

Rob Plaskitt
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22 May 2015

Copy list below - **by email only**

Dear colleague

Access to the East Coast Main Line (ECML) – industry hearing

1. When we wrote to you on 8 May about a hearing, I said we would be in touch before the end of May to confirm arrangements, highlight the background documents attendees should read before-hand and get your comments on a draft agenda.

2. Please find attached a draft agenda for the day. This also lists the key background documents including capacity and timetabling reports produced by Network Rail last year and a further recent letter looking at the choices to be made between the different service proposals. These documents, the track access applications we are considering, consultees' responses to these and redacted versions of DfT's views on the open access applications are all available on our website (see the agenda for links).

3. The other key document is a report by our consultants CH2M HILL. This includes financial analysis of the proposals looking at their possible revenue impacts, our NPA test and their wider economic costs and benefits. The applicants have already seen the draft sections of the report relevant to them and have had the opportunity to discuss and inform that work. We aim to publish the final version of the report on our website by the end of next week (earlier if possible) subject to deciding on any redactions of confidential information. Our aim is to redact as little as possible and preferably nothing. Focusing debate on the report should help us get around the difficulties of discussing confidential information specific to individual applicants' business plans. We are not expecting the applicants to provide any more information before the hearing.

4. The hearing is intended to ensure we fully understand the different proposals and what each entails to help us make the best overall decision on the use of capacity. While the hearing will be a fairly formal process with a transcript taken, this is necessary if we are to get through the wide range of issues and give the many interested stakeholders a fair opportunity to discuss the applications. We do not intend the hearing to be a very legalistic process, and there are no legal issues we want to discuss; we do not need and

do not expect applicants to bring their legal advisers (although they may do so subject to available space).

5. The hearing will be chaired by John Larkinson, our Director of Economic Regulation. With the help of a few senior colleagues, John will aim to ensure all the key issues are aired and addressed. Our consultants CH2M HILL will also be available to answer questions. We expect to cover all the key issues in one day and do not envisage needing any further meetings; we will arrange these separately if they do become necessary.

6. We have received two letters from Virgin Trains East Coast (VTEC, copy attached). VTEC says it would be fundamentally unfair to it and the other applicants to have a hearing on the 12 June because more time is needed to prepare and more clarity needed on how the day will work. It has asked us to defer the hearing to a later date.

7. With so many interested parties we are conscious we may never find a date which is ideal for everyone. We also need to reach a balance between allowing all concerned reasonable time to prepare so that the hearing meets our purpose while not unduly delaying a decision. We hope this letter addresses some of the concerns raised and, on balance, we still think it is best to proceed with the hearing on 12 June.

8. We would welcome your views on this point 'asap' and by close on **Wednesday 27 May at the latest**. Please plan on the basis that the hearing will go ahead on 12 June.

9. Please also look at the draft agenda and let us know by close on Friday 29 May if there are any key issues missing that you think needed to be addressed. Please also email us by the same date at AccessandEconomicsAdmin@orr.gsi.gov.uk to confirm if you want to be represented and who, space permitting, you would like to come, if you have not already done so.

10. We will confirm by Friday 29 May next steps, including sending you a link to the CH2M HILL report. We will finalise the agenda and send it to you at least a week before the hearing.

11. Please contact me, Ian Williams or David Reed if you need to discuss. We will publish this letter on our website.

Yours sincerely



Rob Plaskitt

Copies to:

Andy Sparkes (VTEC)
Ian Yeowart (GNER)
Leo Goodwin (East Coast Trains Ltd)
Chris Burchell (Arriva Group)
Tim Wright (Network Rail)
Paul McMahon (Network Rail)
Peter Craig (Network Rail)

Andrew Murray (DfT)
Steven McMahon (Transport Scotland)
Phil Dawson (VTEC)
John Beer (GTR)
Other current ECML operators
Passenger Focus/London TravelWatch

ECML Track Access Applications Hearing 12 June 2015 - Draft Agenda

The purpose of the hearing is to help ensure ORR has the information it needs about the proposed new services and what they entail to make the best overall decision about ECML access.

