

Stephanie Tobyn
Director, Strategy, Policy & Reform



15 November 2024

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Anit Chandarana
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Dear Mr Lawrie and Mr Chandarana,

Application for a new track access contract for services from Go-Op Co-operative Limited

1. We have carefully considered Go-op Co-operative Limited's (Go-op's) application for a track access contract with Network Rail Infrastructure Limited (Network Rail). This application was first submitted to us under section 17 of the Railways Act 1993 (the Act) in September 2022, with essential information for ORR's decision being submitted over the course of the next two years.
2. We have decided to approve access rights from December 2025 to December 2030. In taking this decision, we placed particular weight on the benefits of new regional services between Swindon, Taunton and Weston-super-Mare. Given the novel nature of Go-op's application, we considered it prudent to mitigate potential risks on ability to use the capacity, so will require strict contractual conditions to be met for the rights to continue. This letter sets out those conditions in more detail and explains the reasons for our decision.
3. More specifically, we have decided to approve access rights for Go-op to operate return weekday and weekend services between Taunton and Weston-super-Mare, Taunton and Westbury, Taunton and Swindon, and Frome and Westbury. In addition, we have approved contingent rights between Taunton and Weston-super-Mare, Weston-super-Mare and Parson Street, Taunton and Westbury, Taunton and Swindon, and Norton Fitzwarren Junction and Taunton.
4. We placed weight on the beneficial aspects of introducing new open access competition on regional routes on the Western route. These include providing new rail journey opportunities for passengers across Wiltshire and Somerset, and greater interchange opportunities for commuters travelling on to London and Bristol.



5. We will now draw up the detailed access contract. We will then direct Network Rail and Go-op to enter into that contract. We will discuss the drafting of these terms separately with you.

Background

6. Go-op first submitted its application in September 2022. However, the application has evolved since it was submitted following questions from ORR. This process involved discussions with Network Rail on operational and safety matters, as well as Go-op's business case and commercial plans. All these topics needed to be addressed before we were in a position to make a decision.

7. Go-op proposes to offer improved local connectivity between Taunton and other key locations across the Wiltshire and Somerset areas. This in turn will offer increased interchange opportunities to Bristol and London and will therefore be of benefit to commuters. The application was for:

- 11 daily return weekday and eight return weekend services between Taunton and Weston-super-Mare; Taunton and Westbury with stops at Frome on some services; Taunton and Swindon via Frome and Melksham; and Frome and Westbury.
- Contingent rights between: Taunton and Weston-super-Mare; Weston-super-Mare and Parson Street; Taunton and Westbury via Frome; Taunton and Swindon via Frome and Melksham; and Norton Fitzwarren Junction and Taunton
- The use of existing Class 153 *Super Sprinter* rolling stock.
- Access rights from May 2023, for a period of 12 years. This start date was unrealistic given the maturity of the application at the time of submission. The applicant has subsequently changed the date to December 2025.

8. Go-op services will compete with public service operator Great Western Railway (GWR).

ORR's role and approach

9. Under the Act we must approve track access contracts between Network Rail and train operators and any amendments to them. If Network Rail and a train operator reach agreement, they jointly submit the proposed contract for our approval, under section 18 of the Act. If they cannot reach agreement, the train operator can apply under section 17 of the Act and ask us to direct Network Rail to enter into the contract. This application was made under section 17.

10. We determine all track access applications in the manner we consider best calculated to achieve our statutory duties, which are set out mainly in section 4 of the Act. The weight we place on each duty is a matter for us depending on the circumstances of



each case. Where the duties point in different directions, we weigh them against each other to help us reach a decision.

11. Although our duties are wide ranging, our experience generally is that a subset tends to be especially relevant to access decisions with the others not pointing strongly one way or the other. In this case we considered all our duties and these were the most relevant:

- promote improvements in railway service performance (which is defined as including in particular, performance in securing (a) reliability (including punctuality), (b) avoidance or mitigation of passenger overcrowding, and (c) that journey times are as short as possible);
- otherwise protect the interests of users of railway services;
- promote the use and development of the network for passengers and goods to the greatest extent that we consider economically practicable;
- promote competition in the provision of railway services for the benefit of rail users;
- enable persons providing railway services to plan the future of their businesses with reasonable assurance; and
- have regard to the funds available to the Secretary of State and [their guidance](#).

