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Dear applicants and Network Rail,

Applications for access to the West Coast Main Line (WCML)

1. We have carefully considered the applications for track access contracts with Network Rail Infrastructure Limited (Network Rail) made by East Coast Trains Limited (Lumo NW), The Wrexham, Shropshire & Midlands Railway Company Limited (WSMR) and Virgin Management Limited (Virgin). These were submitted to us under section 17 of the Railways Act 1993 (the Act) between March and May 2024.

2. We have rejected each of these applications. We considered whether any of the three applications could be approved. We also considered the three Virgin service groups in their own right. We have arrived at the same conclusion for each application and rejected them on the grounds that there is insufficient capacity on the network and the introduction of these services would be detrimental to performance on the West Coast Main Line (WCML). This letter explains in detail the reasons for our decision.

Background

3. On 24 April 2024, ORR wrote to industry setting out a process for access applications for December 2024, May 2025 and December 2025, given our expectation (as confirmed by Network Rail) that we would receive numerous complex and competing applications across that period. Applications were submitted to ORR for direction as “unsupported” applications, as Network Rail was not able to agree that there was sufficient capacity to submit agreed applications for our approval.

4. Lumo NW's application was for new services from London Euston to Rochdale (six daily return services on weekdays and Saturday, five daily returns on Sunday) on a ten-year contract from December 2027 to December 2037. It planned to use new-build rolling stock with battery and electric traction comparable to existing Class 803 rolling stock currently operating on the East Coast Main Line (ECML).

5. Virgin's application contained three new service groups from London Euston. The application was for a ten-year access contract from December 2025 to December 2035 with new service groups between:

- VT1: Greater Manchester and Northwest (Preston via Manchester Victoria – five daily services on Monday to Sunday, and Rochdale via Manchester Victoria – two daily services on Monday to Sunday);
- VT2: Liverpool Lime Street (nine daily services on Monday to Sunday); and
- VT3: Birmingham New Street (four daily services on Monday to Sunday).

6. Virgin advised that each service group (VT1, 2 and 3) could operate independently, and it wished for each to be assessed as a standalone proposal.

7. Virgin proposed to use existing diesel rolling stock, with no less capability or performance characteristics than the Class 222, to operate the services, but with the intention of introducing new-build electric rolling stock to replace the fleet on electrified routes once power infrastructure upgrades had been delivered.

8. WSMR's application was for new services from London Euston to Wrexham General (five daily return services on Monday to Saturday, four daily return services on Sunday) on a seven-year contract from May 2025 until May 2032. WSMR proposed to use existing diesel rolling stock, with no less capability or performance characteristics than the Class 222.

ORR's role and approach

9. Under the Act a train operator may only enter into a contract with Network Rail for the use of its network following ORR's approval or direction. 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. These applications were made under section 17.

10. We must determine all track access applications in accordance with 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.

11. 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. For these applications we considered the following duties 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; and
- enable persons providing railway services to plan the future of their businesses with reasonable assurance.

12. ORR is supportive in principle of open access, by which we mean passenger services provided outside of a public service contract. This reflects our duty to promote competition for the benefit of rail users. Where there is sufficient capacity, 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.

13. In this instance, the duty to have regard to the funds available to the Secretary of State was not relevant because capacity and performance were the determinative factors for each application.

Industry consultation and stakeholder views

14. Network Rail carried out a full industry consultation for each application between spring and summer 2024. Following receipt of Network Rail's final representations ORR offered industry a further opportunity to comment in May 2025. Throughout the process we received and considered correspondence from multiple stakeholder groups on each application. All responses received from the industry consultation and the opportunity to comment were shared with the applicants and we considered their responses to these comments in our analysis.

Virgin

15. For Virgin's application we received the following views:

- We received supportive comments on the benefits of open access more generally from Transport Focus.

- We received unsupportive comments from a combination of public service train operators, freight operators, competing open access operators, regional transport authorities, devolved authorities and passenger groups. Their concerns included capacity, performance, impact of the proposals on operators' own plans, economic concerns, station access, station safety, rolling stock concerns, interaction with HS2, and the delivery of future services.
- DfT had significant concerns regarding both taxpayer and operational impacts of this application. It did not believe that the quantum of paths sought was feasible or realistic and noted that the WCML already operates at close to capacity, particularly into and out of London Euston. It was also concerned about the probable conflict with HS2 and Avanti West Coast (AWC) services.
- DfT believed that this application would have an unacceptable level of impact on taxpayers, given the greatly constrained overall position of rail finances, and that the loss of revenue on such a significant scale would materially impact the funds available to the Secretary of State to support and improve the railway.
- DfT stated that this application did not pass the Not Primarily Abstractive (NPA) test and would abstract £110.5m per annum.

