



Department
for Transport

From the Secretary of State
The Rt. Hon. Patrick McLoughlin

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20 APR 2016

East Coast Main Line (ECML) open access applications

Dear Stephen,

I am writing regarding the ORR Board's impending decision regarding the allocation of track access rights on the East Coast Main Line (ECML). While I fully understand the independence of the ORR in taking decisions of this kind, I thought it would be helpful to set out clearly for the ORR Board my views on this issue.

The Government is fully committed to putting the interests of passengers at the heart of the railway and believes strongly in the importance of competition, as demonstrated by the highly competitive franchising system. We also see advantages in exploring whether increased open access could bring further benefits for passengers. However as the Competition and Markets Authority (CMA)'s recent report has recognised, in order for open access to operate most effectively, a level playing field is needed between franchised and open access operators, and the wider public interest in rail services should be safeguarded. In my Written Ministerial Statement on 17th March 2016 I made clear the Government's policy position when I stated:

"The recent report by the Competition and Markets Authority (CMA) into competition in passenger rail services recommended open access operators could benefit passengers if important reforms are made. These reforms include fairer charges and robust protections for taxpayers and investment. While charges are for the ORR, I hope that changes to charges can be made as soon as possible. I will now explore options for potentially implementing the CMA's recommendations, including legislation if required."

I understand that ORR shares this view and has noted in its recent consultation the opportunity for charging reforms to “create a more level playing field for different types of passenger train operators.”

While I fully accept that charges are a matter for the ORR, and will be considered as part of the Periodic Review, I would very much hope to see reforms in this area, consistent with the CMA’s clear recommendations and the Government’s stated policy. My expectation would be that, in the interests of fairness, any new open access rights granted from this point should be subject to a reformed charging structure from the start of CP6, and that this should be made clear when any applications are granted. Should the ORR not do so, this would be a serious missed opportunity for sustainable reform.

In the meantime, my officials are actively exploring potential options including legislation if needed to introduce a levy on open access operators to support the delivery of public service obligations. This will be taken forward as soon as possible.

With respect to assessment of the applications themselves, I would expect the ORR take full account of the points my officials have raised during this process, which I summarise briefly below.

Firstly, on the methodology, as you know, my officials have raised serious concerns about the approach taken by the ORR’s consultants to assess these applications. These have included the use of non-conventional techniques and assumptions, which are not used in other areas of Government appraisal and, in many cases, have not been used by the ORR in assessing previous applications. I believe that this approach is misleading and significantly overstates the benefits of the open access applications. Independent economic appraisal commissioned by my Department and conducted by Steer Davies Gleave (SDG) indicates that open access applications lead to substantial negative financial impacts on Government, and that Virgin Trains East Coast’s application provides, by far, the greatest benefits to passengers and taxpayers. I hope that the ORR Board will give the SDG analysis careful consideration.

Secondly, it is important that the ORR Board considers the wider implications for taxpayers, passengers and communities of granting these open access applications, which go well beyond those of any applications granted to date. This is because of:

- the scale of the direct financial impact of these open access applications on the current franchise, and hence its sustainability, as well as the major indirect effect on the overall competitiveness of the franchising market;

- the Government's constrained financial position, and the fact that granting any of the open access applications would result in significant open access operator profits at the expense of taxpayers;
- the negative impact this form of open access competition has on past and future government investment cases, for example in relation to the ECML connectivity fund, which, as I have made clear to your officials, I may need to reconsider if the applications are granted given the potential adverse impacts on the business case for the fund; and
- the significant capacity constraints on the ECML which mean that increased open access is likely to impact negatively on services to communities in Northern England, and on general performance levels.

I ask the Board to give these issues, as well as the other points raised by my officials, very careful attention.

I am copying this letter to Joanna Whittington and John Larkinson.

y - sincerely
Patrick McLaughlin

THE RT. HON. PATRICK McLOUGHLIN