No.	Agenda item	Details	Timing	Useful pre-reading (with links).
1.	Introduction	Welcome and housekeeping.	10:00 – 10:05	
2.	Opening statements	To include a short (~5mins) opening statement from ORR about the day and from each applicant summarising their proposals.	10:05 – 10:30	The 'form P' track access application forms.
3.	Capacity	To start with a short opening statement from NR about the conclusions of its analysis and key capacity issues on the route with an opportunity for questions and comments from the applicants and other affected stakeholders. Will include discussion of any investment necessary to support the applications and any FOC concerns.	10:30 – 11:30	NR capacity report. NR timetable report. NR letter of 20/05/2015.
4.	Operational feasibility and performance issues.	An opportunity to discuss the operational feasibility of each application. NR to summarise performance issues for a similar discussion.	11:30 – 12:15	
<i>Lunch provided</i>				
5a.	Revenue generation, revenue abstraction and the NPA ratio.	ORR will summarise the results included in the CH2M HILL report; discussion with an opportunity for questions and comments from applicants and any other affected stakeholders.	12:45 – 13:45	CH2M HILL Report (to be provided by close 29/5/2015).
5b.	Particular concerns around the impact on the Secretary of State's funds.	DfT to briefly outline its particular concerns over abstraction and impacts on the IEP business case with an opportunity for applicants and any other affected stakeholders to comment and question.	13:45 – 14:30	DfT GNER Letter. DfT ECTL Letter.
6.	Costs and benefits (including passenger benefits, service quality issues of each application).	ORR will summarise the analysis included in the CH2M HILL report; discussion with an opportunity for questions and comments from applicants and any other affected stakeholders.	14:30 – 15:45	CH2M HILL Report (to be provided by close 29/5/2015).
7.	Closing Statements	To include short closing statements from each applicant, ORR on next steps and possibly other relevant stakeholders.	15:45 – 16:30	



Rob Plaskitt
Head of Access & Licensing
Office of Rail and Road
One Kemble Street
London WC2B 4AN

20 May 2015

Dear Rob

RE: Access to the East Coast Main Line (ECML) – industry hearing

I refer to your letter of 8 May, my letter to you of 15 May and our telephone discussion of earlier today.

As explained in my letter of 15 May, given the significant implications of the competing proposals and the complexity of the issues involved, it is essential that an oral hearing is held in this matter and that any such hearing is fair to all of the parties involved. The applications are a complex set of mutually incompatible requests and the ORR's decision will have very significant implications on each operator.

In order for the hearing to be fair, the parties must therefore be provided with adequate time to consider, digest and respond to the various arguments and analysis underpinning the proposals. They must also be told in advance, with enough time to prepare, precisely what process the ORR intends to follow at the hearings, which issues it will consider and what criteria it will apply.

As explained in my letter and in today's call, Network Rail's analysis of network capacity and CH2M Hill's final report are complex reports that are central to the decision being taken. Neither report has yet been produced. You explained on our call that the Network Rail report is now expected to be produced today while CH2M Hill's final report is due at the end of next week. This would provide the parties with just over three weeks to consider and respond to the Network Rail report and less than two weeks to consider and respond to CH2M Hill's final report. It is now clear that this would leave the parties with a plainly inadequate amount of time to prepare for any hearing. While you have suggested that the Network Rail report is not dramatically different from the draft issued in December, VTEC must be provided with an opportunity to consider the report for itself, form its own views and decide how to respond.

I have also yet to receive a response to my letter of 15 May which raised a number of questions about the process which the ORR intends to follow in advance of and at the hearing. In the absence of answers to these questions, it is impossible for VTEC to prepare adequately for a hearing.