Lumo NW

16. For Lumo NW's application we received the following views:

- We received supportive comments on the benefits of open access more generally from Transport Focus.
- We received unsupportive comments from a combination of public service train operators, freight operators and regional transport authorities. Their concerns included capacity, performance, the work of the Manchester Task Force to improve performance in the Manchester area, the impact of the proposals on operators' own plans, commercial risk and revenue concerns, and the fact that the proposals do not take into account paths allocated to other operators.
- DfT had significant concerns regarding both the taxpayer and the operational impacts of this application. It did not believe that the quantum of paths sought is feasible or realistic on the basis of WCML capacity, performance and power supply and is also concerned about the conflict with HS2 and Manchester Task Force plans.
- DfT stated that this application did not pass the NPA test and would abstract £5.3m per annum.
- We also received a number of supportive comments from MPs, local councils and other groups, and members of the public who were keen to have services provided for their local area.

WSMR

17. For WSMR's application we received the following views:

- We received supportive comments on the benefits of open access more generally from Transport Focus.
- We received unsupportive comments from across industry objecting on grounds of capacity, failure to account for paths allocated to other operators, impact on operational performance, rolling stock availability, commercial risk and revenue implications, freight performance, WCML capacity and performance, and concerns over stabling and platforming issues.
- DfT noted that WSMR appeared to pass the NPA test but that it had concerns over operational impacts, especially relating to the WCML and London Euston, and expected Network Rail to carry out extensive analysis in this area. However, in summary it was still supportive in principle of the application.
- We also received a number of supportive comments from MPs and local interest groups on the proposed route who were keen to have services provided for their local area.

18. Late on 20 June 2025 we received a letter from DfT "for consideration at our June Board hearing". Much of the letter reiterated the Department's previously stated position with regard to Open Access. However, in the context of the impact of the applications on the Secretary of State's funds, it stressed the need for ORR to take "steps to fully understand and consider the cumulative scale and impacts of abstraction when it assesses Open Access applications".

19. An email from DfT received on 23 June provided partial clarification of the letter, stating that DfT is aware that ORR considers the impact on Secretary of State funds when making decisions, "but we are not aware of a formal statement of how it does this". DfT went on to say that it did not see this as a reason to hold up decisions, "rather that we believe ORR should have regard to cumulative impact from these current applications (reflecting its duty to consider the impact on SoS funds) and that it would be helpful to set out a means of doing this in the future. We of course recognise that the decision on how to consider statutory duties remains one for the ORR."

20. Our Board considered both the letter and the email from DfT at its meeting on 24 June 2025. It concluded that neither was a relevant consideration given the Board accepted the factors of capacity and performance were determinative in each application. In particular, the Board did not have cause at any stage in its discussion to consider its duty relating to the funds available to the Secretary of State.

Statutory Consultation

21. As Network Rail was unable to support the applications, they were submitted under Section 17 of the Act. We conducted a statutory consultation on each application with



Network Rail to elicit the capacity and performance analysis we required to determine the application.

22. We set the expectation that applications submitted to us by 20 May 2024 “be of sufficient quality, completeness, and certainty to enable Network Rail, industry and ORR to assess them”. We received final representations from Network Rail almost 12 months later, on 9 May 2025.

23. Network Rail objected to all three applications based on a capacity assessment of the WCML South between London Euston and Rugby, on the potential impact on future HS2 operations and on route power constraints. In summary, the Network Rail assessment is that there is insufficient capacity for additional services on WCML South Fast Lines; any additional services will impact performance and erode what timetable resilience there is; there are power concerns at key sections of the route for electric traction; and these aspirations will interact with future HS2 operations.

24. We set out further detail on Network Rail’s views in the sections on capacity and performance below.

Engagement with the parties

25. 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 the applicants and Network Rail throughout the course of these applications.

26. The applicants also took the opportunity to provide further detailed submissions to us. In reaching our decision, we considered all the material provided by the applicants and other stakeholders.

Our analysis of the applications

27. Our assessment of these applications has concluded that the availability of capacity on the WCML, and the impacts of additional services on performance, are determinative factors. While we assessed other aspects, including operational viability, the NPA test and the impact on the Secretary of State’s funds, and the (often supportive) views of passengers and local stakeholders, these factors did not alter our conclusions that the proposed services cannot be introduced due to insufficient space on the network and the likely detriment to train performance.

