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Dear John,

**CH2M FINAL REPORT: DFT COMMENTARY**

Further to our comments on the CH2M report and following the letter from Simon Smith of the Department for Transport dated 8<sup>th</sup> February, we would like to address some of the issues raised by the DfT.

Throughout the response, the DfT raises points regarding the absolute levels of abstraction, the impact on taxpayers, the impact on the Secretary of State's funds and the impact upon railway investment.

It is well known that Alliance is supportive of paying a levy to support services designated as Public Service Obligations under Regulation 1370/2007. Indeed Alliance has met the DfT on several occasions to discuss this issue and we have responded to the Competition and Markets Authority Rail Review requesting a levy be implemented.

The levy is enshrined in EU law under Article 12 of Directive 2012/34, and despite our requests for this to be used by the DfT to ensure that any potential impact on taxpayers and the Secretary of State's funds is minimised - they have not chosen to do so. We argue that it is unfair and potentially anti-competitive for the DfT to cite the impact on taxpayers and the Secretary of State's funds as a reason for the ORR to

reject any of the open access services when there is a solution to minimise any potential impact, but the DfT has chosen not to use it.

In addition you will also be aware that the applications made by GNER predate the East Coast franchise process. This was done deliberately by Alliance to ensure that any perceived impact of the GNER services on the new franchisee would be minimised. Indeed the potential impact of the GNER London – Newcastle/Edinburgh service was taken into account in the bid by both Virgin Stagecoach and the DfT. We note that at the hearing on the 15<sup>th</sup> June 2015 the DfT stated:

*“During the course of the current East Coast franchise, the financial risk of new open access services, taking paths that it is anticipated otherwise would be granted to the franchise operator, that financial risk is shared between the franchisee and the Secretary of State”*

It is of concern that the DfT has chosen to use the taxpayer to cover the perceived risk when it could have protected this by way of Article 12 of Directive 2012/34. Clearly the DfT has not taken on board the criticisms which were noted by the Select Committee<sup>1</sup> in relation to the procurement of the IEP fleet.

Despite this, the DfT has chosen a mechanism which requires taxpayers taking risk when it need not have done so, and as a result now tries to restrict the direct benefits that competition brings to passengers, and the wider economic and environmental benefits that go alongside.

We also note that despite the open access applications made by GNER<sup>2</sup>, that Virgin Stagecoach bid £3.3 billion over the eight years of the franchise. This bid is significantly higher than the previous bids made by Sea Containers (£1.3 billion) or National Express (£1.4 billion). It is therefore wholly unreasonable for the DfT to cite an impact on the Secretary of State’s funds given the very significant rise in premium secured despite the increased level of open access services and the potential for further services. GNER Scottish services were consulted upon in December 2013 and the GNER West Yorkshire/Cleethorpes services in February 2014.

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<sup>1</sup> House of Commons Committee of Public Accounts Procuring new trains - *“The Department’s decision to purchase the trains leaves all the risk with the taxpayer”*.

<sup>2</sup> The First Group application came after the franchise award.

We also note the comments made in the DfT letter regarding the impacts “*of the various options on the Secretary of State’s funds and therefore on taxpayers and railway investment*”<sup>3</sup>. On railway investments we note that the DfT has not taken into account the significant third party investment being made by GNER in rolling stock and infrastructure. These third party investments are to provide high quality services which require no taxpayer subsidy. Given the financial burden the rail industry places upon the taxpayer it is disappointing that such investment is not encouraged by the DfT.

With regard to government funding in railway infrastructure recital 8 of 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.”*

It is clear from this statement that government infrastructure investment should be made in order to boost competition - and not to seek to restrict it. We would once again remind the DfT that the passenger is by far the biggest contributor to the cost of running the railway, and yet does not get a mention in its response.

Yours sincerely



Ian Yeowart

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<sup>3</sup> Page 4 paragraph 5