12. ORR is supportive in principle of open access, by which we mean passenger services provided outside of a public service contract. This reflects our duty to promote competition for the benefit of rail users and our recognition that competition can make a significant contribution to innovation in terms of the routes served, ticketing practices and service quality improvements, by both the new operator and through the competitive response of existing operators.

13. However, we must also consider our other duties when making access decisions. These include duties to have regard to the funds available to the Secretary of State in relation to railways and to protect the interests of users of railway services, both passengers and freight customers. These require us to consider the impact of new open access services not just on the passengers benefitting directly from those services but all users of railway services.

14. With those issues in mind, our approach is to test whether new services such as these would be “not primarily abstractive” (NPA) as explained in our published guidance. In essence, the NPA test aims to help us balance our duties, in particular those to promote competition for the benefit of users and to have regard to the funds available to the Secretary of State. The extent to which we value the potential benefits competition can bring is reflected in the threshold for the test that we expect new services to reach – we would not expect to approve applications that did not generate at least 30p of new revenue for every £1 abstracted from existing operators (i.e. achieve a ratio of 0.3:1).



15. In addition to the NPA test, our guidance explains the range of other issues we expect to look at, including capacity and performance. We also consider the absolute impact on the funds available to the Secretary of State. In the circumstances of each application, we can decide what particular weight to place on each of these factors. We discuss these later.

Industry consultation and stakeholder views

16. In advance of submitting the application to ORR, and in line with our published guidance, Network Rail carried out an industry consultation on behalf of Go-op in May and June 2022. Several train operators and other stakeholders responded:

17. Supportive responses to the Go-op proposal came from:

- Somerset County Council and Wiltshire Council (subject to available network capacity);
- Transport Focus, which supported open access applications in principle but did not wish to comment on Go-op's specific proposals; and
- CrossCountry, which was initially unable to support the application on the grounds of potential impacts on capacity and performance. Following receipt of further information, it has since confirmed its support for the application.

18. Two industry responses were not supportive of the proposal:

- GB Railfreight queried the contract length, the proposed start date (which has been delayed since then), and the feasibility of using Class 153 rolling stock in the long term. It also asked to see the outcome of the timetable development work when available; and
- GWR, as the operator that would be the most affected by Go-op's application should it be successful, was not supportive. Its concerns were chiefly around revenue abstraction and increased capacity use, especially where Go-op's services would compete with paths for diverted GWR services, particularly on the Melksham Single Line, which has limited capacity.

19. At the time of Go-op's initial application in 2022, The Department for Transport (DfT) expressed support in principle for Go-op's "innovative" proposal. However, it asked Network Rail to ensure that it has carried out a full and robust analysis of the potential performance consequences and implications.

20. DfT has subsequently confirmed to ORR that its position has not changed and Go-op's application continues to have ministerial support.



Statutory Consultation

21. As Network Rail was initially unable to support the Go-op application, it was submitted under Section 17 and we conducted a statutory consultation with Network Rail to elicit the capacity and performance analysis we required to determine the application. In November 2022, Network Rail provided its representations, concluding that it could not support the application. Its main outstanding concerns were:

- Increased safety risk at 17 level crossings along the proposed routes. Of these crossings, Network Rail considered that eight would need enhancements as a result of the increased traffic. Go-op proposed to fund these enhancements as one of its investment conditions;
- A detrimental impact on performance from the increase in capacity use, particularly at Westbury and on the Melksham Single Line;
- Go-op's proposals for stabling services at Thingley Junction and Taunton station, due to infrastructure capabilities and capacity; and
- Go-op's Empty Coaching Stock movements and a potential conflict with Network Rail's infrastructure maintenance activities.

22. We set out further detail on Network Rail's views in the sections on capacity and performance below.

Engagement with the parties

23. In addition to the industry and statutory consultations, when reviewing an application we may hold discussions with the parties, seeking and clarifying the information we need to make our final decision. In this case we have engaged fully with Go-op and Network Rail throughout the course of this application.

24. Go-op also took the opportunity to provide further detailed submissions to us. In reaching our decision, we considered all the material provided by Go-op and other stakeholders. A list of these materials is included in Annex A.

