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21 July 2016

Dear Stakeholder

We are writing to draw your attention to our **Consultation** on our proposed publication of updated guidance regarding our approach to monitoring and reviewing markets (the **Proposed Guidance**). A copy of our Proposed Guidance is attached to this letter at **Annex 1**

The consultation period begins on 21 July 2016 and will run until 13 October 2016.

The Proposed Guidance, if and when adopted, will replace the existing guidelines - ORR's approach to reviewing markets (2009)¹.

Content of the Proposed Guidance

As the economic regulator for the railways in Great Britain, we have a responsibility to ensure that railway markets work effectively in delivering value for money and benefits for the users of railway services.

The key purpose of the Proposed Guidance is to assist businesses and individuals operating in the railways sector to understand ORR's general approach to: monitoring and reviewing railway markets; the actions we might take; and, how and in what circumstances, we intend to use our powers to:

- make directions to correct market distortion or other undesirable developments in markets as well as to prevent discrimination, under the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the **Access and Management Regulations**); and
- to undertake market studies and make market investigation references to the Competition and Markets Authority.

¹ http://orr.gov.uk/_data/assets/pdf_file/0007/2203/407.pdf

We have designed our procedures with the aim of using our powers transparently, effectively, and efficiently.

We have statutory duties which ensure that we consider both the need to promote competition in the provision of services and to protect users in the exercise of our functions and powers. We are supported in the discharge of our responsibilities by enforcement tools such as:

- the enforcement of licence obligations;
- action under competition and consumer law;
- health and safety legislation; and
- powers derived from European law which enable us to take action where we identify undesirable developments in markets.

To ensure that we exercise these powers effectively, we undertake, either on our own initiative or in reaction to a complaint, research or more in-depth investigations into how markets are working. The Proposed Guidance sets out:

- how we do this in practice;
- what impact it is likely to have on the sector in terms of the engagement we require;
- the range of outcomes that are likely to result; and
- how each of the different tools and responsibilities interrelate.

Key changes

We have updated the Proposed Guidance to reflect changes in the legal framework which underpins the markets regime, as well as the updated access regime implemented by the Access and Management Regulations. The following changes have come into force since the publication of our existing guidelines:

Market studies and market investigation references

In Chapter 3 we set out the new procedure for undertaking market studies which is contained in Part 4 of the Enterprise Act (which was introduced by the Enterprise and Regulatory Reform Act 2013), including the new statutory timescales for conducting market studies and making market investigation references to the CMA.

Monitoring the competitive situation in railway markets

In Chapter 2 we set out our updated duty under the Access and Management Regulations to monitor the competitive situation in the railway services markets.

Directions in relation to markets

In Chapter 4 we set out our new power under the Access and Management Regulations to make directions to correct market distortion and undesirable developments in markets and to prevent discrimination. We also set out how we anticipate the overlap between our appeals function and our power to make directions will work in practice.

We consider it is appropriate to introduce updated guidance to reflect both the changes to the markets regime, and the amendments to the legislation in relation to the access regime. We have also sought to capture our experience of monitoring and reviewing markets in the railways sector, which has substantially increased since we published our existing guidelines, in the Proposed Guidance.

Consultation questions

In this consultation we are seeking views on the Proposed Guidance attached at Annex 1. To this effect, we raise specific questions for consideration but would welcome any other representations you may have. The specific questions are:

- Q1:** Do you agree with our proposals on how we will carry out our functions of monitoring and reviewing markets?
- Q2:** Do you have any other comments on the scope or content of the Proposed Guidance?
- Q3:** Do you have any comments in relation to our interpretation of the Access and Management Regulations, and in particular:
- our responsibility to monitor the competitive situation in the rail services markets under Regulation 34; and
 - the circumstances in which we envisage we would use the power to make directions under Regulation 34(3)?
- Q4:** Are there any areas which you think would benefit from further clarity?

Impact on stakeholders and interested parties

This consultation will be of interest to all businesses (whether or not they are subject to our regulation) who provide services relating to railways in Great Britain. This consultation may also be of interest to the users of railway services with an interest in learning more about how we will monitor and review railway markets and the actions available to us should we have concerns.

The review of the markets guidelines only clarifies existing obligations and, as mentioned above, results from a number of statutory and legislative changes. We take the view, therefore, that there will be no additional costs as a result of the guidelines themselves. We do not consider that the proposals raise any equality or diversity impacts.

How to respond to this consultation

Please ensure that your response reaches us on or before the closing date of 13 October 2016. If you would like further copies of this consultation document, it can be found at:

http://www.orr.gov.uk/_data/assets/pdf_file/0004/22495/orris-approach-to-monitoring-and-reviewing-markets.pdf

Please send your consultation responses to:

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Competition and Consumer Policy

Office of Rail and Road

One Kemble Street

London

WC2B 4AN

Email: ricardo.araujo@orr.gsi.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents.

All responses will be published on ORR website unless marked as confidential².

Yours sincerely,

A handwritten signature in blue ink that reads "Annette Egginton". The signature is written in a cursive style with a large initial 'A'.

Annette Egginton

Annex 1:

- 1- Draft guidance on ORR's approach to monitoring and reviewing markets

² Information provided in response to this consultation, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004. ORR will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties