

Office of Rail Regulation

consultation on

The potential for increased on-rail competition

A submission by

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Jonathan Tyler joined British Rail as a Traffic Apprentice in 1962. His career path has been from operations through demand modelling to BR-sponsored university lecturer and then to independent-minded consultancy in a range of transport work. Since 2000 he has specialised in researching, and making the case for the importance of, integrated strategic timetabling. In a number of case-studies evidence was found for both its operational virtues and its socio-economic benefits, including, most recently, in the design of a joint timetable for HS2 and the West Coast Main Line.

I Introduction

1.1 This response to the Consultation Document published by the Office of Rail Regulation [ORR] in October 2011 is informed by my convictions about the desirable strategic objectives of the railway. They are themselves underpinned by long involvement in the debate about public transport and the services it offers or should offer. To that extent my approach is unapologetically ideological – though no more so than ORR's.

1.2 The response is formed around a series of questions that were largely drafted before I read the ORR document in order to set some criteria to shape my consideration of its approach, evidence, interpretation and proposals. By emphasising wider issues this seems to me to be a more appropriate structure than one focussed on the partisan points listed by ORR [¶7.13]. I hope that it will be taken in the open spirit of the welcome for comments on any aspect that prefaces the narrower points. My questions follow a broadly logical sequence rather than the specifics of the document.

1.3 Open Access [OA] has generally had a good press. ORR has keenly promoted both the concept and the applications and in this document pays little attention to the disbenefits [Summary ¶¶5, 6, 11; ¶¶1.1, 1.13]. True believers in the merits of competition have used the negative image of British Rail and at least some of its franchised successors to highlight how much better things could be if incumbents were challenged by feisty newcomers. Powerful corporate forces are at work. And some of the railway press has feasted rather uncritically on the news stories while enjoying the excitements of the changing scene of trains and liveries.

1.4 **This paper puts the doubts and downsides as it reviews ORR's proposals. Its constant themes are**

- **that the evidence is often not as conclusive as proponents believe;**
- **that the tension between franchising and OA must be resolved;**
- **that the extension of OA now proposed must be assessed in a wider context;**
- **that there are public-interest concerns beyond ORR's apparent purview; and**
- **that alternative strategies must be evaluated before firm decisions are taken.**

1.5 Each section opens (in **bold**) with a question. There follows a discussion, which is summed up in a final short paragraph (in *italic*). The last section [§20] summarises the key arguments and presents the case for an entirely different approach to timetable planning, service delivery and competition. References are to the ORR document [in the form (ORR), ¶[x.x] or to the MVA technical report [(MVA), ¶[x.x.x]]. Sections in this document appear as §x.

2 Does the document propose any changes to reduce (or remove) the tension between the franchise process managed by the Department for Transport and the track-access process managed by ORR ?

2.1 Ever since the Railways Act 1993 there has been tension between the respective roles of the Department for Transport [DfT] and ORR in the planning of passenger services. This is an inevitable consequence of a scheme under which DfT specifies the services it wishes a franchisee to provide but where ORR may deny access rights for some of those services, either because it forms a different view of the available capacity or because it wishes to allocate paths to open-access operators [OAOs] or because it prefers not to change the pre-existing access rights of other operators.

2.2 Nowhere has this tension been more acute than with respect to the East Coast Main Line [ECML], where all three of ORR's reasons for differing from DfT have been in play. It is difficult to dispute that the present ECML timetable is not as good as it could have been, especially if a clean-sheet strategy had been adopted, as its premier status would have justified, in preparation for the changes in May 2011.

2.3 Except insofar as ORR notes its duty to have regard to the funds made available by DfT and allows for impacts on them in its calculations nothing is proposed to reduce or, preferably, remove this tension. Nor will it make much difference if franchisees are allowed greater freedom in specifying services; indeed that freedom could very well exacerbate the problem, albeit with a shift of frustration from DfT to Train Operating Companies [TOCs].

2.4 I recognise that under a regime of separated responsibility for the infrastructure and for the provision of services a regulator has a necessary role in securing non-discriminatory

access, but it seems to me arguable whether this should extend to pursuing goals that are distinct from those of the elected government – as ORR has been doing with its promotion of open access and now proposes in this document to do on a broader scale [Summary, ¶10]. Indeed one statement reads like an aggressive determination to act unilaterally [¶5.1] and is followed by a challenge to DfT to redraw the franchise map yet again just to increase overlaps and promote competition, as though other considerations are barely relevant [¶5.5].

2.5 Nor is this tension simply an outcome of European Union [EU] legislation. Most other countries have preferred to promote competition by means of tendering for the delivery of packages of services. Moreover, the countries with networks most similar to Britain's (for example The Netherlands) give implicit priority to trains that comprise the basic pattern deemed to be in the common interest and in practice (because their core networks have reached capacity) leave little space for open access. In Switzerland (which follows EU law in respect of transport) those trains that comprise the national system of regular, interconnected services are protected by explicit law from anything that would disrupt the structure.

It is disappointing that the document fails to address this issue and may therefore perpetuate an anomaly in the statutory framework that is not demonstrably in the public interest and may continue to cause sub-optimal outcomes.

3 Does ORR's concern to contribute to the Value for Money drive extend to examining the possibility that less fragmentation, stronger planning and fewer transactional interfaces might be more effective ?

3.1 The consultation document places its consideration of extending on-rail competition in the context of the Rail Value for Money Study (the McNulty Report). There are numerous references to this, accompanied by the presumption that competition will automatically contribute to achieving the objectives [ORR, ¶1.8]. However ORR has chosen not to notice the criticism of a number of commentators that the study identified the costs of fragmentation and of poor outcomes arising from the absence of a clear responsibility for planning and yet made recommendations completely contrary to these findings.

