

OFFICE OF RAIL REGULATION'S PROPOSED DECISION ON APPLICATIONS FOR THE TRACK ACCESS RIGHTS NECESSARY TO OPERATE ADDITIONAL PASSENGER SERVICES ON THE EAST COAST MAIN LINE

Introduction

1. This document sets out the decision we are minded to take (the "proposed decision") on three competing applications made under the Railways Act 1993 (the Act) for rights to operate additional passenger services on the East Coast Main Line (ECML). We are seeking representations on this proposed decision prior to reaching a final decision on this matter. Having considered those representations, we aim to be able to make a final decision as early as possible in February to enable Network Rail to take it into account in the timetable it is preparing for December 2006. We consider that the proposed decision takes account of all representations and information that we have received. We would therefore expect representations to focus on material new information and/or factual inaccuracies.

The applications

2. We have been considering track access applications from Great North Eastern Railway Limited (GNER), Grand Central Railway Company Limited (Grand Central) and Hull Trains Company Limited (Hull Trains) who asked ORR to approve the following:

GNER - under section 22A of the Act

- Additional contingent rights for five weekday Leeds – King's Cross services each way which would be used together with existing rights to operate a half-hourly off-peak service between London and Leeds. GNER was seeking these rights until December 2011, at the same time as a proposed extension of its existing track access contract.

Grand Central - under section 17 of the Act

- Firm rights for four services each way Monday to Saturday between Sunderland and King's Cross and a further four firm rights each way between Bradford and King's Cross, with three firm rights each way on Sundays on both routes. Whilst the original application was for a five-year contract, and was based on the use of existing off-lease rolling stock, Grand Central now plans to acquire new rolling stock, and has indicated that it would be seeking a contract for these rights for a period of ten years.

Hull Trains - under section 22 of the Act¹

- Firm rights for a sixth weekday path and fifth Saturday path and contingent rights for a fourth Sunday path each way between Hull and King's Cross.

The proposed decision

3. On the three applications we are minded to conclude that:
 - we should approve (for a term of up to ten years) three firm rights each way (Monday to Sunday) for Grand Central to operate services between King's Cross and Sunderland calling at York, Thirsk, Northallerton, Eaglescliffe and Hartlepool (we understand that Grand Central could begin operations in the first half of 2007). These rights would enable a spread of services through the day, but otherwise contain a degree of flexibility;
 - we should also approve (until the end of its current contract in June 2010) one additional contingent right each way (Monday to Sunday) for Hull Trains to operate services between King's Cross and Hull. Subject to Network Rail being able to timetable this contingent right, this would permit Hull Trains to continue to operate its current level of service; and
 - we do not believe there is sufficient available capacity to accommodate GNER's proposals at this time.
4. We are also minded to require the inclusion of modification provisions in the track access contracts which we expect to approve between Network Rail Infrastructure Limited (Network Rail) and Central Trains Limited (Central Trains), Thameslink Rail Limited (Thameslink), Midland Main Line Limited (MML) and GNER. This would allow the rights in those contracts to be adjusted to ensure that any directions issued by ORR in respect of Grand Central's application, would not necessarily involve Network Rail being in breach of an existing access contract, and would enable Network Rail to identify suitable paths for Grand Central, with minimum disruption to the services of other operators.
5. It should be noted that, as a new train operator, Grand Central would need to fulfil the normal safety obligations and also to be granted a train operator's licence before it can start operations. Nothing in this proposed decision pre-empts decisions which may need to be made on those matters.
6. If the proposed decision is confirmed, we shall expect Network Rail to work with Grand Central to identify commercially useful paths, permitting a spread of services through the day which cause a minimum of disruption to other operators' services.

¹ Hull Trains applied to ORR on 1 February 2005 to introduce these additional services from 12 June 2005 until the end of its current contract in 2010. We explained that until we could establish the extent of the available capacity and consider all three applications together, we could not consider long-term rights. We approved the additional rights until December 2005 (later extended to December 2006).

7. The rest of this document describes the factors that we took into account in considering the applications and the reasons for reaching this proposed decision.

Process to date

8. In addition to our obligation to consult under the Act, we have consulted widely with stakeholders and train operators on each of the applications.

