ALLIANCE
RAIL HOLDINGS

John Larkinson
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ORR
One Kemble Street
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13 April 2016

Dear John,

Applications for access to the East Coast Main Line (ECML)

Thank you for your letter of 24th March 2016 and for providing the additional appendices prepared by CH2M. As requested, we have reviewed these documents and set out our comments in Annex B, with reference to specific paragraphs in the documents where relevant. We have focussed on areas of concern which have the potential to impact on the advice that is provided to the ORR Board.

Alliance's final representations to the ORR on the ECML applications are set out in Annex A. However, I may wish to respond further to David Reed's email of 11th April which proposed material changes to the findings of the CH2M report.

Yours sincerely,

Managing Director

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Annex A: Final Representations from Alliance

- The Alliance applications predate the competing applications by over a year.
- The Alliance applications are the only ones that include significant investment in infrastructure by the applicant (around £75m in total).
- Alliance's applications also include over [REDACTED] investment in rolling stock.
- Alliance is the only applicant that has proposed ways in which it could pay additional charges thereby reducing the cost of the industry to the taxpayer.
- Of all the modelled options, option 10, which includes the VTEC core and Alliance's West Yorkshire / Cleethorpes service, delivers the highest NPV as well as investment in a new station and capacity enhancement.
- Alliance's West Yorkshire / Cleethorpes proposal delivers through services to London from eight stations that do not currently have a through service.
- Alliance services (up to 0.5 tph) to West Yorkshire / Cleethorpes can be delivered earlier than 2021 because they do not rely on new capacity being made available or on power supply upgrades.
- Many aspects of the competing applications have mimicked the applications of Alliance, most notably with limited stop services from London to Edinburgh.
- Alliance's applications do not rely primarily on cheap fares to pass the NPA test. The ORR has previously rejected an application (from Platinum Trains) that proposed a low fare service very similar to First's application.
- In any case, the ORR is unable to enforce the level of fares set by operators. It should not therefore rely on a promise of low fares when making its decision.
- Despite VTEC's claims to the contrary, there is clear evidence of significant competitive response by the franchise-holder, both to air competition and to competition from open access rail operators.
- The downward pressure on fares, both from the market entry of a competitor, and from the incumbent, delivers significant benefits to rail users and corresponding economic benefits. Despite assertions to the contrary, there is no evidence that this affects franchise value.

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Annex B: Comments on the Annex to ORR Letter

Capacity:

Following the latest hearing on 4th March 2016 all parties appear to agree with the position as outlined by the ORR regarding the eventual capacity available on the ECML. It is worth pointing out at this time that Alliance has been the only party to previously identify the availability of capacity beyond 7 LDHS trains per hour[2], and without that persistence, only VTEC's 6 paths per hour service or Alliance's Edinburgh/West Yorkshire/Cleethorpes services would have been possible. Having identified that capacity, and having made applications over 2 years ago, Alliance now finds itself having to fight for capacity against operators who have sought to copy many of its ideas with late applications. This is exactly the position faced by Grand Central in 2005 and later in 2009 when seeking to deliver the successful new services to Halifax and Bradford. At a recent RDG access rights workshop on 8th April 2016 (attended by the ORR), the representative from First Group commented on the reasoning for and the timing of the First Group Edinburgh application. We would ask the ORR to note those comments.

The CMA in its recent report on more on-rail competition also identified the valuable pressure that open access operators put on Network Rail[3] to better utilise the network for the benefit of all operators and passengers/freight users. The emerging position on the ECML underlines the value of that work from Alliance in identifying additional capacity.

Within the applications under consideration, only Alliance is proposing to invest significantly in the infrastructure.

West Yorkshire/Cleethorpes: the application includes the provision of a new station on the route between Leeds and Micklefield – East Leeds Parkway – and discussions have been on-going for some time with Network Rail and other stakeholders on its

[2] Minutes of numerous ECML Programmes Boards and correspondence with Network Rail and the ORR

[3] CMA Report December 2015 – Competition in Passenger Rail Services in Great Britain

location, parking and further facilities. Depending on the outcome of those discussions, it is also expected that this private investment will unlock a further path along the corridor which would enable VTEC to also operate its proposed 2 hourly service along the route in the opposite hour to Alliance. VTEC has already indicated it would call at the new station if it was built.