3.2 In proposing to facilitate the entry of more players, to increase their scale, to leave timetable planning driven by multiple sectional interests embedded in a legal straitjacket rather than imbued with a strategic purpose and to increase by definition the number of interfaces ORR may worsen current problems. What concerns me is not that this is certain to happen, or that I doubt the downward pressure on costs in some competitive circumstances. Instead it is that the possibility of an entirely different structure suited to the particular characteristics of a railway is not even considered, let alone studied by means of analysing experiences in other countries or setting up alternative organisational scenarios [see further at §16 and §20]. There is too a danger that in postponing an impact assessment to a later stage [¶1.12] ORR may become too locked in to its present course to retreat, should the assessment prove negative.

ORR has adopted only one of several possible approaches. It should have reviewed others. That is a serious weakness in a document of great importance for the future of railways in Britain.

4 Does ORR's assessment of competition take into account all of its duties ?

4.1 The Railways Act 1993, as subsequently amended, lays on ORR a number of statutory duties¹. It is required "to exercise [its] functions ... in the manner which [it] considers best calculated" to fulfill these duties, and hence Parliament decided, in line with regulatory practice, not to specify any priority among the objectives. ORR therefore has discretion in balancing them. There are six references to the duties "to promote competition in the provision of railway services" and "to have regard to the funds available to the Secretary of State", and four to the duty to "enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance".

4.2 No mention is made of any other duty. Yet these include the duties "to contribute to the development of an integrated system of transport"; "to promote measures designed to facilitate the making by passengers of journeys which involve use of the services of more than one passenger service operator"; "to promote improvements in railway service performance" (which is specified to include reliability, punctuality, the avoidance or mitigation of overcrowding and journey times that are as short as possible); and "to contribute to the achievement of sustainable development".

4.3 One does not expect every duty to be considered in every ORR document. Nonetheless, one should expect that in a paper with far-reaching implications there would at least be some discussion of the relevance of each of the duties and the implications of the proposals for each of them. If ORR has chosen to disregard them, or simply to ignore them altogether, a reasoned explanation should be presented, with appropriate evidence.

4.4 For example, in this present case, one might expect the question whether greater competition will help or hinder integration to be appraised, bearing in mind the evidence from open-access activity so far that the timetable has become less integrated if by that we mean excellent patterns. Similarly, to the extent that inserting additional operators has complicated ticketing and degraded connectivity, disbenefits may arise for passengers making multi-operator journeys. Again, no evidence is presented as to whether the proposals have been tested for operational robustness or whether they would bring faster journeys across most relations, while additional crowding is expected (albeit with a negative score in the analysis). Finally, no mention whatever is made of any measurement of sustainability.

Selectivity in the duties ORR has decided to prioritise leaves it open to the charge of taking a prejudiced stance that has distorted its conclusions. That might expose it to judicial review.

5 Is the analysis set in the context of several different scenarios ?

5.1 The document assumes that the social and economic context in which rail services operate will not change. This may be the case, but it is quite probable that it will not be. For example, external factors such as increasing scarcity of energy and raw materials, the need for urgent action on carbon emissions, other pollution and ecological degradation and economic factors reversing the trend toward globalisation in favour of more local production could all

¹ See <http://www.rail-reg.gov.uk/server/show/nav.94>.

have profound effects. Equally, widespread disquiet about inequality, excessive consumption, irresponsible behaviour by private companies and the distribution and centralisation of political power could build into radical social transformations.

5.2 I may wish for change rather more than ORR's collective mind does so, but a paradigm shift can no longer simply be dismissed as unlikely. It is therefore surprising that the implications are not considered. For example, the popular expectation might come to be that railways (and public transport as a whole) should be operated with a public-service ethos explicitly designed to capture a large market share and to do so with social and geographical equity. This would reduce the emphasis on competition and on financial objectives (without in any way weakening the imperative of cost-effectiveness) and focus instead on planned qualities of service. In particular it would replace increasingly frenetic marketing with presentation of a basic service assuring every citizen a reasonable level of mobility [see further at §16 and §20].

It is not that this is a certain scenario but that by failing to consider either this or other developments the document is seen to rest solely on a socio-economic model whose foundations look increasingly fragile.

6 Did ORR take into account the impact of competition with other modes when it assessed the benefits of on-rail competition and its possible detrimental effect on rail's collective ability to compete with road and air ?

6.1 On the first, ORR seems singularly uninterested in external competitive pressures on train companies: indeed it peremptorily dismisses them [ORR, ¶1.3]. A majority of business and leisure travellers have alternative modes available. They must constantly be wooed by the railway offering each sub-market the right mix of timetable scheme, total quality and appropriate price. That takes hard work, and both British Rail and the privatised companies have been remarkably successful in keeping the railway as an effective option in the face of a car-dominated culture and the expansion of air services.

6.2 If competition is so surely effective in driving down costs and prices and driving up quality, marketing skills and innovation it has been mightily influential on the railway for generations. This is not to ignore the failures but to recognise historic (and too often denigrated) fact – and the task is permanent, as witness the current East Coast campaign for first-class business. Against these external factors there is little evidence that within-rail competition can provide significant additional pressure.

6.3 Moreover it is not certain that it would not be counter-productive. For sure, the conventional elasticities automatically show that if prices fall as a result of competition more travellers would be attracted to rail. However there are two potential but unconsidered offsets to this. The first is that it is not clear whether the model distinguishes between trips captured from other modes and those generated. It should do, because while the former would be a real benefit to society, the latter are no longer obviously so at a time when environmental considerations necessitate stabilising or even reducing the quantum of travel.