25. The remainder of this decision letter is structured in four sections: potential passenger benefits; our analysis of the application (including operational viability, capacity, performance, and ability to use); the NPA test and absolute abstraction; and conclusions.

Potential passenger benefits

26. We consider that the proposed Go-op service could bring a number of potential benefits to passengers on the route. Additional services on the route would offer more choice to passengers and potentially differing journey opportunities. Further, the proposal offers the potential for improved connectivity with larger railway hubs such as London and Bristol.



27. In its application, Go-op stated that it had the potential to expand its service offering in the future to serve a wider range of stations, including the proposed re-opening of disused stations and the construction of new ones within Go-op's geographical range.

28. We recognise that competition can make a significant contribution to innovation in terms of the routes served, ticketing practices and service quality improvements, by both the new operator and through the competitive response of existing operators. This service would represent the introduction of new open access competition on a regional route in the Western region and we recognised the benefits this could bring. However, these benefits need to be offset against any potential negative impact on other passengers and users of introducing a new service.

Our analysis of the application

29. As part of our assessment, we considered the operational viability of the proposed services, any concerns relating to the fair and efficient use of capacity and any impacts on operational performance. We also considered the level of revenue the proposals will generate against what they will abstract from public funds, and the absolute level of that abstraction.

Operational viability

30. We require applicants to show they are committed to, and capable of, using the access rights in their application. We consider whether proposals are operationally viable and supported by a plausible delivery plan. Having considered the business plan and the proposed operational strategy, we consider this proposal meets these requirements if delivered as specified in its application.

31. Go-op plans to lease Class 153 rolling stock (single car diesel units normally used on rural routes or for additional capacity), with modifications for accessibility compliance.

32. Network Rail has assessed the potential increase in risk at each level crossing that would be affected by the proposed Go-op services. It identified that there were eight level crossings where the increase in risk was identified as being beyond that which Network Rail considered tolerable. Network Rail confirmed there were no improvements already planned or underway. For these eight level crossings, Network Rail has identified solutions to reduce the risk and has stated these should be in place before operations start.

33. Network Rail has estimated the total cost of improvements at these eight level crossings is £1.5m (as of March 2024). The estimates are based on similar improvements previously carried out on Western route. It has not undertaken site-specific assessments for delivering the works at this stage. Go-op has said that the costs provided by Network Rail are consistent with its budget as part of its investment strategy.

34. To support operational viability and safety at level crossings ORR will include conditions within the track access contract requiring appropriate rolling stock to be secured and the level crossing risk mitigations to be implemented in advance of the start of operations. If these conditions are not met, the access rights will lapse.



35. Go-op applied for rights to start services from December 2025. Our assessment is that, as Go-op and Network Rail will need to put in place the level crossing mitigations, starting within this timeframe is less likely. This is because of the lead time for Go-op to raise the funds and for the work to be completed before December 2025. ORR will therefore add a longstop date to the contract for Go-op to begin operations within a year of the start of the rights. If Go-op does not commence passenger operations by that date, the access rights will lapse.

Capacity

36. Network Rail validated the proposed Go-op timetable against the May 2023 timetable. ORR's assessment covered specific scrutiny of Taunton, Weston-super-Mare, Westbury, the Melksham Single Line, the site of the proposed Go-op depot at Thingley Junction, Chippenham and Swindon, as well as relevant signalling locations, based on Network Rail's evidence. We concluded that there are no notable concerns in these areas, and that Go-op services are compatible with GWR paths north of Westbury. Network Rail also raised concerns with the Melksham Single Line and increased capacity utilisation on this. However, no substantive justification was provided to preclude Go-op services.

37. Tracsis Rail Consultancy, commissioned by Go-op, produced a performance assessment in 2019, with further detail provided in "Performance Review April 2023 Update". This concluded that "On most routes the introduction of Go-op services has little effect". It identified that the route between Westbury and Wootton Bassett would be most affected. Tracsis suggested flexes and adjustments that could be deployed to minimise the potential conflicts between Go-op's services and existing operators.