Edinburgh: in order to speed up services significantly, tilting trains are required on this route north of Darlington. Alliance has worked with both Alstom and Interfleet, whose output has been benchmarked by Network Rail, to agree the journey times. While VTEC has challenged the costs associated with the installation of tilt capability, Alliance is confident that the figures contained within its business plan will be sufficient to meet the requirements to operate in tilt mode. Once completed there would be nothing to prevent VTEC from also operating tilt in preference to refurbished 25 year old short formed 225 sets, thereby further reducing journey times, which in turn will generate a further increase in industry revenue. Alliance's proposed journey times would better anything on offer until the arrival of HS2 (expected around 2033), and is the only Edinburgh application that would generate significant modal shift from air.

The Alliance West Yorkshire/ Cleethorpes proposal is to provide 9 services per day to and from London, with some trains attaching and detaching at Doncaster. This equates to only slightly more than a two hourly service, occupying 0.5 paths per hour. By describing it in paragraph 9 as requiring 1 path per hour the ORR is artificially restricting the possible combinations of options that could be accommodated within the assumed maximum of 7.5 or 8 London-based Long Distance High Speed paths.

We note that ORR can, and has in the past (for example with Grand Central's original Sunderland and Bradford applications) granted rights for fewer paths than were applied for, and indeed the ORR contacted Alliance in April 2015 for our position on any subsets of GNER services. While Alliance is keen to operate all the GNER services applied for, it is clear that the position as outlined in paragraph 9 by the ORR does not acknowledge our response to that request[4], and as a consequence the ORR is restricting the possible options and the mix of services which offer the greatest consumer benefits.

Alliance welcomes the ORR's view that only a proportion of the IEP contract costs should be treated as sunk (paragraph 78). However, given the arguments in paragraphs 79 to 81 we accept that it is unlikely that the ORR will grant VTEC less than 6 paths per hour from 2021. Indeed Alliance has never suggested they should not be approved. With existing open access, this will result in just slightly more than 7 paths per hour being occupied.

One key point in paragraph 9 needs correcting in the information you provide to the ORR Board. The VTEC core application is not for an additional 1 tph to Edinburgh: from May 2016 VTEC will operate 2 tph to Edinburgh in virtually every hour anyway. The additional path, above this year's level of service, is an additional train from London to Newcastle each hour, making a total of 3 tph north of York. This is important when considering the available capacity between York and Newcastle, especially in light of the ORR's view expressed in paragraph 7.

The other changes to the existing level of VTEC services do not affect the usage of ECML capacity south of Hambleton South Jn. They are the extension of a two-hourly service from Newark as far as Lincoln, and the diversion of the two-hourly York service to Harrogate via Leeds. The latter service would share an hourly path through Micklefield with GNER's Bradford and Ilkley service if rights for both were granted.

Within a maximum of 7.5 paths/ hour, the options for granting additional rights over and above the VTEC core would be one of any of the options (or subset of options) applied for:

- Alliance West Yorkshire/ Cleethorpes (possibly with a small reduction in rights granted relative to the level sought in the application)

[4] Email to Rob Plaskitt 24 April 2015 outlining acceptable options with supporting commercial rationale.

- Alliance Edinburgh reduced service (as per our April 2015 reply)
- VTEC Middlesbrough or
- First Edinburgh

Within a maximum of 8 paths per hour, the choice would be between any two of the above or the full Alliance Edinburgh application.

At paragraph 10, the ORR suggests that none of the proposed services appear possible prior to 2021. This is not correct. The Alliance West Yorkshire/Cleethorpes service will be operated using bi-mode trains. We expect to run under electric power from London to Doncaster or Hambleton, but will require diesel operation beyond these points, at least until trans-Pennine electrification is complete. The issues affecting capacity and power supply further north of Doncaster do not affect this application, and indeed the investment in the infrastructure to deliver the new station also creates further capacity along the Micklefield corridor.

