



OFFICE OF **RAIL REGULATION**

**EAST COAST MAIN LINE - LESSONS  
LEARNED REPORT**

**AUGUST 2010**



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# Executive summary

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## Introduction

1. This document sets out the Office of Rail Regulation (ORR)'s findings and recommendations from the lessons learned review into the process that led up to the issue of directions and approvals for the various East Coast Main Line (ECML) passenger track access applications on 11 February 2010.
2. In February 2010 ORR issued directions on three applications and approved a fourth granting three passenger train operators - East Coast Main Line Company Limited, Grand Central Railway Company Limited and Hull Trains Company Limited - the rights to operate additional and/or amended services on the ECML. The process leading up to this took two years - full details are on our website<sup>1</sup>.
3. Whilst the industry knows that difficulties were encountered at various stages along the way, it believes that, overall, the process took too long. If the industry is to learn from this we need to look constructively at the whole process, including our own areas of responsibility, in order to establish:
  - (a) what went well;
  - (b) what went less well;
  - (c) how the process could be improved in future; and
  - (d) what the industry could have done differently, with the benefit of hindsight.
4. It is clear from the information gathered that there are strong feelings within the industry on how this process was handled. It is important that the industry takes forward the findings and recommendations in a constructive and positive way.

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<sup>1</sup> <http://www.rail-reg.gov.uk/server/show/nav.1993>

## Summary of findings

5. In summary, the main findings to come out of our discussions with stakeholders and their representations are:
- (a) Network Rail was not proactive enough in managing the access and timetable development process and failed to take a firm line in refusing to try and accommodate operators' and funders' changing requirements. Some of the reasons for this were:
    - (i) the lack of a clear and transparent policy on how it integrates its strategic planning vision into its timetable development activity and how it prepares for major forthcoming changes in the timetable;
    - (ii) it does not give timetabling a high enough priority within the company, even though the timetable is its main product;
    - (iii) the lack of rigorous project planning disciplines; and
    - (iv) the lack of a 'controlling mind' to ensure that the timetable is developed in a way which is consistent with the industry's strategic needs;
  - (b) apparent problems with the resources and skills available within Network Rail for timetabling – possibly more to do with the mix of skills than the overall level of resource;
  - (c) ORR did not provide the industry with a clear enough remit, including timescales and milestones, at the outset of the process;
  - (d) ORR did not ensure that clear deadlines were set for the submission of aspirations and applications, and was not proactive in chasing Network Rail when things lagged or progress was slow;
  - (e) ORR should review its policy on the publication of information during such a process;
  - (f) the lack of alignment between the access planning and franchising processes;

- (g) the role of funders, in particular DfT, in writing its own timetable, and the failure to take a more holistic approach;
- (h) the changing requirements of train operators, which introduced significant delays; and
- (i) the lack of a constructive and joined up approach by train operators, particularly in relation to their dealings with Network Rail.

Our views on these findings are set out in the body of the report.

## Summary of recommendations

6. In order to address these findings our report makes a number of recommendations for the industry and ourselves to take forward. These are summarised at **Annex C** and include:
- (a) suggestions for improving processes and communication;
  - (b) ensuring that robust and appropriate project management arrangements are in place;
  - (c) ensuring that the necessary resources are in place;
  - (d) being clear and transparent about what is expected of all stakeholders; and
  - (e) seeking to align as far as possible the access planning and franchising processes.

As the report indicates, many of these recommendations have already been acted upon. For example, in launching the West Coast Main Line (WCML) capacity allocation exercise in June, Network Rail and ORR have tried to ensure that as many of the failures of the ECML process as possible are taken on board. For our part we have issued Network Rail with a clear remit, and put in place appropriate project management arrangements with clear milestones and timescales. Network Rail has similarly put in place suitable project management arrangements, including the appointment of a project manager and senior responsible officer. It has also ensured that there are clear lines of communication across its organisation and that the necessary

resources have been allocated to the project. To date these are working effectively.

## **The way forward**

7. Neither Network Rail nor ORR are complacent about what remains to be done, and we will continue to work closely together to ensure that matters continue to improve, not just in the area of timetable development and capacity allocation, but across all major projects. I have already met with Robin Gisby and Paul Plummer of Network Rail to discuss our findings and am pleased to say that they welcome the recommendations for the industry as set out in this report. We have also discussed what further steps should be taken to develop the industry's 'strategic timetabling' capability, where we believe that Network Rail is well placed to play a more proactive role in working with its customers to identify opportunities for timetable improvements.
8. But it is not just about Network Rail and ORR. Whilst it is our view that Network Rail was perhaps rather too flexible in its approach to the ECML – in particular in trying to meet the various competing and changing demands - it has to be recognised that it has a difficult task in managing an industry process on behalf of a range of parties. As our report explains, finding the right balance is not always easy and funders and train operators must play their part and work more constructively with the aim of securing the best whole industry solution – clearly this was not always the case in respect of the ECML process.
9. There have been positive signs over the last year or so to show that the industry recognises the need to work together – for example, through the outputs of the current joint industry review of access planning processes. This must continue and, as the report indicates, we intend to play our part.
10. We look forward to continuing to work with the industry to ensure that all of the recommendations are implemented as quickly and efficiently as possible.

**John Thomas**  
**Director, Railways Markets and Economics**

20 August 2010



# 1. Introduction

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## Purpose

- 1.2 The purpose of this document is to set out the findings of our review into the process that led up to the issue of directions and approvals for the various East Coast Main Line (ECML) passenger track access applications on 11 February 2010.
- 1.3 We have reached these findings following discussions with some of the interested stakeholders and we are grateful to them for their helpful and detailed contributions. Through this document we report on the comments received and set out our findings.

## Background

- 1.4 The process began on 29 February 2008 when we wrote to the industry to identify all operators' aspirations for additional track access rights on the ECML. In this letter we advised that we would consider and decide the future capacity allocation on this important part of the national network.
- 1.5 In the letter we referred to our reasons document of 6 April 2006 on the competing applications from Grand Central Railway Company Limited (Grand Central), Great North Eastern Railway Limited (GNER) and Hull Trains Company Limited (Hull Trains) for access rights on the ECML. In that document we said that, due to the uncertainty about the capacity available, the approval of rights for further additional inter-city services (over and above those contemplated by our decision) should await the completion of the ECML Route Utilisation Strategy (RUS), unless there was compelling evidence to the contrary. We said that we expected to receive a number of applications for track access rights following the establishment of the RUS, either for new services or firm long-term rights in place of those running under contingent or short-term rights. The RUS was established on 29 April 2008 and in anticipation of any applications, we wanted to ensure that we could consider the relevant questions of access allocation as quickly as possible in the full knowledge of all operators' aspirations. This was the reason for our request to operators to let us know if they intended to make any applications.

- 1.6 Subsequently, a number of operators submitted track access applications. Whilst it was difficult for Network Rail to assess the total available capacity because of the various service permutations applied for, it was clear at the outset that there was insufficient capacity to accommodate all the rights sought by all the operators. We therefore initiated two work streams - a capacity and performance assessment by Network Rail and our own economic assessment of the competing applications. Our letters setting out the process, various reports, stakeholders' comments, and decision documentation are available from our website<sup>2</sup>.
- 1.7 In total the process took some two years and a number of difficulties were encountered at various stages along the way. A chronology of events is attached at **Annex A**. In the light of that it was decided to carry out a lessons learned review. In order to get the most from such a review we decided at the outset to look constructively at the whole process, including our own areas of responsibility, in order to establish:
- (a) what went well;
  - (b) what went less well;
  - (c) how the process could be improved in future; and
  - (d) what the industry could have done differently with the benefit of hindsight.
- 1.8 We wrote to interested stakeholders, listed at **Annex B**, on 5 March 2010 informing them of the review and inviting their contributions.

## The consultation

- 1.9 We held meetings with those stakeholders with a direct interest in the ECML, namely: Network Rail, the ECML passenger operators who had been seeking rights (East Coast Trains, Grand Central and Hull Trains), the major freight operators (DB Schenker Rail (UK) Limited (DB Schenker) and Freightliner Group Limited (Freightliner)), the funders (the Department for Transport (DfT) and Transport Scotland (TS)), and the passenger representative bodies (Passenger Focus and London TravelWatch). Alliance Rail Holdings (Alliance Rail) and Northern Rail Limited also accepted our offer to meet other

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<sup>2</sup> <http://www.rail-reg.gov.uk/server/show/nav.1993>.

recipients of our letter. Four consultees, Alliance Rail, London TravelWatch, the Rail Freight Group and TS also submitted written responses, and these have been posted on our website<sup>3</sup>.

- 1.10 We are grateful to the industry for its contributions and the detailed and helpful suggestions received.
- 1.11 Alliance Rail felt that we should extend the review to examine the process leading up to the original granting of rights to Grand Central, as many of the difficulties encountered there manifested themselves again with the more recent applications. However, we felt that this was not appropriate because we wanted to focus on learning the lessons from this specific exercise and we were not convinced that there was any more to be gained from going back to the original Grand Central decision.
- 1.12 For ease of reference the term East Coast Trains (ECT) has been used throughout to represent the ECML long distance franchise operator, irrespective of whether East Coast, GNER or NXEC Trains Limited (NXEC) was operating the services.

## Structure of this document

- 1.13 This document represents our final report and conclusions and is structured as follows:
- (a) **Chapter 2** sets out our findings and recommendations;
  - (b) **Annex A** contains a chronology of events from 28 February 2008 to 12 February 2010, when the parties entered into their contracts/agreements;
  - (c) **Annex B** lists consultees and responses/interviews; and
  - (d) **Annex C** summarises the recommendations for ease of reference.

## Next steps

- 1.14 Work is of course already in hand to rectify many of the problems that occurred during the ECML project. In particular, the industry's review of access planning<sup>4</sup> is making improvements to the access planning process,

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<sup>3</sup> <http://www.rail-reg.gov.uk/server/show/nav.2434>.

<sup>4</sup> For further information see <http://www.rail-reg.gov.uk/server/show/nav.2253>.

including the introduction of an 'overhauled' Part D of the Network Code, and the introduction of some guidance to ensure closer alignment between the access planning and franchising processes. Through our review of access policy<sup>5</sup> we expect to introduce further changes to improve, simplify and streamline our processes.

1.15 Since starting this review we published a letter on 14 May 2010 seeking to identify all operators' aspirations, both passenger and freight, for new or amended access rights on the West Coast Main Line (WCML) and setting out the process and timescales involved<sup>6</sup>. In doing so we have, as far as possible, picked up many of the concerns the industry had with the ECML process:

- (a) setting out clear timescales and process;
- (b) keeping aspirations confidential during the early stages of the process, to prevent tactical applications;
- (c) agreeing not to publish interim capacity allocation and associated timetabling and performance information until we publish our decision; and
- (d) agreeing a clear remit with Network Rail.

For its part, Network Rail has put in place robust project management arrangements, including the appointment of a project manager.

1.16 We recognise that some of the recommendations contained in this report will take longer to implement. Nevertheless, we will work with the industry to ensure that the necessary changes and improvements are introduced as quickly as possible.

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<sup>5</sup> For further information see <http://www.rail-reg.gov.uk/server/show/nav.2254>.

<sup>6</sup> <http://www.rail-reg.gov.uk/server/show/nav.2437>.

## 2. Findings and recommendations

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### Introduction

- 2.1 As explained in Chapter 1, we decided to look at the whole process, from the point at which Network Rail received multiple requests for access through to its implementation of our decisions on the various access applications. This chapter reflects the information we have received from stakeholders either in writing or through face to face interviews. This is set out by issue, followed by our findings and, where appropriate, a recommendation.

### Network Rail's role

#### *Overview*

- 2.2 There was considerable criticism of Network Rail from all stakeholders on many aspects of its performance. There was general agreement that Network Rail lacked strategic vision and preparedness. This was evidenced by its failure to plan for forthcoming events such as refranchising, the commissioning of enhancements and, in the case of ECML, the constraints on capacity, given its knowledge that operators were seeking increased access. Stakeholders also felt that throughout the ECML process Network Rail took too long to respond, that it was reactive rather than proactive, and that the shortcomings exhibited in the ECML process had also been evident during the earlier WCML and Midland Main Line timetable developments.
- 2.3 Many stakeholders put these failings down to Network Rail's management structure and the culture within the organisation, which was considered to be overly bureaucratic, negative and lacking in clear leadership, particularly at a senior level. The ECML timetable was developed without the benefit of rigorous project planning and many stakeholders were unhappy with the way in which they were involved in the process.
- 2.4 However, there was a general feeling from passenger operators that the work produced by Network Rail's timetable planning team was good and that when they were given clear instructions it had gone well, although, as discussed below, freight operators felt sidelined. It was also generally agreed that much better progress was made when Network Rail eventually established workshops and scheduled bi-lateral meetings with operators. Even though

it may have taken some time to produce the timetable that accompanied Network Rail's report, it did actually meet the majority of train operator requirements.