38. We considered the proposed rolling stock, access at Thingley Junction (the proposed principal maintenance location), traincrew, stations, train planning (timetabling), managing disruption, and autumn mitigations. We have no material concerns on any of these matters, however we are considering the appropriateness of offering Go-op contingent rights only for a small number of morning trains during the autumn to ensure Rail Head Treatment Trains are able to operate. We will address this with Go-op and Network Rail as we finalise the access contract.

39. Based on our assessment, we are satisfied that there is sufficient capacity to accommodate the Go-op proposals – provided that the identified improvements to level crossings are delivered.

Performance

40. The introduction of new services into the timetable can negatively affect performance, which must be considered carefully against the benefits to customers of introducing those services. The industry is currently being challenged to maintain and improve punctuality and performance.

41. We considered this application in light of the investigation and the wider regional performance of Wales and Western. We concluded that, since the number of services is



relatively small in quantum, and the Network Rail modelled impact is negligible, they should not materially affect wider train performance in the region.

Ability to use

42. Our [published guidance](#) states:

“We would not normally expect to approve access rights unless the beneficiary satisfies us as to its clear intention and ability to use the capacity in question in order to ensure capacity is not reserved for services which have little prospect of being operated. We would therefore want to see evidence supporting an operator’s intention and ability to use that capacity.

For a public service operator or concession passenger operator, such information might include details of their public service contract or concession requirements. For an open access passenger operator, we would look at business case information, including details of resourcing plans.”

43. In past applications from prospective open access operators, we have sought assurances regarding the ability to operate – for example around rolling stock availability, resourcing plans, management experience and competency, and operationalisation timescales. We have also sought information on the financial viability of the proposals, including on financing and business cases.

44. Go-op’s limited rail experience and novel (in the rail sector) commercial model meant we considered it necessary to gather a reasonable degree of further evidence on Go-op’s ability to use the capacity in its application.

45. Following our assessment of Go-op’s operational plans and business model, we have concluded that the ongoing viability of these services is less clearly established than previous open access proposals approved by ORR. The resultant risks mean that we will be setting strict conditions precedent around Go-op’s ability to use the rights.

46. These conditions precedent will include a requirement to evidence, to ORR’s satisfaction and within 12 months of the contract being entered into:

- the necessary finance to start operations;
- the necessary finance to fund £1.5m of level crossing enhancements in advance of operations commencing; and
- that the necessary rolling stock has been secured.

47. We will discuss the exact terms of the contract with the parties following publication of this decision letter. We recognise that the completion of level crossing enhancements is reliant on Network Rail, which has responsibilities as a competent infrastructure manager under its licence.



The Not Primarily Abstractive (NPA) test and absolute abstraction

48. New open access services can offer new travel opportunities for users and create competition on existing flows. However, greater competition can also mean a loss of revenue for the services operated by existing operators, for example holders of DfT National Rail Contracts or “operators of last resort” run directly by the UK or Scottish Governments. In situations where public service operators bear revenue risk, this revenue loss is expected eventually to lead to lower premium payments by franchised operators to the franchising authority (DfT or Transport Scotland, for example), or higher subsidy payments from the authorities to operators. Where the public service’s contracting arrangements mean revenue risk sits with Governments, the loss of revenue bears more directly on the funds available to the Secretary of State. This may also affect funding available for future investment.

49. The ‘**Not Primarily Abstractive**’ (NPA) test, defined in ORR guidance, is the key criterion we use to evaluate this trade-off¹. It informs whether new revenue expected to be generated is sufficient to compensate for the impact on the Secretary of State’s funds. The latter is approximated by using the revenue abstracted from existing operators. Generally, we would not expect to approve applications that generate less than £0.3 of new revenue for each £1 of net revenue loss to taxpayers. Conversely, passing this test at a level above £0.3 is not sufficient criterion for approval on its own, as we must consider all factors and ORR duties together.

50. In addition to the NPA test, ORR guidance also sets out that we may decide to decline a track access application should we deem the **absolute level of revenue abstraction** to be too great². This gives ORR the ability to give greater weight to the impact on Secretary of State’s funds than is implicit in the NPA test. We consider these issues in the round, alongside other factors such as potential passenger benefits and the impact on performance.