We agree that Network Rail's position on ECML power supply issues is much clearer following the briefing on 24th February and the March ORR Hearing. We note that as well as a power supply upgrade in the Doncaster area (paragraph 6) Network Rail is also funded (and expects) to deliver a new feeder station at Hambleton before April 2019. However, further upgrades are required at six existing feeder stations between York and Edinburgh before any further electric trains can operate north of York. These will not be delivered until well into CP6 – 2021 at the earliest - and are not currently funded.

Alliance notes that the following London to Edinburgh services all require a suitable power supply to be available:

- Alliance Pendolino service
- First Group service
- VTEC two-hourly limited-stop service (in conjunction with Middlesbrough)

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We have commented previously on the Connectivity Fund and the suggested position of the Secretary of State. We note with some concern the DfT is attempting to influence the ORR decision with its threats to remove committed investment from the ECML unless its franchised operator obtains the additional paths it seeks. We note that EU Directive 2012/34 states: *"In order to boost competition in railway service management in terms of improved comfort and the services provided to users, Member States should retain general responsibility for the development of the appropriate railway infrastructure."*

While we note the ORR believes the 'value for money' concerns may be relevant, it is clear from the evidence available about the connectivity fund that the DfT remains unable[5] to clarify the claim made at the 4th March hearing that *"..to reiterate the point the original condition for the fund should be a BCR threshold of 1.5 for individual projects[6]".* This has been a clear attempt to mislead the ORR about the supposed business case for the enhancements – as no such business case could exist for enhancements that were undetermined and undeveloped at the time the fund was made available[7].

The connectivity fund is a ring fenced investment fund in CP5 HLOS[8], and the first meeting of the ECML Programmes Board took place on 23rd November 2012. All expected output from the connectivity fund was focused on increasing the capacity from 6 to only 7 LDHS paths per hour[9]. This was the expected capacity output improvement from the £240m investment. The ORR has been provided with evidence to confirm that had Alliance not been present at the Programmes Board, that there would be no additional capacity beyond the 7 LDHS paths for anybody to bid into. Far from having a negative impact on the funds available to the Secretary of State, Alliance has ensured that real value for money has been received, by pressing Network Rail to reveal a further and significant increase in capacity.

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5 DfT letter to ORR 23rd March 2016
6 Transcript ORR Hearing 4th March 2016 – DfT comment Page 11 Lines 11-13
7 16th July 2013 Action tracker note 13/07 13-6 "Proposals for draw down of funds to be supported by a paper summarising costs, benefits, **business case** and details of stakeholder support/sign off"
8 Parliamentary answer by the Secretary of State for Transport to a question - 7th January 2013
9 Various ECML Programme Board documents/minutes/action trackers.

Alliance's applications were made on the very premise that there was further capacity beyond 7 LDHS paths per hour[10], and, despite much industry resistance, has worked tirelessly in meetings to prove the position.

Performance:

Alliance agrees with the ORR's position, and there is no evidence to suggest that a mix of operators would import poorer performance than if additional services were provided by only one operator – a fact easily evidenced elsewhere on the network.

Operational viability and consistency with industry plans:

Alliance's applications are based upon a long term understanding of the requirements to develop the ECML to enhance the core service, and also a deep understanding of the value – and success – of open access in developing a number of new, off core, markets which have had a very positive economic impact on those areas now served, and hopefully those new areas to be served in the future. The open access operators have been a constant during much change on the ECML.

It is rather disappointing that once it was becoming clear that capacity beyond 7 paths per hour was probable, that the DfT 'advised'[11] Network Rail that now the over-riding output it wished to see from the connectivity fund was a "*material reduction in journey times*..", and yet the Alliance Edinburgh application is the only application that addresses the output required by DfT.