#### *ORR's views*

- 2.5 Many of the issues raised by stakeholders are discussed in more detail below, but in general we agree with many of the criticisms. Overall, it is clear that Network Rail should have taken a more proactive role in managing the process and in preventing operators' and funders' changing requirements from extending timescales to the extent they did.

#### *Network Rail's views*

- 2.6 Network Rail recognises that it can do better in developing new timetables, but has pointed out that there will always be a difficult balance when managing an industry process on behalf of a range of parties, all of whom will have different objectives. It also said that more often than not it had to work to very tight and fixed deadlines. It also made the valid point that the rest of the industry must share some of the responsibility and demonstrate a more joined up and constructive approach. For example, stakeholders must understand that it is difficult for Network Rail to start developing a detailed timetable without specifications from all the affected operators. Funders should also support Network Rail in delivering agreed processes.

### **Strategic approach**

#### *Findings*

- 2.7 The majority of stakeholders expressed strong views that Network Rail:
- (a) has a lack of strategic planning and vision in its timetable planning process, including a lack of preparedness for significant forthcoming events such as the ECML process;
  - (b) displays a lack of service planning, instead focusing on the detailed timetable: and
  - (c) has no overall process when a major timetable change is envisaged.
- 2.8 It was felt that Network Rail does not look at the bigger picture. This was seen by many to be an institutional problem, with timetable planners only expecting to validate bids when they are told to do so, rather than having the skills to plan ahead and design efficient and commercially attractive

timetables. For example, Network Rail was aware that operators wanted to increase their usage of the ECML and that to accommodate them a standard pattern timetable would be necessary. But it did nothing until prompted by ORR to do so.

- 2.9 Operators' negative attitude and lack of faith in Network Rail is due in part to Network Rail having shown both a lack of understanding of the available capacity and how to optimise its allocation. Its previous failure to identify capacity for ECT's Leeds half-hourly services and Grand Central's Sunderland services was noted. In 2005 there were 124 long distance franchised services plus 12 Hull Trains services, and Network Rail said there was capacity for only six more (three each way) – a total of 142 long-distance services. In May 2011 there will be 189 per day. Had Network Rail understood the capacity actually available, instead of saying that it could not offer any further paths in addition to those already in the timetable, Grand Central could have been running its Bradford services much earlier.

#### *ORR's views*

- 2.10 There appear to be significant shortcomings in Network Rail's strategic planning and its ability to look ahead and become a proactive rather than a reactive organisation. The proposals currently being developed by the industry working group (IWG) to establish a calendar of events and project working groups<sup>7</sup> to oversee significant projects such as the ECML process will help to ensure that:
- (a) Network Rail is better placed to take a more proactive approach in leading the industry, as evidenced by its current approach on the WCML, and ensuring that it can respond more effectively to the needs of its customers; and
  - (b) interested stakeholders are involved at the outset, providing them with a process that enables them to work with Network Rail to make best use of capacity.
- 2.11 In addition to the changes being proposed through the review of access planning, Network Rail is currently undertaking a major restructuring of its train planning function which will see this operation centralised by the end of

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<sup>7</sup> These new arrangements, which are still in the process of being developed, will be enshrined in Part D in due course.

August 2010<sup>8</sup>. This should deliver a number of benefits and improvements including a more joined up, consistent service and a more effective way of planning ahead.

2.12 As already indicated above, ORR has discussed with Network Rail what further steps should be taken to develop the industry's 'strategic timetabling' capability. It was agreed that Network Rail is well placed to play a more proactive role in working with its customers to identify opportunities for timetable improvements - seeking to balance the need for improved reliability with frequency and journey times and to strengthen the link to RUSs. However, it was recognised that the financial incentives on the organisation were not balanced, partly because these incentives had been designed to focus particularly on performance improvement and on the delivery of infrastructure enhancements. Network Rail considered that it was seeking to "do the right thing" despite the apparent incentives while discussing with ORR, Government and its customers how these incentives could be improved through the Value for Money study and the periodic review. It was also recognised that the organisation had made significant investments in capacity, timetable and performance analysis people, systems and processes, but that further work was needed in conjunction with Network Rail's customers. It was agreed that Network Rail and ORR should continue to develop their plans concerning access planning to address these issues.

2.13 Notwithstanding the above, we also believe that it would be helpful to the industry if Network Rail was to develop and publish a clear and transparent policy statement on how it will integrate its strategic planning vision with its timetable development activity and, for significant projects, appoint a 'controlling mind' who ensures that the access planning process is carried out in a way that is consistent with the strategic needs of the industry and its customers. Any such statement should include the role of stakeholders and what Network Rail expects of them in terms of pre-planning and information.

2.14 **Recommendation - Network Rail should:**

- (a) **develop and publish a clear and transparent policy on how it will integrate its strategic planning vision with its timetable**

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<sup>8</sup> Although the majority of Network Rail Operations Planning staff will be based in Milton Keynes from that date, a satellite office will remain in Leeds until 2012.



**development activity – this should probably be included in Network Rail’s network statement; and**

- (b) appoint a ‘controlling mind’ who ensures that the access planning process is carried out in a way that is consistent with the strategic needs of the industry and its customers.**

## **ECML RUS**

### *Findings*

- 2.15 There was a general view, particularly from train operators, that the root cause of the problems experienced on the ECML actually started much earlier than two years ago with the development of the ECML RUS, which many believed had led the industry astray. It was also pointed out that the idea of a five trains per hour standard pattern timetable was first discussed with Railtrack by ECT back in 1999, although very little came out of it.
- 2.16 The former Strategic Rail Authority started work on an ECML RUS in 2002, and completed it in early 2005, but it was never published. In April 2005 responsibility passed to Network Rail, who restarted the process, but it was two years in the making and used data which was three years out of date. It was acknowledged that an already complex RUS was further complicated by the intense competition for capacity between ECT, Hull Trains and Grand Central on the one hand, and passenger versus freight services on the other. It was also felt that Network Rail’s unwillingness to produce an outline timetable to inform the RUS did not help matters.
- 2.17 In June 2007 the draft RUS concluded that without infrastructure enhancements a timetable with six long distance passenger trains plus one freight train per hour (6 + 1) was not possible without an unacceptable impact on performance and journey times. The effect of the draft RUS was to put the industry on a hostile footing and as a consequence it was challenged by ECT in September 2007. It is argued that the RUS was not fit for purpose, given that subsequent timetable development work has produced a 6 + 1 timetable with ‘generally’ improved, rather than worse, journey times and no significant predicted impact on performance
- 2.18 Despite having a RUS, at the start of the ECML process Network Rail gave every indication of not knowing what the capacity of the core route actually was. Indeed, one stakeholder questioned whether Network Rail understood what additional capacity will be made available by the CP4 enhancements.

There was also criticism that, even after publication of the RUS, Network Rail was still unwilling to agree to sell rights for any additional services. As a result, operators were forced to prepare and submit section 17 or 22A applications which cost them additional time and money.

#### *ORR's views*

- 2.19 We agree that there needs to be better alignment and correlation between RUSs and other industry strategic planning processes, including franchising and access planning and timetabling. It would clearly be beneficial if RUSs were established prior to the signing of new franchises and track access applications, which would mean prioritising them. This did not happen on the ECML and will not happen on the WCML unless DfT extends the current West Coast franchise.
- 2.20 On Network Rail's willingness or otherwise to sell rights, it is important to note the interaction between service specification and the consumption of capacity. Whilst Network Rail may know what capacity is available, this does not mean it will be in a position to say whether a specific permutation of services, which comprise a complex mix of stopping patterns, converging/diverging services and train types/speeds etc., can be accommodated. This is why our letter of 14 May 2010, in which we sought aspirations for new services on the WCML, set out very clearly the information that we felt Network Rail required in order to assess the aspirations.
- 2.21 However, work is in hand through the industry's access planning review not only to improve access planning processes, but also to consider how the interaction between the current franchising and access planning processes could be improved to ensure that users obtain maximum benefit from the process, including more clarity for franchise bidders. Work is under way to produce a statement setting out proposed principles for industry engagement during the period leading up to the Invitation to Tender (ITT) and formalisation of a franchise specification. If adopted, this should improve the overall process and outcomes of refranchising. This policy would of course be subject to the discretion of franchising authorities.
- 2.22 Work is also in hand, through our review of access policy, to clarify the role of RUSs. This will consider how we will take them into account when making access decisions.

## 2.23 Recommendation:

- (a) **Network Rail to ensure that there is better alignment between the access planning and RUS processes;**
- (b) **funders are encouraged to support an approach which gives better alignment between the access planning and franchising processes; and**
- (c) **ORR to clarify the relationship between RUSs and decisions on the allocation of capacity and set these out in its criteria and procedures document.**

## Network Rail's structure & culture

### *Findings*

- 2.24 The appropriateness of Network Rail's structure was questioned by a number of stakeholders. It is seen by some to be a very bureaucratic organisation operating in silos, with an apparent lack of empowerment at key levels of the organisation. This is an impediment to it reaching quick decisions. For example, it was thought that there was very limited communication and interaction between the commercial, strategic planning and timetable planning teams, resulting in a lack of continuity between short/medium term timetabling, long-term timetabling and the contractual arrangements. Furthermore, the process for achieving internal approval takes too long and involves too many people e.g. freight operator customer teams may have to contact numerous people within Network Rail to get matters resolved.
- 2.25 It was also suggested that Network Rail is incentivised not to want additional services running on the network as they may impact adversely on the PPM targets. PPM is now so important that it is seen as an impediment to growth. As a result, operators are not always willing to work and engage constructively with Network Rail. Notwithstanding commercial interests, there is an unwillingness to look at the bigger picture with Network Rail's letters of June and October 2009 being cited as evidence. It was also argued that, if it can be proved that more trains can run without infrastructure enhancement, some of Network Rail's investment schemes could be in jeopardy: a further incentive for Network Rail to refuse additional services.
- 2.26 Furthermore, the person doing most of the timetable development on the ECML had a limited idea of the commercial value of individual paths as

Network Rail's timetable planners tend to work in isolation from the commercial team. This also meant that the commercial team did not appear to be fully versed in what the timetable planners were doing, as the timetable planners were just trying to fit everyone in, and were paying limited attention to journey times and other revenue-related issues.

2.27 There was a strong view from the interviews that there exists within Network Rail a 'can't do, won't do' culture, with everything seen as a battle, and an approach that appears to focus on demonstrating why new proposals cannot be accommodated rather than on generating solutions. Network Rail is also seen as being too negative and too far removed from both its customers and the passengers and other end users. It will always revert to the easiest solution, rather than the best, erring on the side of caution. Essentially, Network Rail is seen as a risk-averse organisation. Some of the criticisms were qualified by statements that this does not apply to individuals, such as the timetable planners, but to senior management.

2.28 For its part Network Rail accepted that communication between teams had been poor, but felt that getting the CRE teams involved in the process was one of the things that had worked well. In terms of understanding the commercial values of paths, Network Rail said that its planning team do take into account the commercial and societal value of the services affected in making capacity allocation decisions. However, it argued that its view is limited by the extent of its detailed knowledge on variables such as revenue or indeed the sensitivity of that revenue to the various possible timetabling decisions. Network Rail accepts that it does not always get it right. It also pointed out that given the extent of change to the specification over the ECML development period, it would seem that those with access to more detailed information also do not always get it right first time.

#### *ORR's views*

2.29 Whilst we acknowledge some of the criticism levelled at Network Rail, it appears to us that many of the issues arose from other factors rather than the organisational structure. For example:

- (a) poor communication within the organisation;
- (b) the lack of a dedicated project manager; and
- (c) the lack of an overall 'controlling mind' to look after the project.