28. As referenced above, while our analysis on factors in addition to capacity and performance, was provided to the Board for completeness, the Board’s decisions were based solely on capacity and performance. We have included the results of our analysis on the NPA test and absolute abstraction in an annex to this letter. Our assessment of all the determinative considerations is as follows.

Congested Infrastructure

29. On 6 May 2020, Network Rail formally declared the WCML South Fast Lines (from London to Leighton Buzzard) as Congested Infrastructure. A declaration of congested infrastructure by Network Rail does not mean that parties cannot apply for access or that ORR cannot grant access. We do, however, consider this a relevant consideration in our assessment of capacity.

30. Network Rail's WCML South Congested Infrastructure Report (November 2020) concluded that no significant additional capacity could be utilised between Camden South and Ledburn Junction without harming performance. Network Rail is considering further declarations at Acton Lane, Washwood Heath and Crewe power feeding areas as it still has concerns about power supply on the existing working timetable and any increase in trains (passenger and freight) that use electric traction.

31. Virgin, Lumo NW and WSMR all intend to introduce additional services onto an area which Network Rail has publicly declared as congested infrastructure. While that declaration does not of itself preclude new services from being approved, the further capacity and performance information supplied by Network Rail in response to these applications supports the view that the congested infrastructure declaration in this area remains valid.

Capacity on WCML South

32. The restructured December 2022 timetable unlocked an additional hourly path between London Euston and Liverpool in each direction while also providing for five paths a day between London Euston and Stirling/Preston. Subsequent timetable productions have eroded space in the period since ORR's decision to approve rights between London Euston and Stirling for Grand Union Trains Limited (now First Rail Stirling services) in March 2024, even without additional rights being allocated. This left nine theoretical paths in each direction throughout the day that now act as 'firebreak' paths. Firebreak paths are planned gaps or unused time in the timetable. Network Rail has provided clear evidence that the firebreaks are frequently used. For example, it notes that "on a typical day at Rugby from 11:00am there is three minutes or more of lateness in the system...resulting in the current poor punctuality of services currently seen between [Milton Keynes] and Euston through to the evening peak...on a bad day the planned 'white space' is almost completely eroded [i.e. occupied]". We agree with the view that firebreaks can play an important role in creating a robust and resilient schedule, especially on congested or high-frequency routes such as the WCML.

33. Virgin intended to use more capacity (in its total application) than the theoretical capacity identified on the WCML Fast Lines between London Euston and Rugby. Virgin wanted to utilise AWC London Euston to Liverpool paths on which AWC hold rights from December 2025. The Lumo NW and WSMR applications individually would use all (or all but one) of the identified theoretical paths in the northbound direction. Each of the applications would use all (or nearly all) of the firebreaks within the timetable structure.

34. Network Rail's simulation modelling produced for the planned WCML timetable expects that overall performance on WCML will deteriorate once the additional AWC London Euston to Liverpool and First Rail Stirling services are introduced in the timetable period from December 2025. Rugby and Ledburn Junction were identified by Network Rail as the key areas where recovery time in the timetable is required to provide resilience, ensuring that disruption to individual trains does not cause avoidable knock-on, or reactionary, delay to other trains. The introduction of the services in these applications, in addition to those already approved by ORR, would trigger a notable impact to network performance through increased knock-on delays. Network Rail's analysis does not account for whether there is capacity at Euston Station or track capacity north of Rugby. However, given Euston is the origin/destination in every application, there needs to be available capacity between Euston and Rugby for services to serve that station. Network Rail concludes that there is very limited spare track capacity during peak periods, with the network already operating close to its limits.

35. We consider WCML South to be an area where punctuality is limited by a timetable structure and services specifications that offer limited opportunities to recover. If every theoretical path available was used, removing the firebreaks, this would further limit the opportunity for timetable recovery without impactful intervention by Network Rail and existing operators. We consider that passengers and freight users would be negatively impacted by a less punctual and reliable train service if these paths were used.

Capacity constraints north of Birmingham and interaction with HS2 on WCML

36. Our view supports Network Rail's, which is that the baseline service quantum through the Handsacre Junction area comprises eight passenger and four freight services per hour. The eight passenger paths can be formed of any combination of HS2, conventional express and conventional local services. While the train specification for HS2 is unconfirmed, it is known that for every HS2 service introduced north of Birmingham on the conventional WCML infrastructure, one existing service will have to be removed (without infrastructure enhancements).