Alliance has undertaken significant long term work on this application, and despite Virgin claims in the press[12], Alliance is the only service (and was the first of the applications) capable of challenging the dominance of air on the Edinburgh – London route. Its proposal, as evaluated by the ORR's consultants[13] not only exceeds the NPA threshold, but also generates over £47m of new business to rail (at Edinburgh and Newcastle), while VTEC would generate only £13m at the same locations, and

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[10] GNER Edinburgh Form P – GNER West Yorkshire/Cleethorpes Form P
[11] DfT (Peter Foot) letter to Network Rail 17th July 2013
[12] Scotsman 3 April 2016
[13] CH2M Assessment of Applications on the ECML 15th January 2016

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First just £10m (if not overtaken). Only the Alliance application pushes the rail mode share beyond 50%.

Demand modelling:

Like other stakeholders, as noted in paragraphs 31 and 32, we continue to have significant concerns about the modelling of fares. It should be recognised that the modelling of fares in circumstances where there is on-rail competition is an area of weakness in PDFH and the formula in Section B11.4 is a considerable simplification. Accordingly ORR cannot give undue weight to the specific PDFH formulations. However we fully accept that the entry of a new operator charging lower fares would lead to transfer from the incumbent (beyond what is forecast using MOIRA) and to the generation of new rail demand. However, we do not agree that the incumbent would share in the demand generation (offsetting wholly or partly the transfer of existing demand to the new operator). We have provided a spreadsheet to ORR which shows that this is not necessarily required in order for revenue to remain constant under the assumption of a conditional elasticity of -1.0.

We also note that the modelling of fares is inconsistent with the approach taken in previous access decisions, when ORR has never – as far as we are aware - considered that there would be any generation to an existing operator, offsetting abstraction, as a result of a new entrant charging lower fares[14]. If the approach adopted by CH2M in this case had been used previously, it might have had a significant impact on ORR's decision making.

In any case, it is implausible to suggest that people would be attracted to an operator's services by the lower fares charged by another operator. If this assumption is a material factor in the decision making process, it would expose the ORR Board to ridicule.

[14] MVA Making Better Decisions – Assessment of track access applications on the ECML Jan 2009 and WCML Feb 2011

We note in paragraph 52, the statement "*Overall, reflecting the above points, we consider that it is highly likely that VTEC would adjust its fares in response to competition from FirstGroup or Alliance, albeit the response to the latter might be somewhat muted.*" While Alliance's Edinburgh application is, unlike First's, not primarily dependent on charging very low fares and having compulsory reservations, we do not agree that the impact would be "*muted*". While the overall effect of the proposal is generative, it would obviously result in a higher level of abstraction than First's slower and less frequent proposition. Accordingly, VTEC would have more empty seats to fill than with First's proposal and could therefore be expected to compete aggressively on price.

We also note that the above statement is not consistent with the assessment undertaken by CH2M which has assumed no competitive response by VTEC. This is significant because competitive response by VTEC could have a significant impact on the outcome of the economic appraisal.

Paragraph 54. As we, and other stakeholders, have stated on numerous occasions, the use of a confidential model provided by an applicant to assess price competition with air is inconsistent with the approach adopted by ORR in all previous open access applications and is a major failure of transparency. We consider that it gives First an unfair advantage in the decision making process and is not consistent with what is expected from an independent regulator. This is particularly important given that First's application is one of several competing for limited capacity.

We must also be mindful that the only reason First has been able to dovetail a timetable to give favourable results in the CH2M process is due to the significant advantage they have had in being provided a copy of the VTEC timetable before First submitted its application. The provision of that timetable – which has also severely delayed the process - remains an area that has yet to be fully explained, as VTEC's version of events is at odds with the ORR's version.

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The table in paragraph 83 highlights issues that ORR believes should be considered in relation to each option. Our comments are set out below:

- Option 2 - the economic appraisal of Alliance's Edinburgh application in the CH2M report (Table 35) showed an NPV of £46.1 million. ORR compares this with Alliance's estimated cost for tilt infrastructure of £50 million. This is not a fair comparison. For consistency, the £50 million should be expressed as a Present Value of expenditure incurred in (probably) 2019 and 2020, discounted to 2010 in 2010 prices. This implies a Present Value of c.£32 million. In addition, as noted above, the assessment does not include the consumer benefits of price competition from VTEC.