- 2.30 On culture, we are aware that there have been a number of issues and the impression certainly appears to have been in the past that the default response was often to explain why things cannot be done – rather than to investigate how they might be done. It is not unknown for Network Rail to refuse access, only for a train operator to demonstrate how its needs can be met. There also appears to be evidence of a disconnect between Network Rail’s timetabling function and the needs of passengers and freight customers. It is worth saying that we do not feel that this sort of response was true of the Network Rail team that undertook the ECML work. Indeed, as explained elsewhere in this report, we felt that Network Rail was perhaps too flexible. Having said that, Network Rail recognises that change is required and that there is a need for it to develop good, long-term working relationships with its stakeholders and customers that are built upon openness, fairness and trust, so that it is as easy as possible for people to do business with it. Network Rail has already introduced changes and an important element of these is its Stakeholder Relations code of practice<sup>9</sup>, which lets people know what they can expect from Network Rail, every time they deal with the organisation.
- 2.31 As part of its project management arrangements for significant timetable developments, Network Rail must ensure that it always appoints a project manager and designates someone at a senior level as the ‘controlling mind’. The former will drive the project, keeping it on track, ensuring timescales are met and ensuring good cross organisational working and communications. The latter has to be an experienced service planner, with a good understanding of timetabling, resourcing and commercial requirements.
- 2.32 Network Rail appears to have taken these points on board and is ensuring that appropriate project management arrangements are in place, e.g. in respect of the WCML process. More generally, Network Rail will be reflecting these lessons in all future workstreams, for example, its preparation for the expected recommencement of DfT’s refranchising programme later in the year.
- 2.33 Network Rail has recognised the need to develop a greater understanding within the organisation that the timetable is its fundamental offering to its customers and stakeholders and that all activities should be focused on

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<sup>9</sup> See Network Rail’s website at <http://www.networkrail.co.uk/asp/1544.aspx> for further information.

delivering it. This heightened recognition of the central importance of the timetable, together with the adoption of a more systematic project management approach to major re-casts, should result in a more pro-active, two-way exchange of information between train planning and other Network Rail functions.

#### 2.34 Recommendation - Network Rail to:

- (a) **ensure that internal communications are improved between teams working on the access planning activity and that it has in place clear guidelines and processes;**
- (b) **continue with its work on introducing updated guidance on stakeholder engagement; and**
- (c) **review its project management arrangements for timetable development to ensure that they are rigorous and include the appointment of a dedicated project manager and a senior responsible officer.**

### Timetabling & resources

#### Timetabling

##### *Findings*

2.35 There was a general feeling from passenger operators that the work produced by Network Rail's timetable planning team was good and that, when they were given clear instructions, it had gone well. However, some considered the remit for the timetable planners was too restricted, resulting in Network Rail looking at the timetable specification from a very narrow viewpoint, without considering the consequences. For example, Network Rail:

- (a) developed a timetable option which it thought best met everyone's needs but it was not what the funders wanted;
- (b) overlooked some of the issues such as the benefits of the Durham Coast re-signalling; and
- (c) concentrated on the Edinburgh – London and Leeds – London routes for passenger trains and Peterborough – Doncaster for freight services, ignoring the routes beyond these core routes. Therefore, path matching for freight services could not be carried out.

- 2.36 On the latter point, freight operators generally felt sidelined, even though they confirmed that in parallel workstreams they were fully engaged throughout, e.g. the development of the ECML RUS and in the Strategic Capacity work stream. Their main concerns were:
- (a) freight services were always being left until last in timetabling terms, irrespective of the level of rights held by the respective passenger and freight operators;
  - (b) that at all stages the information provided by Network Rail on which they were being asked to comment was incomplete. This made it difficult for them to comment fully as they were unable to assess the implications for their current services and for capacity remaining to accommodate future freight services. As a result they wasted much time and effort attending meetings; and
  - (c) the timetabling work did not establish whether the paths identified for freight services on the ECML were compatible with available paths on adjacent routes. This meant that the effects on freight services/paths could not be considered for the through journeys from origin to destination, with the freight operators unable to ascertain whether what was being proposed complied with their access rights.
- 2.37 In its response to our consultation, the Rail Freight Group (RFG) wrote pointing out that, although the freight operators had provided their requirements at the beginning of the process, they were not taken into account in the December 2008 capacity report. By October 2009 when the draft timetable was issued, although some progress had been made, there were still significant freight issues outstanding. Given our plan to make an early decision on specific rights, RFG was surprised that decisions were about to be taken when the impact on freight was unknown and unresolved. Whilst accepting that most of the issues were resolved by the time we finally issued directions, RFG said that it failed to see why it took two years from freight operators submitting their requirements to reach a position where pathing of existing freight services and paths for freight growth were resolved. It concluded that the requirements of freight and other users must be included at the outset of timetable development, not as an afterthought. Sadly, the ECML is not the only example of such an approach.
- 2.38 Stakeholders also acknowledged that Network Rail had to be responsible for the development of the timetable, though one suggestion was that the service

design could have been contracted out with the detailed timetabling then undertaken by Network Rail. A couple of stakeholders suggested that rather than adapting the existing timetable it would have been better to start again, e.g. by using the Taktfahrplan concept to develop a completely new timetable using external resources if necessary.

- 2.39 Grand Central commented that it had not benefited from the standard pattern timetable; in fact, the opposite applied, with journey times on average longer. It queried why, if there had to be only one open access service in the hour, did it have to be at the same time each hour – why not a different path on alternate hours, slower for Hull Trains, with its additional station stops, faster for Grand Central, non-stop south of Doncaster or York? Hull Trains too thought that it would have been better if Network Rail had varied the standard pattern.
- 2.40 Alliance Rail expressed the view that Network Rail was not flexible enough in developing the timetable, instead taking a dogmatic approach and using the existing timetable as the base, with the Anglo-Scottish service not leaving King's Cross at a time to make maximum use of the capacity available. Furthermore, instead of looking at a standard pattern timetable for the whole route, Network Rail should have looked at creating standard paths over separate sections of the route. Also, Network Rail had not made maximum use of the capacity available - for example, having ECT's departures from King's Cross five minutes apart when the signal headway is only three minutes.
- 2.41 We did not ask Network Rail to produce a weekend timetable, because the priority was to establish that an acceptable weekday timetable could be delivered containing all the services for which we had said we would grant approval. Nevertheless, operators felt that Network Rail should have produced a weekend timetable. Indeed, Grand Central noted that, if Network Rail had produced an acceptable weekend timetable at the same time as that for weekdays, it might not have objected to the worsening of its weekday timetable, given that Grand Central's best train loadings are on Sundays.

## Resources

### *Findings*

- 2.42 There was general agreement that Network Rail had not devoted sufficient resources to the development of the timetable. Questions were raised as to



whether Network Rail generally is sufficiently resourced, both in terms of quality and quantity, to deal with timetable requests, let alone to be proactive and come to the operators with proposals. Respondents said that Network Rail does not have enough train planners with the necessary knowledge and experience who know the route. It is not unknown for it to rely on timetabling input from the train operators. Whilst the passenger operators were generally able to engage on this basis, this was not easily achieved by national freight operators, who have to deal with all the planning offices and have neither the time nor the staff to help Network Rail in detailed timetable development work.

- 2.43 Given that Network Rail sometimes has difficulty in covering its normal timetable workload, it was suggested that it should use external resources when something like the ECML process comes up, as it had when the December 2008 WCML timetable had been developed. It was felt that that resource should be independent - the use of a resource from one of the applicants not being acceptable due to lack of impartiality. However, some stakeholders felt that Network Rail already has sufficient people in its access planning function (thought to be over 300). The problem is that they work in three separate functions – strategic (including performance modelling), permanent and short term timetable planning. When there is a priority in one area it appears that staff cannot be drafted in from one or both of the other two functions to help to resolve a major issue quickly.
- 2.44 There were also differing views on Network Rail’s policy of consolidation of timetabling in one location (Milton Keynes) rather than it being in separate offices. Some saw this as beneficial because it would avoid the issue of the separate planning offices appearing to operate independently, looking only at their particular area of responsibility rather than the end to end timetable – this was of particular relevance to long distance freight services. However, most stakeholders felt that Network Rail’s future timetabling capability is at risk given the unwillingness of some experienced staff to move to Milton Keynes. They felt that there is a long learning curve and local knowledge is important, so centralisation was not a good idea. A few stakeholders noted that Network Rail has already lost many experienced timetablers and raised questions over how and when it is going to replace them. It was also pointed out that Network Rail was relying on one experienced timetable planner to complete the ECML timetable before he retires this month.

2.45 Although there is a belief that ITPS, when functioning properly, will make matters easier for Network Rail and the industry, Network Rail will still need experienced staff to produce complex new timetables, such as those on the WCML and ECML. The next twelve months will be challenging for Network Rail.

*ORR's views*

2.46 Whilst we acknowledge the work produced by Network Rail's timetabling team, we have some sympathy with the general view expressed by stakeholders that Network Rail gives insufficient priority to timetabling and therefore does not devote sufficient resources to it. It needs to be much better resourced in terms of the number of staff as well as their knowledge. Network Rail's ethos appears to be to give the job to one person and let him/her get on with it, meaning he/she has to deal with all the train operators. Whilst he/she appears to be trying to satisfy the needs of everyone, it sometimes means that the operator who shouts loudest and most often gets what it wants. Such an approach also led to a lack of suitable cover when the senior timetable planner was absent on leave or otherwise out of the office. Everyone interviewed agreed that the process took too long and the lack of resource in this area was one of the main contributing factors throughout the two years.

2.47 On the issues raised by the freight sector (paragraph 2.36 above), again we have some sympathy with the views expressed and we are certainly concerned to ensure that the requirements of freight operators are taken into account and not sidelined, particularly where they hold established access rights. However, it should be remembered that the purpose of the ECML exercise was to establish a standard pattern passenger timetable - freight does not, of course, conform to a standard pattern. Therefore, in our view, the only way Network Rail could sensibly undertake this work was to first establish the broad standard passenger pattern and then determine whether it left sufficient space for the required freight services.

2.48 It was widely recognised across the industry that a standard pattern timetable was the best way forward in order to create the extra capacity required to meet as many of the demands for additional paths as possible. It was our understanding that a standard pattern timetable was necessary to accommodate all the services that we approved in the decision of February 2009. We did set a number of parameters for Network Rail – namely that the

WCML timetable should not need to be amended and that a major re-write of the ScotRail timetable was not an option. This fixed Transpennine Express, CrossCountry, West Coast Trains and some ScotRail services at Manchester, Birmingham, Glasgow and Edinburgh, which limited the room for change on the ECML. The open access operators had every opportunity during the process to make their views known.

- 2.49 Whilst the process for development of a detailed timetable may still work on those parts of the network where there is a dominant operator (providing that operator is prepared to work closely with Network Rail), it does not work well where there are multiple operators, such as on the ECML. The process for significant long term change to the timetable has been conducted very much on an ad hoc basis up to now. As a result it can be expensive, lengthy, possibly lead to sub-optimal use of scarce capacity and can even present a barrier to entry for new operators. This issue has been addressed by the recent review of access planning, and the proposals of that review are being incorporated into the process for considering new access applications for the WCML.
- 2.50 We have already mentioned at paragraph 2.11 Network Rail's plans for centralising its timetable planning discipline which, when established, is intended to remove many of the planning and resourcing issues experienced on the ECML. It is also worth repeating the good work that has been carried out by the IWG in overhauling Part D of the network code to produce a process that is clear, transparent and works. The proposal for change is currently going through the consultation process. The IWG will follow up with a further proposal for change that will introduce the Calendar of Events and project working groups, which are first being tested on a specific December 2011 timetable change, and a revised Decision Criteria.
- 2.51 **Recommendation: The timetabling process should be accorded more priority within Network Rail, properly resourced and conducted in line with rigorous project planning disciplines. Network Rail should produce and publish a clear process which would accurately reflect the requirements of the network code.**

## Stakeholder engagement

### *Findings*

- 2.52 The general message we received was that the industry workshops, when eventually organised, worked well. This was because they created the opportunity for Network Rail to get an understanding of all stakeholders' requirements and enabled compromises to be agreed, so that the best overall solution could be more easily identified. However, some stakeholders felt that as the process continued the workshops became shorter, with Network Rail becoming more defensive and not giving enough opportunity for discussion of what it had produced.
- 2.53 The point was also made that the Network Rail/ORR/ECT meetings in December 2009 achieved a lot, with Robin Gisby's approach at these meetings removing many of the blockages. Whilst this was welcomed, respondents asked how the industry got into a position where the May 2011 timetable Priority Date had to be deferred.
- 2.54 Concern was expressed that after we issued our decision in February 2009, ECT worked with Network Rail unilaterally on its own aspirations, but that only one month's real work was done by Network Rail before the process became multilateral. It was only with the three days of workshops in August 2009 that progress began to be made. Stakeholders said that, without our prompting Network Rail to start talking to the operators and other stakeholders, the process would have been delayed even further.
- 2.55 Network Rail acknowledged that whilst some of the one to one meetings had been productive, others were not, as it tried to respond to changing requirements put to it during those meetings. With hindsight it recognised that it should have exerted better control earlier in the process.
- 2.56 The passenger representative bodies were pleased that we included them in our consultations, but were concerned that the industry does not always involve them. In the case of the ECML process, they thought they were not involved early enough in the process and were not involved in any of the timetable development meetings. They saw an enhanced role for stakeholders in the development of timetables, so that they are for the benefit of passengers. The formal involvement of stakeholders is vital to the outcome producing the correct balance between the interests of the operators,

fundlers, infrastructure manager and the end users, both passengers and freight customers.

