Complaints about rail fares and car-park charges – the role of competition law

Introduction

1. We are the competition authority for the railway sector. This means that if you are not happy with the price of your train ticket or the charges for parking your car at a station, you can complain to us and we will look at whether the train company has broken competition law. Please read to the end of this guide to see if we can help.

2. This guide explains how we will handle your complaint. We do have powers under competition law but, in many cases, the train company will not have broken the law. This guide explains why.

3. If we cannot help, you could contact the train company, an independent passenger watchdog (Passenger Focus or London Travelwatch) or the Government. Links to their websites are included at the end of this guide.

How does competition law apply to train fares and car-park charges at stations?

4. The Competition Act 1998 makes it illegal for companies to do certain things, for example, fixing prices or using their powerful position in the market to take advantage of consumers.

5. The price of your train ticket or the charges you pay to park at a station car park might be very high. This could be because the company is abusing its powerful position in the market and setting prices which are too high under the rules of competition law. We look individually at every complaint we get, because the facts may be different each time. To prove that the law has been broken, we would have to show that the train company has a powerful position in the market and is charging too much.

6. We have to meet a very high legal test to show that a price is too high under competition law. Part of the legal test of whether a price is too high is whether it relates reasonably to the value of the product (or service) being supplied. Just because there has been a big increase in a ticket price or a car-park charge does not mean that it is too high under the law. First, we need to decide if there is enough evidence to justify beginning an investigation.

Competing to run rail services – why prices are unlikely to break the law

7. The Government awards contracts (franchises) to companies to run train services and provide car parks at stations. The Government wants the best-value deal for passengers and taxpayers, so it gets companies to compete to win each contract.

8. Some franchises are made up of a high percentage of services that lose money, and so the Government pays subsidies to encourage companies to compete for the contract. Train companies will be prepared to pay money (also known as a premium) to the Government to run franchises that have a high percentage of profitable services.

9. For prices to be too high under competition law, the income a train company earns would have to be much higher than the train company's costs. Companies compete to win franchise contracts by offering the best package, including as low a subsidy or as high a premium, they think they can. A lower subsidy or higher premium tends to lower a train company's profits. Think of a subsidy as income and think of a premium as a cost. Both affect train companies' profits.

10. This means that, in cases where competition for the franchise has worked well and things go roughly as expected during the period the contract lasts for, there will not normally be any prices that are high enough to mean the law has been broken. This all means that the price of franchised passenger services will only be breaking the law in exceptional circumstances.

11. We have looked carefully at the available evidence on the Government's franchise competitions. Although train companies do usually earn profits, we have not found any cases of train companies earning profits that are consistently so high that it would be possible to prove that competition for the franchise had not worked well and that illegally high prices have been charged as a result. On 15 October 2008, the National Audit Office published a report which concluded that competition for franchises has been working well.

12. For the time being, we will assume, based on the above, that franchise competitions have worked well and because of this, fares and car-park charges are unlikely to be breaking the law.

13. It is theoretically possible that circumstances could change so much during a franchise that a train operator could raise prices to illegally high levels. But this would happen very rarely. Circumstances would have to have changed in a way that could not have been predicted at the time the franchise started. Assessing whether something of this sort had happened would raise some complicated legal and economic issues, and this could take us a long time to look into. Because of this, we will carry out a number of simple checks before we investigate a complaint.

How we decide which fares complaints not to investigate

14. We are unlikely to look more closely at a fare if it is:

- a regulated fare;
- less than a regulated fare which passengers could use instead, or similar to a regulated fare for roughly the same sort of journey sold by a different train company;
- for a journey where passengers have a realistic choice to travel using other forms of transport;

- not increasing significantly more than general price inflation (for example, rising more steeply than would be allowed for a regulated fare); or
- a first-class fare.

15. We are unlikely to look more closely at your fare if it is capped by the Government (known as a 'regulated fare'). This means the Government has set a limit which the fare must not go over. Regulated fares are mainly aimed at 'captive consumers' – for example, commuters who have little or no choice but to travel by train. Train companies are not likely to be breaking the law if they are setting fares within a limit set by the Government. On average, regulated fares have gone down slightly in real terms during the last 10 years.

16. If a regulated fare is not so high that it is breaking the law, it follows that any other fare for the same or a similar journey that is less expensive than the regulated fare would not be breaking the law either.

17. A train company is unlikely to have a powerful position in the market if many of its passengers have realistic choices to travel using other forms of transport. As we explained above, to prove that the law has been broken we would have to show that the train company has a powerful position in the market.

18. We are unlikely to be able to prove that the law has been broken unless fares have risen significantly above general price inflation. Modest future fare increases are often predicted at the start of a franchise.

19. First-class travel is a premium product, where passengers choose to pay more in return for a higher quality of service. We are not aware that there is a bigger gap between prices for first-class and standard-class rail travel than the gap between prices for business class and standard class in other transport markets (for example, the Channel Tunnel rail link and short-haul air travel). This means we think it is unlikely that first-class rail fares are too high under competition law.

How we decide which car-park charges not to investigate

20. We are unlikely to look more closely at a station car-park charge unless it is more expensive than the charge for around nine out of 10 other parking spaces in the region. This is because a charge is unlikely to be illegally high unless it is much higher than the charges at almost all other car parks in the region.

21. If a station car-park charge is more expensive than the charge for around nine out of 10 other long-stay parking spaces in the region, we will still be unlikely to look more closely at it if:

- there are other long-stay car parks or on-street parking nearby (by 'nearby', we mean within walking distance, or roughly a kilometre or just over half a mile away);
- walking, cycling, or public transport provides a realistic alternative to driving to and parking at the station;

- there are other stations with cheaper car parks within about 15 minutes' drive of the station; or
- there is a realistic choice to travel using other forms of transport for the whole journey.

22. In all of these cases, the risk of losing business should stop companies from charging too much.

What next?

23. If you want to complain about high rail fares or high car-park charges at your local station **and** you think, based on the explanations above, that we would want to look at it, please contact us by e-mail at competition@orr.gsi.gov.uk or by writing to the following address.

    Competition Team
    Office of Rail Regulation
    One Kemble Street
    London
    WC2B 4AN

24. If you think that your complaint about a rail fare or car-park charge is not one that we would look at based on the explanation above, but you still want to complain about it, you can complain to another organisation.

25. If your complaint is about the level of service, the price you are paying, or fares that are not regulated by the Government, please contact the train company responsible for the service or car park. Give them the opportunity to deal with your concerns. You can find their websites on the National Rail Enquiries website at www.nationalrail.co.uk.

26. If you are not satisfied with the answer you get, you can then raise the problem with either Passenger Focus or, for journeys in and around London, London Travelwatch.

    Passenger Focus
    Website: www.passengerfocus.org.uk

    London Travelwatch
    Website: www.londontravelwatch.org.uk

27. If your complaint is about how fares are regulated by the Government, please contact Transport Scotland (for First ScotRail), Transport Wales (for Arriva Trains Wales) or the Department for Transport (for all other train companies).

    Department for Transport
    Website: www.dft.gov.uk

    Welsh Assembly Government, Transport Wales
    Website: http://new.wales.gov.uk

    Transport Scotland
    Website: www.transportscotland.gov.uk