37. When HS2 opens, assuming only the currently planned infrastructure is built, the accommodation of services north of Handsacre Junction will be more complex. The Virgin and Lumo NW applications intend to operate services through Handsacre Junction and further north. This means they will compete for capacity north of Handsacre with HS2 and other existing conventional and planned services. In the absence of certainty on the HS2 train plan or operational start date, ORR is unable to support these applications as it would direct scarce capacity that is likely to be needed for delivery of the HS2.

Train Plan Resilience

38. The Chartered Institute of Railway Operators 'Operators Handbook' provides good practice guidance on construction of a robust train plan. It sets out that, while the timetable may comply with industry rules on technical minimum dwell times, headways, and turnaround margins, compliance alone does not guarantee good performance. Running close to these minimums – especially across a congested network – reduces timetable

resilience and the ability to recover from delays. The WCML is an example of operating at the minimums across a number of areas.

39. The nine theoretical daily paths identified by Network Rail's capacity study currently provide some resilience in the timetable, acting as "firebreaks". They are especially important on congested or high-frequency routes, such as the WCML, where late running services frequently cause knock-on delays to the wider GB rail network. WSMR is of the view that there are nine "unused" paths available on WCML South. We do not consider that these paths are "unused" per se – while they are unoccupied in the timetable, they act as a buffer to a deterioration in performance, and it would not be possible to occupy these without worsening performance for all WCML users.

Power supply

40. Network Rail provided information on power constraints between London Euston and North Wembley and further north between Crewe and Weaver Junction. This defines the region as having widespread low voltages and other power quality concerns under normal traffic conditions. Network Rail specified that Acton Lane feeder station (WCML South) has safety, capacity and asset life concerns already under normal traffic conditions. There are also power quality concerns under heavy traffic north of Weaver Junction, impacting the WCML route toward Liverpool and Preston.

41. Network Rail suggests that for these areas service introduction would be limited to specific times of day, limitations on rolling stock, driver behaviour, and train routing. This will impact applications for operating electric traction, which Virgin aspires to do in future and Lumo would do from the beginning.

42. We agree that there are various power supply issues across the route and that these concerns will remain until as yet unfunded mitigations are implemented. Until then, we do not consider it reasonable for ORR to support the inclusion of additional electric traction at certain times of the day as proposed in these applications.

Current performance on WCML

43. In response to Network Rail's representations the applicants all insist that current performance challenges on WCML should not preclude them gaining access. They all dispute the need for firebreaks in the timetable and contend that if granted access, their evidence shows that they have robust performing timetable plans. Lumo NW goes further, countering that failing to utilise these performance firebreaks will cost the economy of the North West £0.5bn of wider benefits, without substantiating what these are.

44. Our analysis of performance, as measured by T-3¹, for best performing 5% of weekdays, excluding bank holidays and strike days, shows that AWC ranks among the poorest-performing long-distance operators. The data show that AWC does not attain

¹ 'Time to 3': the percentage of recorded station stops arrived at early or less than 3 minutes after the scheduled time.

similar performance compared to its peers in the long-distance sector. However, AWC only caused 22% of the delay minutes it suffered (190,00 out of 865,000) from April 2024 to March 2025. This compares with TOC on self delay² of 32% nationally, showing that AWC itself is performing better than average when measured by delay, despite the fact that the timetable structure does not favour punctuality more generally.

45. While AWC is not the sole operator on the WCML, it is a principal operator and does run the largest number of services to and from London Euston on the fast lines. It is also a good comparator to the proposed open access services. Considering all the above it appears that the current timetable structure, as well as infrastructure capability and capacity, is significantly contributing to poor performance. This suggests that adding in more trains, regardless of the operator and its efficiency, is likely to be detrimental to performance outcomes.

46. It is also important to stress that the current performance levels are being delivered while the nine theoretical available daily paths are used as firebreaks and before all services with rights have started operating.

ORR conclusion on performance and capacity

47. Our review of the wider capacity and performance information on the WCML, evidence from the applicants and the information we requested from Network Rail leads us to agree with Network Rail's position. In the context of weak observed performance of the current timetable structure, with existing train services operating to their specified calling patterns, we consider the introduction of services using the remaining theoretical paths on the fast lines between Euston and Ledburn Junction would very likely have significant negative impacts on performance, and therefore the end users – passengers and freight customers. We consider that the quantum of proposed services in each of the Virgin, Lumo NW and WSMR applications would likely have a material impact, affecting train performance on the WCML. Simply put, the WCML South is currently unable to accommodate any of the proposed applications.

48. In arriving at our conclusions on WCML capacity and performance, we have assured ourselves that Network Rail is taking a fair and non-discriminatory approach to all applications from public and private sector operators on the WCML South. We are satisfied it is taking a consistent approach.