2.57 Passenger Focus argued that there needs to be sufficient transparency for passengers and stakeholders to understand and discuss the issues at two stages in the process:

- (a) an outline specification showing quantum, indicative stopping patterns, and, where applicable, journey times. The specification should also provide detail about what individual operators are trying to achieve – e.g. maximisation of revenues, or better utilisation of rolling stock; and
- (b) a detailed timetable, which must be the whole timetable – i.e. including local services on the route and services feeding into those on the route.

When a timetable is already well developed it is very difficult to change the principles, which is why passengers need to be asked their views at the outset. Similarly, the views of local authorities, regional stakeholders and user groups should be obtained.

2.58 Passenger Focus understood why we only consult the industry and the passenger representative bodies about track access applications but said that as we make decisions which affect the service that passengers get, we needed to involve them as well. Such a consultation would flush out the downsides, which can be glossed over at present. Passenger Focus believes it is important to ensure that there is a good understanding of the advantages and disadvantages of proposals.

2.59 Many consultees were in favour of the proposals to establish stakeholder working groups, with a clear remit and project plan incorporating a Calendar of Events for major timetable changes, coming out of the access planning review, and to be included in Part D of the network code. It was suggested that we should monitor delivery of the project. Both passenger representative bodies would like to see a more holistic approach, and believed that creating a project group, involving them, to oversee any major change in the timetable of a route - caused by a new franchise, new services, new infrastructure etc. - would be beneficial. It would provide them with an opportunity to take a strategic view of the timetable and remind operators of the need to sense check the emerging work against passenger needs.

- 2.60 However, there were some concerns, in particular that Network Rail would use such a forum as a means of delay and that it would only work when operators had been allocated a quantum of paths by ORR – i.e. not in the first part of the process, when operators do not have any certainty of the paths they would be granted and Network Rail is trying to work out what could be accommodated. Concern was also expressed that such a group, with representatives of each of the main operators, would become a discussion group for the rehearsed positions of each of the three lobbies – franchised operators, freight operators and open access operators.
- 2.61 Whilst the forthcoming WCML timetable development process should be less complex than the ECML process, as the WCML timetable is likely to be a variation on what exists now rather than a complete re-write, TS believes that a project group is necessary and wishes to be involved in such a group. This is in view of the importance to Scottish Ministers and TS of Anglo-Scottish services between Glasgow/Edinburgh and the North West/West Midlands/London. TS also said it would be important that, should franchised services be in competition for capacity with planned new open access services, we make clear the value we place on say, Glasgow – London and Glasgow – West Midlands services, and the methodology we will apply to evaluate them against the open access services.

#### *ORR's views*

- 2.62 We agree with the general view of stakeholders that the ECML process highlighted the need for a structured programme with adequate opportunities for them to input and that somebody needs to take ownership, with a suitable forum for discussion. There is a need to establish early on at what point stakeholders should become involved and who should be involved, e.g. when funders should be involved and when and whether there needs to be consultation with passenger representative bodies. We certainly agree that they should be involved.
- 2.63 Those interviewed all agreed that the bilateral meetings with individual operators and the workshops helped to move things along considerably, but they should have been arranged much earlier in the process. Although the Network Rail/ORR/ECT meetings may have achieved a lot, this was not the ideal way to move the process along because of the lack of transparency to the other interested stakeholders. Again, this is another issue that Network

Rail has already taken on board, for example, on the WCML capacity project bi-lateral meetings have been programmed from the outset.

- 2.64 Joint meetings of the affected operators, rather than individual meetings between the operators and Network Rail, are usually more effective in making progress, as these create the opportunity to understand everyone's requirements and enable compromises to be agreed so that the best overall solution can be identified more easily.
- 2.65 As many stakeholders acknowledged, the issue of stakeholder engagement is already being picked up through the access planning review and the development of proposals for a Calendar of Events and the establishment of project working groups for significant timetable workstreams such as the ECML process. These arrangements will be included in Part D, which itself is being overhauled to make it clearer and more transparent. Delivery of this work is being monitored by the Industry Steering Group, of which we are a member. We do not accept that Network Rail will be able to use the new arrangements to introduce delay – the whole point behind the new arrangements is that it would have clear deadlines to meet.
- 2.66 **Recommendation: Network Rail and ORR to continue with the work of improving stakeholder engagement. The industry generally to ensure that the passenger representative bodies are included at an appropriate stage.**

## **ORR's role**

### *Overview*

- 2.67 It was generally agreed that it was a good idea for ORR to get the process under way early on with the launch of a letter asking operators to make their service proposals known, and that we should adopt the same approach for the expected requests for capacity on the WCML<sup>10</sup>. Our open and transparent way of handling the process, including the consultation process, ensuring that all interested stakeholders had an opportunity to input, was also appreciated.
- 2.68 There were also many positive comments about the way in which we arrived at the decision even though not everyone agreed with it. We were not swayed

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<sup>10</sup> Letter issued to the industry on 14 May 2010, available at <http://www.rail-reg.gov.uk/server/show/nav.2437>.

by pressure from the funders and/or the franchised operator as evidenced by our decisions to make some of ECT's rights contingent, and to include defeasance provisions where necessary in some access contracts. London TravelWatch (LTW) said that we considered the competing applications fairly and equitably and came to a decision based on the evidence.

2.69 However, there was criticism about:

- (a) the timescales and deadlines;
- (b) the clarity of the remit and the way in which it was interpreted by Network Rail;
- (c) ORR's process, which can be seen as complex and confusing; and
- (d) the lack of clarity over whether ORR or Network Rail was leading the process.

#### *ORR's views*

2.70 We accept many of the criticisms, particularly in relation to timescales, remits and our role in the process, and these issues are discussed in detail below. In terms of the clarity of our process, we have over the last two years or so carried out a programme of work aimed at achieving a more focused and effective approach towards access regulation, which is consistent with the Government's Better Regulation Initiative. We have done this by ensuring that we are focussing on those issues where we can add most value, facilitating a public interest outcome, reducing the regulatory burden/cost on the industry and withdrawing where this makes sense and the industry is in a position to take more responsibility.

2.71 This has resulted in a number of significant changes, including the adoption of a more proportionate response to all applications, allowing the industry more flexibility on the more straightforward and minor service changes through the wider use of general approvals and ensuring that there is, as far as possible, better alignment and integration of track access processes with the industry's own processes. We also published clearer and more transparent criteria and procedures last year.

2.72 This work continues. We are working closely with the industry through the review of access planning to ensure that we:



- (a) provide greater transparency and understanding to those funding, planning and using rail services;
- (b) enable Network Rail to respond to all applications in a more consistent, efficient, reliable and timely way; and
- (c) provide more effective processes for operators to work together with Network Rail in optimising their use of capacity.

2.73 We are also working with the industry to produce a clearer and more transparent Part D to the Network Code through our involvement in the industry's access planning review<sup>11</sup>. We will also be reviewing our model clauses, particularly the ways in which Schedule 5 in the passenger model contract could be improved, looking to see what scope there is for extending the use of general approvals and making our application forms easier to complete.

2.74 **Recommendation: ORR will continue to work with the industry to find ways of improving, simplifying and streamlining industry processes, including its own.**

## **Timescales**

### *Findings*

2.75 Whilst the industry acknowledged that dealing with the various ECML track access applications had not been an easy task, the key issue for most stakeholders was the length of time the process took, as evidenced in the chronology, and the fact that in reality it is still ongoing.

2.76 It was suggested that the real timescale is arguably longer in that it started with the letting of the ECT franchise and the commitment to deliver Service Level Commitment 2 (SLC2), in August 2007. There was then a further delay awaiting the establishment of the RUS at the end of April 2008. Even then, detailed timetable planning work did not start until March 2009, work on the Saturday timetable did not start until April 2010, and work on the Sunday timetable, representing some operators' busiest day of the week, only started in June 2010. Effectively the process is likely to take three years and the delay has caused numerous problems, including creating business

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<sup>11</sup> See <http://www.rail-reg.gov.uk/server/show/nav.2253> for further information.

uncertainty for all operators. Most importantly, the provision of new improved passenger services has been delayed.

- 2.77 There was also general agreement that we should have been more forceful in our dealings with Network Rail. This applied particularly to the time we allowed it to undertake specific pieces of work: it was suggested that we should have forced Network Rail to allocate more resources. We allowed timescales to slip too easily through a lack of proper project management. Even when we set deadlines, Network Rail still did not produce a full timetable - operators quoted the absence of a weekend timetable and fully validated freight paths from origin to destination.

#### *ORR's views*

- 2.78 We accept that the process took too long. There are many reasons for this. As the chronology demonstrates, there were delays throughout the process and it is fair to say that all stakeholders, including ORR, must share some of the responsibility. However, we are confident that the changes being made through the industry's access planning review will result in a more efficient and transparent process that involves all interested stakeholders, such as is now happening on WCML.
- 2.79 **Recommendation: ORR will ensure that rigorous project planning disciplines are applied to all future projects of a similar nature, including the setting of clear timescales and milestones.**

#### **Setting deadlines for applications**

##### *Findings*

- 2.80 There was concern from a number of stakeholders about the submission of last minute applications from both new aspirants and existing operators trying to 'block' a rival's bid. We were asked to consider whether we could impose a deadline on applications for competing capacity, to avoid the problems created by late applications, and also impose a deadline on major changes to those applications, to avoid the problems created by changes to ECT's requirements. It was suggested that we should use the Part D process, with a deadline linked to the Priority Date.
- 2.81 Alliance Rail re-iterated its belief that we had been wrong to accept a late change in ECT's destination from Leeds to York, and that these paths should have been made available for all operators, including Alliance Rail, to apply

for. Alliance Rail could find no reasoning for this change which appeared to it to be outside the network code, our criteria and procedures, and had no justification. It also again brought into question the validity of the RUS process.

- 2.82 Alliance Rail also noted that the ECML RUS had identified Halifax and Bradford as destinations for additional services, so Grand Central's application of 18 April 2008 was both consistent with the RUS and with its earlier application which had passed our 'not primarily abstractive' test, but had been rejected because of lack of capacity. In contrast, Hull Trains' application of 8 May 2008 for services to Harrogate was for a destination not identified in the RUS, and not mentioned by Hull Trains during the RUS discussions.
- 2.83 When we suggested that Hull Trains had not declared its hand for fear of copycat applications, Alliance Rail said it did not accept that an existing operator should not reveal its aspirations during the RUS development process. It was not right that we had treated the two applications as equals. We should have given higher priority to an application in line with the RUS.

#### *ORR's views*

- 2.84 This is not a new issue. During our review of our Criteria and Procedures for the Approval of Track Access Contracts in 2007, we consulted on the principle of establishing a process for setting deadlines and parameters for the submission of applications. There was a mixed response, the main concern being that deadlines could limit a train operator's flexibility to adapt to late changes in demand. Some consultees considered that any deadlines should not restrict late applications in certain extenuating circumstances.
- 2.85 It was also suggested that deadlines should be appropriate to the type of application, i.e. more significant applications should require an earlier deadline. The different types of application could be distinguished by 'materiality criteria' and deadlines should not apply to applications arising out of the timetabling process. However, there was general recognition of the problems with conflicting applications, particularly those that arrive late in the process, with operators being required to make known their aspirations during Network Rail's consultation process. As a result of concerns at that time that we may not be able to impose deadlines because under the

Railways Act 1993 (the Act) anyone can submit an application at any time, the proposal went no further.

- 2.86 However, we have reviewed the position again in the light of further experience. Notwithstanding the right under the Act for anyone to make an application at any time, we believe that there is a strong case for priority to be given to more significant applications where we have set out clear timescales, particularly on congested parts of the railway. This is the approach we have adopted for the WCML, where we said that we would only take account of aspirations received by a given date for the purposes of that project. However, it was made clear that, whilst this did not preclude anyone from submitting an application, which would still be considered in line with our usual processes, it would not be given the same level of priority unless there was strong justification.
- 2.87 This is particularly true where a train operator might seek to 'block' another company's access application by making a rival application. We will try to manage this around the Network Rail-led consultation process and, where appropriate, through the changes to the access planning process which are being considered as part of the review of access planning workstream<sup>12</sup>.
- 2.88 On Alliance Rail's first point, although not a matter for this review, it is our view that this issue was addressed thoroughly in our letter of 25 November 2009<sup>13</sup>. On its second point, we have some sympathy with Hull Trains in wishing to keep its aspirations quiet, given that shortly after they were made public, ECT decided that it too wished to operate services to Harrogate. In fact, we had been aware of Hull Trains' aspirations for some time, following a confidential presentation by Hull Trains.
- 2.89 Finally, in relation to giving priority to applications consistent with a RUS, as part of our review of access policy<sup>14</sup>, we will be looking at how we can/should make RUSs more useful for access decisions and more generally providing greater clarity on our approach to them. The industry will be consulted in due course.

