategies and policies of the Welsh Ministers, so far as they relate to Welsh services or to any other matter in or as regards Wales that concerns railways or railway services.

59. **Promote improvements in railway service performance** (which is defined as including in particular, performance in securing (a) reliability (including punctuality), (b) avoidance or mitigation of passenger overcrowding, and (c) that journey times are as short as possible). We note that this proposal is forecast to cause some negative performance impacts in terms of punctuality, but we do not consider that these impacts alone preclude approval of this application. The industry has been challenged by Government to maintain the improved levels of performance that have been experienced since the coronavirus pandemic caused passenger numbers and train services to be significantly reduced and Network Rail has stressed its commitment to embed improved performance. Further, the absolute potential performance impact of Grand Union's proposed services modelled by Network Rail is significantly less than we, and Network Rail, have accepted for other, albeit larger, recent timetable changes.

60. **Otherwise protect the interests of users of railway services:** we consider this duty does not point clearly in any one direction. For example, while it may be in passengers' and/or other users' interests that there are more services on offer, it may also not be in passengers' or users' interests if more services leads to a negative impact on performance.

61. **Promote the use and development of the network to the greatest extent that we consider economically practicable:** 'Use' is about capacity, and we have identified that there is sufficient capacity on the relevant part of the network in relation to this application. Approving a contract for Grand Union to run six return services would be consistent with our duty to promote use and development of the network, through new direct trains, some faster journey times, investment in Severn Tunnel Junction and use of new rolling stock.

62. **Promoting competition in the provision of railway services for the benefit of users of railway services:** ORR has a policy of supporting greater on-rail competition, through enhanced open access, and there is some evidence that competition can bring real passenger benefits even on the competing franchised services. Further, we also considered that this application would represent the first competitive pressure from an open access operator on the Great Western Main Line and the user benefits that could bring to the route.

63. **Enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance:** we consider that this duty does not point towards approval or rejection of the application, but rather points towards us making timely decisions for the benefit of both applicants and incumbents in order to provide them with certainty in order to plan their businesses with reasonable assurance.

64. **Having regard to funds available to the Secretary of State and his guidance:** We considered the current state of rail finances in deciding the weight to be given to these duties. Our published approach emphasises the role of the NPA test as a necessary (but not sufficient) condition to approving an open access application; the NPA analysis informs but does not determine how we weigh relevant duties in reaching a final decision. In the circumstances of this application, we have to decide what weight to place on the modelled £25.6 or £30.8m per annum (for six and seven paths respectively, net of ICC payments) absolute level of abstraction impact on the Secretary of State's funds and our duty to have regard to the Secretary of State's funds. This is at the upper end of the range that we have approved for previous open access applications, however we need to consider whether it is appropriate to place additional emphasis on absolute impacts given the current exceptional state of rail finances. DfT specifically noted in response to this application that in the weighing of our duties it "would advocate a particular focus to have regard to the funds available to the Secretary of State, especially in light of the unprecedented effect COVID-19 has had on the rail sector and the UK economy as a whole". We also considered the Secretary of State's [guidance](#) to us, which notes he is "supportive of open access in particular circumstances where these do not significantly impact on affordability or the value for money from public investment".

65. **Having regard to notified strategies and policies of the Welsh Ministers:** Welsh Government support the application and in particular the proposal to provide a significant increase in services between Carmarthen and London, including additional services at Llanelli, Swansea and Cardiff.

## Decision

66. We considered carefully the beneficial aspects of this application, but decided to place additional emphasis on the absolute level of abstraction due to the current exceptional state of rail finances, and therefore gave additional weight to our duty to have regard to the funds available to the Secretary of State. We have therefore rejected this application.

67. I am copying this letter to Dan Moore at DfT, Gareth Evans at the Welsh Government, James Price at Transport for Wales and Robert Holder at GWR. We will also place a copy on our website.

Yours sincerely



**Daniel Brown**

## **Annex A: Submissions, Correspondence and Representations received**

In reaching our decision we considered all the material provided by Grand Union and other stakeholders. These included:

From the applicant:

- [Form P](#) (application form) and [Draft Contract](#) - 5 May 2020
- Business Case and supporting material – 1 September 2020
- AECOM report *London to Carmarthen Demand and Revenue Forecasts* – 16 July 2020
- Additional correspondence between ORR and our consultants, Royal HaskoningDHV, and Grand Union and its consultants, AECOM.
- All responses from the applicant to representations, including to industry consultation responses and Network Rail's submissions.

[Industry Consultation responses](#) (May and June 2020):

- Freightliner
- Great Western Railway
- MTR Elizabeth Line
- Transport for London
- Transport Focus
- CrossCountry Trains

Statutory Consultation with Network Rail:

- [Initial Response](#) – 26 June 2020
- Wales & Western Route Performance submission – 31 July 2020
- [Further response](#) – 16 October 2020
- [Further response](#) – 30 October 2020
- [Further response](#) – 6 November 2020
- [Further response](#) – 11 December 2020

EET information request responses:

- Department for Transport, 10 August 2020
- Great Western Railway, 5 June 2020
- Keolis-Amey Transport for Wales, 5 June 2020

Other correspondence:

- Ken Skates AS/MS, Welsh Minister for Economy and Transport – 24 June 2019
- John Penrose MP – 5 May 2020
- Correspondence between Ken Skates AS/MS, Welsh Minister for Minister for Economy, Transport and North Wales and the Rt Hon Grant Shapps MP, Secretary of State for Transport - 17 August 2020
- Ken Skates AS/MS, Welsh Minister for Minister for Economy, Transport and North Wales - 13 January 2021
- Transport for Wales – 19 January 2021

Other:

- Report from ORR's consultants, Royal HaskoningDHV, *Grand Union Trains Track Access Application Demand and Revenue Forecast Appraisal* – 29 May 2020