Conclusion

49. We determined this application in light of (a) ORR's policies and (b) ORR's statutory duties. None of the duties has 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

² Delay caused by issues which the train company could have prevented such as defective trains or a lack of train staff.

considers most appropriate. We have identified below the duties which we consider most relevant to this application.

50. We considered whether any of the three applications could be approved and we also considered each of the three Virgin service groups in their own rights. We have arrived at the same conclusion for each and rejected them on the grounds that there is insufficient capacity and the introduction of these services would be detrimental to performance on the WCML.

Summary of our assessment against our policy:

51. **Operational viability:** We have considered the track record of all three applicants in running train services, which posed us no concerns. However, given our assessment regarding insufficient capacity for a resilient timetable, we have not conducted a full review of their plans to set up services.

52. **Capacity:** Our assessment is that there is insufficient capacity to accommodate any of the proposals in part or full as specified.

53. **Performance:** Network Rail has provided evidence that a theoretical maximum of nine daily paths may be available on the WCML South. Network Rail has also provided information on negative performance impacts of allowing these additional paths. We have reviewed Network Rail's submission and, based on the information we have received, we accept Network Rail's conclusions. Given the current structure and specification of the existing timetable, we are confident that this level of additional services cannot reliably be accommodated on the WCML South, and that allowing this number of additional daily services would have significant detrimental performance impacts by eroding the resilience of the timetable.

Weighing ORR's duties:

54. **Promote improvements in railway service performance:** We consider that performance impacts preclude approval of these applications. The detrimental performance impacts will prevent the proposed passenger benefits of the applications from being fully realised.

55. **Promote the use and development of the network to the greatest extent that we consider economically practicable:** 'Use' includes capacity and we have identified that there is insufficient capacity on the WCML in relation to these applications. This means that, while the applications involve some theoretical benefits for passengers, they cannot practicably be introduced by the operators in question.

56. **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. However, when there is insufficient capacity for the inclusion of services and performance would deteriorate as a result, it is in the interest of passengers that more services are not added to the network.

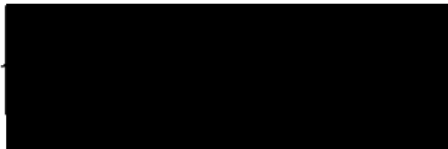
57. **Enable persons providing railway services to plan the future of their businesses with reasonable assurance:** we consider that this duty does not point towards approval or rejection of the applications. It points towards our making timely decisions for the benefit of both applicants and incumbents to provide them certainty for planning their businesses with reasonable assurance. A timely decision is important for these applications. While we have been delayed by the fact that it took nearly 12 months for Network Rail to provide evidence, we are now in a position to decide these applications and have done so promptly.

Decision

58. We have considered carefully all of our duties and placed particular weight on our duties to promote improvements in railway service performance and to promote the use and development of the network to the greatest extent that we consider economically practicable. We have therefore rejected each of the applications from Virgin, Lumo NW and WSMR.

59. I am copying this letter to Jake Kelly at Network Rail and Richard Goodman at DfT. We will also place a copy on our website.

Yours sincerely

A large black rectangular box redacting the signature of Stephanie Tobyn.

Stephanie Tobyn

Annex A: Results of our analysis of the NPA test and absolute abstraction

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). We also consider the absolute impact on the funds available to the Secretary of State.

Not Primarily Abstractive test: 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. Our published approach emphasises the role of the NPA test as a necessary (but not sufficient) condition to approving an open access application.

- Our assessment is that the generation:abstraction ratio of the Virgin application is 0.29:1. The Virgin application as a whole does not pass the NPA test. Two subsets (Birmingham 0.51:1 and Preston/Rochdale 0.55:1 service groups), when viewed as standalone, do pass. The Liverpool subset is 0.27:1 and does not pass.
- Our assessment is that the generation:abstraction ratio of the Lumo NW application is 0.34:1. We therefore consider the application passes our NPA test.
- Our assessment is that the generation:abstraction ratio of the WSMR application is 0.40:1. We therefore consider the application passes our NPA test.

Absolute abstraction:

- We forecast **all the** Virgin services would abstract £64.1m of revenue per annum, predominantly from AWC. This is well above the range of open access applications we have previously approved. Our assessment is that the absolute abstraction for Virgin Birmingham is £13.5m, for Virgin Preston and Rochdale is £13.2m and for Virgin Liverpool is £37.0m
- We forecast that the absolute abstraction of the Lumo NW application is £3.4m per annum.
- We forecast that the absolute abstraction of the WSMR application is £11.7m per annum.