Our central NPA test ratio forecast

51. Table 1 below summarises Go-op’s and ORR’s NPA test forecast results. Both forecast a clear pass in year 3 of operation, based on a MOIRA forecast alone. The NPA test ratio is between 0.54:1 and 0.64:1. The difference in results is largely because at the time of our analysis we used the winter 2023 timetable whereas Go-op used the 2022 winter timetable. The more recent timetable reflects other operators’ plans more accurately, providing a more up to date forecast.

52. Go-op’s business case revenue forecast involved a number of uplifts beyond the MOIRA based forecast, although it did not use this as part of its NPA test forecast.

¹ Our [NPA test guidance](#) notes, however, that “there will necessarily be a large degree of judgment involved in this decision” and that “we will need to strike a balance between a number of our statutory duties, in particular to promote: the use of the railway network; competition for the benefit of rail users; whilst enabling persons providing railway services to plan with a reasonable degree of assurance and having regard to our duties in relation to funders”.

² This was originally set out in Office of the Rail Regulator (2004), *Moderation of Competition: Final Conclusions*, 3.18(c), available [here](#). More recently, this was given as one of the reasons for rejecting GNER’s application to run services between Cleethorpes/West Yorkshire and London in May 2016, and a 2020 application from Grand Union Trains.



Because the NPA and abstraction results were not dependent on these uplifts (i.e. it passes on MOIRA alone), we did not consider it proportionate to question Go-op’s revenue forecast further for the NPA test.

Table 1: Forecast NPA test results (2022/23 prices) Year 3 of Operation.

Year 3 Operation	Generation £000	Abstraction £000	Go-Op Total Revenue £000	NPA test ratio
Go-op forecast	£454	£707	£1,161	0.64
ORR forecast	£386	£713	£1,099	0.54

53. We therefore consider Go-op’s application passes the NPA test.

Absolute level of abstraction

54. In addition to the assessment of the relative benefits and costs of the new services under the NPA test, the absolute level of abstraction is relevant in weighing our Section 4 duty to have regard to the funds available to the Secretary of State and [their guidance](#).

55. We forecast annual abstraction by Go-op services will be £0.7m of revenue (2022/23 prices) in Year 3 of operation, predominantly from GWR. GWR is on a National Rail Contract, with Government currently taking full revenue and cost risk, with a core term to June 2028. GWR First Group received £904m in fare income in 2022-2023³[\[OBJ\]](#)

56. ORR has no pre-set limit on an acceptable level of absolute abstraction. Past decisions have been taken on a case-by-case basis, taking account of the circumstances surrounding each application. Our forecast abstraction of £0.7m for this application is considerably smaller than previous applications we have approved.

Conclusion

57. We determined this application in light of (a) ORR’s policies and (b) ORR’s statutory duties. None of the duties have higher priority than the others in the legislation. It is for the ORR to decide, first, which duties are relevant to this application, and secondly, where the relevant duties point in different directions, it is for ORR to give each of them the weight it considers most appropriate. We have identified below those duties we consider are relevant to this application.

Summary of our assessment against our policy:

58. **Operational viability:** Having considered the business plan and the proposed operational workings we consider this application meets our requirements for operational viability.

³ <https://dataportal.orr.gov.uk/statistics/finance/rail-industry-finance/table-7223-franchised-passenger-train-operator-finances-by-franchise-latest-year/>



59. **Capacity:** There are no major capacity concerns outstanding. Based on our assessment, we are satisfied that there is sufficient capacity to accommodate the Go-op proposal. The proposal is not in an area which has identified capacity constraints.

60. **Performance:** Some stakeholders identified concerns over the performance impacts of this application. We have analysed the evidence provided on performance impacts and concluded that the concerns are not material. We considered here the potential trade-off between the benefits to customers associated with the proposed additional services (including new journey opportunities) and the protection of user interests in good performance. We do not consider that performance impacts should preclude approval of this application.

61. **Ability to use:** We have considered Go-op's ability to use these rights, from both an operational and a financial point of view. We concluded that the ability to use would need to be demonstrated by Go-op via the fulfilment of strict conditions precedent which have been outlined earlier in this letter.

62. **NPA test:** Our published approach emphasises the role of the NPA test as a necessary (but not sufficient) condition to approving an open access application and as our main analytical tool for helping us weigh some of the duties we have found especially relevant in open access decisions.