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<sup>12</sup> <http://www.rail-reg.gov.uk/server/show/nav.2253>.

<sup>13</sup> <http://www.rail-reg.gov.uk/upload/pdf/ecml-orr-letter-251109.pdf>.

<sup>14</sup> For further information on our review of access policy, see <http://www.rail-reg.gov.uk/server/show/nav.2254>.

2.90 **Recommendation: ORR will develop and introduce arrangements, in certain specified circumstances, for a cut-off date, and these will be set out in its criteria and procedures document<sup>15</sup>.**

## Remits

### *Findings*

2.91 There was a general, but not unanimous, view that we should have provided a clearer and more prescriptive remit and specification for Network Rail, particularly given that Network Rail does not appear to go beyond what is specifically asked of it, i.e. it is seen as a reactive rather than a proactive organisation.

2.92 The minority view was that our remit was possibly too constraining, and that it should have been more open to Network Rail to develop proposals.

2.93 Network Rail agreed that it needs a clear remit at the start of such a project, clearly setting out the aspirations of each of the operators, particularly in terms of service patterns, journey times, calling patterns etc. It should be a fixed remit with a change control process, and a cut off point for funders and/or operators seeking changes. Network Rail also made the point that whilst the initial remit was essentially to prove that it could accommodate 6 + 1 per hour, it also had to work on a 5 + 2 option to satisfy the stated aspirations of the freight operators.

2.94 Network Rail said it had written to us back in October 2009 saying that further significant changes had been sought by DfT and that this was creating difficulties because it required a fixed base to develop the timetable - whilst this base continued to move, it was unable to complete essential parts of the process.

### *ORR's views*

2.95 We accept many of the points raised by stakeholders and that we need to be more precise in setting remits and be clear about what operators actually want. However, it is important that in doing so we strike a balance. Network Rail is the infrastructure manager with responsibility for timetabling and it is

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<sup>15</sup> “*Criteria and procedures for the approval of track access contracts*”, Office of Rail Regulation, London, November 2009, available at <http://www.rail-reg.gov.uk/server/show/nav.2409>.

important that any specification should not tie Network Rail down too tightly - it must have the opportunity and scope to develop the best timetable based on its experience and knowledge of the network and its capabilities. We clearly need to engage more with Network Rail in agreeing the remit, but it is also true that Network Rail could and should have been more proactive in obtaining clear remits from the operators and funders in developing the timetable.

- 2.96 In order to carry out our economic assessment of competing applications where it is known, or indeed merely believed, that there is insufficient capacity to satisfy them all, we need an outline timetable. One of the difficulties we faced during the ECML process was the lack of knowledge of the capacity available and the absence of an outline timetable – hence the work Network Rail had to undertake in 2008, before we reached our February 2009 decision.
- 2.97 Our remit, which we published on 30 June 2010<sup>16</sup>, for the WCML capacity work picks up on the lessons learned from the ECML and will provide the basis for all future projects going forward.
- 2.98 **Recommendation: ORR to ensure that:**
- (a) **it provides Network Rail with clear and unambiguous instructions/remits;**
  - (b) **strong project management arrangements are in place, both in Network Rail and within its own organisation; and**
  - (c) **interested stakeholders understand how the timetable development process will work, and their role in it.**

## **ORR's attendance at industry meetings**

### *Findings*

- 2.99 There was a belief from train operators and Network Rail that it would have been valuable for us to attend meetings as an observer, particularly the industry stakeholder ones, so that we would have had a better understanding of what was actually happening. Indeed, Network Rail argued that it would

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<sup>16</sup> <http://www.rail-reg.gov.uk/upload/pdf/wcml-capacity-letter-300610.pdf>.

have been helpful had we been more proactive when we did attend meetings, rather than just acting as an observer.

2.100 TS said that it was important for Network Rail's internal work to be challenged and that there was no reason why we should not be involved in the process and attend meetings, believing that would be in line with our section 4 duties under the Act.

*ORR's views*

2.101 We decided at an early stage in the process not to attend industry meetings, even as an observer, because of possible conflicts with our role in approving applications and/or acting as the appeal body in the event of any subsequent timetabling dispute. Accordingly, we had to be very careful about getting too involved in the detailed discussions on timetabling. We did attend the initial stakeholder meeting, to explain what was happening and to address any questions, but not the subsequent ones. However, towards the end of the process, we did get more involved, attending two meetings with Network Rail and ECT in December 2009 to help move matters along.

2.102 We believe that the responsibility for managing processes such as this one lies squarely with Network Rail. It is its responsibility both to undertake an appraisal of network capacity and to come to conclusions as to how it should be allocated and timetabled. It is then our role to ensure that the allocation of that capacity by Network Rail is fair and efficient, and to determine that allocation if there is any dispute, as happened on the ECML. This is the approach that both Network Rail and we have taken on the WCML capacity work, where Network Rail has been remitted to produce a capacity and performance report, including a recommendation on how capacity should be allocated. This will include the development of a prototype timetable.

2.103 It is also worth reminding Network Rail and the industry that the former's network licence requires it to run an efficient and effective timetabling process. Notwithstanding the above, and having regard to the need to be careful not to prejudice our appellant role, we will consider further our role in similar exercises to see how we could add value by attending meetings without prejudicing our regulatory position.

2.104 **Recommendation - ORR will in future:**

- (a) **attend initial meetings of industry stakeholders to explain its position and to set out what it hopes to achieve from the project; and**
- (b) **consider attending other meetings throughout a particular project as an observer on a case by case basis.**

## **Project management arrangements**

### *Findings*

2.105 There were strong views that we should have ensured that suitable project management arrangements were in place both in Network Rail and within ORR. Also, it was thought that we should have been more proactive in telling Network Rail to make swift progress after 29 February 2009. The chronology suggests that not much happened for some time after that date and that we therefore did not take a sufficiently tough stance with Network Rail and the industry. Furthermore, there was an unacceptable delay between the submission of some applications, e.g. ECT's track access application in June 2008, and our decision at the end of February 2009, which meant that eight of the 18 months available for the then planned December 2009 implementation were used up.

2.106 It was suggested that there were times when it was not clear who in ORR was dealing with the project. TS indicated that whilst it felt we were clear about what we were trying to achieve, there was a lack of clarity about what the ECML timetable would look like. In future there needs to be clarity about the objective and a clear project plan showing how the industry achieves it. Whilst our letters to the industry included next steps, they did not go further.

### *ORR's views*

2.107 We accept the criticism about the lack of robust and appropriate project management for the ECML work and that we were not proactive enough in monitoring progress. As a result, unnecessary and significant delays were introduced into the project timetable.

2.108 However, we do not accept the point that there was no clear point of contact. It has been standard operating practice within ORR for many years to have a sole point of contact for each and every project or workstream. This was no different for the ECML case. The named case officer through whom all



contact should have been made was in contact with all relevant stakeholders. Indeed, we were not aware that this was ever an issue.

**2.109 Recommendation: ORR will ensure that:**

- (a) **both ORR and Network Rail establish suitable project management arrangements at the outset of any project, including the early publication of a project plan detailing timescales, milestones and resources; and**
- (b) **the sole point of contact, together with others involved in a particular piece of work, is clearly detailed at the outset.**

**ORR's timetabling & planning resources**

*Findings*

2.110 Some stakeholders raised the issue of whether ORR should employ external consultants to provide a timetabling and performance assessment in the same way that we employ external consultants for an economic assessment of the applications. The general view was that we should not, as this would allow Network Rail an excuse if it then had problems in implementing what our consultants had produced. Instead, ORR should use its powers to ensure that Network Rail does its job properly. However, some suggested that we should not rely on Network Rail. As the independent regulator, they considered that we should have our own timetabling resources to assess what Network Rail has produced, or at least seek an independent view. We were reminded that this point had been made in an ORR Board paper back in 2004.

2.111 A minority view was that timetable planning should not be undertaken by Network Rail at all. Instead, an independent company should be formed which is incentivised by us to maximise utilisation of the network. It was suggested that Network Rail's culture is one of caution and to take no risks with reliability. It was seen as perverse that the infrastructure provider is tasked with overseeing slack timetables which cope with poorly performing infrastructure. These respondents believed that, as long as Network Rail controls the process, the industry will continue to see the same problems occurring.

2.112 A number of stakeholders were critical that we had issued directions for detailed access rights without any performance modelling having been

undertaken on the then latest iteration of the timetable<sup>17</sup>. As a result, train operators did not, and still do not, know the impact the new timetable is likely to have on their PPM. One consultee widened the discussion to express concerns about the limitation of current performance modelling approaches. In its view Railways has serious limitations and is not an appropriate tool for modelling a large part of the network. The only available alternative at present is to rely on expert judgement, but clearly this is also unsatisfactory. There is a pressing need for the industry to develop better performance modelling techniques.

2.113 One operator also said it was concerned that when we change our economic consultants – as we did for this series of applications - there is a risk of them taking a different approach, if only in the way that the data is presented, which creates additional work for the operators, who are expecting to see it presented in the same way as last time.

#### *ORR's views*

2.114 Network Rail has a clear responsibility to provide capacity, timetabling and performance services to the rail industry and should be resourced to provide the necessary assessments to a high professional standard. The industry should expect Network Rail to conduct analysis of the economic issues and to demonstrate to us and the wider industry how it reached its views. For this reason there should be no need for us to employ our own consultants on a routine basis: this would be a duplication of effort which would increase our, and therefore industry, costs.

2.115 On the point about economic consultants, as a public body it is necessary for us to tender for consultancy work, and on this occasion the consultants used previously had already been appointed by one of the applicants, so could not be invited to tender for the work. However, the consultants we appointed had access to all the previous data and documentation, and, of course, we maintained an overview to ensure consistency.

2.116 **Recommendation: No change to ORR's current position, although ORR will work with Network Rail to ensure that it has suitable arrangements in place so that it can provide high quality professional advice and assessments.**

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<sup>17</sup> Note: some modelling had been undertaken on the timetable which informed our decision of February 2009.

## **ORR's publication policy**

### *Findings*

- 2.117 There was almost unanimous agreement that we should not in future publish timetables which were still under development because it led to a lot of additional work managing stakeholders and fielding enquiries, which could only be answered in an inconclusive way – that is, it was for DfT and the operators to specify their requirements. It also led to false hopes and misunderstandings, for both passengers and freight customers, particularly when the industry is then unable to deliver. This is a particular issue on a shared route such as the ECML where the overall timetable available to passengers is spread between multiple train operators and is also dependent upon DfT specification, Network Rail timetabling and our approval of track access rights. It would be far better to keep timetable iterations within industry processes.
- 2.118 The exception to the general view was Passenger Focus, who argued that if we had not published the draft timetables no one would have known what was being proposed, and thus would have been denied the opportunity to comment on the downsides for those using particular stations. However, the timetables should have been more clearly caveated as work in progress. More generally, the passenger representative bodies would like to see more of the confidential commercial information which accompanies track access applications made available to them, to inform their responses to consultations.
- 2.119 Freightliner also raised a more general question about the extent to which we should publish operators' views where there are issues or conflicts. It said this was not always helpful, can create issues unnecessarily and cause uncertainty in the minds of freight customers. Ideally, publication should not take place until a decision has been made.

### *ORR's views*

- 2.120 As previously indicated, we have already taken Freightliner's point on board in the WCML capacity work, where we have said at the outset that during the early stages of the process we will not publish any of the responses received. Rather we will wait until after the completion of the process and publish all relevant documentation when we publish our decision. However, we believe that Passenger Focus made a number of legitimate points, and our views on

its involvement are discussed below. The same principle should apply to consultees' responses in respect of track access applications.

- 2.121 Recommendation: ORR will review its policy on the publication of material and provide further clarifying guidance as necessary in its criteria and procedures document.**

## **Industry structure**

### *Findings*

2.122 The problems experienced have raised the question among some stakeholders as to the appropriateness of the current industry structure, i.e. allowing a system that provides for owning groups to compete with each other to win a tightly specified franchise under which the successful bidder has to then compete for capacity with open access operators, both passenger and freight. If there is a limit on capacity then inevitably there will be conflict.

