

21 September 2017

Track access issues arising with High Speed 2 (HS2)

Introduction

1. The High Speed Rail (London-West Midlands) Act 2017 became law on 23 February 2017. Section 39(1) gives ORR an additional objective of “*facilitating the construction of Phase One of High Speed 2*”. In addition, on 20 July 2017, the Department for Transport (DfT) updated its statutory guidance to ORR to, amongst other things, ask ORR to facilitate the introduction of HS2 services on both new and existing infrastructure. On 8 September, DfT wrote to us to explain its intentions regarding the introduction of HS2 services, and to ask how we might handle the track access issues arising.

2. We are discussing with DfT several regulatory issues HS2 raises. This letter focuses on one issue, track access, and how we would take into account the future operation of HS2 when making decisions about access to the existing network.

3. As this raises issues of principle and process around the approval of access rights, and given the considerable timescales involved, we think it will be helpful to the industry to explain our proposed approach. Please send any comments or questions you have to jonathan.rodgers@orr.gsi.gov.uk by **20 October 2017**. Although HS2 services will not start running until 2026, access rights can be applied for and granted years in advance of operation, and access contracts of around 10 years duration are not unusual. So applications we may receive relatively soon could be affected by HS2.

Background

4. Construction of Phase 1 of HS2 is scheduled for completion in 2026. Trains will then run from London Euston to Birmingham Curzon Street and to Handsacre Junction, where they will join the current West Coast Main Line (WCML) to serve destinations further north. In Phase 2a which will be ready in 2027, the new high speed line will be extended to join the existing network at Crewe. Under Phase 2b, by 2033, there is a planned extension of the line to the North West and North East, with new stations in Manchester city centre and at the airport, Leeds and the East Midlands.

5. During Phase 1 and 2A operations the majority of trains using HS2 will also use the existing rail network. Some trains using HS2 will continue to use the existing network when Phase 2B opens. This letter focuses on the introduction of Phase 1 and 2A services, but the principles are also relevant to Phase 2B services.

6. On 4 November 2016, DfT announced a new rail franchise, the West Coast Partnership (WCP), which will combine the current InterCity West Coast services with the development and introduction of HS2 Phase 1 and 2A services. The new franchise will be responsible for operating services on the WCML from 2019 and also for designing and

operating new high speed services using HS2 and Network Rail infrastructure from 2026 (for the first 3-5 years of HS2).

7. The invitation to tender for the WCP is expected in November 2017, with the new franchise scheduled to start on 1 April 2019. The delivery of the WCP will require a short-term franchise extension of around 12 months for the continued operation of services on the WCML, following the end of the current franchise in April 2018.

8. The current franchise operated by Virgin Trains West Coast (Virgin) runs long-distance high-speed services, primarily on the WCML between London, Birmingham, Manchester, Liverpool, North Wales, Glasgow and Edinburgh. The franchise runs through Network Rail's London North Western, Wales and Scotland routes.

9. An overview of DfT's assumptions about post-HS2 service patterns and quantum is included in its letter to us of 8 September (attached).

Our general role in HS2

10. Apart from the additional construction objective referred to in paragraph 1 and an arbitration role in some circumstances, the High Speed Rail Act does not refer to ORR and does not exempt HS2 infrastructure or services from any aspect of existing railway regulation. Therefore, the existing statutory framework for the regulation of the railways will apply to HS2 (e.g. the Railways Act 1993 and Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016).

11. So far, we have had informal discussions with DfT around:

- safety issues, including "Safety by Design" and authorisations for interoperability;
- charging policy (including a potential Investment Recovery Charge);
- an HS2 arbitration procedure; and
- track access issues, which are the focus of this letter.

Our general approach to access regulation

12. Our approach to the regulation of access is explained on our website¹ and summarised below. Some aspects of the framework are being or will be reviewed as we look ahead to the next 5-year control period starting in 2019. For example, we are working towards extending the recovery of the existing network's fixed costs from all train operators. Similarly, DfT has consulted on the possible introduction of a public service obligation (PSO) levy. Nevertheless, until a new framework is agreed, we expect to take the same approach to access issues involving HS2 as we do for the existing network today. In other words, applications for access involving HS2 will be treated in the same way as any others under the current regulatory framework.