9. Following discussions with Network Rail, on 9 August 2005 we wrote asking it to carry out a detailed examination of existing available capacity on the ECML, the scope for additional services without infrastructure enhancement and options for restructuring the ECML timetable, and to provide a report by 23 December 2005. We also commissioned consultants, Arup, to undertake an economic appraisal of the three applications. We wrote to the applicants and all interested parties on 9 August 2005 to advise them of these work streams.

10. In December 2005, we circulated copies of the draft Network Rail and Arup reports (the latter redacted where necessary for confidentiality reasons, and to remove incomplete sensitivity analysis) to the parties and to the Department for Transport (DfT) for comment. Comments were duly received and have informed our proposed decision.

11. It should also be noted that we have received an unusually high level of support for Grand Central's proposals from MPs, local authorities, regional stakeholders, chambers of commerce, local businessmen and members of the public. We have also received some support for GNER's proposals.

12. Our criteria and procedures document² says that we will hold hearings whenever we consider it necessary or desirable to ensure that the issues of regulatory concern have been probed and tested. We have considered whether to hold a hearing in relation to these applications. Given the amount of information that has been shared between the parties, ORR and consultees, and the opportunities given for them to comment in writing, we are not currently minded to hold a hearing. Publication of this proposed decision provides a further opportunity to bring to our attention any issues or concerns that we should take into account before making our final decision, including in relation to process.

Network Rail's capacity study

13. The key messages from the Network Rail study are:

- the ECML is already one of the busiest lines on the network and there is currently insufficient capacity on parts of the line to satisfy all the stated requirements of both GNER and Grand Central;
- none of the six specific up paths sought by GNER, and only one of the eight specific up paths sought by Grand Central can be accommodated

² *Criteria and procedures for the approval of passenger track access contracts: Third edition*, ORR, London, June 2003

within the existing timetable. However, both GNER and Grand Central could use the current (temporary) Hull Trains sixth weekday up path;

- in order to introduce the proposed services as described in the applications, it would be necessary to alter the access rights of other operators;
- the level of demand on the line means that there would be no capacity for further freight paths beyond the 2005 levels (if all the rights sought in the three applications were granted); and
- Network Rail would only wish to sell two further paths over Welwyn viaduct during Control Period 3, and would prefer to implement them one timetable at a time so it could monitor the impact on performance.

14. Whilst GNER requested contingent rights, the timing of those services is necessarily linked to filling the gaps in its existing timetable. Grand Central, on the other hand, has no existing services, and can therefore be more flexible. Network Rail therefore looked at the possibilities of providing paths at times other than those which Grand Central had originally requested. The work undertaken suggested that it might be possible to create a number of viable paths for Grand Central, but Network Rail commented:

- these paths would be subject to a considerable amount of pathing time, and therefore extended journey times;
- only off-peak arrivals at/departures from King's Cross would be possible;
- with restricted platform availability at King's Cross, it would be difficult to match up and down paths;
- any service developed would require greater rolling stock resources than planned by Grand Central, because of longer journey times and a mis-match of return paths; and
- the effect of these services on performance would be detrimental as it would use valuable capacity currently used to recover from service perturbations.

15. In order to reduce the number of paths required south of Doncaster, Grand Central proposed that separate services from Bradford and Sunderland could join at Doncaster, run to King's Cross and back as one combined service, and split again at Doncaster. Network Rail did not wish to permit splitting and joining at Doncaster for operational, performance and timetabling reasons. We see no reason to disagree with this, especially in view of the distance that the separate portions of joining services would have to travel before reaching Doncaster.

Responses from the rail industry to the capacity study

16. There was broad agreement with the conclusion that available capacity was limited, though GNER said that it believed that timetabling solutions could be found to enable its proposed services to operate as long as the other applications were not approved. However, Grand Central, supported by its

timetabling consultants, Vossloh, continued to believe that it was possible to path a number of services from Sunderland and Bradford and even accommodate some of the proposed GNER services.

17. The rail freight industry was concerned by Network Rail's conclusion that, if the additional rights requested were approved, no additional freight services over 2005 levels could be accommodated, and argued strongly that no rights to additional passenger services should be granted pending the ECML Route Utilisation Strategy (RUS).

