



OFFICE *of the*
RAIL REGULATOR

**West Coast Main Line:
Statement by the Rail Regulator**

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Regulator's Foreword

1. The West Coast Main Line is one of the most important and strategic parts of the national railway network. It is used by 14 train operators, including freight operators. In turn, each year these operators provide passengers with services amounting to millions of journeys. Freight operators carry very significant tonnages. These services are provided not only to the people who travel on or consign goods on the West Coast Main Line. They are relied upon by employers whose workers need to get to their jobs, or travel in the course of their work. They are needed by businesses whose goods are carried on the network and who rely on them reaching their destinations in good time. They are needed by local authorities and by other organisations throughout the country who rely on the transport network to provide them with the necessary railway links to all other parts of Britain.
2. At the time of privatisation, Railtrack was entrusted with the national railway network. That endowment of strategically important national assets carried, and continues to carry, special obligations. In their widest sense, these public interest obligations are owed to the whole nation. In the narrow sense, under Railtrack's network licence, they are owed to passenger and freight train operators and the people and organisations who support the railway financially.
3. In June 1998, Railtrack gave a number of formal legally-binding undertakings to my predecessor as Regulator. They included the preparation and delivery of reviews of the capacity of the West Coast Main Line to establish how it could be enhanced and developed. They also included the establishment of strategies for the routing of freight trains on the West Coast Main Line or on alternative routes. Those undertakings were given in order to obtain the Regulator's approval of the contract between West Coast Trains Limited, a subsidiary of the Virgin Rail Group, and Railtrack. That approval would not have been given if the undertakings had not been provided.
4. The undertakings were given for the benefit of the other users of the route, the Franchising Director and the wider public interest. They were given to the Regulator as trustee for that wider interest, and they were given in a form which contemplated and permitted their enforcement.

5. I regret to say that, seventeen months after they were given, those undertakings have still not been complied with. It is clear now that the capacity reviews which Railtrack has so far carried out have been neither well-founded nor complete. Work on the freight routing strategy is also unsatisfactory, despite Railtrack having promised in the 1999 NMS to finalise freight routing options by July 1999. Railtrack's work on improving the timetable to achieve robustness in performance terms is still not finished, despite Railtrack's assertion that it would be completed in September 1999. The deadlines set out in Railtrack's letter to ORR dated 13 May 1999 have been missed, and no decision has yet been taken on whether to adopt moving-block signalling. Neither is there clear evidence that adequate contingency plans have been devised in case moving block signalling is not adopted.
6. Large and complex projects often run into trouble. In those cases, remedial action is often devised and implemented. If it is early enough, it can get the project back on track and avoid the target completion date being missed. But the project does have to be managed, and managed well, even in these unintended circumstances. That has not happened in the case of the West Coast Main Line.
7. Very serious concerns have been expressed by train operators and the Shadow Strategic Rail Authority, as well as a number of other interested parties. These organisations need to be able to plan their own activities and to make investment decisions. Railtrack's progress so far with the West Coast Main Line upgrade has hindered or prevented that process, and this cannot be allowed to continue any longer. Railtrack has had every opportunity to put these matters right.
8. The Shadow Strategic Rail Authority and I have reached the conclusion that in the public interest Railtrack should be placed under stronger pressure to deliver on the promises which it made. These shortcomings are not confined to breach of commercial obligations on the part of a private undertaking. They concern central parts of Railtrack's public interest obligations on the main route at the heart of Britain's railway network. For the reasons explained in this document, I am therefore today initiating enforcement action in relation to Railtrack's breach of its undertakings. These requirements do not constitute new obligations on Railtrack, and I am not aware of any reasons why it should be unable to meet them. Clearly, I shall need to consider carefully any representations or objections made with respect to the final draft order. But Railtrack can and should put right the failure to make adequate progress. The users of the West Coast Main Line and those who rely on them deserve no less.

TOM WINSOR
Rail Regulator
5 November 1999

1. Purpose

- 1.1 Chapters 1 to 4 of this document constitute a notice, published in accordance with the provisions of section 56 of the Railways Act 1993, stating that the Rail Regulator ("the Regulator") proposes to make a final order requiring Railtrack PLC ("Railtrack") to take steps to avoid a prospective contravention of its network licence. These steps, which are set out in more detail in the text of the proposed final order at Annex A, would require Railtrack to prepare and provide to the Regulator on or before 28 January 2000:
- (a) its freight routing strategy, setting out feasible options for meeting in full the ten year projections of freight traffic stated by freight operators in respect of origins and destinations on or reached via the West Coast Main Line ("WCML");
 - (b) costed specifications identified on the basis of the freight routing strategy referred to in paragraph (a) above;
 - (c) provisional timetables demonstrating how Railtrack will meet the commitments it gave to the Regulator set out in its letter of 29 April 1998 to provide additional capacity (the "capacity commitments") on the WCML on completion of phase 2 of the passenger upgrade of the WCML ("PUG 2"), and plans for modifying the infrastructure of the rail network to meet the capacity commitments, on the basis, respectively, that:
 - (i) Railtrack adopts moving block signalling in order to implement PUG 2; and
 - (ii) Railtrack adopts an alternative to moving block signalling in order to implement PUG 2;
 - (d) its proposals for complying with the duty in paragraph 2 of Condition 7 of its network licence, in addition to meeting the requirements of paragraph 1.1(c)(i) above, if Railtrack asserts that fulfilling the capacity commitments it gave would no longer accord with the purpose in paragraph 1 of Condition 7 of its network licence; and

- (e) revised strategic reviews setting out costed specifications for meeting the stated requirements of train operators and funders.

- 1.2 In addition, the draft final order requires Railtrack to appoint an independent risk assessor to certify that the costed specifications provided to the Regulator comply with Railtrack's line standard for project risk management and are prepared to the required probability value.

- 1.3 The draft final order also requires Railtrack to publish the information set out in paragraph 1.1 on its website, and provide free of charge copies of that information to the Franchising Director, each passenger and freight train operator providing services on the WCML, any Passenger Transport Executive with an interest in passenger services on the WCML, and any local authority or organisation having a material interest in passenger or non-passenger services on the WCML.

- 1.4 Section 56(1)(b) of the Railways Act 1993 requires the Regulator, when giving notice of a proposal to make a final order, to set out:
 - (a) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made;
 - (b) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement;
 - (c) the other facts which, in his opinion, justify the making of the order; and
 - (d) the period (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposed order may be made.

- 1.5 For the purpose of paragraph 1.4(a) above, the relevant condition or requirement is Condition 7 of Railtrack's network licence (full text at Annex B). Chapter 2 of this document outlines the background to the proposed order. Chapter 3 of this document complies with the requirements in paragraph 1.4(b) above by setting out the reasons why the Regulator considers that Railtrack is contravening the duty in Condition 7 of its network licence, and what action it must take to fulfil the duty. Chapter 4 of this document complies with the requirements in paragraph 1.4(c) above and sets out the reasons which, in the opinion of the Regulator, justify making the order.

- 1.6 For the purpose of paragraph 1.4(d) above, the Regulator requires that any representations or objections with respect to the proposed order may be made to him in writing on or before 7 December 1999 at 1 Waterhouse Square, 138-142 Holborn, London, EC1N 2TQ. Please mark them for the attention of Rebecca Phillipson at that address. It is our intention to place copies of all comments received in the Library of the Office of the Rail Regulator ("ORR"). Submissions made in confidence will be accepted, but should be clearly marked as such. However, in addition, where a submission is made in confidence, it should be accompanied by a statement to be placed in the ORR Library that a confidential submission has been made, giving the reasons why the submission was made in confidence, and summarising that submission excluding the confidential information.
- 1.7 Neither the Regulator's foreword nor Chapter 5 of this document form part of the formal notice, but they are published by the Regulator to clarify the position on a number of issues related to the proposed order.

