



Association of Train Operating Companies

On-rail competition: Consultation on options for change in open access

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Introduction

ATOC provides a national voice for Britain's passenger train companies, helping to create, inform and shape the rail environment in Great Britain. We bring together all train companies to preserve and enhance the benefits for passengers of Britain's national rail network, which jointly we do by providing the following key services:

- A central clearing house for the train operators, allowing passengers to buy tickets to travel on any part of the rail network, from any station, through the Rail Settlement Plan
- A customer service operation, giving passengers up-to-the-minute information on train times, fares, reservations and service disruption across the country, through the National Rail Enquiries (NRE)
- A range of discounted and promotional rail cards, cutting the cost of travelling by train for groups including young people, families, senior citizens and people with disabilities
- Operational and engineering expertise, promoting safety, setting standards and encouraging excellence across the sector.

ATOC's mission is to work for passenger rail operators in serving their customers and supporting a safe, reliable, attractive and prosperous railway.

The ATOC Response

The UK rail industry can demonstrate a continuing story of success and on-rail competition has helped keep a focus on further improvement. It is an important part of the operating arena, where it can be demonstrated to meet the strategic aims of Government, provide a sustainable business environment and deliver tangible benefits for users and funders of rail services.

Competition already exists between competing transport modes, between franchise passenger operators, and between franchise passenger and open access operators, delivering a wide range of services, benefits and commercial offerings to the market. Franchised operators continually work closely with their funders and with passengers to seek to deliver the required levels of service. Open access operators have targeted business environments and are directly accountable to their markets. Performance is scrutinised robustly, and operators are held firmly to account – legally, financially and through their reputations - for their results. More can and will be done, but the existing regime has delivered many benefits. ATOC wishes to see ORR make the greatest possible gains from the existing structure, and take an evidenced-based approach to areas of market failure or deficit.

In reading the ORR proposition, it is not yet evident what ultimate outcome is being sought or quite what tangible benefits could be expected from the costs of additional regulatory activity. There is also an embedded confusion as to whether the consultation is regarding on-rail competition or just open access operation. This is also evident on the ORR website. We have judged that ORR is seeking to provide rail users with ever higher standards of customer service, promoting efficiency and economy. Franchise passenger and Open Access operators already fully support and share this ambition, increasingly challenging their own operating environment, including through the Rail Delivery Group (RDG).

The RDG was set up to act as a key resource for the governments of the UK, Wales and Scotland, the ORR and other industry stakeholders to stimulate such activity in rail and lead change. We encourage the ORR to make full use of the mechanisms that have been created, and see how rail operators are already striving for greater performance, efficiency and economy.

It is also difficult to judge from the existing proposals, how the ORR consultation will deliver the strategic rail aims of Governments or fit with the wider charging framework. Competition should not be pursued as an end to itself, and ATOC would have wished to see, through a range of impact assessments and modelling of rail scenarios complementing this consultation, quite how the proposals would deliver the intended results along with any resulting implications. The consultation provides one perspective, and this now needs to be considered in light of the whole rail operation.

With the consultation underway in parallel with the Draft Determination, the Long Term Regulatory Statement and the proposed Schedule 4, 8, volume incentive and capacity charge regime changes, the eight weeks response time has proved particularly difficult. The ORR will be aware of the 'Principles of Good Regulation' and its recommendation that regulators give stakeholders at least 12 weeks to respond to consultations. We have consulted our members as extensively as possible given these time frames.

The wider context

This consultation cannot be viewed in isolation and should be seen in the context of the wider charging framework. We continue to seek a regulatory framework that is straightforward and simple to understand and which gets as close to the principle that each participant (including Network Rail) should pay an accurate share of costs. This is the best way to influence behaviour and incentivise all industry players. We recognise that charges have the potential to serve the purpose of cost recovery as well as provide signals for efficiency of use and allocation.

It is clearly desirable that there should be a predictable and stable charging regime for all operators. One option might be a re-balancing of the fixed and variable charges for running additional services. However, we recognise that current open access operators entered the market and based their business models on a reasonable expectation of charges being stable. Further thought will therefore need to be given to transitional arrangements.