- Option 6 – we accept that VTEC might eliminate the crowding dis-benefit of this option relative to the VTEC Core by altering fleet diagrams. In practice, this is likely to require strengthening of the Middlesbrough service, thereby increasing operating costs. This would reduce the already low NPV. In addition, there is much uncertainty about the level of abstraction from Eaglescliffe, which we consider has been understated.

- Options 15 and 16 – there is a serious inconsistency between the ways these options have been assessed. The journey time difference between the two options is approximately 5 minutes (4 hours 7 minutes in Option 15, 4 hours 2 minutes in Option 16), but Option 15 is shown with an NPV of £214.6 million, compared to £83.9 million for the slightly faster Option 16. The analysis of pricing and load factors is much more realistic for Option 16 and we consider that this approach should be applied to a revised Option 15 to address uncertainty about achievable journey times. Using the existing Option 15 as part of a range implies that an implausible pricing strategy (with consequential severe crowding) is one of a number of likely outcomes. The current results show the totally illogical consequence that increasing journey times results in greater benefits! As noted above we also have more general reservations about the modelling of fares, which would have an especially large impact on these options, potentially reducing the benefits very significantly

Appendix H:

We consider the approach used to establish First's actual fare level is now more realistic than employed previously. However we are very concerned about the general approach to the modelling of fares as discussed in relation to paragraphs 31, 32 and 54 of the Annex to the letter. We consider that this results in the level of abstraction from VTEC being under-stated. We are also concerned about the lack of transparency in the modelling of air fares competition. This is compounded in the Appendix by the fact that the two elements of the modelling of fares have been combined in Figure 1 rather than being shown separately as previously. This is a further loss of transparency and is not related to any confidentiality issue.

We consider that the previous Option 15 assessment needs to be set aside. It is simply implausible that an option which is the same in all other respects but with a somewhat longer journey time has much greater benefits.

Appendix I:

As expressed at the industry hearing on March 4th, Alliance has concerns that the level of abstraction from Grand Central has been under-stated.

In addition, there are several important points that must be borne in mind when assessing the results:

1. As the main operator on the ECML, a high proportion of the revenue obtained by the proposed service would be transferring from other VTEC services. Indeed, a specific objective is to transfer some York – London revenue as a result of eliminating York stops from some Edinburgh services. If this was a proposed open access service, the transferred revenue would be regarded as abstracted and the proposed service would be unlikely to pass the NPA test. This indicates that the generation:abstraction ratio is of no relevance in assessing options of this type, a point we have made consistently.

2. CH2M has assumed that the crowding dis-benefits that were included in their previous assessment could be eliminated by changing stopping patterns or rolling stock diagrams. This may be true, but this is likely to come at a cost. For example, allocating more vehicles to the Middlesbrough service would increase operating costs and might result in crowding issues elsewhere. Introducing additional stops on other services to eliminate crowding would lead to journey time dis-benefits to passengers. CH2M report that the main source of crowding dis-benefits in the previous assessment was in relation to the York – London flow. All VTEC services through York call there, except some fast Edinburgh services in the Middlesbrough option. Reinstating these calls would negate one of the primary claimed sources of benefit of the option.

3. It does not appear that the VTEC Middlesbrough option is commercially viable. From Table 1, the service would generate £4.607 million in extra VTEC revenue per year, with whole industry revenue gain being £4.489 million. Accordingly, the gain to VTEC would be only 2.6% more than the gain to the industry. From Table 2, the Present Value of whole industry revenue gain is £37.8 million. Adjusting this to match VTEC revenue gain increases it to £38.8 million. This is significantly less than the Present Value of operating costs of £56.9 million. While we do not have access to the commercial arrangements between VTEC and DfT, it would appear to be logical that the introduction of this service would reduce franchise value, both in the current VTEC franchise and in future. An important part of the ORR's determination in assessing new applications is the validity of the underlying business plan, and in 2009 the franchise winner NXEC proposed regular services to Lincoln, but these were then not operated by Directly Operated Railways as they were deemed unaffordable. That approval however did block a competing open access application at the time, and this type of behaviour by franchised operators is a regular theme on the ECML.

