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7 August 2015

Dear John,

ECML – current applications

Thank you for your reply to my letter of 3 July 2015.

I note your comments regarding the receipt of the First Group application, but despite First Group suggesting they had been looking at this for some time (see hearing transcript p112), it was not until the ORR provided them with the VTEC Timetable that their application was completed. You may recall I questioned whether First had actually previously prepared a timetable (before receiving the VTEC one) and they did not respond to my challenge.

I note your further comment regarding the date of the CH2MHILL report being published, but it is exactly because of the First Group application that it was delayed until 29 May 2015.

My position regarding the anti-competitive nature of the ORR's decision to allow First Group to enter the process when they did, and the further advantage given by the provision of the VTEC timetable has not changed, and the ORR has not provided any evidence to alter that position.

In relation to the timing of applications it is clear that applications can be made at any time, but we have not complained about the timing of the VTEC application because the process had identified the position, and they were also doing work with CH2MHILL prior to their application. First Group has done exactly what the ORR had

identified might happen from the East Coast Lessons Learned Document of 2010, but the ORR has not applied any of its recommendations on this occasion.

I cannot comment on your position with VTEC in relation to the provision of their timetable. However you do state “*The ORR did not compel VTEC to share its timetable*”. VTEC stated at the hearing “*We were told it was going to be shared with FirstGroup [by the ORR] whether we liked it or not*” (p114). The two statements are not compatible and it is a matter that requires further investigation.

In relation to the provision of a new timetable from GNER, the benefit we would have would be in relation to our West Yorkshire application in that we could ‘dovetail’ this two hourly service alongside the VTEC Bradford/Harrogate proposals, to ‘allow’ VTEC to deliver its full application. However this would only be of value if we also believed it was the only way in which we would pass the NPA test, and on the West Yorkshire and Cleethorpes service group that is not an issue, as indeed it is not on the Edinburgh proposal.

As we have already referenced, the real issue has been the ability of First Group to prepare an application with a significant commercial advantage over the other applicants. This has manifested itself in an unworkable and unrealistic timetable designed around another’s known aspiration with the sole purpose of passing the NPA test, and then passing off the application as being ‘fast’ when in fact the generation levels rely entirely on this non-stop service being overtaken by a stopping VTEC service, giving 4h 24m journey times.

If this error is corrected, and added to the CH2MHILL mistake of showing no VTEC calls at Morpeth, the First Group application would have an output very much in line with previous ORR decisions on services proposing very cheap fares.

Despite our continuing concerns about the process and the advantage given to one applicant, it is clear that the railway on the ECML is in a state of flux at this particular time. Not only are there the issues surrounding the applications and the CH2MHILL work, the ‘Hendy review’ is now suggesting that deliverability of schemes on the ECML is slipping into CP6, and work is still on-going in relation to affordability.

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With the CMA currently consulting on its recent Rail Review, and the ORR also having work undertaken by Leigh Fisher on the impacts of open access, I would again suggest that a moratorium on any decisions on the ECML should be established for a period of around 6 months.

This would enable a period of reflection to take place to ensure that the significant areas of concern within the CH2MHILL report are addressed, that the Hendy review has reported, and that the areas of concern surrounding the process to date are also addressed.

It would also enable the ORR to further address and consider the legitimate concerns of the current open access operators in relation to franchise access rights that seek to compete with established commercial services. It was established in Court in 2006 that franchised operators have very considerable advantages over open access operators in the upstream market, and that, moreover, open access operators are at a disadvantage because ORR's policy on new competitive services requires them to pass tougher tests than franchisees when applying for access rights.

We are aware that the ORR carries out the NPA test on new franchise proposals, but the reality is that as the dominant operator on the main part of the route it is impossible for any franchise to fail the test – so the test is an irrelevance. In view of the Court's position on the already advantageous position of franchises, this, along with a fundamental review of what is a PSO service needs to be addressed.

We have been in a situation before on the WCML where the ORR has suspended consideration of applications, so it would not be a new position, but would be an entirely understandable position in the circumstances.

There would be no impact on the further development for the current ECML operators, and with the Hitachi build under way, a 6 month moratorium would have no impact on timescales in relation to any of VTEC's proposals or aspirations.

The propositions before the ORR are too important to be determined when so much information is still not available, and although a delay would have an impact on our own start date should we be successful, the current position would suggest a delay would be pragmatic and sensible.

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All the applicants could then, if desired by the ORR, re-submit applications to a known timescale and forward process, or the ORR could continue to review the applications as they stand.

Yours sincerely



Managing Director

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