2. Background

- 2.1 The WCML is one of the most important routes of the Great Britain rail network, providing passenger and freight links between London and the South East of England, the West Midlands, the North West of England, and Scotland. In 1997, Railtrack concluded negotiations with West Coast Trains Limited (operator of the Virgin West Coast services) to upgrade track and signalling on the WCML so as to enable Virgin to run faster and more frequent services on the route using new tilting trains. These negotiations subsumed an earlier agreement between Railtrack and the Franchising Director for a more limited upgrade (Passenger Upgrade 1), and led to an agreement known as PUG 2. The upgrade was planned in two phases: the first phase of PUG 2 is intended to allow new tilting trains to run up to 125 mph from 1 May 2002, whilst the second phase is intended to allow the trains to run up to 140 mph from 1 May 2005.
- 2.2 Railtrack and Virgin negotiated a draft supplemental track access agreement reflecting the outcome of their negotiations, and submitted it to the Regulator for comment on 27 November 1997, prior to a formal submission. Following consultation with train operators, funding bodies and other interested parties, the Regulator concluded that, whilst PUG 2 met the needs of Virgin and would provide substantial benefits to passengers using the route, Railtrack had not made adequate provision for the needs of other train operators, including freight operators. In draft conclusions published in March 1998, the Regulator set out his expectations of Railtrack, and the changes which would need to be made to the draft supplemental track access agreement in order for him to approve it. (The Regulator's Draft Conclusions on the Proposed Tenth Supplemental Agreement to the Track Access Agreement between Railtrack PLC and West Coast Trains Ltd (The "PUG 2" Agreement), ORR, London, April 1998.)

Approval of PUG 2

- 2.3 Following a hearing attended by interested parties, and formal undertakings given by Railtrack to provide additional capacity for train operators other than Virgin, as well as to carry out strategic reviews of the scope for further capacity, the Regulator confirmed that he would be prepared to approve an agreement reflecting his draft conclusions and the commitments offered by Railtrack. (The Regulator's Conclusions on the Proposed Tenth Supplemental Agreement to the Track Access Agreement between Railtrack PLC and West Coast Trains Ltd (The "PUG 2" Agreement), ORR, London, June 1998.) In doing

so, the Regulator took the view that the agreement could bring about a step change in the quality of service provision between several of the country's major cities, offering benefits in terms of frequency, journey time and reliability, and that this more than offset the disbenefits to some local services. The supplemental agreement was formally approved and signed on 8 June 1998, and the undertakings took effect at the same time as the supplemental agreement.

Railtrack's undertakings

2.4 The substance of Railtrack's undertakings was set out in Annex A to the Regulator's conclusions (reproduced in Annex C(1)), and were confirmed in a letter from Railtrack's Commercial Director, Mr Richard Middleton, to the Regulator, dated 29 April 1998 (Annex C(2)). In summary form, they provided that:

- (a) on completion of PUG 2, the WCML would provide sufficient capacity to meet Railtrack's contractual commitments to Virgin, to accommodate the quantum of passenger service rights (as defined in paragraph 2 of Annex C (1)) and the level of freight services as at April 1998, and to provide additional capacity on the fast and slow lines of the WCML as set out in paragraph 1 of Annex C(1); and
- (b) Railtrack would carry out strategic reviews of the scope for further changes to the capacity and capability of the WCML in the following areas:
 - (i) the capacity to carry additional freight traffic on the WCML or alternative routes;
 - (ii) the capacity of the rail network in the West Midlands, including the scope for cost-effective options to maintain existing journey times of local passenger services between Birmingham New Street and Coventry;
 - (iii) the capacity of routes serving Manchester Piccadilly from Wilmslow and Stockport; and
 - (iv) the scope for future operation of higher speed services between Euston, Milton Keynes and Northampton.

- 2.5 In his letter, Mr Middleton accepted that subject to and in accordance with Railtrack's duty under Condition 7 of its network licence, the provision of the capacity specified in the undertakings could be treated as a reasonable requirement of train operators and funders, and that the strategic reviews could be treated as works necessary for Railtrack to ascertain and, as appropriate, produce plans to meet the reasonable requirements of train operators and funders.

Strategic reviews

- 2.6 In paragraph 4 of its undertakings (Annex C(1)), Railtrack agreed that each strategic review should be completed in sufficient time to enable its results and firm plans for the implementation of requirements identified in order for Railtrack to be compliant with the duty in Condition 7 of its network licence to be incorporated in the 1999 Network Management Statement ("NMS"). This was to include, as appropriate, plans for infrastructure enhancement. Railtrack was to use reasonable endeavours to finalise funding arrangements by the date of publication of the NMS; the plans were to be accompanied by proposed or actual methods of funding, depending on the progress made. The strategic reviews were to consider the scope for synergy between works already planned to renew the WCML and to implement PUG 2, and additional works which might be necessary in order to facilitate the exercise of the options identified as a result of the reviews.
- 2.7 Railtrack set out the process it proposed to adopt to complete the capacity reviews in a letter from the then Director, West Coast Route Modernisation ("WCRM"), Mr James Mackay to the then Regulator, Mr John Swift, dated 20 April 1998. The process made provision for consultation with train operators and funding bodies, and discussing the funding of selected schemes with these parties before deciding by 31 January 1999 on the schemes which should appear in the 1999 NMS. Railtrack conducted this consultation through a series of meetings with representatives of all users of the southern end of the WCML. Representatives of ORR and the Office of Passenger Rail Franchising ("OPRAF") also attended these meetings from time to time.
- 2.8 ORR wrote to interested parties on 21 September 1998 to ask whether they were satisfied with the process to date. Whilst most were satisfied, concerns were expressed by English Welsh and Scottish Railway Limited ("EWS"), a freight operator, that slippage in Railtrack's own timetable would leave inadequate time for train operators to consider properly costed options to meet their reasonable requirements. In a letter to Mr Mackay

dated 30 October 1998, ORR asked Railtrack to address these concerns, and received assurances at a briefing on 4 November 1998 that good progress was being made. In reply to further concern about progress expressed by ORR, Railtrack confirmed on 4 February 1999 that the reviews were nearly complete, and that the commitments given by Railtrack in its letter of 29 April 1998 would be met.

2.9 In March 1999, Railtrack produced four Strategic Reviews, purporting to be the capacity reviews which Railtrack had committed to producing as the basis for firm plans in the 1999 NMS (published later that month):

- (a) Strategic Review A (on freight capacity) noted that there might be scope to divert freight trains on to alternative routes, but did not set out the costs of options which Railtrack had identified as alternatives to the extensive infrastructure works which it said would be necessary to accommodate the ten-year forecasts of freight demand on the WCML. The full cost implications of infrastructure options were not assessed, and their feasibility was not demonstrated. The NMS did not contain firm plans, but reported that discussions were continuing with customers on options that offered realistic solutions;
- (b) Strategic Review B (on approaches to Manchester Piccadilly) confirmed that costed options were needed to provide the capacity and capability needed by services using Manchester Piccadilly, but failed to set out what these options were, still less to specify firm plans to meet the reasonable requirements of affected train operators and funders. The 1999 NMS reiterated the contents of the review;
- (c) Strategic Review C (on capacity in the West Midlands) concluded, amongst other things, that the cost of additional infrastructure to allow the journey times of local services between Birmingham and Coventry to be maintained would be very substantial. The NMS recommended that no additional infrastructure work be undertaken; and
- (d) Strategic Review D (on the route from Euston to Rugby) concluded that faster services to Northampton would require a grade-separated junction and the procurement of new rolling stock, but that the additional costs could not be wholly funded by the extra revenue generated. The NMS suggested that, following the implementation of PUG 2, Silverlink services be pathed on the slow lines.