6.4 The second offset is the likely effect of extended competition on perceptions of the service. There is widespread concern about network fragmentation, confused presentation of information, unreliable connections, buck-passing between operators and the complexity of

fares. It is disappointing that ORR, with claims to act in the public interest, appears oblivious to this² and even more so to the possibility that greatly extending OA operation might make matters worse and hence fail to attract the calculated numbers of additional passengers.

Preoccupation with on-rail competition and disregard for the powerful and constant external challenge from other modes represents a strange imbalance in ORR's analysis.

7 Do the arguments adduced in support of competition stand up to scrutiny ?

7.1 Chapter 3 opens with a statement of the classic case for competition in driving improvements in value for money [ORR, ¶3.2], with no discussion of alternative ways of achieving that or indeed any questioning whether it should everywhere and always be the sole criterion (the opening sentence of the summary [¶7.2] bluntly states that it should be). The following paragraph does list some “potential downsides” (confusion-marketing, loss of coordination³, reduced investment arising from lower profits and the loss of scale advantages), but only the scale issue receives any further attention. We comment too that the MVA report refers to evidence about the benefits of integrated systems but then disregards it⁴.

7.2 The findings of some comparative analysis are presented [ORR, ¶3.10-12]. This is thin material. Stronger growth on flows newly served by OAOs is hardly surprising since initial market-penetration would have been lower than on the mature comparator flows. And of course fares fell on the competed-for flows: it would be strange if incumbent franchisees had not reacted to the activities of the new entrants, but it is likely that they recouped their losses by discreetly spreading small compensatory increases across their many other flows. Nor is any account taken of the DfT prohibition on the lead company (ie. the main franchisee) offering its own standard-class walk-up fare⁵: this rule exists (rightly) to protect the principle of interavailability but it curtails responses to an OAO with the freedom to price as it wishes.

7.3 This evidence then is highly selective, and to quote recent material from a player with a vested interest [¶3.12] displays bias. Similarly, where franchises overlap more rapid growth can be found, but the influence of external factors should be allowed for and is not⁶ [ORR,

² For example, ORR seems uninterested in the way in which the performance regime has perverse consequences for train regulation and the management of connections, or in the wilful failure of TOCs to lend substance in their literature to the ‘National Rail’ brand (many just ignore complementary services).

³ The example given is the management of disrupted services, where divided responsibility is certainly a problem, but ORR seems naive in expecting competitors to “work together to maximise [network] benefits”.

⁴ First to the Mohring effect and then to “evidence that a well planned and integrated timetable offering regular interval services and good connections can considerably enhance traffic, revenue and benefits” [MVA, ¶2.2.4]. I declare an interest as one of the co-authors of the paper, which was reporting research sponsored by Government and the rail industry with ECML as the case study. Similar results have been found subsequently. There are also references to the loss of network cohesion and of socially useful services for lower-order places as liberalised air, bus and express-coach operators focussed on the commercially profitable larger markets.

⁵ It is permitted to run promotions for a limited period, but this just introduces further confusion.

⁶ A small excess in the case of Cambridge might easily be explained by the buoyancy of its economy. The list of franchise overlaps does not inspire confidence that ORR understands the real railway or its passengers: it includes as competitors Northern (slow, serving local markets) and TransPennine (brisk, serving inter-regional and inter-

¶3.15]. The one quoted example of the effect of removing competition between overlapping franchises [¶3.16] ignores the overwhelming reasons for why it was done that the document had earlier mentioned [¶2.11].

7.4 Next there is reference to the consistently higher satisfaction levels reported in surveys of passengers using open-access compared with franchise trains [¶3.17]. This is an interesting finding, but it needs to be unpicked rather than used as easy propaganda. For example, OA passengers are a self-selecting group: they are only to be found on certain relations, and they generally have to be more flexible in their travel arrangements than many franchise passengers who have no option but to use the more frequent standard service. That is not an excuse for the too-common failings of the big operators, but it recognises that it is more difficult to get a large operation right all of the time than to run a niche operation well. And to imply that on-rail competition alone can deliver better customer service [¶7.8] is a slur on existing staff and on good managers. It is also belied by public perceptions of some banking, energy and telecommunications companies.

7.5 Including evidence from the rail freight business is just silly [ORR, ¶3.18-19]. To begin with, freight has entirely different market characteristics. Trainload movements (which almost all freight in Britain now is) have one customer, one origin, one destination and, within bounds, one time requirement. By contrast every passenger train serves many customers, each contributes to a complete day-long service (they cannot be treated as separate entities, whatever ORR and some marketeers may wish), and few operate simply from A to B. Experience from the freight railway is irrelevant to the passenger railway.

7.6 In any case, the freight data is thinner than it looks. It cannot be understood without deeper analysis of changes in the composition of the traffic, without knowledge of the business behaviour of the shippers and the freight operators, without the facts about the scale of embedded inefficiencies at the start of the process and without detail on the contribution of state-funded investment in the form of infrastructure projects. Some of the productivity gains may be attributable to competition, and in the freight sector that is unlikely to have the downsides it has in the passenger sector, but the contention is unproven⁷.

7.7 Similar arguments apply when attempts are made to transfer the history of low-cost airlines to railways. No one can deny that the advent of these operators has transformed the air industry [ORR, ¶3.22, last point], but again comparisons can be glib. The national carriers had a long record of complacency, inefficiency and oligopoly that was just waiting to be challenged. By contrast British Rail became progressively more efficient, developed outstanding marketing and finely-tuned pricing, made great and sometimes radical technical advances and certainly faced competitive pressure from other modes. For all its faults it would be a parody to compare its condition by 1993 with that of most state airlines.