ORR conclusion on capacity and performance

18. We have considered information and comments on the availability of capacity on the ECML from GNER, Hull Trains, Grand Central, Network Rail and the DfT. In addition, other users of the network (both passenger and freight operators) have provided comments. After taking account of all information and comments we have reached the view that there is not enough capacity for all the additional proposed services without significant changes to many services operating on the ECML. In particular, we are not satisfied that there is enough capacity for additional Leeds services with the present level and pattern of utilisation of the Doncaster to Leeds route.

19. We do not consider that this proposed decision should require a total revision of all services operating on the ECML. We consider that the ECML RUS will provide the appropriate forum for consideration of the strategic issues in relation to capacity on the ECML. Both the capacity available for freight growth and the benefits of a more general recast of services to allow the introduction of more passenger services on the route will need to be addressed by the ECML RUS, now in development. In the light of the demonstrated and immediate pressures for increased use of this strategic route we ask Network Rail to give development of this RUS, including the Doncaster to Leeds route, particular priority within its overall programme. However, we consider that a small number of additional train services on the ECML can be accommodated before the RUS provides for a strategic review of the timetable. These are likely to require limited changes to some of the existing passenger access rights.

20. We note that the proposed additional passenger paths would necessarily limit the room for freight growth to a small extent, though we consider that adequate headroom will still remain prior to the RUS (probably with a need for intermediate looping of trains on the ECML north of Stoke Tunnel).

21. Network Rail has stated that it is unwilling to sell additional capacity because of the anticipated adverse effect on performance. However, in our view it has not fully explored the scope for introducing limited additional services, nor has it undertaken any timetable development which would provide a better basis for making a performance assessment. We consider that it is for Network Rail, as network operator, to do its utmost to facilitate the introduction of additional services in a way which is compatible with maintaining or improving performance. There is evidence of this objective being achieved elsewhere on the network and we consider that it is achievable on the ECML if Network Rail takes pains to plan and implement a

robust timetable. We also believe that a proactive and responsible infrastructure manager should be looking for ways to improve capacity utilisation and developing the tools to do so.

Economic benefits

Context

22. It is our view that each of the proposed applications would provide passenger benefits:

- GNER services would provide five nine-coach trains per day (each way) between London and Leeds and intermediate stations, infilling gaps in the existing half-hourly timetable and relieving overcrowding (some GNER services have load factors in excess of 90%, although average load factors are below this);
- Hull Trains services would provide one four-car train per day (each way) (making a total of six) between King's Cross and Hull; and
- Grand Central services would provide new direct five-car trains to Bradford and Sunderland, albeit with little or no journey time saving over existing indirect services to these locations, although they would provide larger time savings for some intermediate locations at Pontefract, Brighouse, Halifax, Thirsk, Hartlepool and Eaglescliffe (for Teesside).

Economic appraisal

23. Arup's economic appraisal used standard industry procedures (for example following DfT/SRA appraisal guidance) and utilised the most relevant 'state of the art' demand forecasting models, namely MOIRA and Planet Strategic Model. Although the economic appraisal was a factor in our proposed decision, it was not the only, or a determinative, factor.

24. The appraisal indicated that all of the proposed services would provide positive net economic benefits (although performance impacts and changes to existing services are unknown and so were not included), with the largest benefits from GNER, followed by Grand Central (Sunderland), and then Hull Trains and Grand Central (Bradford). The results of the appraisal, as with all forecasting, are sensitive to the underlying assumptions. For example journey times, timing of individual slots, fare levels and train capacity. Nevertheless across a range of sensitivity tests all of the proposed services provided positive net economic benefits.