Regulator's questions

- 2.10 On 18 March 1999 and 14 April 1999 respectively Silverlink and EWS wrote to the Regulator expressing concern that Railtrack had not complied with the undertakings it gave to the Regulator on 29 April 1998. In particular, Silverlink pointed out that the indicative timetables produced by Railtrack in order to demonstrate the ability to meet the capacity commitments did not appear to provide adequate scope to recover from performance perturbations, and would not accommodate the usual range of ad hoc train movements. EWS asked the Regulator to investigate the matter.
- 2.11 ORR convened a meeting with Railtrack, affected train operators, and representatives of OPRAF on 30 April 1999 to examine these concerns. At that meeting, and subsequently in a letter to ORR dated 13 May 1999, Railtrack acknowledged that it needed to do further work to establish how 17 of the 42 slow line paths and the 2 extra fast line paths could be delivered. It also acknowledged that further work was needed to improve the depth of analysis of the options contained in the strategic reviews. Railtrack proposed in its letter to set out costed options for meeting its capacity commitments by the end of June 1999, and to complete more detailed strategic reviews by the end of July 1999.
- 2.12 In his response, the then Regulator, Mr Chris Bolt, told Railtrack on 2 June 1999 that he considered that, in order for Railtrack to have complied with the undertaking it gave to carry out strategic reviews, it would have been necessary to do so on the basis of firm plans for the committed capacity. It did not appear to him that the outcome of the reviews provided sufficient detail to enable train operators and funders to plan with a reasonable degree of assurance. He therefore considered that Railtrack might have breached Condition 7 of its network licence. He was not satisfied that the proposals in Railtrack's letter dated 13 May 1999, if implemented, would provide the information which train operators and funders required. He required Railtrack under Condition 13 of its network licence to answer certain questions by providing information relating to:
- (a) the plans Railtrack had or was producing to meet the capacity commitments it had made (paragraph 1 of Annex C(1)); and
 - (b) the basis on which Railtrack gave the undertakings set out in Mr Middleton's letter to the Regulator dated 29 April 1998 (Annex C(2)).

- 2.13 Responding to enquiries by solicitors acting for EWS, ORR on 2 July 1999 said that the Regulator would assess whether Railtrack was in breach of its licence in the light of its responses to his question, and that it was possible that he would convene a formal hearing in September 1999 in advance of reaching final conclusions in early October 1999. However, in the light of subsequent developments, the Regulator concluded that this would not be appropriate (see paragraph 2.23 below).
- 2.14 In its response to the Regulator's information requirements (see paragraph 2.12 above), on 5 July 1999 Railtrack provided a large quantity of documentation, followed on 29 July 1999 by specimen timetables seeking to demonstrate its ability to meet the capacity commitments. Copies of the Regulator's letter, and Railtrack's responses, with excisions requested by Railtrack, have been placed in the ORR Library. In its responses, Railtrack noted that its plans for meeting the capacity commitments were subject to the successful implementation of moving block signalling, and the resolution of a number of practical problems. Examples of the practical problems identified by Railtrack included the inability to demonstrate:
- (a) how Railtrack would meet freight rights for paths between London and Rugby when only two tracks are available (e.g. at night); and
 - (b) how Railtrack would achieve a timetable that was robust enough to cope with performance perturbations.
- 2.15 Subsequent analysis by ORR of the specimen timetables provided by Railtrack indicated that they did not demonstrate its ability to meet the capacity commitments, a view reinforced by analysis conducted by the Shadow Strategic Rail Authority ("SSRA"), as OPRAF has been known since 20 July 1999. For example, the timetables would not allow the full quota of 42 paths to be provided on the slow lines, or meet the specific requirement for eight daytime paths in each direction between Coventry and Stechford. Nor are the paths suitably distributed over the day: five of the six paths offered between Coventry and Stechford are timed between 0200 and 0630. Moreover, the paths do not offer an appropriate balance between the modes of traction required (i.e. diesel or electric haulage). Paths from Crewe to Wembley are almost exclusively for electric traction, as compared with 70% in the reverse direction.
- 2.16 While Railtrack has continued to develop the specimen timetables in consultation with train operators, the Regulator is not aware that Railtrack has succeeded in demonstrating

how it would meet the capacity commitments. A recent version of the timetables dated 29 September 1999 fails to demonstrate how the capacity commitments could be met, and in an accompanying document Railtrack acknowledges that a number of unresolved problems remain.

- 2.17 On 24 June 1999, Railtrack told representatives of train operators using the southern end of the WCML that it would not be possible before autumn 1999 to demonstrate the feasibility of the moving block signalling technology which they proposed to use to implement PUG 2. In its response dated 5 July 1999 to the Regulator's information requirement (see paragraph 2.12 above), Railtrack said that it did not expect to confirm the feasibility of moving block signalling until the end of 1999. At a briefing for ORR on 28 July 1999, Railtrack said that it did not envisage being able to make a decision on the feasibility of moving block signalling until January 2000. It has subsequently advised that it expects to reach a view by mid-December 1999.
- 2.18 The Regulator is aware that, as a result of the consultations Railtrack has undertaken on the development of its plans to meet the capacity commitments and on the strategic reviews, train operators and funders have set out to Railtrack:
- (a) their expectations of the further work Railtrack requires to do to validate its plans to meet the capacity commitments, and to demonstrate the feasibility of the options identified in the strategic reviews completed in March 1999; and
 - (b) requirements for additional options to be investigated by Railtrack. For example, on 25 June 1999 the SSRA wrote to Railtrack, reiterating its expectation that Railtrack would complete work on the strategic reviews by the end of July 1999, and asking that it undertake work on additional options by mid-August 1999. In addition, on 13 September 1999, the SSRA announced plans for a review of rail capacity in the West Midlands, in which Railtrack will participate.
- 2.19 On the basis of the information available to him, the Regulator is satisfied that the work described in paragraph 2.18 (a) above is necessary to meet the undertakings given by Railtrack on 29 April 1998, and to meet the reasonable requirements of train operators and funders, and is complementary to the additional work described in paragraph 2.18 (b) above, which does not form part of the original strategic reviews.

Freight routing strategy

- 2.20 In September 1997, the Regulator published 'Regulatory Objectives for Rail Freight' (Regulatory Objectives for Rail Freight, ORR, London, September 1997.), setting out his objectives for promoting rail freight. He noted that Railtrack had a critical role to play in supporting the growth of rail freight, and said that he expected Railtrack to develop a clear approach to meeting the capacity needs of freight, covering its routing strategy, amongst other things.
- 2.21 On 5 March 1999, the Regulator approved Railtrack's proposed specification for the 1999 NMS, following extensive discussions with Railtrack. The form and period specification included a statement that the NMS would contain a coherent and deliverable strategy for meeting the reasonable requirements of current and potential freight train operators and funders, including a freight routing strategy showing how freight traffic would be conveyed by 'first choice' routes or alternative routes if this was not possible.
- 2.22 The 1999 NMS reported that the WCML was one of seven routes which could not accommodate the demand forecast of freight operators by 2009, and that one of three options would need to be finalised to meet demand on the WCML, namely substantial work to expand the infrastructure, diverting traffic on to other routes, or restructuring the timetable for all users of the southern end of the WCML. Railtrack said that it would do this in consultation with customers by July 1999, not just for the WCML, but also for parallel routes. In a letter to the Regulator dated 5 July 1999, Railtrack's Chief Executive, Mr Gerald Corbett, acknowledged the need "to accelerate the work on freight routeing strategy to put the proposals for WCRM in a wider context", and said that detailed proposals were being worked up. To date, ORR has seen no evidence that Railtrack has finalised any of these options.

Next steps

- 2.23 Having regard to the shortcomings of the plans produced by Railtrack in response to the Regulator's questions, the Regulator saw little point in convening a formal hearing in September 1999, since:

- (a) it is apparent that Railtrack would not have been able to confirm or otherwise the feasibility of implementing PUG 2 using moving block signalling until the end of 1999;
- (b) Railtrack had not yet developed feasible options for accommodating freight demand for destinations served by the WCML; and
- (c) he believes that the completion of work referred to in paragraphs (a) and (b) was necessary before Railtrack could set out robust plans for meeting its capacity commitments, and finalise useful strategic reviews.

3. Likely contraventions of Railtrack's network licence

3.1 The Regulator has concluded that:

- (a) Railtrack is likely to contravene the requirements of its network licence unless by 28 January 2000 it produces robust plans demonstrating its ability to meet the reasonable requirements of train operators and funders as described in:
 - (i) the capacity commitments; or
 - (ii) to the extent that Railtrack can demonstrate that changes in their reasonable requirements have rendered these commitments redundant, an updated statement of reasonable requirements; and
- (b) Railtrack is likely to contravene the requirements of its network licence until it completes adequate strategic reviews on the WCML, including a freight routing strategy in respect of origins and destinations reached on or via the WCML that sets out feasible options for meeting in full the ten-year projections of freight traffic stated by freight operators, in order to provide the basis of establishing the reasonable requirements of train operators and funders.