7.8 Moreover railways and low-cost airlines have, and can have, little in common in the way they operate. Most flights, and virtually all provided by low-cost carriers, convey a batch of passengers from one airport to another. Almost no railway in Europe can operate like that, for fundamental geographic and technical pathing reasons. Inevitably load-factors are higher for planes than trains; although more needs to be done to improve train occupancy it is doubtful whether scope exists for more A to B operations without damaging the integrity and

city markets) and ScotRail and East Coast north of Edinburgh as though the latter's limited services have a deliberate within-Scotland function (ironically Transport Scotland is contemplating removing them).

⁷ More than half the growth in freight moved has been in the coal sector, where productivity gains, though perhaps driven by (oligopolistic) competition, would have been relatively easy for a single operator (think BR's development of Merry-Go-Round working with two other nationalised industries).

usefulness of the network and particularly its more social functions. In other words, the starting point for the low-cost revolution in the air provides weak evidence of the value of competition on rail while their different characteristics challenge transferability.

7.9 ORR records that MVA could find “no definitive evidence as to the relative efficacy of competition for – or within – the market” in achieving “significant cost reductions” in the bus industry [¶3.24]. They also note the recent finding of the Competition Commission that head-to-head challenges on bus routes or corridors have generally led to short-term but unstable benefits and early withdrawal by all but one player [¶3.25-26]. Conveniently it is assumed that this could not happen in the rail industry.

7.10 A final general point needs to be made. Both ORR and MVA report, with a certain cold satisfaction, the substantial fall in bus-workers wages following deregulation. They treat it as evidence of the benefits of competition, plainly regret the fact that circumstances prevented something similar from happening on the post-privatisation railway⁸ and regard extension of open access as an opportunity⁹ to try again.

7.11 This is only a legitimate line of argument if every aspect is taken into consideration. There needs to be analysis of the effect on demand in the economy at large of these cuts, of the impacts on the labour market and the wider costs of immigration by those willing to work for lower pay, of the extent to which low wages are bolstered by the working tax credit (which is effectively a state subsidy) and of the social anomie caused by these wage cuts while the owners of bus companies have been amassing considerable private fortunes.

7.12 A related issue concerns the environmental consequences of lowering prices. This is not an argument against deploying competition to remove inefficiencies (the environment cannot afford them), but it is to point out that expanding demand can no longer be treated as an unalloyed good. In the case of cheap flights competition may have created new markets and brought satisfaction and choice to many, but it has stimulated demands that are unsustainable by any ecological measure. We must beware of assuming that any similar growth in rail travel (as distinct from the capture of higher market shares) will not have unforeseen consequences.

7.13 We turn now to evidence and modelling assumptions based on comparisons between franchise and open-access operators. Much of this is disingenuous because it fails to recognise some fundamental differences between them. OAOs by definition pick the markets and times at which they wish to run whereas, as already noted, franchised companies are required to operate a comprehensive public service.

7.14 ORR’s stance is laid bare in a curious paragraph [¶4.2]: this argues that competition for the market through the franchising process weakens incentives to reduce prices and improve quality without explaining why that should be so – the prospect of profits beyond those forecast seems to have been overlooked, as has the seemingly relentless elimination of posts by TOCs – and goes on to note that “market power is restricted” and passengers protected by service standards and fares regulation embedded in the franchise contract. This is followed [¶4.8] by scarcely-veiled criticism of interavailable fares on the grounds that competition benefits are foregone in favour of other passenger benefits.

⁸ That skilled staff and their trade unions would exploit the breaking up of British Rail by protecting or forcing up salaries at companies who could not risk operating failures arising from staff shortages was not foreseen by the clever people who devised the fragmentation and privatisation strategy. This could happen again.

⁹ MVA assumes for its modelling that the TUPE legislation would not apply to OAOs taking over presently franchised services [MVA, ¶2.9.17].

7.15 It would seem that ORR is itching to abandon those constraints. It resents the very limited degree of competition and takes that as self-evidently leaving “considerable scope” for its extension [¶4.9]. If the implication is that present limitations are obsolescent and that the passenger railway should become a set of disaggregated packaged mobility options with no social role, to be filled by clever marketing in the context of uninhibited consumer choice, then it should say so more publicly, for to pursue this model is to stray into a fundamental debate which belongs in the public realm rather than among specialists using esoteric language and managing a system of dense and vulnerable complexity.

7.16 In sum, franchisees have less freedom because of the nature of their product. It is also important to note that if competition placed unremitting pressure on staffing levels and resources generally there could be a race to the bottom in terms of quality of service: that certainly happened in the bus industry, and while it is unlikely to run to the same extremes on rail, it could happen and must not happen without wider appraisal of its outcome for modal share. Finally there are some odd suggestions about the use of smaller trains which we deal with below [§12].

Both ORR and MVA have been selective in their use of evidence about the effects of competition and simplistic about its transferability to railways or the extent of its possible application. The tone of the discussion and the lack of any reference to experience of public transport systems abroad that are run without this supposedly essential stimulus raise suspicions of prejudice.

8 Does the document consider whether the benefits of competition justify so much effort being invested in facilitating open-access services ?

8.1 From the early years of the privatised railway ORR has devoted a great deal of attention to promoting competition. It was keen to support short-lived and almost forgotten initiatives by the initial franchisees such as through trains from north of Manchester on the West Coast Main Line and the ludicrous Colchester <> Basingstoke service via the North London Line, and it has spent considerable resources on facilitating the entry of three open-access operators, one, now defunct after a brief and unhappy history, on the West Coast and two on ECML.