2.123 It has been argued that having such a competitive environment delayed the introduction of ECT's Leeds half hourly services by 18 months, and has delayed introduction of SLC2 by the same timescale. Open access operators are prevented from making calls which might be in the interest of passengers because they would fail the 'not primarily abstractive' test. As a result there may be too many trains running non-stop between London and Doncaster or York in the May 2011 timetable, which would not be an efficient use of limited capacity.

### *ORR's views*

2.124 The structure of the industry is not a matter for ORR. However, the Government has recently announced a review of franchising and is of course jointly sponsoring with us the rail Value for Money study.

## **Allocation of capacity between passenger and freight services**

### *Findings*

2.125 Freight operators have ongoing concerns about how we allocate capacity between passenger and freight services and reiterated the fact that freight trains only run when there are goods to be moved, i.e. in reaction to customer demand, whereas passenger trains run irrespective, i.e. in anticipation of customer demand. The reluctance of freight operators to operate empty or

under utilised trains simply to utilise a path often gives the incorrect impression that there remains sufficient capacity for freight growth.

#### *ORR's views*

2.126 In making access decisions we already take account of the potential for future growth in freight services, as indeed we did on the ECML. Nevertheless, we recognise the concerns over how we decide between passenger and freight services when allocating scarce capacity. This is why, as part of our ongoing review of access policy<sup>18</sup>, we looked at the issue and consulted the industry on some proposals drawing on a separate industry workstream looking at freight values of time. Our conclusions on this consultation are due to be published shortly.

### **ORR's role in protecting the interests of open access operators**

#### *Findings*

2.127 It was suggested that ORR tends to favour open access operators - in part it was felt that this appeared to be the result of a bias in favour of competition rather than co-ordination and best use of capacity. Some stakeholders said that we might be expected to favour the largest operator in order to generate the greatest benefits, but this does not appear to happen.

2.128 On the other hand, it was argued that open access operators, with few services, were in need of more protection than franchised operators who obtain the access they want at the expense of those open access operators, irrespective of the overall passenger benefits. For example, there are no incentives for Network Rail to deliver good journey times for open access operators – providing they are within contractual limits. Some respondents believed that we should have been more positive in our decision letter, stressing the importance of open access operators having good journey times.

#### *ORR's views*

2.129 We already ensure that all applications before us are dealt with in a fair, transparent and balanced way and in accordance with legislative requirements and published policies. We are content that this happened in the case of the ECML. We accept that our decision letter might have been

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<sup>18</sup> <http://www.rail-reg.gov.uk/server/show/nav.2254>.

more explicit on the specific issue of journey times; however, we believe that there is also an onus on stakeholders to look after their own interests. We also note that the Decision Criteria (in Part D of the Network Code) already provide an incentive for Network Rail to deliver good journey times, though the dispute resolution process is not an attractive proposition for an operator to get what it wants.

2.130 More generally, our ongoing review of access policy is already looking at the issue of conflicting capacity and competition<sup>19</sup>.

2.131 **Recommendation: ORR will ensure that journey times are given more recognition in any similar exercise (this has already been noted as an issue for the WCML capacity exercise).**

### **Other issues**

#### *DB Schenker*

2.132 DB Schenker raised ORR's failure to recognise its section 22A application for additional rights on the ECML in the decision of 29 February 2009. Had we done so, it would have been a lot easier for DB Schenker to get the Level 1 rights it was seeking.

#### *ORR's views*

2.133 We accept that this was an oversight on our part, but note that this did not affect the outcome for DB Schenker. Our decision on DB Schenker's ECML application, which was set out in our decision letter, still stands.

#### *Defeasance*

2.134 ECT referred to the six weeks it took ORR (and Network Rail) to come up with a satisfactory (to them – the operators were not consulted) wording for the defeasance provisions, and contrasted it with the time it took the timetable development "team" to come up with a solution to the one known breach of an operator's existing track access rights (Grand Central's rights to an 11:10 -11:40 departure from King's Cross).

2.135 DfT said it was disappointing that ORR and Network Rail had failed to resolve this conflict before we made our final decision on access rights, particularly as a straightforward solution was found soon afterwards. Had this issue been

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<sup>19</sup> <http://www.rail-reg.gov.uk/server/show/nav.2254>.

addressed properly, there would have been no need to make some of ECT's rights contingent.

*ORR's views*

2.136 We do not agree that it took six weeks to come up with the defeasance provision – we already had a standard template provision which was made available to Network Rail when the need became apparent. Although amendments were made to the provision to ensure compatibility with the particular circumstances on the ECML, there was no need to consult operators. It is also worth noting that the availability of the defeasance provision was not on the critical path for bringing matters to a conclusion.

2.137 We too were disappointed that a timetabling solution was not found in time, but it was not for us to do so. It was clearly a matter for the industry.

*Freightliner*

2.138 Freightliner expressed the view that the rights we had granted the passenger operators were quite generic and it would rather have seen the rights drafted more tightly, as this would have made it clearer what capacity they would actually use. Freightliner said this view was perhaps an expression of a lack of trust in Network Rail managing the timetable properly.

2.139 Freightliner also expressed concern that the passenger operators are increasingly seeking to run more trains rather than run longer trains, thus using the remaining capacity inefficiently.

*ORR's views*

2.140 Freightliner is alone in its view that the rights we had granted the passenger operators were quite generic, and we believe that we struck the right balance between giving Network Rail the necessary flexibility to develop future timetables and giving the operators sufficient certainty to proceed with changes and/or additions to their services.

2.141 On the length of trains, whilst this a commercial matter for operators and, of course, a natural consequence of starting up new services, at least initially, we do have regard to train lengths as part of our economic analysis of competing applications.

## Funders' role

### *Findings*

- 2.142 Train operators expressed a number of concerns about the role of funders (essentially DfT and TS) in the process, particularly in relation to their apparent unwillingness to take a holistic view. Some also felt that TS should have had less input in determining the outputs for English services. DfT, in particular, is seen by the open access operators as being against competition and opposed to open access. DfT acknowledged that its role as the funder of the ECT franchise meant its objectives took into account the interests of both passengers and taxpayers and therefore are not necessarily fully aligned with our statutory duties. These include a requirement to have regard to issues such as competition, benefits to passengers and other users and protecting the taxpayer (through the funds available to the Secretary of State), which means that we might attach different weights to those of the funder. DfT also pointed out that its objectives may conflict with those of others for the route. This in turn can cause difficult conflicts with EU and UK legislation in relation to promoting competition.
- 2.143 A major issue raised by some stakeholders was the granting of a franchise to ECT, including SLC2, before it had been established with Network Rail that there was capacity available within the existing infrastructure to accommodate the additional services and before any timetabling work had been undertaken to establish whether the journey time improvements required were achievable. It was also suggested that running services to Lincoln was not an efficient use of capacity and took up paths that could otherwise have been used by other operators. It was pointed out that this is not a new problem, and funders should engage earlier with Network Rail and the industry to ensure that the SLC is deliverable before entering into the franchise agreement. This problem is compounded where there are competing operators also planning to introduce new or additional services.
- 2.144 A related issue was the relationship between Network Rail and DfT. The view was expressed that the industry needs to understand at the outset what Government requirements are but, having established them, funders should then keep out of the process until the later stages. To support this view, it was felt that when DfT was not present at industry meetings the debate between the operators was more constructive and progress was made. For the future, operators suggested that it would be better if they first reached



agreement, based on the options available, before the franchised operators approached funders for their consent.

2.145 It was also felt that funders should not be specifying the SLC in detail, rather they should be selecting from deliverable options. Although it was accepted by some stakeholders that DfT's current approach requires it to be closely involved, the general view was that there was undue interference from DfT, just as there had been in the earlier WCML process. This position was not helped by the fact that DfT has its own timetable planners with their own views. This further contributed to DfT's interference in the detail, which it should have left to Network Rail. As already discussed above, DfT, in particular, kept changing its mind, which not only created extra work for Network Rail and delayed the process, but also created extra work for other operators, who found their paths being amended to take account of changes to ECT and/or other franchisee requirements.

2.146 TS was generally satisfied with the outcome of the process, a significant improvement in average Edinburgh – London journey times, and with its involvement in the process. However, there were some bilateral discussions between DfT/ECT and Network Rail which resulted in timetable iterations which had unacceptable impacts in Scotland – for ScotRail in timetabling terms and for TS in funding terms. It was widely accepted by stakeholders that communications between DfT and TS, and DfT and ECT, were not always good, e.g. their differing views on journey times and calling patterns. DfT was criticised for not being sufficiently involved in discussions with some of the franchised operators regarding the specification of their rights, in contrast to its 'over' involvement in specifying ECT's rights.

2.147 DfT recognised that towards the end of the period when NXEC was operating the franchise, Network Rail was getting mixed messages from the operator and DfT and that there was a need for better interaction between DfT and Network Rail so that they take a common approach. That apart, DfT felt that it and the operators generally worked well together.

#### *ORR's views*

2.148 We understand that the objectives and commercial considerations of funders, operators and other stakeholders will not always be aligned and will in some cases conflict. Whilst we agree it is important that the industry endeavours to take a holistic view, it has to be recognised that DfT and TS must be able to

input in order to meet the policies and strategies set down by their respective Ministers, in line with statutory duties and responsibilities. For example, we feel that it is legitimate for TS to input to discussions on issues south of the border in circumstances where they might impact upon ScotRail services. However, as evidenced by the review of access planning, there is some appetite across the industry for alignment of the franchising and access planning processes. In particular consultees agreed that:

- (a) there should be earlier engagement by funders with the industry (particularly with Network Rail) to see if the capacity required is actually available;
- (b) train operators generally want a greater degree of validation of a prospective timetable both to reduce and understand risk before the funder issues an ITT<sup>20</sup>; and
- (c) there is a need for clear industry involvement in the ITT/formalisation of specification processes.

2.149 We hope that the industry, including funders, supports the policy of ensuring that there is more alignment between the access planning and franchising processes and to be actively engaged in the establishment of the industry best practice statement as proposed by the IWG. It is particularly important that funders align their processes better with train operators and Network Rail in developing franchise specifications and particularly in managing change to those specifications accordingly. The level of capacity depends very largely on the service specification. If that is changed, then the level of capacity can increase or decrease substantially, which makes it difficult for Network Rail to plan.

2.150 Also, as mentioned earlier in this document, we consider that timetable development is Network Rail's responsibility. It needs to ensure that proper project management arrangements are in place and that it controls and manages the process in a fair and balanced way. As part of that, it is important that funders are involved throughout. We believe that the proposed new arrangements to establish a Calendar of Events and project working groups for all future major timetabling projects will help to improve

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<sup>20</sup> This is particularly important where a franchise introduces services onto the network that will affect a number of operators and/or impact on other routes. This could in part be resolved by ensuring the early engagement of funders within the Calendar of Events process proposed under workstream 1 of the access planning review.

communications between all stakeholders and ensure that the industry works together in a constructive and positive way.

- 2.151 Recommendation: Funders are encouraged to support the policy of improved alignment between the access planning and franchising processes, and to be actively engaged in the establishment of an industry best practice statement.**

## **Train operators' role**

### *Findings*

- 2.152 Generally, stakeholders acknowledged that they needed to take projects such as the ECML one more seriously and ensure that that they are fully engaged. A number of stakeholders acknowledged that they should have also been more proactive in telling Network Rail what they needed at the outset. Freight operators agreed they need to work with Network Rail, but said it was more difficult for them to say with certainty what their future demand would be. On the other hand, some operators felt that they could not have done anything more, having attended all the meetings to which they were invited, and provided Network Rail and ORR with all the information requested.
- 2.153 Two operators, in acknowledging that the process took a long time, said that the eventual outcome worked well for them, but only because their people had a very clear idea of what they wanted, what they could compromise on, and made sure that they were fully involved. It was said that there is a big onus on operators to be proactive because Network Rail's commercial team and its timetable planners do not communicate as well as they should. As a result, operators need to have their own internal processes in place and aligned with those of Network Rail.
- 2.154 Some non-ECML operators, albeit those who were directly affected by any decisions, said that they had not been involved until we had decided what quantum of paths we were prepared to approve, by which time it was too late to contribute. In some cases this had resulted in negative outcomes in respect of resourcing over which they had had no say, which earlier constructive discussions with Network Rail would have probably resolved.
- 2.155 Network Rail acknowledged that operators such as First Capital Connect, Northern and ScotRail, with their detailed knowledge of diagram issues, had a major beneficial input to the process when they discussed the timetable on

a one to one basis. Bringing the operators' commercial and operational and timetabling staff together had also brought benefits. Network Rail noted that this collaborative working had started before the workshops.