3.2 The reasons for these conclusions are set out below.

Railtrack's capacity commitments

3.3 The Regulator notes that:

- (a) Railtrack accepted that the capacity commitments it gave to the Regulator in its letter of 29 April 1998 (Annexes C(1) and (2)) represented the reasonable requirements of train operators and funders for the purposes of Condition 7 of its network licence;
- (b) train operators have expressed concern about Railtrack's continuing failure to provide robust plans demonstrating that it can meet the capacity commitments which continue to reflect their reasonable requirements;

- (c) the timetables with which Railtrack purports to demonstrate its ability to meet the capacity commitments are subject to a number of important caveats, including the feasibility of the moving block signalling system which Railtrack proposes to employ and the resolution of various practical problems identified by Railtrack in consultation with train operators; and
- (d) ORR's analysis of the timetables indicates that they do not enable the quantum of capacity commitments to be delivered, and adds weight to the doubts expressed by Railtrack in its report to the Regulator dated 5 July 1999 that the timetables are robust in performance terms (see paragraph 2.14 above); and
- (e) Railtrack has continued to put back the date by which it would decide whether it is feasible to implement PUG 2 using moving block signalling. Railtrack has now told the Regulator that it does not expect to ascertain until mid-December 1999 whether there is a feasible alternative if moving block signalling is not adopted.

3.4 He considers that it is reasonable for train operators and funders to expect Railtrack to demonstrate that it has robust plans to meet the capacity commitments given that:

- (a) current and potential train operators need to know that they can rely on the capacity commitments given by Railtrack in order to plan their businesses with a reasonable degree of assurance. This is particularly significant given the SSRA's initiation of the franchise replacement process in October 1999; and
- (b) these plans are (and were expressed in the undertakings to be) necessary to identify synergies between the works to implement the capacity commitments and any works which train operators and funders might require as a result of the strategic reviews to provide additional capacity on the WCML.

3.5 He has no evidence to demonstrate why, if Railtrack had endeavoured to prepare these plans to the greatest extent reasonably practicable, it could not have done so by now, given that it has had 17 months to prepare the plans since the Tenth Supplemental Agreement reflecting PUG 2 was signed. Having regard to the lead time required for planning and implementing a project of the size and complexity of PUG 2 and the associated capacity commitments, he considers that Railtrack should by now have robust plans in place if it is to complete PUG 2 and associated works as scheduled by May 2005.

3.6 In the light of the factors summarised in paragraph 3.3, and the considerations summarised in paragraphs 3.4 and 3.5, the Regulator has concluded that:

- (a) given the doubts which Railtrack has expressed about the feasibility of moving block signalling, Railtrack's plans for meeting the capacity commitments cannot be robust unless they provide for the contingency that moving block signalling is not feasible; and
- (b) Railtrack is likely to contravene the requirements of its network licence unless by 28 January 2000 it produces robust plans demonstrating how it would meet the capacity commitments it gave in its letter of 29 April 1998.

Railtrack's strategic reviews

3.7 The Regulator notes that:

- (a) Railtrack accepted that the strategic reviews were necessary to ascertain and, as appropriate, produce plans to meet the reasonable requirements of operators and funders for the purposes of Condition 7 of its network licence (Annex B);
- (b) Railtrack undertook to complete the reviews in sufficient time for their results and firm plans for implementation of the requirements identified in order for Railtrack to be in compliance with Condition 7 of its network licence to be incorporated in the 1999 NMS (paragraph 4 of Annex C(1));
- (c) in a letter to ORR dated 13 May 1999 Railtrack acknowledged that it needed to improve the depth of analysis of the options identified in the strategic reviews, particularly in the case of capacity requirements for the southern end of the WCML, and that the work on freight capacity needed to be tied in with the wider work on freight routing strategy, the outcome of which might have significant implications for traffic on the southern end of the WCML; and
- (d) Railtrack said in the 1999 NMS that it would finalise options for meeting the 2009 demand forecast by freight train operators for the WCML and parallel routes by July 1999.

3.8 The Regulator considers that:

- (a) in order to provide an adequate basis for the strategic reviews, Railtrack should have developed robust plans for meeting its capacity commitments, a freight routing strategy which demonstrates how it proposes to accommodate freight demand on destinations served by the WCML, and a signalling strategy which includes a fallback option should moving block signalling prove unfeasible.
- (b) on the evidence set out in paragraph 3.3, Railtrack does not have robust plans for meeting its capacity commitments;
- (c) Railtrack has not demonstrated that it had finalised options for meeting the 2009 demand forecast by freight train operators for the WCML and parallel routes by July 1999;
- (d) information on options for changes in the capacity and capability of the WCML which they need to plan their future requirements with a reasonable degree of assurance. In the context of the strategic reviews, this information comprises costed options for meeting their stated requirements, to enable train operators and funders to identify the preferred options to meet their reasonable requirements, having regard to the fundability and practicability of the options;
- (e) the timely completion of the strategic reviews and of the freight routing strategy were accepted by Railtrack as necessary preliminary actions to establish the reasonable requirements of train operators and funders and to enable them to plan their businesses with a reasonable degree of assurance;
- (f) he has no evidence to demonstrate why, if Railtrack had endeavoured to prepare the strategic capacity reviews to the greatest extent reasonably practicable, it could not have done so by now, given that it has had 17 months to conduct the reviews since the Tenth Supplemental Agreement reflecting PUG 2 was signed and came into effect on 8 June 1998; and
- (g) it was a clearly stated purpose of the strategic reviews to consider the possible synergy of additional works with the completion of the PUG 2 agreement and the capacity commitments.

3.9 In the light of the factors summarised in paragraph 3.7, and the considerations summarised in paragraphs 3.8, the Regulator has concluded that:

- (a) the strategic reviews conducted by Railtrack have not yet provided an adequate basis for firm plans for the implementation of the reasonable requirements of train operators and funders, and that Railtrack has failed to comply with the undertakings it gave;
- (b) completion of adequate strategic reviews is a necessary step in determining the reasonable requirements of train operators and funders, and was accepted as such by Railtrack, but Railtrack has failed to achieve this objective to the greatest extent reasonably practicable; and
- (c) if adequate strategic reviews are not completed in a timely manner, the opportunities for synergy may be lost. Railtrack accepted that these were necessary steps to identify the reasonable requirements of train operators and funders to satisfy its obligations under Condition 7 of its network licence. There is therefore a real possibility of increased cost to train operators or funders and difficulty or delay in implementing options identified by them and therefore, Railtrack is likely to contravene its licence, and this likelihood will continue until it provides train operators and funders with well-founded capacity reviews.

4. *Regulator's reasons for proposing a final order*

- 4.1 If the Regulator is satisfied that Railtrack is contravening or is likely to contravene its network licence, section 55(1) of the Railways Act 1993 requires him, by final order, to make such provision as is requisite for securing compliance, subject to the provisions of section 55(2) to (5).

Nature of appropriate order

- 4.2 Sections 55(2) and (3) of the Railways Act 1993 require the Regulator to consider whether a provisional order (which would have immediate effect) rather than a final order (which in particular can only take effect after a consultation period) should be made. In making that decision, the Regulator is required to have regard to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the licence condition, is likely to be done or fail to be done before the final order is made.
- 4.3 The Regulator considers that, in the light of the information referred to above, it will not be practicable for Railtrack to provide the information referred to in the draft final order until the dates indicated which will occur after the date upon which he would expect to be able to decide whether or not to issue the final order. He also considers that it is appropriate to allow an opportunity for representations to be made by Railtrack and other interested parties on the terms of any order which is made. He therefore does not consider it necessary or appropriate to issue a provisional order.

Conditions which would preclude the making or confirmation of an order

- 4.4 Section 55(5) provides that the Regulator should not make a final order if he is satisfied:
- (a) that the duties imposed on him by section 4 of the Railways Act 1993 preclude the making of the order;
 - (b) that Railtrack has agreed to take, and is taking, all such steps as it appears to him for the time being to be appropriate for it to take for the purpose of securing or facilitating compliance with the licence requirement; or

- (c) that the contraventions were, or the apprehended contraventions are, of a trivial nature.