8.2 It is important to register that these operations presently provide only 1% of total train-kilometres. That figure is most unlikely to increase significantly on a congested network [ORR, ¶2.2] where most of the capacity is absorbed by the basic service specified and commissioned as a result of decisions by the elected Government¹⁰. Even if ORR envisages that the fresh proposals presented for consultation will pave the way for an extended scope for open access it cannot plausibly grow much further, and in fact the proposals should really be interpreted more as ORR seeking to take over from DfT a batch of services for a different form of franchising rather than as extending opportunities for the likes of Grand Central.

¹⁰ The examples of possible OA interventions on the West Coast are pure fantasy in pathing terms [MVA, ¶3.1.1], while it is admitted that the “operational practicality” of the East Coast scenarios has not been considered [¶6.4.1]. One scenario allows an OAO to switch Sunderland, Bradford and Hull paths to head-on competition on more profitable routes, which would surely undermine the rationale ORR has hitherto used [¶6.4.5].

8.3 It is distinctly arguable whether this trivial fraction has justified the enormous administrative effort and the legal constructs that go with it, and it cannot be implied that the rest of the network is irremediably inefficient in the absence of competition. It is also telling that ORR does not seem inclined to publish certain data or to follow up on whether its judgments have been correct. As noted below [¶15.3] the value to OAOs of the revenue transfer from franchisees is not public knowledge (which is deplorable), while the opaque nature of ORCATS obfuscates understanding [§14]. Equally, it is time for someone to inform the debate by researching whether the claims that a few trains a day would bring much-needed regeneration to Sunderland – in a way that East Coast’s faster and higher-quality Newcastle service could not – have materialised. It may be speculated that they have not.

8.4 Moreover open access has not been without damaging downsides. It is certainly stretching a point to claim that OAOs paying only variable charges facilitate the best use of capacity [ORR, ¶2.8]. Timetable change on ECML became an interminably drawn-out and over-legalised process largely because of ORR’s determination to secure paths for OA services¹¹. This process delayed introduction of the half-hourly Leeds timetable and subsequently also the general recast (to May 2011). Even then it has delivered a patently sub-optimal timetable (it contains among other weaknesses poor spacing of trains and scrappy connections and is showing signs of cramming in more paths than was operationally wise). It is galling that the process excluded consideration of a clean-sheet timetable that showed signs of being both superior as a service-offer and capable of yielding greater social benefit.

Of these limitations and drawbacks the document has nothing to say. After the failure of huge regulatory effort to make OA more than marginal, for some fairly obvious and fundamental reasons, it is strange to propose extending the concept.

9 Is the effect of open-access on franchise bids adequately evaluated ?

9.1 If open access is encouraged then bidders for franchises will respond by discounting the effect on cash flows when they make their bids. That much is apparent, and the document acknowledges the probability [ORR, ¶1.12]. What it does not do is to explore the wider implications, perhaps because ORR seems to think that, so long as the revenue transfer is balanced by new passenger benefits under its ‘not-primarily-abstractive’ test or by auction pricing bidders, need not take the factor into account [¶2.6]. The logic is unconvincing.

9.2 It is not clear for example what happens if one bidder takes a limited view of future competition to the extent that it comes in with the most attractive bid – which DfT takes. Note too that the possibility creates a risk which DfT must itself evaluate (and may misjudge) at the public expense. Suppose then that the competition is acute and the franchisee faces financial trouble. If DfT has no mechanism in the agreement that covers this the franchisee could be forced to hand back the keys, with all the disruption and unproductive work that that causes. If it does then there will be in effect transfers from the public purse to the OAO which go beyond what is calculated in ORR’s modelling.

¹¹ An access application by an unknown company with few credentials, little credibility, no trains or staff and a bid for a few paths was treated as of equal status to that by the then-franchisee, National Express East Coast.

The instability, guessing and game-playing that the possibility of OA entry engenders ought to be considered as a costly downside of the concept that may not offer corresponding benefits.

10 How does the document analyse the use of capacity ?

10.1 The capacity of a passenger railway is (broadly speaking) maximised when the number of trains in a unit of time, the number of seats on each train and the mean load-factors are all at their highest practicable level. During peak periods of the day on a busy route such as ECML one would expect the equation $\text{trains} \times \text{seats} \times \text{occupancy}$ to deliver high values commensurate with the demand, even if at other times the trough in demand coupled with maintaining (for good reasons to do with the overall offer) a minimum frequency leads to somewhat lower values.

10.2 ORR prefers a different approach. It is concerned with the allocation of paths, seemingly regardless of the size of the trains (this is not mentioned in the list of considerations [ORR, ¶2.9]) or even with load factors (it assumes that if these are low that is only a problem for the operator's finances)¹². This is difficult to comprehend since it elevates the supposed virtues of competition above those of good utilisation of resources (it has a duty "to promote efficiency and economy"), yet despite numerous challenges ORR appears never to have satisfactorily justified its policy¹³. If, as rightly or wrongly everyone assumes, demand continues to increase the policy will become ever more problematic.

10.3 There is another scenario too. Under prevailing Government policy the prime inter-city operators are expected to produce a handsome premium that goes toward support of the financially unprofitable parts of the network. That has a little but not much logic: it means that a greater share of the cost of the railway is borne by rail passengers in general than would otherwise be the case, but it also means that subsidies deemed necessary for regional and social reasons – which might be more appropriately borne by regional authorities or directly from tax resources – are paid through higher fares for long-distance travellers than would otherwise be charged.

10.4 In turn, if that excess were no longer levied, lower fares could be expected to attract greater numbers and franchisees might even be charged with maximising capture from other modes rather than, as happens now, maximising revenue. In that event the emphasis would plainly need to be on large and frequent trains between major centres with less scope for small trains serving secondary and tertiary flows.