2.156 More generally, Network Rail said that the industry needed to show more trust in it if the industry was to move forward. Of particular concern was the lack of availability of business cases and other commercially sensitive information, the provision of which would help it to make more informed judgements about capacity allocation and timetable development. Notwithstanding operators' commercial considerations, it was also felt that there was scope for them to show more willingness to work co-operatively both with Network Rail and other operators and to take a more holistic approach on major issues like the ECML process. Operators sometimes used tactics aimed at blocking each others' aspirations.

2.157 As indicated above, there was much criticism of operators changing requirements throughout the process. This related particularly to DfT and ECT, which many stakeholders, including those directly involved, believed had resulted in considerable delays in the process. For example, Network Rail had devoted considerable time and effort to establishing that it could not deliver acceptable paths to Bradford and Harrogate via Leeds, only for the requirements to change overnight when the franchisee changed. The publication of ECT's 'Eureka!' timetable and subsequent roadshows resulted in further changes to the timetable requirements and generated more work, which Network Rail had not planned into the project timescales<sup>21</sup>.

#### *ORR's views*

2.158 It is clear from the comments received that there are still problems even though the industry is trying to work together. We believe that the changes that the industry itself is proposing to the access planning process will go a long way to improving matters and negating the conflicts that currently exist. We agree with Network Rail that stakeholders need to show more trust in its ability, but it is also true that such trust has to be earned. Again, we believe that the changes we are recommending in this report that Network Rail should make, particularly in relation to project management and the involvement of all interested stakeholders, will help to achieve this.

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<sup>21</sup> The operator's plans have of course again changed with the decision to no longer run the majority of the planned Lincoln services.

**2.159 Recommendation: Train operators should:**

- (a) **be clear about their requirements for timetable development and ensure that these are communicated to Network Rail in a timely and constructive way; and**
- (b) **maintain adequate processes to ensure that they are able to respond and contribute as necessary to the access planning process.**

## **Other issues**

### **Rules of the Plan**

#### *Findings*

2.160 It was brought to our attention during the interviews that the Rules of the Plan (ROTP) on the ECML are more generous than on other main routes for historical reasons. For example, far longer is allowed for trains to turn round at King's Cross than at Euston, Paddington or St Pancras. Furthermore, on much of the ECML, timetable planning headways are four minutes where signalling headways are only 1.5 minutes, a larger difference than on other routes and one which has an effect on the available capacity.

#### *ORR's views*

2.161 We are not in a position to confirm this variance, but it is something that Network Rail needs to assess. However, we believe that in order for Network Rail to optimise the use of the infrastructure it will have to consider more than just the ROTP.

**2.162 Recommendation: Network Rail to investigate the optimum use of route capability, including a review of the ROTP and taking into account both infrastructure and rolling stock, so as to maximise the benefit of commercial train services whilst delivering a timetable that can be operated day in and day out on the ECML, and to agree a plan, with affected train operators, by the end of September 2010, for developing potential improvements to feed into ECML timetables at the earliest practical opportunity.**

## Track access application forms

### *Findings*

2.163 It was noted that track access application forms do not always explain the expected timetable changes, including any downsides, as a result of changes in the rights sought. It would be helpful, to those representing the passengers in particular, if such information was consistently made available.

2.164 **Recommendation: ORR will review its application forms to ensure that the relevant questions are clear, and remind the industry of the need to give clear and concise information.**

## MOIRA

### *Findings*

2.165 LTW expressed concern that MOIRA does not properly reflect passenger demand – this is worrying, as it is used by the industry in the development of RUSs and by us in our ‘not primarily abstractive’ test.

### *ORR’s views*

2.166 We recognise the limitations of MOIRA, particularly in estimating the demand for new direct services between locations which currently have a limited, or no such, service. Whilst we understand that an updated version of MOIRA is being developed, it is possible that it will have similar limitations. However, our five stage ‘not primarily abstractive’ test is designed to overcome this limitation, and in particular it takes MOIRA estimates as a starting point and then develops an overall assessment taking into account the known weaknesses in the MOIRA forecasts and benchmarking against experience from previous new direct services. We have now built up a significant body of evidence on the impact of new services and believe that the five stage test remains fit for purpose, although we are considering what improvements can be made as part of our access policy review.

2.167 **Recommendation: ORR is currently reviewing the ‘not primarily abstractive’ test as part of its review of access policy, and is expecting to publish conclusions shortly.**

## Current position

### *Findings*

- 2.168 Even after the approval of track access rights in February 2010 there were still concerns about the current position of the timetable work before implementation, leaving some stakeholders to suggest that there was a significant risk to a satisfactory delivery of the new timetable in May 2011.
- 2.169 Whilst the planned introduction of a standard pattern timetable has provided more clarity on the available capacity for freight services, freight operators remain concerned that there may not be enough capacity to accommodate future demand. Also, there is uncertainty about how the standard pattern timetable will affect freight operators' existing services, not just on the ECML but also on the routes leading to and from the ECML.
- 2.170 More recently, some stakeholders questioned the announcement by ECT that it no longer planned to operate seven weekday services each way between Lincoln and London – in our February 2009 decision letter we said we would approve access rights for them. Instead it wished to operate one service each way, with a further four services each way operating between Newark and London. It indicated that it intended to submit a track access application to amend its rights.

### *ORR's views*

- 2.171 We understand that Network Rail has been working closely with all stakeholders and that it quickly put in place a project plan with clear milestones and timescales. We are in regular contact with Network Rail regarding progress and have been reassured that everything is on course to ensure the introduction of the timetable in May 2011. More recently, we have been advised that, following an industry meeting on 12 August 2010, there are no outstanding major issues and that all stakeholders are reasonably content. However, given the ongoing concerns of a few operators, we continue to monitor the situation.
- 2.172 In relation to ECT's recent proposal to change its Lincoln services, we have issued a letter to the industry setting out our position<sup>22</sup>.

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<sup>22</sup> This is available on the ORR website at <http://www.rail-reg.gov.uk/upload/pdf/ecml-orr-letter-110810.pdf>.





## ***Annex A – chronology***

29 February 2008	ECML RUS published	
29 February 2008	ORR letter to industry	Asking for aspirations
11 March 2008	ORR meeting with Network Rail	To discuss process going forward
20 March 2008	Grand Central Sunderland 4th path section 22A submitted to ORR	
28 March 2008	Deadline for responses to ORR's letter of 29 February	16 substantive responses received
4 April 2008	ORR forwarded responses to Network Rail	
18 April 2008	Grand Northern Bradford section 17 submitted to ORR	
24 April 2008	ORR meeting with Network Rail and DfT	Update on process going forward – Network Rail concentrating on December 2008 timetable
29 April 2008	ECML RUS established	
8 May 2008	Hull Trains Harrogate section 17 submitted to ORR	
21 May 2008	ORR meeting with Network Rail and DfT	Network Rail presented its view of the 1 February timetable bids for PCD December 2008
5 June 2008	ORR letter to Network Rail and DfT	Network Rail was asked to undertake a capacity study to enable ORR to reach a decision on the track access applications received and expected
10 June 2008	NXEC section 17/22A applications submitted to ORR	
25 June 2008	ORR meeting with Network Rail and DfT	Including discussion of remit and arrangements for the capacity and performance analysis
27 June 2008	Letter from DfT to ORR	Setting out its detailed specification for the timetabling work
9 July 2008	Letter from ORR to Network Rail	Confirming actions arising out of meeting of 25 June, including meeting with timetable planners to be arranged
11 July 2008	Network Rail published its December 2008 timetable options assessment	Concluded that it was unable to offer any paths in addition to those currently running

16 July 2008	ORR letter to stakeholders	Setting out a specification for Network Rail to undertake a capacity assessment and report back by 19 September
25 July 2008	ORR meeting with Network Rail	To discuss progress
28 July 2008	Network Rail provided ORR with a standard two hourly pattern timetable (option 0)	
31 July 2008	ORR commented on the timetable	
8 August 2008	ORR letter to stakeholders	Advising that ORR proposed to extend some rights which would otherwise expire
11 August 2008	Network Rail responded to ORR's comments on the timetable	
19 August 2008	ORR letter to stakeholders	Outlining approach to potentially competing applications
20 August 2008	Industry capacity planning meeting	Meeting of Network Rail, ORR, DfT and operators using the ECML to review the standard pattern timetable and receive comments
27 August 2008	ORR meeting with Freightliner	Freightliner wished to ensure that the timetable development fully reflected the freight position
29 August 2008	Network Rail provided ORR with a draft updated standard pattern timetable (option 1)	
29 August 2008	ORR provided comments and asked a number of questions	
end August 2008	ORR appointed MVA to undertake an economic evaluation of the competing applications	This followed a tendering process
1 September 2008	Network Rail answered ORR questions of 29 August	
1 September 2008	ORR meeting with EWS	EWS wished to ensure that the timetable development fully reflected the freight position
1 September 2008	Network Rail issued an updated standard pattern timetable to stakeholders (an amended option 1)	
3 September 2008	Second industry capacity planning meeting	To discuss latest iteration of timetable – ORR did not attend

5 September 2008	Deadline for responses to ORR's letter of 19 August	Two responses received
16 September 2008	ORR meetings with NXEC, Hull Trains and Grand Central	To discuss planned economic analysis methodology
17 September 2008	ORR meeting with Network Rail	Network Rail provided an initial draft of its capacity report
24 September 2008	ORR provided comments on the draft	
25 September 2008	ORR meeting with EWS	To discuss the economic appraisal of the applications
26 September 2008	ORR meeting with MVA	To discuss progress <sup>23</sup>
26 September 2008	Network Rail issued its capacity report	Original deadline for receipt of report was 19 September – ORR agreed extension of one week
29 September 2008	ORR circulated Network Rail's capacity report to stakeholders	
30 September 2008	ORR meeting with Alconbury Developments	To discuss Alconbury's aspirations for paths on the ECML
6 October 2008	Deadline for comments on Network Rail's capacity report	17 responses received
14 October 2008	ORR meeting with Transport Scotland	To discuss Transport Scotland's concerns
23 October 2008	ORR letter to stakeholders	Advising that ORR will be asking Network Rail to undertake further work
24 October 2008	ORR meeting with Network Rail	To discuss and agree the further work required
27 October 2008	ORR meeting with Hull Trains	To discuss Hull Trains' track access applications and problems being created by the delay in reaching a decision
30 October 2008	Letter from ORR to Network Rail	Setting out the detailed remit for the further work; reporting back no later than 19 December
5 November 2008	Network Rail provided ORR with a timetable update (option 2)	
10 November 2008	ORR meeting with EWS and Network Rail	To discuss EWS's concerns
11 November 2008	ORR meeting with Network Rail's performance team	To discuss performance issues
17 November 2008	EWS provided ORR with details of expected new freight flows	Confidential to ORR – used to inform ORR's decision

<sup>23</sup> Note: other meetings between ORR and MVA are not recorded in this document

18 November 2008	ORR comments to Network Rail	Comments on latest iteration of timetable
25 November 2008	Industry performance workshop	
28 November 2008	ORR meeting with Network Rail	To discuss latest iteration of timetable
2 December 2008	ORR letter to stakeholders	Reserving dates for possible hearing (subsequently not held)
9 December 2008	Network Rail letter to stakeholders	Setting out performance impact of 6 + 1 timetable
12 December 2008	MVA provided ORR with its draft economic assessment	
12 December 2008	Network Rail provided ORR with a draft of its capacity report	
18 December 2008	ORR provided Network Rail with some minor comments on its draft report	
18 December 2008	Network Rail issued its capacity report to ORR (an amended option 2)	
19 December 2008	ORR circulated the capacity report to stakeholders	Asking for comments by 5 January (deadline subsequently extended)
24 December 2008	ORR letter to DfT	Seeking comments on DfT's support for SLC2b and financial effect on the Secretary of State's budget
24 December 2008	ORR letter to stakeholders	Update on progress, including extension of deadline for responses to capacity report
9 January 2009	ORR issued the draft MVA economic assessment to the four applicants	Comments requested by 20 January
12 January 2009	Deadline for responses to Network Rail's capacity report	15 responses received
13/14/15 January 2009	ORR meetings with the four applicants	To discuss the draft MVA economic assessment
20 January 2009	ORR letter to Network Rail with questions on capacity report	
22 January 2009	ORR Directors Group met and agreed the case team's recommendation	
28 January 2009	Network Rail responded to ORR's questions	Nothing in the response to change the case team's recommendation
29 January 2009	ORR issued its proposed decision	Representations requested by 13 February