'Not primarily abstractive' test

25. We have a policy of not approving rights to competing services that are primarily abstractive of incumbents' revenue without compensating economic benefits. Such services are often referred to as "cherry picking" services. While the introduction of any new service is almost certain to bring some benefits to the passengers that use it, "cherry picking" services are those where such benefits are more than offset by other factors. Our policy, as set

out in our document 'Moderation of Competition: Final Conclusions'³, is only to approve services that pass the 'not primarily abstractive' test, which uses the ratio of generated revenue to that abstracted from existing services. If we concluded that the primary impact of a new service would be to abstract revenue from incumbent operators without compensating benefits, we would reject the application. We have considered each of the open access applications against our five-stage 'not primarily abstractive' test and, for the reasons set out below, we consider that the relevant services pass the test. GNER, as the incumbent operator, does not need to pass the 'not primarily abstractive' test.

Hull Trains

26. Additional services proposed in previous Hull Trains track access applications have had estimated generation: abstraction ratios of between [REDACTED] and [REDACTED]⁴, i.e. for every £1m of revenue abstracted from other services, the new service would be expected to generate revenue between [REDACTED] and [REDACTED]. We have previously estimated that the move from the fourth to the fifth Hull Trains weekday path had a ratio of between [REDACTED] and [REDACTED].

27. The sixth Hull Trains weekday path has been in operation since June 2005. As part of our approval process we assessed the sixth path against the 'not primarily abstractive' test. We concluded that the sixth path would have a similar ratio to the fifth Hull Trains path and therefore passed the 'not primarily abstractive' test. When we assessed extending these rights beyond December 2005 our analysis suggested that this was the case. We have not identified any evidence to suggest that circumstances have changed and have therefore concluded that Hull Trains' sixth path passes the 'not primarily abstractive' test.

Grand Central

28. We have assessed Grand Central's Sunderland and Bradford services against our five stage 'not primarily abstractive' test.

Stage one: MOIRA analysis

29. For both services MOIRA predicts a generation: abstraction ratio of around [REDACTED]. As stated in previous assessments, we believe that MOIRA under-predicts traffic generation.

Stage two: Broad estimate of ratio

30. In its submission, Grand Central forecast ratios of [REDACTED] for Sunderland and [REDACTED] for Bradford in the first year of operation, rising to about [REDACTED] for the Sunderland service and [REDACTED] for the Bradford service after a few years. The DfT and other parties provided evidence which predicted lower ratios of around [REDACTED] although, as with the MOIRA analysis, we have concluded that these under-represent generated traffic.

³ *Moderation of Competition: Final Conclusions*, ORR, London, May 2004

⁴ Information removed for reasons of confidentiality

Stage three: Benchmarking

31. Grand Central services have similarities with Hull Trains: for example, both connect poorly served markets to London; and both offer relatively reduced dedicated walk-on fares compared with GNER. Differences between Grand Central and Hull Trains services would have counter-acting effects on revenue generation. Compared with Hull Trains:

- both the Sunderland and Bradford services would provide a larger population with new direct services (indicating that revenue generation could be higher than Hull Trains); and
- a smaller proportion of the existing rail market would be in areas that are currently poorly served (indicating that revenue generation could be lower than Hull Trains).

32. We consider, therefore, that it is reasonable to expect Grand Central to achieve similar generation:abstraction ratios to those achieved by Hull Trains.

Stage four: Proposed impact over time

33. Grand Central's forecast ratios are given in paragraph 28 above. Evidence from previous similar services indicates that ratios will increase over time. Our assessment of Hull Trains' move from three to four weekday services per day found that the generation:abstraction ratio increased from between [REDACTED] and [REDACTED] in the first year of operation to between [REDACTED] and [REDACTED] if the analysis was extended by a further twelve months.

Stage five: Other relevant factors

34. As part of the economic appraisal, our consultants Arup forecast generation:abstraction ratios for Grand Central services. Arup's modelling work points to relatively low generation:abstraction ratios compared with those estimated by Grand Central. Although Sunderland services are within the range that have previously passed the 'not primarily abstractive' test, Bradford services fall below it. However, once allowance is made for factors not covered by the modelling (e.g. modal shift from coach), the ratio for the Bradford service is also within the range that we have previously accepted.

35. We have concluded that generation:abstraction ratios for both Grand Central Sunderland and Bradford services are likely to be towards the middle to lower end of the range estimated for previous Hull Trains services, and so pass the 'not primarily abstractive' test.