10.5 One of the bright ideas drawn from the MVA modelling is that costs could be saved if the batch of services – every other Leeds train – to be handed over to an open-access operator were to be covered by half-length trains [¶6.20, option 2]. That makes total sense if one considers only loadings off-peak on selected services. It ignores a raft of other factors. First, ECML trains are the size they are, and unsplitable, because of engineering realities at the

¹² On a supposedly congested railway even off-peak, a long-distance train leaving King's Cross in mid-morning with only a minibus load of passengers does not appear especially sensible.

¹³ Indeed, when the draft of the ECML Route Utilisation Strategy suggested that the minimum size of long-distance trains should be specified as eight coaches, the clause was removed from the final text, presumably at the request of the open-access operators.

time they were designed over twenty years ago, not because of perverse behaviour by successive franchisees¹⁴. Second, more recent engineering practice has opened up the possibility of flexible unit-trains, so that the number of seats can be better tailored to varying demand. This seems likely to happen without the stimulus of competition – subject of course to the practicalities and costs of joining and splitting and of stabling the part-time sets.

10.6 Third, it is not explained how the operator of small off-peak trains is going to cope with the peak. If it is by adding a set, just as a franchisee with a flexible fleet would do, then this item should be removed from the calculations. It is quite wrong to treat this issue as a function of competition. And fourth, reducing the size of off-peak trains is not quite so simple. Load-factors are variable and unpredictable, and if half-size trains meant that the number of heavily-discounted tickets had to be reduced then the mean price would increase and some groups of customers would be disadvantaged, or even priced off altogether. If, beyond this, ORR's hidden agenda is to abandon the concept of the walk-up railway it should say so.

10.7 One other matter should be mentioned here. ORR seems to think that ERTMS in-cab signalling will facilitate a significant increase in capacity that can be used to expand open access [¶4.11]. It is by no means certain that this will happen. In a recent report for HS2 Ltd the consultancy SYSTRA expressed significant caution¹⁵, and plainly other constraints such as platform capacity and the heightened risk of perturbations will weigh against running extra trains out on the open track.

ORR's approach to the utilisation of capacity is a notably egregious example of how its theoretical economists' emphasis on competition distances it from the practical business of running a socially useful railway.

11 Has ORR undertaken any studies of the impact of open-access services on the efficient utilisation of assets ?

11.1 This question matters greatly. It is true that the theoretical impact on economies of scale and density are incorporated in the MVA model while ORR notes that lost economies of density would have to be recouped from other savings [¶6.29]. However there is a world of difference between econometric aggregates¹⁶ and what happens on the ground, and MVA shows little sign of having benefitted from contact with managers of the real railway. For example, if different operators choose different rolling-stock, as well they might, costs rise in maintenance and as a result of incompatibilities (the railway still rues the plethora of small orders following privatisation and the reaction that led to DfT attempting to bring order into the situation).

¹⁴ It is absurd of MVA to imply that East Coast and their predecessors have no incentive to utilise their trains efficiently [MVA, ¶5.7.2]: on the contrary an electric fleet that cannot be expanded and the elderly and limited diesel fleet are flogged up and down run mercilessly every day in order to meet the demand for services.

¹⁵ See <http://www.hs2.org.uk/assets/x/79247>, §3.3 to 3.6.

¹⁶ One line of argument is that because costs have not fallen on the privatised railway in the way they should have done according to conventional assumptions and the models, therefore we have had the wrong sort of franchising. MVA seems reluctant to accept the possibility that there are other more basic flaws in the system. It is also the case that the range of variables and often the limitations of the data make modelling difficult.

11.2 Similarly the optimal stock diagrams with a single operator are almost certain to be disrupted. A classic example was found in our study of a clean-sheet timetable for ECML. We proposed that the two Scotland / Newcastle trains and the two Leeds trains in every hour should not call at Retford, Newark and Grantham. Instead there should be a service every half-hour between Doncaster, these three stations, Peterborough and London. This was (provisionally) shown to yield higher gross revenues than the traditional pattern because it secured good growth on the big, long-distance flows and a regular service for the intermediate stations that did not rely on random stops by the fast trains.

11.3 The case for the 'all-stations' service would of course depend on excellent connections, but it also provided a means, if so wished, of integrating the open-access offer into a coherent timetable. Thus one train/hour would run from and to York in connection with the Scottish fast while the path in the other half-hour would alternate between Hull and the flows covered by Grand Central (both with better paths and more passenger-friendly stopping patterns than now). The fleet for this service would best have been of a type designed for fast inter-urban operation and naturally distinct from the main ECML fleet.

11.4 However the scheme would have fallen foul of fragmentation. The timetable made sure to plan ideal short turnrounds at King's Cross, but these would have required a train coming in from, say, Hull to return to, say, York. In other words, efficiency would depend on all trains in this group being operated either by the main company or as a single self-contained entity by a second company. Involving three independent operators would not be acceptable.

11.5 Further consequences can follow from arbitrary differentiation. Extra positioning moves may be required, thereby wasting capacity in congested terminal areas. Substitution in the event of a breakdown becomes more complicated and may disadvantage passengers if a train is cancelled that would not have been with a common-user homogeneous fleet. And unless some authority lays down an absolute requirement for technical compatibility disruption may occur when trains cannot couple to each other.

The impression is given that ORR believes so strongly in the benefits of competition that it is not particularly interested in real operating issues of this kind. That risks future cost and should be assessed through practical exercises rather than abstract models.