Economic Appraisal:

As the ORR would expect, Alliance has significant concerns about the First Group application. The use of short trains on the core market, with a reduction in overall quality (loss of First Class and passenger ticket flexibility) would be a severe retrograde step on the route. We note the view on ticket pricing, but as Alliance, (and I believe VTEC) has shown, the total number of reduced price (standard class) tickets available to passengers will be almost identical to the number offered by First, and in a service that would be record breaking and innovative for the route.

The provision of Alliance's record breaking service on the core ECML between London and Edinburgh can be delivered within the timeframe of the ORR's decision making process if the sub-set of services was approved[15], and following the upgrade to the power supply and capacity issues as identified within the ORR's latest paper the full service could then be delivered if approval was given. It is important to note that Alliance has never sought to operate this service in place of any franchised service, and indeed due to the significant generation forecast, the provision of 3 full sized high quality trains per hour would be necessary to meet the demand. These trains would deliver sub 4 hour journey times many years before those offered by HS2 in 2033, with significant private investment in the infrastructure.

The low NPV for this service is purely as a result of the equipment required to deliver the record breaking journey times, which would be further enhanced with any future line speed upgrades. The Alliance Edinburgh application generates more new traffic to rail (£54.7m) than the VTEC core (£40.2) and only slightly less than the VTEC full (£59.9m), showing the value of real journey time improvements.

Alliance's West Yorkshire/Cleethorpes application is a traditional open access application, seeking as it does to open up a significant number of new markets to areas which have poor or no services at present, and where competition is restricted or non-existent. The importance of direct services to North Lincolnshire cannot be

[15] Email to Rob Plaskitt 24 April 2015 outlining acceptable options with supporting commercial rationale

emphasised enough, as plans are in place to regenerate Immingham with significant new technologies following the loss of much of its aggregates market. It is no coincidence that the successful open access operators have identified and delivered significant improvements to the Durham Coast and West Yorkshire, underlining the potential of these previously neglected markets.

Alliance would also invest in the infrastructure on this application, working alongside Network Rail and others to deliver a new 'East Leeds Parkway', which VTEC has indicated they would call at if the station was built. The further generation of additional traffic from further calls by VTEC and others at this station would drive up the NPV even further.

From the work undertaken by CH2M, the largest NPV is delivered by Option 10, a mix of this application alongside the VTEC core, delivering £59.2m of new rail business to the network. Importantly, the absolute abstraction levels of the two applications are very similar at £26.7m and £30.4m, which, if this option was approved, would go some way to addressing the valid concerns of other open access operators on the impact on their business should the full VTEC service be approved.

Services for this application could also be delivered earlier than 2021 as the capacity and power supplies issues are not relevant this far south.

The funds available to the Secretary of State:

Each one of the Alliance applications passes the ORR's NPA threshold. No open access services which have passed the NPA test have previously been rejected.

The DfT has consistently stated that the introduction of open access services affects the funds available to the Secretary of State, but the only evidence points to the exact opposite being the case. The DfT has been unable to provide any evidence to back up its claims, and where open access exists, this has not prevented bidders from offering significantly larger premiums than in previous contests, and in Alliance's case, its applications were known well in advance of the franchise contest recently won by Inter City Railways Limited (90% owned by Stagecoach Transport Holdings) and operated by VTEC.