13. If a train operator wants to run trains on the rail network, its track access agreement must usually be approved by ORR. When we make decisions on track access

¹ http://orr.gov.uk/_data/assets/pdf_file/0007/17593/regulation-of-track-access.pdf

applications, we must do so in accordance with our statutory duties. Where these duties do not align we consider the weight to be attached to each relevant duty so that we reach a result that is in the overall best public interest.

14. The duties most likely to be relevant are:

- Protecting the interests of users of railway services;
- Promoting the use of the network for passengers and freight;
- Promoting competition for the benefit of rail users;
- Taking into account the Secretary of State for Transport's funds and guidance, including that part which requests ORR facilitate the introduction of HS2 operations;
- Promoting improvements in railway service performance; and now
- Facilitating construction of HS2.

15. Our published criteria and procedures explain that we typically consider the following factors when making track access decisions:

- Whether there is fair and efficient use of capacity. We determine what that is in cases where an operator and Network Rail cannot agree a contract;
- What impact proposed services could have on train performance, especially on a busy network;
- The effect on the Secretary of State's funds, recognising the need to work within fixed government budgets;
- Whether new services would support more competition resulting in overall benefits for passengers (e.g. through lower fares);
- Whether proposed services are consistent with the industry's long term plans;
- Whether new competing services would generate new revenue, rather than just taking it away from current services. We call this the 'not primarily abstractive' test; and
- Where we have competing applications for limited capacity, the costs and benefits of the available options.

16. ORR is supportive in principle of passenger open access applications, recognising the benefits competition between train operators can bring.

17. There is a strong presumption in our approach in favour of the extension of current access rights except where we have said otherwise (for example, where there was uncertainty about capacity or performance impacts, or if we anticipate a significant change in infrastructure configuration/capacity).

18. Our approach to the duration of track access contracts is explained on our website.² We are satisfied that the award of a typical franchise contract can justify access contracts having a duration of up to 10 years, in line with European requirements. This assumes a franchise length of 7-8 years with an additional 1-2 years beyond to facilitate a smooth transition to the next franchisee.

19. We will consider access applications when they are made and will make decisions within two months of having all the relevant information. We consider case by case what the relevant information is that will enable us to make a robust decision about the best overall use of capacity. As a minimum we will normally need to see the network operator's view of capacity and performance on a route.

20. We may "batch up" applications as in our ECML decision³ or hold an application that comes in during a franchise competition until the franchise proposals are clear. We may also decide not to consider applications, for example where they are speculative and do not demonstrate the applicant is ready, willing and able to use the rights applied for, or where including an application in a process that is underway would unduly delay our decision making and be unfair to others.

What access issues does HS2 raise?

21. At this stage neither DfT nor Virgin has submitted a track access application to support their long-term plans for HS2 and WCML services. DfT has however developed clear assumptions in its business case which it, Network Rail, the WCP and others will continue to refine. DfT has set out how it anticipates operators working with Network Rail as the system operator to develop these assumptions, and consult on the options, leading to implementation of the train service. It anticipates this taking account of the high level principles set out in its letter, and the need for a smooth transition to eventual operations on the high speed and conventional networks when HS2 Phase 2B opens. DfT has asked us how we would consider other applications for access given the fact its requirements are still in development, and the need to secure delivery of the benefits in the business case underpinning its very substantial investment in the railway.

22. We see HS2 related track access issues falling into 4 areas concerning:

- Access rights to provide services on the HS2 network only;
- The southern end of the WCML including what happens to any capacity "freed up" when current services transfer over to HS2;
- The northern end of the WCML; and
- Non-franchised operators.

² http://orr.gov.uk/_data/assets/pdf_file/0018/22815/duration-guidance-publication-sept-2016.pdf

³ http://orr.gov.uk/_data/assets/pdf_file/0006/21885/2016-05-12-ecml-decision-letter.pdf

23. In each case we have considered what definitive statements we can make now about our approach. Where this is not possible we have considered what further steps DfT might take and how we might respond to access applications.

Access issues on the HS2 network

24. The HS2 network will comprise new track infrastructure designated for use by high speed rolling stock and DfT therefore anticipates the WCP using all of the available capacity on HS2 for the foreseeable future. Given this, we expect to approve the access contracts between HS2 and the WCP for access to HS2 infrastructure only, in line with our usual approach.

