



OFFICE OF RAIL AND ROAD

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Ian Yeowart CMILT  
Managing Director,  
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88 the Mount,  
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Dear Ian

**ECML – response to Alliance letter of 3 July 2015**

Thank you for your letter dated 3 July 2015. We responded briefly on 16 July 2015 and said that a full response would follow. Our full response is set out here.

**ORR's decision to consider FirstGroup's application**

FirstGroup made its application for access rights on the ECML on 9 March 2015, the same day we received VTEC's application. Given where we were in the process, we decided we could consider the application from FirstGroup alongside the applications from Alliance and VTEC without importing unfair delay into the process. Our objective is to make the best use of capacity whilst balancing our statutory duties; the inclusion of an additional applicant helps us to achieve this objective. We still believe that our decision was fair and reasonable.

In our letter of 6 February 2015 setting out indicative timescales for the decision making process, we estimated that the CH2M HILL report would be published mid-late March. In the end, the final version of the CH2M HILL report was not published until 29 May 2015. The estimates in the 6 February letter proved over-optimistic because of the complexity of the subject matter, particularly in respect of methodology discussions and modelling VTEC's proposals. The inclusion of FirstGroup in the process did not significantly contribute to this delay. The late publication of the report meant that when we decided to agree to a hearing (as supported by Alliance) the earliest possible date for that hearing was 12 June 2015.

You allege that the advantage conferred on FirstGroup as a result of entering the process later than the other applicants is 'anti-competitive'. We do not agree. The Railways Act 1993 does not require the submission of simultaneous applications. It is ORR's



responsibility to manage the application process so that it is fair to everyone. This means that where there are competing applications, there is likely to be an applicant who applies first and an applicant who applies last. So long as the final application does not unfairly delay the process, we see no reason for refusing to consider it. Indeed, we felt that it would be unfair and anti-competitive not to consider FirstGroup's application alongside the other applications.

### **The VTEC timetable**

In response to a request from FirstGroup, we asked VTEC if it would be prepared to share its timetable with FirstGroup. VTEC agreed in writing, on the basis that the arrangement would be confidential and reciprocal. The ORR did not compel VTEC to share its timetable. There was a minor delay between sharing VTEC's timetable with FirstGroup on 24 February 2015 and then sharing it with Alliance on 5 March 2015. That delay was certainly not intended to prejudice Alliance in the overall process and we note that both companies were in receipt of the timetable before either VTEC or First Group made their applications. Nonetheless, we would accept that it would have been preferable for the timetable to be provided to both companies simultaneously and we would try to avoid such a delay in the future.

However, we do not accept that the short delay in providing the timetable to Alliance has prejudiced Alliance in any way. Alliance has now been in possession of the timetable for over four months but, at the time of writing, Alliance has not submitted an amended timetable in order to take into account the VTEC timetable. Alliance made its application earlier than the other applicants and so inevitably was not in a position at that time to consider competing applications or proposed timetables. In this respect, we note that, in its application for access to the WCML in 2014, Alliance submitted, of its own volition and very late in the decision making process, an amended timetable which ORR duly considered. Alliance has been free, right from the date of making its ECML application (and in particular since 5 March 2015), to submit supplementary and amending material.

For the sake of clarity, let me state here that if you would like to submit an amended timetable to take account of all the information now in your possession, you need to do so before decision making becomes so advanced that we do not have time to consider further information. It would be helpful to know by 31 July 2015 if you intend to submit an amended timetable and when you expect it to be available so we can take this into account in CH2M HILL's work.

We also note that you state Alliance requested the VTEC timetable at a meeting on 12 February 2015. We have no record of this request. If the request was made on 12 February, it was fulfilled on 5 March 2015 and again, there would appear to be no disadvantage suffered by Alliance as a result of the delay.

As you are aware, a number of points were raised at the hearing which we need to address - particularly in relation to the CH2M HILL report - before a decision can be



reached. We remain mindful of the need, to which you refer, for applicants to plan their businesses with a reasonable degree of assurance. We do not intend to suspend the work needed to reach a decision as we see no reason for doing so.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Larkinson'.

**John Larkinson**