Section 4 duties

4.5 It is necessary for the Regulator to consider each of the duties in section 4 and to give each the weight appropriate to the matter in question. Whilst all are relevant and have been taken into account, the following are the duties which appear to him to be particularly germane:

- (a) to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that he considers economically practicable; and
- (b) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

4.6 As regards paragraphs 4.5(a) and (b), the Regulator considers that an order requiring Railtrack to produce plans demonstrating its ability to meet the capacity commitments, and strategic reviews identifying the scope for further enhancements to the capacity and capability of the WCML, will facilitate the development of the rail network by helping persons providing railway services to plan the future of their businesses with a reasonable degree of assurance. These plans would be particularly important to freight operators, current and potential open access operators, and current and potential passenger operators, seeking to respond to the intention of the SSRA, announced on 30 June 1999, of renegotiating, extending or replacing a significant proportion of existing franchises over the next two years or so. He has invited Railtrack to provide undertakings to take steps in the term of the proposed final order and Railtrack declined to do so.

4.7 The Regulator has also considered whether the proposed order might lead to public interest detriments by diverting Railtrack's resources away from planning safety or development of the network elsewhere than on the WCML. For example, Railtrack might switch resources away from planning for developments proposed as part of franchise replacement deals, or from planning safety developments following the Ladbroke Grove accident, or to meet other requirements of train operators or funders. The Regulator sees no reason why such detriments are a necessary consequence of Railtrack's compliance with the proposed order. He considers that a company of the size

of Railtrack and having its responsibilities should have sufficient staff or the ability to employ appropriate assistance to enable it to carry out such planning throughout the network. He will, in any case, monitor the position carefully and if there is any evidence of such unacceptable consequences of this nature, he will not hesitate to use his powers under Railtrack's network licence, or those concerning access to the network, as appropriate.

- 4.8 Under section 4(5) of the Railways Act 1993, the Regulator must have regard to the impact of his decisions on the financial position of the Franchising Director, and the need not to make it unduly difficult for Railtrack to finance its activities. The Regulator has no evidence to suggest that the costs involved in complying with the proposed order would make it unduly difficult for Railtrack to finance its licensed activities or prejudice the financial position of the Franchising Director.
- 4.9 The Regulator is therefore satisfied that, on a proper balance of his duties in section 4 of the Railways Act 1993, he is not precluded from making the order.

Inadequacies of Railtrack's current actions

- 4.10 The Regulator recognises that major projects are often delayed, but considers that if an early delay results in a more robust solution, it need not delay the completion date. However, he notes that there have been repeated delays in meeting both the original and revised target dates for completion of the undertakings given by Railtrack on 29 April 1998, and for completing key parts of Railtrack's freight routing strategy. The Regulator is also aware of frequent changes in the leadership of the PUG 2 project over the past 17 months. It is evident from the quality of the information submitted to the Regulator by Railtrack that these delays and changes to project leadership have not resulted in more robust plans.
- 4.11 The Regulator made clear the significance he attached to the undertakings he requested from Railtrack (paragraphs 2.2 and 2.3) and was entitled to expect that it fully understood and would fulfil these obligations which it accepted. However, Railtrack has repeatedly failed to deliver on each date it has given for provision of adequate information and continued to identify further problems to be solved, without fully explaining why these problems had not been identified and solved earlier. He therefore has no evidence to demonstrate that Railtrack has applied itself to the greatest extent

reasonably practicable to identify and enable it to deliver, within the PUG 2 timetable, the reasonable requirements of train operators and funders.

- 4.12 The Regulator wrote to Railtrack on 20 October 1999 explaining that he was satisfied that Railtrack is likely to be in breach of its commitments in respect of the WCML upgrade and therefore the duty in Condition 7 unless it took appropriate steps. He set out the steps which he considered Railtrack would need to undertake to avoid the necessity for an enforcement order in draft undertakings annexed to his letter, and asked for Railtrack's confirmation by 29 October 1999 that it would provide those undertakings. He subsequently agreed to an extension of this time limit to 4 November 1999. On 4 November 1999, Railtrack wrote to the Regulator declining to offer undertakings in the terms he had requested, and arguing that considerably more time would be required.
- 4.13 The Regulator is therefore not satisfied that Railtrack is taking all the necessary steps to secure or facilitate compliance with its duty under Condition 7 of its network licence. Railtrack's failures to date satisfy him that it is not likely to comply with its licence obligations and therefore it is necessary for such compliance to be reinforced by the making of a final order. In particular, it appears to the Regulator that Railtrack is seeking to complete the strategic reviews without the benefit of:
- (a) conclusions on the feasibility of implementing PUG 2 using moving block signalling and, if not feasible, a specific alternative;
 - (b) a freight routing strategy in respect of traffic for destinations reached via the WCML; and
 - (c) robust plans for meeting the capacity commitments it gave.
- 4.14 In the view of the Regulator, this means that the steps Railtrack is taking would not be likely to ensure that it complies with Condition 7 of its network licence, by delivering the capacity commitments and the other reasonable requirements identified from the strategic reviews by the due completion date of PUG 2.

Nature of the contraventions

4.15 The Regulator is satisfied that the contravention and the apprehended contravention are matters of importance to passengers and freight users, and from a public policy perspective. They are therefore not trivial within the meaning of section 55(5)(c) of the Railways Act 1993. The Regulator is therefore satisfied that he is not precluded by section 55(5)(c) from making the order.

Monetary penalty

4.16 Section 55(8) of the Railways Act 1993 enables the Regulator to include a provision in a final order which imposes a "monetary penalty of such amount as may be appropriate, in all the circumstances of the case, in respect of the contravention in question". The purpose of imposing a monetary penalty should be to ensure that Railtrack has a further incentive to comply with its obligations.

4.17 However, such a penalty will not always be necessary or appropriate. In the present case, the Regulator does not propose to impose a penalty for the following reasons:

- (a) Railtrack should recognise that, having regard to the importance of the WCML, the breach of the proposed enforcement order, and the way in which this would be perceived by investors, customers and passengers, would be a very serious matter for the company and the credibility of its management. There is therefore a strong non-monetary incentive for Railtrack to comply with its licence and any enforcement orders issued by the Regulator where this does not involve substantial additional costs. Given this, it should not be necessary to impose a monetary penalty in order to incentivise compliance in this case;
- (b) the information which is required by this order is information which Railtrack needs for its own business planning purposes, and Railtrack has already done much of the necessary preparatory work, although it is behind schedule, and the results produced to the Regulator have not been of an adequate standard. Accordingly, Railtrack should not face undue difficulties in complying with this order; and
- (c) if the Regulator were to impose a monetary penalty where this is not necessary to incentivise compliance, this could add unnecessarily to perceived regulatory risk.

This might therefore increase Railtrack's cost of finance which may not be in the longer term interests of train operators and funders.

- 4.18 Nonetheless, if as a result of his review of the information available to him, including that provided by Railtrack, the Regulator is satisfied in the future that Railtrack has breached or is likely to breach its network licence in relation to this project, he will not hesitate to take further action to require Railtrack to comply with its licence and would consider including a penalty in any such order.

Requirements of the order

- 4.19 In the light of the conclusions in relation to the capacity commitments set out in paragraph 3.6 above, the Regulator proposes to require Railtrack to fulfill the obligations summarised in paragraph 1.1 above and set out in full in the draft final order at Annex A.