12 What consideration is given to the fact that open-access applications are random interpretations of market opportunities and do not necessarily represent the best use of capacity or the best pattern of services ?

12.1 Open access operators have been too few to enable any classification by background, motives and business success. Hull Trains began as a very specific attempt to fill a gap in the inter-city network that British Rail and then the first franchised East Coast company had struggled to serve effectively for economic and geographic reasons. Because it was a niche operation that realised the value of a local presence it was able to create strong loyalty and gradually to build its business. What we do not know – since it is hidden behind commercial confidentiality – yet ought to know if there is to be properly-informed debate is how profitable the company has been and is now and how important to such profitability has been the favourable treatment of access and the authorised abstraction from the franchisee's revenues.

12.2 The other two inter-urban operators have been less successful. Both attempted to trade on the same community sense of isolation from the core long-distance network, but their cases were weaker because of the size of place to be served, more attractive alternative options for travel, albeit with a change of train, and the poor quality of available paths. Wrexham & Shropshire only lasted a few years. Observation indicates that Grand Central's operation between Sunderland and London has had some success in building business from stations that previously had few or no direct services, but its abstracted share of the York market is plainly vital to it. From its accounts we know that it lost some £8m pounds in each of the two financial years before its recent acquisition by Deutsche Bahn, and it is not irrelevant to public policy that its ultimate owner until then was a shadowy company vested in the tax-avoidance haven of the British Virgin Islands.

12.3 In sum, these operations have been a mix of genuine gaps in the market – though with no certainty that the particular tactics of the promoters could fill them – and opportunism. And therein rests a problem. ORR is statutorily required (and corporately minded) to start from the presumption that the applicants know what they are doing, that they are entrepreneurs with a sense of their market. Yet beyond the basic scrutiny of the company's finances and competence there is no real scope to test that, and certainly not to examine the many other options for the use of capacity that happen not to have been proposed.

12.4 These range from quite different strategic policies through Network Rail's plans to the gaps that undoubtedly exist and finally to different ways of addressing the particular problem that an OAO has identified. Take for example Grand Central's more recent service between Bradford and London via Halifax and Pontefract. This was built, as before, on arguments about the value of through services, but ECML only had capacity for three services a day in each direction and in order to sustain the business model ORR had to permit abstraction of public funds by granting rights to stop at Doncaster. What it could not do was to initiate a study of why provision for longer-distance journeys is so poor at Halifax and Pontefract (which it plainly is) and what measures might improve matters. For example, frequent and good connections with ECML services at Doncaster might conceivably have brought more benefits to the railway collectively and in socio-economic terms than occasional through trains that consume precious paths while often carrying small numbers of people.

Analysis highlights a systemic weakness. The entrepreneurial model under which numerous initiatives succeed or fail while in aggregate broadly satisfying the market cannot work on a capacity-constrained railway with high entry costs. It would be more realistic to abandon the attempt and more beneficial to look for alternative models.

13 Does ORR intend to take into account the scope for strategic game-playing by groups that operate both franchised and open-access services ?

13.1 A related matter is the ownership of OAOs by large holding groups. Hull Trains is now a subsidiary of FirstGroup, the leading (so it says) shareholder-owned transport corporation in the world, while Grand Central has recently been purchased by Deutsche Bahn, a large state company wholly owned (for the time being at least) by the German Government. Both these organisations have, perfectly legitimately, their own objectives, but they cannot automatically be assumed to align with those of the British government or with the needs of

British travellers. Moreover, both are active players in the franchising business, with extensive current operations and intentions to be strong future contenders. This gives them all manner of opportunities to play games with a dual franchising and open-access system in the interests of their ultimate owners, setting one off against another, manipulating timetables for ORCATS raids and protecting their operations while attacking rivals.

13.2 This is a far cry from the idea of modest, dedicated entrepreneurial companies filling niches in the rail network. It is the politics of large corporations whose detachment from the wider public interest is, rightly, a topic of growing criticism and even anger. It is not that these two may not behave benignly but that there is no certainty that they will, and that ought to be a matter of real concern.

ORR should not treat open-access applications as though each is naturally endowed with an aura of legitimacy by virtue of reflecting 'a market'. Broader considerations of public interest should be in play and should include challenges to applicant's motives.

14 Is ORR examining how ORCATS functions and the manner in which it may not be securing the best public outcomes ?

14.1 ORCATS has a long history. It was first conceived in the early 1970s as a means of achieving greater precision and clarity about the economics of sub-sets of services than traditional aggregate data about ticket sales. With the advent of the concept of business sectors within British Rail its importance grew, and then in the fragmented railway created by privatisation it became a vital tool to each company in ensuring that it captured 'its' share of total revenues.

14.2 Tickets other than those sold at discount prices for nominated trains can be used in many different ways, and data on each passenger's behaviour cannot be captured in detail, although occasional sample surveys may indicate patterns. The allocatory system therefore depends on a model of the choices made between routes, between trains with different timings and between journeys ('opportunities to travel') by through trains or those involving changes. In principle that is a reasonable approach, and computing power has made it feasible despite the sheer number of station-pairs and ticket types. There are nonetheless drawbacks.

14.3 First, the process is not transparent, with the result that its workings are really only known to those with arcane knowledge. Second, its effectiveness and fairness depends on the quality of the model, and it is not obvious that the model continues to reflect real behaviour sufficiently well. Third, adjustments almost inevitably affect operators differentially, which in a fractured and finance-driven railway means disproportionate effort being spent on protecting interests and fighting claims. The combined consequence of these three features is that ORCATS has become largely fossilised because it would be too fraught to change it.

