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John Czyrko
Head of Operational Strategy
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London & Birmingham Railway Limited: application for approval of track access rights

1. I am writing to you about your applications of 28 October 2010 to the Office of Rail Regulation (“ORR”) under section 22A of the Railways Act 1993 for approval of access rights to operate train services on the West Coast Main Line (“WCML”). On 2 March 2011 we issued a letter setting out the decision that we were minded to take (the proposed decision). This included the conclusion that we should

- (a) approve the London & Birmingham Railway Limited (“London Midland”) 21st supplemental agreement, subject to a satisfactory timetabling solution being found; and
- (b) refuse the London Midland 22nd supplemental agreement.

2. This letter is to confirm that ORR has taken the decision to reject your 22nd supplemental agreement. The reasons for our decision were set out in full in letter of 2 March 2011, but briefly we have concluded that best use of capacity - to the benefit of passengers, other rail users and the taxpayer - can only be achieved through a gradual recast of the West Coast Main Line timetable from December 2013, as various service and infrastructure enhancements come into play. Given that, we did not think it right for us to take decisions which could lock in inefficient use of capacity on such a significant part of the network without this further timetabling work being done. As our proposed decision letter explained we concluded that we could not agree to your 22nd supplemental because we believe that it affects the core WCML route and is the subject of decisions that still need to be taken by Government in relation to future franchising requirements.



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3. As our proposed decision makes clear, this does not stop any operator from submitting an application to make use of the limited amount of spare capacity available in the interim period up to December 2013. This includes any proposals to use 110mph rolling stock. Beyond 2013, more capacity may be available with timetable revisions which could be used by either franchised or open access operators, subject to our policies for the approval of access rights. We will consider any such application in the usual way and in accordance with our published criteria and procedures.

4. We now expect London Midland to work with Network Rail to develop a satisfactory timetabling solution for the rights proposed by the 21st supplemental agreement. We are of course willing to meet with you to discuss any concerns London Midland may have over our decision and next steps. We are also happy to continue with the dialogue on your company's future plans. If you require a meeting, please contact Dave Wearing (david.wearing@orr.gsi.gov.uk) and he will make the necessary arrangements.

5. I am copying this letter to Richard Stuart at Govia, to Peter Craig at Network Rail and to Emily Bulman, David Robertson and David Wearing here.

Yours sincerely

A handwritten signature in black ink that reads 'Brian Kogan'. The signature is written in a cursive, flowing style.

Brian Kogan