63. Our assessment is that the generation:abstraction ratio of the application is between 0.54:1 and 0.64:1. We therefore consider the application passes our NPA test.

64. **Absolute abstraction:** We forecast Go-op services will abstract £0.7m of revenue per annum by Year 3 of operation, predominantly from GWR. This is considerably smaller than the absolute abstraction in previous applications we have approved.

Weighing ORR's duties:

65. The NPA test informs the overall assessment of the application in respect of the weighing of potentially competing duties, in particular (i) to promote the use of the railway network; (ii) to promote competition for the benefit of rail users; (iii) to enable persons providing railway services to plan with a reasonable degree of assurance; and (iv) to have regard to the funds available to the Secretary of State.

66. **Promote improvements in railway service performance:** (which is defined as including in particular, performance in securing (a) reliability (including punctuality), (b) avoidance or mitigation of passenger overcrowding, and (c) that journey times are as short as possible). We do not consider that performance impacts should preclude approval of this application. Equally, the addition of more trains generally assists with the management of overcrowding and this application does involve some improved journey times.

67. **Promote the use and development of the network to the greatest extent that we consider economically practicable:** 'Use' is about capacity, and we have identified that there is sufficient capacity on the relevant part of the network in relation to this application.



Approving the contract is consistent with our duty to promote use and development of the network, through new direct trains and some faster journey times.

68. Promoting competition in the provision of railway services for the benefit of users of railway services: ORR has a policy of supporting greater on-rail competition, through enhanced open access, and there is some evidence that competition can bring real passenger benefits even on the competing franchised services. Further, we considered that this application would represent the first competitive pressure from an open access operator on a regional route in the Western region and the user benefits that could bring to the route.

69. Enable persons providing railway services to plan the future of their businesses with reasonable assurance: we consider that this duty does not point towards approval or rejection of the application, but rather points towards us making timely decisions for the benefit of both applicants and incumbents in order to provide them certainty in order to plan their businesses with reasonable assurance. A timely decision is important for this application given the short duration of the rights and the tight timescales for mobilisation.

70. Having regard to funds available to/and general guidance from the Secretary of State: we considered the current state of rail finances alongside our published approach which uses the NPA test. The NPA analysis informs but does not determine how we weigh relevant duties in reaching a final decision. We considered the modelled £0.7m pa absolute level of abstraction impact on the Secretary of State's funds and the Secretary of State's official representations to ORR. The relative size of abstraction, the limited impact on performance in an area which is not congested means approval is consistent with these duties.

Decision

71. We have considered carefully our duty to promote improvements in railway service performance and to have regard to the funds available to the Secretary of State. However, we consider that greater weight should be given to the beneficial aspects of this application arising from the advent of competition and the introduction of new, better journey opportunities for passengers. **We have therefore decided to approve a five-year access contract for Go-op to run services between Taunton and Weston-super-Mare, Taunton and Westbury, Taunton and Swindon, and Frome and Westbury.** This decision, and the contract we will subsequently direct, provides Go-op, Network Rail and other interested parties with clear expectations and timescales to deliver the introduction of these new services. In particular, we will closely monitor Go-op's progress towards addressing the strict conditions precedent that it must meet promptly before it can bring the services into operation.

I am copying this letter to Rob Cairns at Network Rail, Elisabeth Cuthbertson and Lucy Ryan at DfT and Rob Holder at GWR. We will also place a copy on our website.



Yours sincerely

Stephanie Tobyn

Stephanie Tobyn



Annex A: Submissions, Correspondence and Representations received

In reaching our decision we considered all the material provided by Go-op and other stakeholders. These included:

From the applicant:

- [Form P](#) (application form) and [Draft Contract](#) – May 2022
- Business case and plan, financial model, and supporting material provided by Go-op
- Additional correspondence between ORR and Go-op and its consultants, Tracsis.
- All responses from the applicant to representations, including to industry consultation responses and Network Rail's submissions (see below).

[Industry Consultation responses](#) (May and June 2022):

- CrossCountry
- DfT
- GB Railfreight
- Great Western Railway
- Transport Focus
- Transport for Wales

Statutory Consultation with Network Rail:

- [Network Rail Initial Representations](#) – 1 November 2022
- [Go-op's Response to Network Rail's Representations](#) – 25 November 2022