5. *Related matters*

Capacity of the WCML from 2002

5.1 The Regulator wishes to be satisfied that, in seeking to fulfil its contractual commitments to West Coast Trains Limited in phases 1 and 2 of PUG 2, Railtrack will not do so in a manner which will cause unreasonable detriment to other freight and passenger train operators. Accordingly, (and whether or not the final order is issued) under Condition 13 of Railtrack's network licence, he requires Railtrack to provide him, on or before 28 January 1999, with specimen timetables for the period from the scheduled implementation of phase 1 of PUG 2 (1 May 2002):

- (a) such timetables to demonstrate capacity which broadly can accommodate, with a standard of operational performance meeting the reasonable requirements of train operators and funding bodies:
 - (i) the existing quantum of rights held by passenger operators (as defined in paragraph 2 of the undertakings at Annex C(1)); and
 - (ii) the existing level of freight services (including Post Office services) normally being provided at present including the broad service characteristics of such services (having regard to the information provided at the Regulator's hearing on 6 March 1998); and
- (b) for Mondays to Fridays reflecting the estimated service characteristics, mixes of traffic and haulage mode forecast by Railtrack and its customers:
 - (i) providing for all movements (including ancillary movements) on a 24-hour basis for each of the following route sections: Euston - Rugby, Rugby - Birmingham (via Stechford), Rugby - Stafford (via Trent Valley); and
 - (ii) on a 24-hour basis for freight movements along the whole of the WCML (including paths to and from the WCML sections which run over all or part of the route from Rugby to Bescot via Stechford, from Nuneaton to Bescot/Lawley Street, and from Bescot/Lawley Street to Stafford).

Freight routing strategy

5.2 The Regulator considers that, in addition to completing a freight routing strategy in respect of origins or destinations reached via the WCML, it is essential that Railtrack should complete a network-wide freight routing strategy as soon as possible. In the light of the answers given by Railtrack to questions posed by the Regulator on 12 July 1999, the Regulator is considering whether the work done so far by Railtrack on a network-wide freight routing strategy is adequate..

Review of and consultation on information supplied by Railtrack

5.3 Upon receipt of the information referred to in this document from Railtrack, the Regulator expects that he will consult interested parties, including in particular the SSRA, other funders, and passenger and freight train operators, on the adequacy of:

- (a) Railtrack's freight routing strategy in respect of destinations served by the WCML, as set out in paragraphs 1.1 (a) and (b) above;
- (b) Railtrack's plans to meet the capacity commitments and any alternative proposals as set out in paragraphs 1.1 (c) and (d) above;
- (c) Railtrack's strategic reviews as set out in paragraphs 1.1 (e) above; and
- (d) Railtrack's plans to provide capacity from the implementation of phase 1 of PUG 2, as set out in paragraph 5.1 above.

5.4 The Regulator expects to commission consultants to assist him in considering the adequacy of Railtrack's plans to meet the capacity commitments and the strategic reviews in relation to the reasonable requirements of train operators and funders.

Annex A

RAILWAYS ACT 1993

FINAL ORDER – RAILTRACK PLC

Under section 55 of the Railways Act 1993, I hereby make the following order in respect of Railtrack PLC of Railtrack House, Euston Square, London NW1 2EE.

The obligation

1. In order to comply with Condition 7 (Stewardship of the Licence Holder's Network) of its network licence, Railtrack shall:
 - (a) on or before 29 February 2000 prepare and provide to the Regulator the freight routing strategy which would enable it to meet in full the requirements stated by non-passenger train operators and funders for the period between 31 January 2000 and 1 May 2009 in respect of origins and destinations on or reached via the West Coast Main Line;
 - (b) on or before 29 February 2000 prepare and provide to the Regulator a costed specification in respect of each modification to the network specified in or contemplated by the freight routing strategy prepared under sub-paragraph (a), other than in respect of any modification in respect of which the train operator or funder for whose benefit such modification was proposed has notified Railtrack that it does not require a costed specification or which Railtrack establishes to the satisfaction of the Regulator has no appreciable prospect of being funded;
 - (c) on or before 29 February 2000 prepare and provide to the Regulator:
 - (i) a specimen timetable demonstrating how Railtrack can satisfy the capacity commitments;
 - (ii) the Rules of the Plan which would be necessary to enable the specimen timetable to be operated to satisfy the capacity commitments, and

- (iii) specifications (in sufficient detail to establish the nature and extent of the works required) of the modifications which would be required to the network to enable the specimen timetable to be operated (including any alternative modifications which it reasonably considers could also enable that purpose to be achieved),

in each case separately on the following bases:

- (aa) that the signalling system to be installed to enable the capacity commitments to be satisfied is a system which includes the use of moving block signalling;
- (bb) that the signalling system to be installed to enable the capacity commitments to be satisfied is a system which does not include the use of moving block signalling, and
- (iv) to the extent that Railtrack reasonably believes that any part of the capacity commitments do not now represent the reasonable requirement of a train operator or funder:
 - (aa) the grounds for that belief;
 - (bb) sufficient evidence for those grounds;
 - (cc) any alternative requirement proposed by the train operator or funder concerned; and
 - (dd) any modification to the information provided under sub-paragraph (c) (i)-(iii) which would enable Railtrack to satisfy the alternative requirement referred to in sub-paragraph (c)(iv)(cc);
- (d) on or before 29 February 2000 prepare and provide to the Regulator the strategic review in respect of each of the areas specified in sub-paragraphs (ii), (iii) and (iv) of paragraph 3 of the Undertakings, in sufficient detail to establish that it has fulfilled the requirements of the Undertakings (other than as to timing contained in paragraph 4 of the Undertakings) in respect of the currently stated requirements of train operators and funders and specific modifications to the network (if any) specified by any of them, in each case:

- (i) specifying those modifications to the network or to the manner of operation of the network which have been agreed between Railtrack and a train operator or operators or a funder or funders as necessary to meet their stated requirements together with, in respect of each modification to the network, a costed specification;
 - (ii) summarising those modifications which have been agreed as unnecessary or otherwise inappropriate to meet those stated requirements; and
 - (iii) where modifications to the network or the manner of operation of the network have not been agreed, specifying the modifications considered by the persons in question, the reasons for their failure to agree on them and the actions proposed to reach agreement and a costed specification of each modification to the network so considered;
 - (e) appoint an independent risk assessor in accordance with the procedure set out in paragraph 4; and
 - (f) ensure that the costed specifications provided to the Regulator in accordance with sub-paragraph (b) are certified by the independent risk assessor as having been produced in accordance with Railtrack's line standard (reference number RT/PCM/CM/005) for project management procedure (issue 3) and prepared to the required probability value.
2. For the purposes of the paragraph 1(d), a modification may be treated as agreed notwithstanding the fact that the method of funding the relevant works has not been agreed.
3. Railtrack shall:
- (a) on or before 3 March 2000, publish (except to the extent that publication would or might, in the opinion of the Regulator, seriously and prejudicially affect the interests of any person) the information referred to in each of the sub-paragraphs (a) to (d) of paragraph 1 on its website;
 - (b) provide (free of charge) a copy of that published information to:

- (i) the following persons, on or before 3 March 2000:
 - (aa) each train operator providing scheduled services on the West Coast Main Line;
 - (bb) the Franchising Director;
 - (cc) any Passenger Transport Executive having an interest in passenger services provided on the West Coast Main Line; and
- (ii) any local authority or organisation having a material interest in passenger or non-passenger services provided on the West Coast Main Line which requests a copy.

Independent risk assessor

4. For the purpose of complying with paragraphs 1(e) and 1(f) Railtrack shall:
- (a) within 2 weeks of the date of this order provide to the Regulator a list of three risk assessors who are, in Railtrack's opinion, suitably qualified for, and capable of, certifying whether Railtrack has used the required quantitative risk model, applied to the required probability value, in completing the cost specifications required by this Order;
 - (b) appoint the risk assessor nominated by the Regulator from that list to provide such certification and include in the contract of appointment a requirement that each certification issued in accordance with paragraph 1(f) shall be expressed to be given by the risk assessor for the benefit of the Regulator and shall be unqualified; and
 - (c) timeously provide the independent risk assessor with such information and to such standard as he requires to enable him to complete that certification.