Other impacts

36. Our Moderation of Competition: Final Conclusions states: "[ORR] may also need to consider whether the benefits of additional direct services on a poorly served route should be given additional weight". Sunderland, Teesside (via Eglecliffe) and Bradford are among the largest conurbations in England with poor or no direct services to London. Hull is also poorly served compared to other conurbations of a similar size. We place particular importance on the provision of new journey opportunities to poorly served areas, particularly where there are no direct services at present.

37. The granting of additional access rights will also enhance competition, with potential effects including fares competition; higher service quality; or a stimulus to innovation and improvements to efficiency, all of which will be to the benefit of users of railway services. We consider new entry is likely to bring the greatest additional competition benefits for users.

Other agreements

38. We are currently considering applications from four other passenger train operators seeking an extension of their access rights on the ECML: GNER wants to extend its current contract (which expires in December 2006) to December 2011; MML wants to replace its current contract (which expires in April 2006) with a new contract expiring in December 2008; Thameslink, on behalf of the new Thameslink/GN franchisee, wants to enter into a new agreement covering the period between June 2006 and December 2007; and Central Trains wants to extend its current agreement (which expires in December 2006) to December 2008. Each of these operators wishes to obtain new track access rights before we have finalised the proposed decision. We are therefore minded only to approve rights for those operators at this time if they will include a modification provision in their agreements.

39. The provision will require Network Rail to identify modifications, only to the extent necessary to allow it to satisfy Grand Central's rights, and provide the operator with the best alternative available access rights. The provision contains an iterative process for the train operator to agree the modifications which then require ORR approval.

40. Our judgement is that this will not require major changes and, as our consent would be required, we shall ensure that any changes made are no more than the minimum necessary to satisfy Grand Central's rights.

41. We do not believe that it will be necessary to insert such a provision in any freight agreements because, by their nature, freight access rights are more flexible than passenger access rights.

42. In the course of our consultation of other train operators, Eurostar drew our attention to its access rights relating to the ECML. Network Rail has asked us to consider including a modification provision in all new agreements for train operators using the ECML or West Coast Main Line, in order to ensure its ability to satisfy Eurostar's access rights on those routes. We have studied Eurostar's rights in order to assess the possibility of a conflict arising. Our view is that, even if the rights were exercised, as the rights are to quantum only, with no protected journey times and no calling patterns, it is likely they could be accommodated without a realistic likelihood of a conflict arising. We do not therefore propose to include such a modification provision.

Access charges

43. During the consultation period, GNER made representations that the charging framework for track access established by ORR discriminated against franchised operators and in favour of open access operators, and was, therefore, contrary to the requirements of European and domestic legislation. We have discussed this with GNER. We are content that our approach is compliant with relevant law. After consideration, we do not

propose any changes to the current framework at this time outside the work currently in progress for the 2008 Periodic Review of access charges. We are minded to include an access charges re-opener in Grand Central's track access contract which would allow the implementation of the conclusions reached by that periodic review. We would also be minded to include a similar re-opener in Hull Trains' agreement for the additional right referred to in this proposed decision.

Statutory duties

44. When we exercise our functions under Part 1 of the Act, we are governed by our statutory duties, most of which are listed in section 4 of the Act. These duties are not in order of priority, and it is for us to decide how to balance our duties in reaching a decision. We have considered all our duties in reaching the proposed decision. We considered that the following duties were particularly relevant:

Section 4(1)(zb) – to promote improvements in railway service performance

45. The duty to promote improvements in railway service performance is a new one, introduced by the Railways Act 2005. The statutory definition of "railway service performance" includes reliability, avoidance or mitigation of passenger overcrowding and that journey times are as short as possible. We have considered whether the approval of any new use of the national network, by increasing the level of congestion, is likely to have an adverse effect on overall performance. We do not consider that this is necessarily the case. Approving new services may also reduce overcrowding and offer improved journey times.

46. Network Rail has not provided us with a detailed operational performance assessment and it has therefore been necessary for us to exercise judgement. We know that the latest GNER PPM (trains arriving at their destination less than 10 minutes later than their scheduled arrival time for the year to 10 December 2005) at 81.4%, is lower than desired. On the other hand, Hull Trains' latest PPM (trains arriving at their destination less than 5 minutes later than their scheduled arrival time during the year to 12 November 2005) is 88.98%.

47. We know that Hull Trains operates a currently extremely reliable fleet of Class 222's and that this is the same type of rolling stock which Grand Central would expect to operate. Within the proposals we have considered, GNER would need to use the busy Doncaster to Leeds line which is used by a number of other operators. This could import a slightly bigger risk to reliability although it would not necessarily do so.

48. The Grand Central proposals, as new direct services, might offer marginally greater benefits on journey times, but some changes to GNER services may be required. It is unclear which proposals would provide the lowest overall average journey times as it depends on how exactly they are timetabled.

Section 4(1)(a) – to protect the interests of users of railway services

49. This duty refers to the protection of the interests of users of railway services other than in respect of railway service performance. In considering the applications we have consulted widely and we have received an unusually high level of responses from the general public and a wide group of industry stakeholders, mainly in support of Grand Central which, with would serve new markets in Sunderland and Teesside.

Section 4(1)(b) – to promote the use of the network

50. Approval of additional services would promote the use of the network. This duty, however, requires us to consider both the carriage of passengers and the carriage of goods and economic practicability. We have therefore weighed all known competing passenger and freight demands for capacity on the ECML and their individual and overall economic practicability. Although there are currently no agreed proposals, development work is under way on the proposals to electrify the route between Leeds and Hambleton via Micklefield in order to facilitate the running of additional London-Leeds services without further congesting the Doncaster-Wakefield Westgate-Leeds corridor. This, and other enhancement proposals (including also those relating to the Bathside Bay development) will be addressed by the RUS.

Section 4(1)(d) – to promote competition for the benefit of users of railway services

51. The duty to promote competition has an obvious application to this decision. The duty is qualified in that the promotion of competition must be for the benefit of users of railway services. We consider that approval of Grand Central's services would significantly promote competition. Approval of Hull Trains' sixth path would also promote competition. We have also noted that additional GNER services would provide some additional inter-franchise competition by increasing the number of GNER services calling at Stevenage.

Section 4(1)(g) – to enable providers of railway services to plan the future of their businesses with a reasonable degree of assurance

52. Under this duty we have considered the following issues. All three operators have been waiting for nearly a year to hear the outcome of their applications and we consider that a further delay on this decision would be inconsistent with this duty. In the case of GNER, the additional services are a franchise requirement, subject to ORR approval of the access rights; and for Hull Trains, the additional service is an important component of the company's proposed development. Equally, the operation of competing services will have a financial effect on GNER's business, particularly if this requires its services to be altered; we do not know the extent to which GNER factored the risk of further competitive entry into its bid for the InterCity East Coast franchise, although such competition was clearly possible. The need to include modification provisions in four passenger operators' forthcoming track access agreements will adversely affect their ability to plan their businesses, though the provisions themselves will require this effect to be minimised.

Section 4(3)(a) – to take into account safety considerations

53. We have consulted the Health & Safety Executive (HSE) in relation to the Grand Central and GNER applications and it raised no concerns. By agreement, we do not consult HSE where there are no significant changes from current operations, so we did not consult it on Hull Trains' proposals. In addition, as noted in paragraph 5 above, Grand Central would have to satisfy the normal safety obligations.

Section 4(5)(c) – to have regard to the funds available to the Secretary of State

54. The approval of additional open access services would have a financial impact on GNER. We have considered revenue abstraction figures reflecting the impact on all franchised operators of running the various new services. The largest effects are on GNER but these are not identical to effects on "the funds available to the Secretary of State" for which other elements also need to be taken into account, including the fact that if GNER does not get approval for its additional Leeds services, the additional premium payable to DfT under its franchise agreement will not be paid.

55. We asked the DfT to identify the impact of a number of options, including the proposed decision, on the funds available to the Secretary of State. Having considered the DfT's response, we concluded that the impact of the proposed decision was not so significant as to outweigh the other benefits of that decision.

Conclusions

56. Having considered all relevant factors, representations and duties, we have concluded that we would be minded to approve the services described in paragraph 3 and take the action described in paragraph 4 of this document.