In the case of VTEC's position, they stated[16] "*….we naturally assessed the risk of greater Open Access competition and did so on the basis of how ORR assessed applications in the past*". And "*We therefore took into account ORR's past practice which has been to assess OA applications using established modelling approaches, and which has seen successful OA initiatives targeting markets which previously had poor levels of rail service*". It goes on to state: "*The current applications break new ground by targeting core well-served markets.*"

It was clearly a business decision for VTEC as to how much weight was given to the open access applications in its bid submission, but it is clear that the Alliance West Yorkshire/Cleethorpes application uses the same modelling as previous Alliance/Grand Central applications, and is a 'traditional' open access application. It is not clear why VTEC would think otherwise. We acknowledge the Alliance Edinburgh application is a 'new' type of application, but it is driven by the desire to further enhance rail's market share on this important flow, generating significant new revenue for rail with record breaking journey times in a way that VTEC's proposal (and First Group's) cannot.

The ORR identified the absolute level of abstraction for its recent approval of the GNWR Blackpool – Euston service at £22m. The absolute level of abstraction for the Alliance West Yorkshire/Cleethorpes is £30.4m, but this is balanced by the VTEC Core abstraction of £26.7m as VTEC is targeting the current open access markets of Grand Central in West Yorkshire and the North East. Overall Alliance abstraction and any potential impact will be significantly less than £30.4m, with these 'options' operating together also having the highest overall NPV.

[16] VTEC letter to the ORR 15 March 2016

Other issues:

We note the ORR is considering the potential impact on existing open access operators, and we welcome that intervention. As to the consideration of whether any impacts could be mitigated we would hope that effective regulation prevents that necessity.

The markets developed by Grand Central – the focus of the VTEC applications – were only approved in 2006 and 2009 following applications to the ORR. These markets, in railway terms, have barely matured. The introduction of competing services by VTEC would place these services at financial risk from disproportionate competition[17] from the dominant operator which already has significant access benefits in this 'upstream market[18]'. This is clear from the potential approval process which makes it impossible for the monopoly operator to fail the NPA test.

In assessing whether to approve new franchised services that would compete with open access services, the ORR is explicit that it will take into account whether the new services could force the open access operator to withdraw from the market. It is conceivable that approval for VTEC on its full application could see Grand Central withdraw. The ORR recognises that not all 'competition' will be good for the consumer. Paragraph 4.43(c) of the ORR's Criteria and Procedures for the Approval of Track Access Contracts, December 2011:

(c) a new open access or franchised service would compete with an existing open access service, where that new service could force the existing open access operator to withdraw from the market and reduce overall competition on the network."

ORR goes on to say that the way it assesses whether to approve competing services is through its 5 stage NPA test. However, Stages 1 to 4 of the test can only be effective in assessing the situations in 4.43 (a) and 4,43 (b). The generation to abstraction ratio which is produced is in itself of little use to ORR in assessing

[17] VTEC application is for 7 trains per day compared with Grand Central's 5 per day
[18] GNER v ORR July 2006 in the High Court

whether new competing services could force open access operators to withdraw from the market. Of the 5 stages of the NPA test, Stage 5 is the only reasonable way that ORR can assess 4.43 (c):

"Stage 5: will consider other relevant factors against quantitative assessment produced under Stages 1 – 4."

In Annex D of the Criteria and Procedures document, it is explicit that in Stage 5 of the test, at (e) (iii) ORR will consider whether competition would cause the open access operator to withdraw from the market.

(iii) where a new service competes with an open access service – whether this would cause the open access operator to withdraw from the market, reducing competition on the network."

ORR has pointed out in the past that it will take into account the magnitude of the financial impact on Government of proposed open access services even if the quantitative NPA test is passed. ORR must do the same in this case, but by substituting the magnitude of the financial impact on Government for the financial impact on Grand Central, if it is to comply with its own policy of assessing whether open access services are likely to be withdrawn.

There is ample evidence to show that open access operators greatly enhance the perception of rail as a means of travel, and this benefits all parties, including franchised operators. A competitive environment makes all operators continuously seek opportunities to increase revenue and reduce costs, and without the competition that open access brings, these competitive forces would only exist once every 8 years or so with franchise competitions. On some inter-city routes there has been no successful franchise competition at all since privatisation.

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