Access issues on the southern WCML

25. Virgin's current access rights run until December 2022. We expect the WCP to apply to extend all of these rights to 2026 or beyond. In due course some elements of these rights would then be transferred into a separate new access contract with HS2.

26. Broadly speaking, we understand that under current assumptions 5 Virgin services in a typical hour would transfer from the southern parts of the WCML to HS2. We might expect this to "free up" capacity on southern parts of the WCML for a similar quantum of services. However, DfT has told us that its plan is to use most of this capacity on the WCML to deliver an important part of the benefits of HS2 and to meet stated Ministerial aims including for a broadly comparable or better service for all places which currently have a direct London service.

27. In line with our presumption in favour of the extension of existing access rights we would expect to approve access rights necessary to maintain services to these locations (in terms of connectivity and journey times, for example) where specified in future franchises.

28. DfT is assuming several existing WCML services will continue in similar form to today, though potentially with adjusted stopping patterns and timings. This includes intercity services to Birmingham New Street and extensions from there to Shrewsbury and Scotland, and services to Chester and North Wales.

29. DfT is assuming the total quantum of passenger trains using the southern WCML in off-peak hours will be slightly reduced, potentially creating opportunities for (for example) additional passenger or freight services or breaks in the timetable to support good performance, noting also the reduced number of conventional platforms at Euston (although the total platform capacity will increase).

30. We would expect to consider applications to use this capacity in the usual way.

Access issues on the northern WCML

31. Where HS2 services rejoin Network Rail's network, we anticipate that in many cases they will make use of paths similar to those used by Virgin's existing services to complete their journeys north. DfT anticipates this will be the case for HS2 services to Liverpool (one per hour), Glasgow (one per hour) and Manchester (three per hour). Where HS2 services replace existing Virgin services from London to Manchester, it is assumed these will be re-routed to run via Crewe. Again, we expect our presumption in favour of the extension of existing access rights will apply to all these services.

32. There are some locations where the assumed quantum of HS2 services represents an increase on current Virgin service patterns. There are currently additional peak hours Virgin services to Liverpool and Preston/Blackpool. These are envisaged to be replaced by “all day” HS2 services, which in the case of the Preston service would maintain existing connectivity to Warrington and Wigan.

33. However, where HS2 services will use the existing network there are places with particular capacity constraints, such as the sections of line between Crewe and Manchester Piccadilly, Crewe and Weaver Junction, and north of Preston. HS2 and DfT are working with Network Rail to understand the options for services in these areas. Our approval of additional access rights for the WCP will be subject to resolution of these capacity concerns.

34. DfT has discussed with us whether it could apply for a track access option to help secure these access rights while it finalises the WCP. However, we have agreed a better approach would be for us to consider proposals to extend and amend Virgin’s existing access contract; this will be simpler and will bring greater certainty for all stakeholders more quickly.

Non-franchised operators

35. Freight access issues are likely to arise on the WCML as a result of HS2 services. For example, the freight industry is looking at the potential freight uses of any freed up capacity on the southern WCML and interactions with HS2 trains rejoining the WCML in the north where capacity is constrained (as mentioned in paragraphs 29 and 33). Many freight train operators already have access contracts running until 2026. Our strong presumption in favour of the extension of current access rights applies equally to them.

36. One question is how we would deal with a passenger open access application which interacts with DfT’s WCP proposals for services when HS2 opens. This might arise if applications for services extending beyond the start of HS2 operations seek to use capacity that will later also be sought by the WCP.

37. If we receive an open access application which interacts with the DfT’s proposals before it has secured access rights, we would envisage allowing it time to firm up its proposals to help us ensure the best overall use of capacity in line with our duties.

38. If we receive any open access proposals to use capacity between now and 2026 (with an end date prior to the start of HS2 operations) which, if extended beyond 2026 could impact DfT’s proposals, we will explicitly look at this aspect to ensure there is clarity about the pre and post 2026 position and the impact of any future application to extend the rights.

39. If you have any comments or questions on the approach discussed in this letter please address them to jonathan.rodgers@orr.gsi.gov.uk by 20 October 2017. We will publish a final version of this letter once we have considered any comments.

Yours sincerely

John Larkinson