57. So far as our duties and available network capacity allow, it is our objective to promote the availability of railway services that offer choice and value for money for users.

58. While the ECML is already heavily used, we do not consider that capacity utilisation is optimised by the present timetable. We therefore gave serious consideration to the option of granting all the rights sought by GNER and Hull Trains, in addition to granting firm rights to Grand Central, so as to oblige Network Rail to work with all operators through the timetabling process to maximise the number of paths made available. We took note however of the views strongly expressed by a number of respondents that this should more properly be done through the RUS process, and concluded that it would be wrong to circumscribe the outcome of the RUS process by granting rights at this time in respect of paths that cannot obviously be accommodated without a major revision of service patterns. We nonetheless consider that we should grant rights wherever it appears to us that they can be accommodated without a major timetable revision. Accordingly, we concluded that it would not be consistent with our duties to defer any decision until the RUS is concluded.

59. We consider that a small number of additional train paths can be accommodated if relatively limited changes are made to some of the existing

services. We also consider that if Network Rail plans and implements a robust timetable with these new services, performance on the ECML can be maintained or improved.

60. The decision to approve firm rights for three daily return services between London and Sunderland to Grand Central, and contingent rights to Hull Trains for an additional daily return service between London and Hull, is consistent with our objective, and is expected to enable Grand Central to provide services to communities with no current direct services to and from London from 2007 onwards and to enable Hull Trains to maintain the service it currently provides beyond the end of 2006.

61. We welcome new entry to rail markets which brings additional benefits for users overall. In addition we consider that GNER's application has considerable merit and we would have been prepared to approve the rights sought had we been able to satisfy ourselves that they could be accommodated without a major revision of the timetable, and without prejudging the result of the RUS process.

62. We look to the RUS process to provide the flexibility needed to enable GNER and other operators (including freight operators) to provide additional services where this is economic. We also look to Network Rail and, especially, to train operators using or crossing the ECML, to do all they can to achieve dependable, consistently high levels of performance. This will assist in increasing available capacity on the ECML and, as with other busy parts of the network, enabling the provision of greater service choice for users, reducing crowding and enhancing the use that is made of the network for the benefit of society as a whole.

63. We consider that each of the proposed services provides positive economic benefits and our conclusion on the rights we are minded to approve is based on an assessment of our Section 4 duties. In summary, the factors that have influenced our proposed decision to grant a limited number of rights to Grand Central for services to Sunderland include:

- the benefits of the proposed services for passengers on the route;
- the weight given to providing direct London services to poorly served areas; and
- the benefits arising from the promotion of competition on the network.

64. The factors that have influenced the proposed decision to grant one contingent right to Hull Trains include:

- the benefits of the proposed services for passengers on the route;
- the weight given to providing direct London services to poorly served areas; and
- the benefits arising from the promotion of competition on the network.

65. The factors that have influenced the proposed decision not to grant rights to Grand Central for services to Bradford at this time include:

- limited capacity for additional new services; and
- lower net economic benefits than services to Sunderland.

66. The factors that have influenced the proposed decision not to grant any additional rights to GNER at this time include:

- limited capacity for additional new services;
- particular capacity issues between Doncaster and Leeds, and the difficulty of introducing new services on that route without a complete revision of services;
- the desirability of not approving a significant number of paths when we know that this will be examined as part of the RUS process; and
- if GNER is able to make available additional capacity on the route to Leeds (by making adjustments to its own services), the way in which this should be used should be considered as part of the RUS process.

Next Steps

67. We aim to be able to make a final decision as early as possible in February to enable Network Rail to take it into account in the timetable it is preparing for December 2006. Accordingly, we are seeking representations by midday on 6 February 2006. These should be sent in electronic format to Brian Hopkinson at these offices (brian.hopkinson@orr.gsi.gov.uk).

68. We will publish responses on our website and may quote from them. You should indicate clearly if you wish all, or part, of your response to remain confidential to ORR. If you make a response in confidence, you should also send a statement, excluding the confidential information, which we can publish. We may also publish the names of respondents in future documents or on our website, unless you tell us that you want your name to be withheld.

Office of Rail Regulation
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