Definitions

5. In this order:

"capacity commitments" means the provision of the capacity specified in paragraph 1 of the Undertakings;

"costed specification" means an estimate, prepared in accordance with the highest practicable standards and on the basis of the best information available or reasonably obtainable, of the cost of carrying out the works required to effect a modification, in a timely, economic and efficient manner and in accordance with best practice, based on a specification of the relevant works prepared in sufficient detail to demonstrate the nature of the works required, and which uses a quantitative risk model complying with Railtrack's line standard for project management procedure and prepared to the required probability value;

"freight routing strategy" means a statement setting out:

- (i) the capacity of the relevant part or parts of the network to enable train movements stated by non-passenger train operators wishing to use the West Coast Main Line as the preferred route of that operator during the period between 3 March 2000 and 1 May 2009;
- (ii) is insufficient to enable such train movements to be made, how this could be resolved, including any proposed changes to the manner of operation of the network and any proposed modifications of the network, a reasoned estimate of the cost of each modification and an outline timetable indicating the critical dates in respect of the carrying out of the modification;
- (iii) where the preferred route for a train movement is not possible or reasonable, having regard to other likely demands on the routes concerned, reasonably practicable proposals in respect of alternative routes;

and in each case establishing, so far as practicable, that Railtrack has maximised the ability of the network to meet the stated requirements of current and potential passenger and non-passenger operators and funders (to the extent that they are, or ought reasonably to be, known to Railtrack) stating, where appropriate, the assumptions on which it is made;

"independent risk assessor" means the risk assessor appointed in accordance with paragraph 4;

"Railtrack" means Railtrack PLC;

"required probability value" means 80% or such other value as the Regulator specifies by notice to Railtrack meets the requirements of relevant train operators and funders;

"Rules of the Plan" has the same meaning as in the Railtrack Track Access Conditions incorporated in track access contracts to which Railtrack is a party and shall also include proposed sectional running times covering the characteristics of the main types of new and existing rolling stock reasonably expected to be operated from 2005, proposed headways, and proposed junction, station and engineering time allowances, and state the assumptions and allowances for performance made by Railtrack;

"specimen timetable" means working timetables for Mondays to Fridays reflecting the service characteristics, mixes of traffic and haulage mode forecast by Railtrack having full and proper regard to information provided by train operators and to the reasonable requirements of train operators and funders:

- (i) providing for all movements (including ancillary movements) on a 24-hour basis for each of the following route sections: Euston – Rugby, Rugby – Birmingham (via Stechford), Rugby – Stafford (via Trent Valley);
- (ii) on a 24-hour basis for freight movements along the whole of the West Coast Main Line (including the paths which use the sections Rugby – Stechford - Bescot, Nuneaton – Bescot/Lawley Street, and Bescot/Lawley Street – Stafford); and
- (iii) showing a standard hour timetable for off-peak hours (between 11.00 and 15.00 hours) for the following route sections: Stafford – Crewe, Crewe – Manchester, and Motherwell – Glasgow;

"Undertakings" means Annex A of the document entitled "The Regulator's Conclusions on the Proposed Tenth Supplemental Agreement between Railtrack PLC and West Coast Trains Limited (The "PUG 2 Agreement")" published by the Regulator on 8 June 1998;

"West Coast Main Line" and WCML means that part of Railtrack's network known as the West Coast Main Line;

"2000 NMS" means the statement required to be published by Railtrack under paragraph 4 of Condition 7 of its network licence on or before 31 March 2000.

6. In this order (unless the context otherwise requires):
- (a) references to paragraphs are to paragraphs of this order;
 - (b) paragraph headings are for convenience of reference only and do not form part of, and shall neither affect nor be used in the construction of, this order;
 - (c) terms and expressions defined in the Railways Act 1993 or Railtrack's network licence shall have the same meanings in this order; and
 - (d) "stated" in relation to the requirements of an operator or funder means communicated to Railtrack prior to 6 October 1999.

Effective date

7. This order shall take effect on the day following the making of the order.

TOM WINSOR
Rail Regulator

[the date the order is made]

Annex B

Condition 7: Stewardship of the Licence Holder's Network

1. Purpose

The purpose is to secure:

- (a) the maintenance of the network;
- (b) the renewal and replacement of the network; and
- (c) the improvement, enhancement and development of the network,

in each case in accordance with best practice and in a timely, economic and efficient manner so as to satisfy the reasonable requirements of persons providing services for the carriage of passengers or goods by railway and funders in respect of the quality and capability of the network.

2. General duty

The licence holder shall carry out its licensed activities to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of the licence holder to finance its licensed activities.

3. Criteria

The licence holder shall within three months of the coming into force of this Condition (or such later date as the Regulator may, after consulting the licence holder, specify) develop and publish the criteria which it will apply to comply with the duty including its method of determining the priority and timing of different types of work, the parts of the network on which it will be carried out and the basis for reviewing such priority. The licence holder shall from time to time:

- (i) review the criteria to determine whether they are fit for purpose; and

- (ii) revise the criteria so as to make them fit for purpose,

and shall publish any such revised criteria.

4. Annual Statement

After complying with paragraph 6, the licence holder shall prepare and publish on or before 31 March in each year (or such other date as the Regulator may, after consulting the licence holder, specify) a statement in a form and covering a period approved by the Regulator including the information specified in paragraph 5 in sufficient detail to enable providers and potential providers of railway services to plan their businesses and to enable funders of railway services to plan their future financial and service requirements, in each case with a reasonable degree of assurance.

5. Contents of the Statement

The statement referred to in paragraph 4 shall demonstrate the way in which the licence holder expects to carry out the duty and satisfy the criteria in respect of:

- (a) projections of future network quality and capability requirements;
- (b) planned modifications to the network;
- (c) the expected effect of such modifications on the quality and capability of the network, the quality of network services and the ability of users to provide improved services to their customers;
- (d) the estimated costs of, and the method proposed for financing, such requirements and improvements within its overall financial framework; and
- (e) a progress report on the matters referred to in the statement last published under paragraph 8.

6. Consultation

The licence holder shall consult persons providing, or potential providers of, services for or connection with the carriage of passengers or goods by railway and funders regarding their present and future proposals in the provision of such railway services.

7. Records

The licence holder shall maintain adequate information as to the actions it has taken to comply with its obligations under this Condition. The licence holder shall furnish the Regulator with such information as he may reasonably require to monitor compliance with this Condition.

8. Reconciliation

The licence holder shall prepare and publish on or before 31 July in each year (or such other date as the Regulator may, after consulting the licence holder, specify) a statement in a form compatible with the statement published in the preceding year under paragraph 4 ("the preceding year's statement") setting out:

- (a) the works carried out by it during the year ending on 31 March in that year and the extent to which it has achieved the aims for such work set out in the preceding year's statement;
- (b) the extent to which such works have not achieved their aim, the reasons therefor and the steps the licence holder proposes to take to remedy such failure; and
- (c) the reasons for any material changes to the works set out in that statement.

9. Transitional

In respect of the statements required during the year 1998:

- (a) in subparagraph (e) of paragraph 5, the reference to "the statement last published under paragraph 8", and

- (b) in paragraph 8, the reference to "the preceding year's statement" shall be deemed to refer to the statement published by the licence holder in February 1997 in accordance with the provisions of Condition 7 of this licence at the time of such publication.

10. Interpretation

In this Condition

"criteria"	means the criteria referred to in paragraph 3;
"duty"	means the duty set out in paragraph 2;
"funder"	means the Franchising Director, each Passenger Transport Executive and any local, national or supra-national authority or agency (whether of the United Kingdom or the European Union) or other person who provides money by way of grant or loan with the primary purpose of securing the provision of railway services;
"licensed activities"	includes the management of any estate, interest or right in the network;
"network"	includes, where the licence holder has any estate or interest in, or right over a station or light maintenance depot, such station or light maintenance depot; and
"the purpose"	means the purpose set out in paragraph 1.