In the circumstances, pressing ahead with a hearing on 12 June would be fundamentally unfair to VTEC and the other parties involved. During our telephone conversation, I was surprised and disappointed by your refusal to consider shifting the hearing date to allow more time. This is particularly given that ORR has not suggested that there is any particular urgency in deciding these applications which

would warrant imposing a timetable which restricted the rights of the parties to prepare adequately.

I therefore invite the ORR to confirm by Friday, 22nd May that it will not proceed with a hearing on 12 June. I also invite the ORR to respond to the points raised in my letter of 15 May by Friday, 22nd May. Once the process which the ORR intends to follow has been clarified, it should invite comments from all of the affected parties as to this process and the timetable that should be followed. By doing so, the ORR can avoid the risks associated with pressing ahead with an unfair timetable and process that leaves it open to a legal challenge.

In the event that the ORR fails to do so, VTEC reserves all of its rights.

Yours sincerely,



Andy Sparkes
Commercial Director

Rob Plaskitt
Head of Access & Licensing
Office of Rail and Road
One Kemble Street
London WC2B 4AN

15th May 2015

Dear Rob

RE: Access to the East Coast Main Line (ECML) – industry hearing

Thank you for your letter of 8 May proposing an industry hearing on 12 June 2015. We agree that an oral hearing is important given the complexity of this issue and the multiple competing proposals to use the limited capacity on the ECML. Indeed, we consider that such a hearing is essential given the significant financial implications of the proposals on the operators concerned and the public purse, and their impact on the travelling public.

It is obviously critical that the hearing is fair to all parties involved. This includes ensuring that the parties are provided with sufficient information and time to consider, digest and respond to the competing proposals and the arguments and analysis underpinning them in advance of the hearing. We are concerned that two complex reports which are central to this process – Network Rail's analysis of network capacity and CH2M Hill's final revenue assessment for the competing proposals (the Reports) – have yet to be finalised, meaning that the parties may not have enough time properly to consider these reports in preparation for a hearing on 12 June. It is also critical that the hearing itself is structured so as to given the parties a fair opportunity and adequate time to address the issues being considered, and that the parties know in advance how the hearings will be run.

We would be grateful if you could clarify the following issues:

- i) When are the Reports anticipated to be finalised and provided to the parties?
- ii) Will all non-commercially sensitive correspondence between the parties and the ORR be provided to all parties? If so, when is it anticipated that this will take place?
- iii) Has all relevant correspondence between the parties and the ORR been provided to CH2M Hill?
- iv) What are the names and roles of those who will be attending the hearing on behalf of the ORR?
- v) Will the ORR seek to identify and narrow the issues in advance of the hearing? You asked us for our views on this at our meeting on 5th May. We believe that the hearing should concentrate on abstraction, the capacity available and the feasibility of the journey times proposed by Alliance, particularly in the absence of major infrastructure investment.

- vi) Will the ORR clarify the criteria that it is applying and that the parties should address?
- vii) Will the parties have an opportunity to make and exchange further written submissions in advance of the hearing?
- viii) What process will the hearings follow (e.g. in what order will parties speak, will there be opportunities for cross-questioning, how does the ORR intend to allocate the available time to various issues)?
- ix) Does the ORR consider that it is empowered to consider the arguments raised in Alliance's letter of 7 April 2015 concerning Regulation (EC) 1370/2007 and state aid? It seems to us that these are not matters within the ORR's remit.
- x) Will there be scope for the hearings to extend into additional days if necessary?
- xi) Will CH2M Hill attend the hearing and be available for cross-questioning?
- xii) Will experts on behalf of the parties be entitled to give evidence?
- xiii) How does the ORR propose to manage commercially sensitive information while ensuring that the parties are able to respond to all relevant evidence?

We look forward to your response to the questions above. While we do not wish unnecessarily to delay the ORR's decision making process, we are anxious to ensure that all parties are given a fair opportunity to present their cases. We are concerned that this may not be possible under the current proposal given the importance and complexity of the issues involved.

We would be happy for you to copy this letter to the other applicants should you feel that appropriate.

Yours sincerely,



Andy Sparkes
Commercial Director