29 January 2009	ORR also issued the final MVA report	
4 February 2009	ORR meeting with Hull Trains to discuss its request for extended term	At Hull Trains' request. Note: Hull Trains subsequently provided further written justification in response to request from ORR
13 February 2009	Deadline for receipt of representations	10 responses received
16 February 2009	DfT response to proposed decision	Included offer to facilitate changes to other operators' rights
19 February 2009	ORR meeting with CrossCountry	At CrossCountry's request – to discuss its aspirations
24 February 2009	ORR meeting with DfT	At ORR's request - to discuss DfT's offer to facilitate changes to other operators' rights
24 February 2009	ORR directors met with the case team to agree the decision	
27 February 2009	ORR issued its decision	Changed from proposed decision as a result of DfT's offer to facilitate changes to other operators' rights
2 March 2009	Network Rail email to all the ECML operators	Advising that Network Rail would be meeting the affected operators 1:1 to agree the process to take things forward
13 March 2009	Network Rail email to all the ECML operators	Advising that it had met them, would continue to develop the options and no further meetings would be held until there was something worth sharing
13 March 2009	ORR meeting with Grand Central	Meeting at Grand Central's request to discuss aspects of our decision
March 2009	Network Rail holding fortnightly internal Steering Group meetings	Meetings covering operations, property, safety and performance
30 March 2009	NXEC advised Network Rail that it did not wish to implement any part of the SLC2b timetable in December 2009	
1 April 2009	NXEC meeting with Network Rail to discuss progress with timetable development	Meeting with timetable planners
1 April 2009	ORR meeting with Network Rail	To discuss progress and the way ahead. Agreed to hold stakeholder meetings when core timetable developed

6 May 2009	ORR letter to Network Rail	Expressing concern that Network Rail was proposing that the new timetable should be delayed until PCD 2010, rather than SCD 2010
15 May 2009	Network Rail reply	Would be two months before Network Rail was in a position to say whether a change in May was deliverable
17 May 2009	Network Rail email to all the ECML operators	Advising that it hoped to share some timings with the operators by 22 May 2009
20 May 2009	ORR reply to Network Rail's letter of 15 May 2009	Suggesting that Network Rail put out a statement to that effect
26 May 2009	Network Rail issued a further iteration of the timetable to the operators (option 3)	A big improvement on the previous iteration according to NXEC
5 June 2009	ORR meeting with Network Rail in Leeds	To discuss progress with timetable development. ORR subsequently expressed concerns that the current timetable did not reflect some aspects of the February decision
8 June 2009	ORR meeting with Network Rail	To discuss track access contract matters
18 June 2009	ORR meeting with Network Rail	To discuss timetable development and ORR's concerns
3 July 2009	Network Rail issued ECML standard pattern timetable options document	Setting out two timetable options, which of the two it recommended and asking for comments by 17 July
3 July 2009	ORR meeting with Grand Central	To update ORR on various issues
24 July 2009	Network Rail letter to stakeholders	Proposing way forward and timescales
6 August 2009	ORR letter to Network Rail	Concurring with Network Rail's proposed way forward and timescales
17/18/19 August 2009	Industry workshops organised by Network Rail	Attended by DfT, Transport Scotland and train operators
26 August 2009	ORR meeting with Grand Central and Network Rail	To discuss contractual issues and current position of ECML timetable development - Grand Central concerned
26 August 2009	Network Rail letter to ORR	Updating ORR on progress
27 August 2009	ORR letter to Network Rail	Noting that Grand Central felt it was being disadvantaged

11 September 2009	Network Rail issued a further iteration of the timetable	
2 October 2009	Network Rail provided ORR with the latest timetable produced that week	
16 October 2009	Network Rail issued its ECML SLC2 timetable report	
19 October 2009	ORR letter to stakeholders	Inviting comments on Network Rail's report by 2 November
19 October 2009	ORR meeting with DfT	To discuss Network Rail report and other known issues
20 October 2009	ORR meeting with Hull Trains	To discuss investment provisions
23 October 2009	ORR letter to Network Rail	Initial comments on its report
30 October 2009	Network Rail's reply	
2 November 2009	Deadline for comments on Network Rail's report	18 responses received
11 November 2009	Network Rail issued KX platform analysis	Confirming that all services could be accommodated at KX
12 November 2009	ORR meeting with DfT	To discuss SCL2 timetable implementation
20 November 2009	ORR meeting with East Coast	At director level
20 November 2009	Network Rail issued an updated timetable to stakeholders	The first of fortnightly updates
25 November 2009	ORR letter to stakeholders	Commenting on destination of fifth East Coast path
27 November 2009	ORR meeting with Network Rail and East Coast	High level meeting to agree what detail of access rights Network Rail was able to offer
7 December 2009	Network Rail issued an updated timetable to stakeholders	The second fortnightly update
8 December 2009	ORR meeting with Network Rail and DfT	To discuss what agreements were necessary and the process for getting them in place before the Priority Date
9 December 2009	Grand Central letter to ORR in response	Setting out financial effects of the standard pattern timetable
9 December 2009	ORR meeting with Network Rail and East Coast	High level meeting
15 December 2009	Network Rail provided ORR with the main body and some of the schedules of the Hull Trains' contract	These documents were revised and the outstanding schedules provided and revised as necessary through to 2 February
16 December 2009	ORR meeting with Network Rail and Grand Central	To discuss track access rights

16 December 2009	ORR meeting with Grand Central	To discuss the economic impact of the standard pattern timetable on Grand Central
16 December 2009	Network Rail wrote to the industry	Proposing that the Priority Date for the May 2011 timetable be put back from 8 January to 12 February
18 December 2009	Network Rail issued its final timetable report	
18 December 2009	East Coast provided ORR with the first draft of its proposed supplemental agreement, excluding the new Schedule 5	There was further correspondence and the agreement was amended as necessary through to 4 February
23 December 2009	ORR letter to stakeholders	Setting out next steps, assuming the Priority Date was put back
23 December 2009	Network Rail provided ORR with the first draft of the proposed Grand Central Bradford contract	There was further correspondence and the contract was amended as necessary through to 2 February
4 January 2010	East Coast provided ORR with the first draft of its proposed new Schedule 5	There was further correspondence and the schedule was amended as necessary through to 4 February
5 January 2010	Network Rail letter to the industry	Confirming that the Priority Date had been put back
29 January 2010	ORR meeting with Network Rail	To discuss defeasance
2 February 2010	ORR issued draft directions in respect of the Grand Central Bradford and Hull Trains applications	
4 February 2010	ORR issued draft directions in respect of the East Coast application	
11 February 2010	ORR issued directions in respect of three applications and said it would approve the fourth	
11 February 2010	ORR issued its reasons letter	
12 February 2010	The parties entered into the two contracts and agreement as directed, and the other agreement was approved	Priority Date for SCD May 2011 timetable



## ***Annex B – list of consultees/responses***

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Alliance Rail Holdings – letter dated 26 March and interview 11 May  
Colas Rail Limited  
DB Schenker Rail (UK) Limited – interview 22 April  
Department for Transport – interview 21 May  
DP World  
Direct Rail Services Limited (DRS)  
East Coast Main Line Company Limited – interview 20 April  
East Midlands Trains Limited  
First Capital Connect Limited  
First/Keolis Transpennine Limited (TPE)  
First ScotRail Limited  
Freightliner Group Limited – interview 4 May  
GB Railfreight Limited  
Grand Central Railway Company Limited – interview 13 May  
Hull Trains Company Limited – interview 14 May  
Hutchison Ports (UK) Limited  
London Eastern Railway Limited (NXEA)  
London TravelWatch – letter dated 31 March and interview 19 April  
MDS Transmodal Limited  
Network Rail Infrastructure Limited – interview 29 April  
Northern Rail Limited – interview 30 April  
Passenger Focus – interview 14 May  
Rail Freight Group – letter dated 17 March  
Renaissance Trains  
South Yorkshire PTE  
Transport Scotland - letter dated 12 April and interview 30 April  
Transport for London  
Tyne & Wear PTE (Nexus)  
West Coast Railway Company Limited  
West Coast Trains Limited (Virgin Trains)  
West Yorkshire PTE  
XC Trains Limited (CrossCountry)



## **Annex C – summary of recommendations**

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<b>Paragraph number</b>	<b>Issue</b>	<b>Recommendation</b>
2.14	Strategic Capacity	<b>Network Rail should:</b> (a) develop and publish a clear and transparent policy on how it will integrate its strategic planning vision with its timetable development activity – this should probably be included in Network Rail’s network statement; and (b) appoint a ‘controlling mind’ who ensures that the access planning process is carried out in a way that is consistent with the strategic needs of the industry and its customers.
2.23	ECML RUS	(a) Network Rail to ensure that there is better alignment between the access planning and RUS processes; (b) funders are encouraged to support an approach which gives better alignment between the access planning and franchising processes; and (c) ORR to clarify the relationship between RUSs and decisions on the allocation of capacity and set these out in its criteria and procedures document.
2.34	Structure & culture	<b>Network Rail to:</b> (a) ensure that internal communications are improved between teams working on the access planning activity and that it has in place clear guidelines and processes; (b) continue with its work on introducing updated guidance on stakeholder engagement; and (c) review its project management arrangements for timetable development to ensure that they are rigorous and include the appointment of a dedicated project manager and a senior responsible officer.
2.51	Timetabling & resources	The timetabling process should be accorded more priority within Network Rail, properly resourced and conducted in line with rigorous project planning disciplines. Network Rail should produce and publish a clear process which would accurately reflect the requirements of the network code.
2.66	Stakeholder engagement	<b>Recommendation: Network Rail and ORR to continue with the work of improving stakeholder engagement. The industry generally to ensure that the passenger representative bodies are included at an appropriate stage.</b>
2.74	ORR’s role	<b>ORR will continue to work with the industry to find ways of improving, simplifying and streamlining industry processes, including its own.</b>

2.79	Timescales	<b>ORR will ensure that rigorous project planning disciplines are applied to all future projects of a similar nature, including the setting of clear timescales and milestones.</b>
2.90	Setting deadlines	<b>ORR will develop and introduce arrangements, in certain specified circumstances, for a cut-off date, and these will be set out in its criteria and procedures document.</b>
2.98	Remits	<b>ORR to ensure that:</b> <b>(a) it provides Network Rail with clear and unambiguous instructions/remits;</b> <b>(b) strong project management arrangements are in place, both in Network Rail and within its own organisation; and</b> <b>(c) interested stakeholders understand how the timetable development process will work, and their role in it.</b>
2.104	Attendance at industry meetings	<b>ORR will in future:</b> <b>(a) attend initial meetings of industry stakeholders to explain its position and to set out what it hopes to achieve from the project; and</b> <b>(b) consider attending other meetings throughout a particular project as an observer on a case by case basis.</b>
2.109	Project management arrangements	<b>ORR will ensure that:</b> <b>(a) both ORR and Network Rail establish suitable project management arrangements at the outset of any project, including the early publication of a project plan detailing timescales, milestones and resources; and</b> <b>(b) the sole point of contact, together with others involved in a particular piece of work, is clearly detailed at the outset.</b>
2.116	ORR's timetabling & resources	<b>No change to ORR's current position, although ORR will work with Network Rail to ensure that it has suitable arrangements in place so that it can provide high quality professional advice and assessments.</b>
2.121	Publication policy	<b>ORR will review its policy on the publication of material and provide further clarifying guidance as necessary in its criteria and procedures document.</b>
2.131	Protecting the interests of open access operators	<b>ORR will ensure that journey times are given more recognition in any similar exercise (this has already been noted as an issue for the WCML capacity exercise).</b>
2.151	Funders' role	<b>Funders are encouraged to support the policy of improved alignment between the access planning and franchising processes, and to be actively engaged in the establishment of an industry best practice statement.</b>

2.159	Train operators' role	<b>Train operators should:</b> <b>(a) be clear about their requirements for timetable development and ensure that these are communicated to Network Rail in a timely and constructive way; and</b> <b>(b) maintain adequate processes to ensure that they are able to respond and contribute as necessary to the access planning process.</b>
2.162	Rules of the plan	<b>Network Rail to investigate the optimum use of route capability, including a review of the ROTP and taking into account both infrastructure and rolling stock, so as to maximise the benefit of commercial train services whilst delivering a timetable that can be operated day in and day out on the ECML and to agree a plan, with affected train operators, by the end of September 2010, for developing potential improvements to feed into ECML timetables at the earliest practical opportunity.</b>
2.164	Application forms	<b>ORR will review its application forms to ensure that the relevant questions are clear, and remind the industry of the need to give clear and concise information.</b>
2.167	MOIRA	<b>ORR is currently reviewing the 'not primarily abstractive' test as part of its review of access policy, and is expecting to publish conclusions shortly.</b>