Annex C(1): Railtrack's undertakings to the Regulator – Annex A to the Regulator's conclusions on the Proposed Tenth Supplemental Agreement to the Track Access Agreement between Railtrack PLC and West Coast Trains Ltd (The "PUG 2" Agreement)

Capacity of the Network

1. Having regard to the statements made by Railtrack during the consultation on this proposed agreement, on completion of the PUG 2 project the West Coast Main Line should provide as a minimum:
 - (i) in addition to the train paths for which West Coast Trains will have rights under its access agreement, sufficient capacity for at least two 140 mph train paths per hour, plus in the hours when West Coast Trains is not taking up its rights to run between London and North Wales sufficient capacity for a 125 mph path, on the fast lines in each direction between Euston and Crewe between 0700 and 2100 Monday - Friday, 0700 - 1900 Saturday and 1300 - 2100 Sunday, subject to the Rules of the Route; and
 - (ii) capacity which broadly can accommodate, with a standard of operational performance meeting the reasonable requirements of train operators and funding bodies:
 - (a) the "existing quantum" of rights held by passenger operators; and
 - (b) the existing level of freight services (including Post Office services) normally being provided at present including the broad service characteristics of such services (having regard to the information provided at the Regulator's Hearing on 6 March 1998); together with
 - (c) between Willesden and Rugby an additional 42 train paths per day in each direction on the slow lines; and

- (d) between Rugby and Crewe an additional 42 train paths per day in each direction of which 34 train paths per day in each direction will be available via the Trent Valley (or at night subject to diversion via alternative routes in accordance with the Rules of the Route) and 8 train paths will be available in the daytime in each direction via Coventry and Stetchford;

in respect of (c), and (d) such paths to be capable of being suitably distributed over the day (or daytime as the case may be) in accordance with the reasonable demands of customers, and to have other characteristics consistent with those reasonable demands. (This capacity is to be additional to any capacity required for trains run in connection with the maintenance or renewal of Railtrack's infrastructure.)

- (i) For the purpose of paragraph 1(ii) (a) above the "existing quantum" means the access rights of passenger operators under access agreements and access contracts as at 6 March 1998 on the basis that they would, if they expire before 1 January 2013, continue to that date; subject to:
 - (a) adjustments reasonably required to accommodate those rights held by Silverlink Train Services Limited and Connex South Central Limited, having regard to Railtrack's current plans in respect of the West Coast Main Line, and the requirements of the Franchising Director, in respect of which Railtrack shall consult with the relevant funding bodies and affected train operators and notify them of its proposed adjustments by 15 May 1998; and
 - (b) (if the works referred to in paragraph 2(ii) below do not or do not fully achieve the required infrastructure solution) adjustments reasonably required to accommodate those rights held by Central Trains Limited to operate services on behalf of West Midlands PTE (Centro), having regard to Railtrack's current plans in respect of the West Coast Main Line, and the requirements of Centro and the Franchising Director;
- (ii) Railtrack will undertake in consultation with West Midlands PTE studies to identify a cost effective infrastructure solution which will enable the existing pattern, frequency and journey times of the Central Trains services operated on behalf of Centro to be retained as set out in the existing passenger service

requirement. Railtrack will use its reasonable endeavours to deliver the solution within the timescales for PUG 2 subject to obtaining all necessary consents, availability of possessions and other matters not directly in the control of Railtrack. Railtrack will invest up to £10m (index linked by RPI to April 1998) to achieve the infrastructure solution. In the event that investment in excess of this sum is required, Railtrack and West Midlands PTE will collaborate to secure the necessary funding from passenger operators, and the public and private sectors. In the event that a funding package for the additional costs cannot be achieved, Railtrack will use reasonable endeavours to minimise the impact of PUG 2 on the ability of the PTE to achieve its statutory objectives in the West Midlands and to further this Railtrack will instead invest this sum on infrastructure improvements on the Central Trains network in the West Midlands in a manner to be agreed with West Midlands PTE.

- (iii) for the purposes of paragraph 2(i)(b), the maximum extent of such adjustments can be to cause journey times for which rights are held in respect of trains calling at all intermediate stations between Birmingham New Street, Birmingham International and Coventry, to be increased by 6 minutes for services in each direction.
3. The Regulator considers that it will be necessary for Railtrack to carry out strategic Reviews, in consultation with freight operators, passenger operators and funders (and other parties who can provide relevant assistance) of:
- (i) options for enhancing freight capacity on the West Coast Main Line and alternative routes in respect of the origins and destinations on or reached via the West Coast Main Line in respect of the reasonable requirements of freight operators both now and in the future, including investigation of gauge enhancements;
 - (ii) the rail network in the West Midlands in respect of the reasonable requirements of passenger and freight operators and funders of rail services both now and in the future. The study should include the development of plans and, where required to comply with the licence condition, proposals to provide adequate capacity to meet these requirements for the Rugby - Wolverhampton route, and routes affected by the operation of services on that route (including the renewal of Proof House junction) and include the seeking of cost-effective options to enable the

existing journey times of the local services between Birmingham New Street and Coventry to be maintained;

- (iii) the routes serving Manchester Piccadilly from Wilmslow and Stockport in respect of the reasonable requirements of passenger and freight operators and funders of railway services both now and in the future; and
- (iv) the route between Euston and Rugby in respect of the reasonable requirements of operators and funders of rail services for the future operation of higher speed trains between Euston - Milton Keynes Wolverton - Northampton than currently operate, the review to include consideration of the possibility of a station on the route via Weedon to serve Northamptonshire

in each case the requirements for additional capacity arising from these Reviews will be in addition to that set out in paragraph 1 above.

4. Having regard to the concerns which have been expressed, each study should be completed in sufficient time to enable its results and firm plans for implementation of requirements identified in order for Railtrack to be compliant with the General Duty in Condition 7 of the Network Licence to be incorporated in the 1999 Network Management Statement. For the avoidance of doubt, these should include plans for infrastructure enhancement where the Reviews indicate that this is an appropriate means of meeting the requirements of the Licence Condition. In carrying out these reviews Railtrack should explicitly consider the scope for synergies between works contemplated as part of the renewal of the route and the PUG 2 project, and works in addition to these. Railtrack will use reasonable endeavours to finalise funding arrangements by the date of publication of the Network Management Statement. In cases where funding has been finalised, Railtrack will publish the proposals and explain the method of funding. Otherwise it will publish proposals and explain what steps it is taking to procure the necessary funding.
5. In order to demonstrate that it will be able to comply with the above, Railtrack should provide to the Regulator by 30 April 1998, after consultation with the relevant parties referred to above, details of the process by which it intends to carry out these Reviews, with a proposed timetable.

6. The Regulator will also expect Railtrack to report to him by 31 May 1998 on the procedural arrangements it has put in place to ensure that, in meeting its licence obligations in respect of maintenance, renewal and replacement, and improvement enhancement and development of the network, it meets the reasonable requirements of the West Midlands PTE and PTA as funders of services for the carriage of passengers.

Annex C(2)

RAILTRACK

Richard Middleton, Director, Commercial

29 April 1998

John Swift QC
The Rail Regulator
1 Waterhouse Square
138-142 Holborn
London EC1N 2ST

Dear John,

PUG2: UNDERTAKINGS IN RESPECT OF FUTURE CAPACITY PROVISION

Railtrack welcomes your intention to approve the PUG2 agreement. The upgrade of the West Coast Main Line will deliver a significant enhancement to Britain's rail network for the 21st Century. The agreement with Virgin will bring more than £600m of new private investment to the railway infrastructure, in addition to Virgin's investment in new tilting trains. Coupled with Railtrack's Core Investment Programme and the original passenger upgrade agreed for the line, there will be £2.1bn of investment on this core route over the next eight years.

Annex A to your proposed conclusions (in the final form attached to your letter today) sets out various requirements you would like Railtrack to undertake. These are already in hand, and, subject to the agreement with West Coast Trains becoming unconditional in all respects, Railtrack is happy to provide the undertaking you require. Specifically, Railtrack undertakes that, subject to and in accordance with its general duty under its network licence Condition 7(2):

1. At the conclusion of the PUG2 project, the West Coast Main Line will as a minimum provide the capacity set out in paragraph 1 of Annex A;
2. This capacity may be treated as a reasonable requirement of operators and funders for the purposes of Condition 7;
3. Railtrack will carry out the works referred to in paragraph 2(1) of Annex A;

Cont/...

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Cont/2

4. These works may be treated as a reasonable requirement of operators and funders for the purposes of Condition 7;
5. Railtrack will carry out the strategic Reviews as set out in paragraphs 3 and 4 of Annex A;
6. These Reviews may be treated as works necessary for Railtrack to ascertain and, as appropriate, produce plans to meet the reasonable requirements of operators and funders for the purposes of Condition 7;
7. Railtrack will report to you as set out in paragraphs 5 and 6 of Annex A.

I look forward to receiving your final conclusions, so that we can take forward this project and deliver to passengers the benefits of a faster, more frequent and more reliable train service on the West Coast Main Line.

Yours sincerely,


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