

Economic Equilibrium Test requests received in relation to a proposed open access service

Proposal: [Virgin Trains Ltd London Euston – Liverpool Lime Street](#)

Date of notification: 10 June 2019

The Economic Equilibrium Test was requested by the following relevant parties:

- [Arriva Rail North, on 5 July 2019;](#)
- [First TransPennine Express, on 10 July 2019;](#) and
- [Department for Transport, on 10 July 2019.](#)

Economic Equilibrium Test request from Arriva Rail North

To whom concerned,

I am emailing on behalf of Arriva Rail North in relation to the notification received by the ORR for the new Virgin Trains open access service which may be subject to the EET :

Company details:

ARRIVA RAIL NORTH Limited, a company registered in England and Wales under company number 04337712, having its registered office at 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, SR3 3XP

Contact details:

[Redacted]

ARN has carefully considered the information contained in the Form OA and we would like to request the EET based on the limited information which has been put forward regarding the new Virgin Trains services proposed to commence on SCD 2021.

ARN operate a large number of services in the Liverpool area and call at two of the stations within the proposal – Liverpool South Parkway and Liverpool Lime Street. As the information contained is high level and subject to the planning bid and offer process we can only at this point in time anticipate that the proposed services could impact on ARN. We believe that the increase in services in the Liverpool area could adversely impact performance. The Liverpool area does already have performance issues in particular at Liverpool Lime Street due to congestion at the junction approaching the station. Any large uplift in services in this area has the potential to cause further detriment in performance which would be unacceptable to ARN.

We also believe the proposed services and in particular the first early morning service leaving Liverpool Lime Street could abstract revenue from ARN, without further detail on the service timings we at this time can only raise this as a potential issue but we hope that this will be sufficient in warranting the EET to be undertaken.

Finally the current Virgin trains west coast franchise (west coast trains ltd) has a current track access application (25th SA) ongoing to increase services between Liverpool Lime Street and London Euston. ARN requested further information on the proposed services during the consultation period as we were unable to assess the impact of the proposed changes on our business. Disappointingly the information was never received and ARN therefore objected to the proposal, our objection remains today. We would therefore anticipate that ARN's position would be the same for any new services proposed between Liverpool and London whether those services are delivered by a franchised operator or an open access operator unless information is provided to the contrary.

Arriva Rail North, 5 July 2019

Economic Equilibrium Test request from First TransPennine Express

First TransPennine Express Limited in regard to its TransPennine Express Franchise.

Registered in England and Wales under number 09111801, registered address – 4th Floor, Capital House, 25 Chapel Street, London, NW1 5DH

First TransPennine Express, (TPE), requests that the ORR carries out the EET on this proposal as it believes the economic equilibrium of our Public Service Contract with the Department for Transport, (the Franchise), risks being compromised.

Potential Operational and Economic Risks

1. Congestion at Liverpool Lime Street station.
It is of concern that proposed December 19 service changes, in particular the introduction of TPE's Liverpool – Glasgow service, have not been considered in Virgin's proposal. The performance implications of this could have a direct financial impact.
2. The lack of detail within the proposal, means that a performance assessment is difficult. There are however concerns that the additional services proposed will have a significant knock on effect on other parts of the network in the North West, affecting the financial footing of North West franchises. Experience shows that late running on the Cheshire Lines, (CLC), has a significant impact on services within Greater Manchester. In addition, it is known that late running on the West Coast Main Line has an impact on TPE services around Euxton Junction

We believe that the issues raised above provides sufficient concern to request that an economic equilibrium test in conducted. We would be happy to engage further in terms of detailed analysis in due course.

Contact

[redacted]

First TransPennine Express, 10 July 2019

Economic Equilibrium Test request from Department for Transport

Thank you for the opportunity to respond regarding the Economic Equilibrium Test (EET) for Virgin Trains Ltd's open access application to operate services between London Euston and Liverpool Lime Street, starting in May 2021.

In line with the ORR's guidance on the EET published in March 2019 carrying out the new EU Implementing Regulation 2018/17951¹ ('the Regulation'), we, as a competent authority within the meaning of the Regulation, would like to request that the ORR undertake the EET. The overlap of this new service proposed with franchised services on this line, in our view, means that there is a clear case that the economic equilibrium of a public service contract could be compromised.

However, given that the Department is in the process of competitively tendering a public service contract covering parts of the same route, we request that the ORR, consistent with paragraph 5.27 of the ORR's guidance and Article 9(7) of the Regulation, suspends consideration of the proposed application for a limited period of time, until the contract award is announced. The West Coast Partnership (WCP) competition is nearing completion of the procurement process and it is expected that the successful bidder will be announced in Summer 2019, within the 12 months deadline set out in your guidance.

After the successful bidder for the WCP is announced, it will be possible for the ORR to consider the access rights that the new franchisee could be seeking. At that time, a more informed discussion can take place regarding the appropriate allocation of available capacity to the various competing rail passenger services in this part of the network. This would be in the interest all of parties involved, by enabling a more realistic and sustainable assessment of the impacts of the open access services on the economic equilibrium of the franchised services; and the ORR would be better able to fulfil its statutory duties, including the duty with respect to the Secretary of State's funds.

We recognise that the current question of whether the Economic Equilibrium Test should be applied to the application represents only the first steps in a wider consideration and decision-making process around the application. This includes the implications for the preparation and launch of HS2 services, particularly the half-hourly Liverpool service included in the current HS2 business case. This was subject to the ORR's regulatory statement regarding track access, published on 9 April 2018. We welcome further engagement with you on this application, undertaking the EET in due course, and we will continue to support you through your assessment of the Virgin Trains Ltd track access application.

Please do contact me if you have any questions on our request to delay, or you require anything further information from us at this time.

Department for Transport, 10 July 2019

¹ https://orr.gov.uk/_data/assets/pdf_file/0013/40801/guidance-on-the-economic-equilibrium-test.pdf
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1795&from=EN>