This policy review should form part of the wider structure of charges (and incentives) debate. ATOC represents franchise passenger and open access operators and we believe that access to the rail network should incur fair and cost reflective charges. Where elected representatives pursue social objectives for rail that may not support cost reflectivity, we seek full transparency, so that the public and passengers are sighted on how their money is spent.

Franchising

There is an inevitable close relationship in the UK rail industry between franchise passenger and open access. Increases in competition should trigger flexibility within franchise agreements to allow other operators to respond. This flexibility could be built into the franchise proposition. Substantial innovation and competition exists within the existing franchising process and will continue to develop. Open access operators already complement this approach.

Those bidding for franchises are required to forecast commercial opportunities, judge passenger trends and gauge risks over extensive periods. It is therefore important that bidders are able to plan the future of their businesses with a reasonable degree of assurance. As with all commercial business, risks of unforeseen changes to commercial revenues and operating environments must be priced for in order to ensure financial stability and sustainability. This would represent a direct cost to funders, and should be minimised wherever possible. This could be addressed by appropriate adjustment mechanisms in the franchise contracts balanced by the access charge mark up income flowing to funders under the ORR proposal.

Planning

Increased on-rail competition should be included in the overall strategic planning for each route. It is part of the long term planning process and has implications for the current set of market studies. While there remains a strong central planning mindset in the UK, particularly in relation to core routes (ECML and WCML) the impact of further on-rail competition must be evaluated holistically including looking at the rolling stock, timetable and depot strategy.



Whilst recognising that ORR has a duty to promote competition in the provision of railway services, this must be balanced with the other duties including to contribute to the achievement of sustainable development and to enable operators to plan the future of their businesses with a reasonable degree of assurance. The impact of competition will affect both the consumer and the taxpayer to varying degrees, depending upon how aggressively competition is pursued. All of these duties are then to align with the strategic direction of government as set out in the Command Paper.

Europe

This consultation correctly highlights the current discussions within the EU and the need for alignment with the emerging policy propositions. We would only add that there remains an opportunity to influence the EU 4th rail package and not just respond to it.

The options

Within this consultation, ORR has set out four options:

Option 1 – the status quo

Option 2 – partial relaxation of the NPA test in return for a mark-up calculated on the basis of the level of abstraction

Option 3a – partial relaxation of the NPA test in return for a mark-up based on the charging regime for franchise passenger operators

Option 3b – partial relaxation of the NPA test in return for a mark-up based on an estimate of avoidable costs caused by open access

Option 1 would continue the ‘not primarily abstractive’ (NPA) test, but given the NPA test was developed some time ago, there is an opportunity to update it. It is our understanding that aspects of the MOIRA analysis have been challenged and the level of adjustments should be reviewed in the light of recent experiences. As it was not designed to model new services, MOIRA can over estimate abstraction and under estimate income generation.

Option 2 could create significant uncertainty and make it almost impossible to plan or invest. Any incentive properties would depend upon the accuracy of estimation and modelling. It is difficult to envisage how this modelling could stand the test of time as changes will inevitably occur in market demand and the behaviour of other players. A reopener mechanism would enable change, but would itself create the further uncertainty that operators are trying to reduce. Certainly incorporation of 100% of the excess abstraction in a mark-up would provide a disincentive to enter the market. If the mark-up goes to Network Rail, as stated in the consultation, further thought will have to be given to the funding mechanisms between DfT, Network Rail and operators. Adjustment mechanisms are often complex in nature, but compensation for abstraction loss is an area that would need to be explored. It would appear that Option 2 would struggle to pass the simple or transparent test. It would also be unlikely to lessen the regulatory burden.

Option 3 (both 3a and 3b) would appear simpler to implement. The tariff structure could provide greater certainty of costs associated with additional services and it would provide an opportunity to create greater cost reflectivity. It could help to create strong and demanding customers of Network Rail. However, the calculation of an accurate open access specific charge would prove very challenging and any reopener mechanism to review the charge would again expose operators (with high fixed costs) to significant uncertainty. This in itself could prove an insurmountable barrier to entry.

Conclusion

Each of these options is still very high level and there is significant development required if one of these options were to be adopted. ATOC is willing to work closely with industry players to evaluate the opportunities and implications through the RDG contractual and regulatory reform group. Ultimately, we wish to see a fair, stable and thought through regime created that has clear benefits to passengers and taxpayers.

Enquiries

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