14.4 ORR welcomes the possibility that smart ticketing could replace what it (rather deprecatingly) calls the existing 'knock-for-knock' scheme for interavailable tickets [¶4.12]. This might make allocation more accurate, but it would only boost competition in the way ORR expects if passengers' choices were influenced by specific features of operators' trains or customer care. The dominant factor is more likely to be convenience of timing, and if smart tickets took over some functions of the advance-purchase mechanism it could actually reduce

competition by allowing more travellers to take the most convenient train¹⁷ – unless it were hedged about by complex variations in price and intrusive controls such as ticket-gates.

14.5 This situation is most unsatisfactory and hardly in the public interest. Proper debate about rail policy depends on an understanding of the flows of money, and that is inhibited by external parties not knowing how ORCATS allocates them. This becomes especially relevant when timetables are deliberately manipulated, as they undoubtedly are, in order, not to offer some useful benefit to travellers, but instead to capture a greater share of a common pot for a particular operator. It would be better still of course if comprehensive data on ticket-sales by relation were public knowledge so that there could be independent analysis and scrutiny of the railway's role and of the activities of each company¹⁸.

14.6 Furthermore, it must be suspected that train companies are promoting advance tickets so strongly in part because the revenue from them bypasses the ORCATS allocations. Now such tickets undoubtedly have their place in the market, but the restrictive conditions surrounding their use, the impact they have on passengers' perceptions¹⁹ and the associated high price of walk-up fares are sufficiently arguable – and probably detrimental – that their application should not be artificially stimulated by the happenstances of railway organisation and complex accounting procedures.

ORR should review the ORCATS system and make it more transparent, urgently in respect of enhancing understanding of rail issues in general and specifically in enabling third parties to judge what is really going on when OAOs are granted access rights.

15 Is an economically-credible rationale offered for levying lower track-access charges on open-access operators than on franchise operators ?

15.1 The ORR document describes the present system, and its discussion of alternatives almost hints at a recognition that it is no longer defensible. Franchise operators pay a fixed track-access charge to Network Rail plus a variable charge. OAOs pay only the latter. The justification is that they are subject to limitations on what they can do that are imposed as a result of applying the not-primarily-abstractive test to their proposals. There is also an EU requirement that they should only cover the marginal costs they incur, which arises from the EU's desire for new operators to challenge what it sees as hidebound state monopolies.

¹⁷ Theoretical economists despair at the propensity of bus travellers to take the first bus rather than behave as economic man is supposed to do by responding to the difference between red buses and green buses.

¹⁸ Secrecy (including the unhelpful redactions in the MVA report) is justified by 'commercial confidentiality', ie. it protects the corporations holding the franchises and the open-access companies. However, given the huge sums of public money going into the railways, their substantial public-service functions and the scope for self-interested behaviour and competitive game-playing this argument seems to me somewhat threadbare. The Government is keen to announce public access to the minutiae of data on real-time train running: is it not equally important to enable third parties to access data that would greatly enhance analysis of strategic policy ?

¹⁹ Because of the way in which advance tickets are sold on websites many people now assume that *all* tickets are tied to particular trains [source: Barry Doe in his Fare Dealer column in *Rail* magazine, *passim*, and other anecdotal evidence]. That may suit TOCs, but the 'walk-up railway' is too important to be lost by default.

15.2 It is difficult to form a proper rationale for this positive discrimination. Open-access companies may face certain restrictions, but they are effectively being given use of a public facility without contributing to its basic costs while also benefitting from the deliberate transfer of revenues on selected flows from the franchisee –at a loss to the public purse. On the other side, franchise operators are constrained in what they can do, because they are expected to sustain many individually-unremunerative elements within the provision of a comprehensive service (notably at low-demand times or to serve off-route places), a requirement that is unlikely to be materially changed under the revised franchise structure. The issue is further confused by the fact that the status of the open-access companies hides their finances from public view, so that we cannot judge just how beneficial the abstracted revenue flows are.

15.3 ORR now suggests that new OA entrants should pay an auction price for the paths they are awarded. We discuss below some timetabling consequences of this system [see §19]. Here we note that while this might be more equitable it is not at all clear, other than in one modelled case-study, how likely it is that significant amounts would be bid, nor is any analysis offered of the likely strength of the business cases that would have to carry this extra cost (East Coast is presently paying a premium such that each of its paths are ‘worth’ over £1m/year). In other words, we do not know whether it is possible that few bids would be made and that ORR would then adopt special pleading to reduce the contributions.

15.4 It is not auspicious that it is proposed, if a new system were adopted, that the existing open-access operators on ECML should be allowed to continue paying only variable charges since their businesses are financially fragile [¶5.28, 5.33]. While it would be unreasonable to end this concession abruptly it cannot be right that it should be perpetuated indefinitely, especially bearing in mind that they are now subsidiaries of large corporations (one of them the state railway of a foreign country). Finally there is silence about the economic conundrum surrounding the contribution that OAOs might be expected to make to servicing their proper share of the large sums of public money that are being dispensed on infrastructure enhancements to create additional capacity.

15.5 Under the Access and Management Regulations no price discrimination is permitted between undertakings performing “services of an equivalent nature in a similar part of the market”. ORR has deemed that three different charging schemes for three components of the same business, namely InterCity East Coast, would be compatible with this rubric [¶5.36-37]. Some might call that sophistry.

Other than to provide a public subsidy for open-access competitors it is difficult to justify the present charging arrangements. The only fair system would be for all operators to pay charges levied in more or less direct proportion to their use of the network, whether measured by train-kilometres and costs incurred or by more sophisticated evaluations of their respective effects on the utilisation of capacity.

16 Are steps proposed to evaluate whether increased on-rail competition would be compatible with people's expectations regarding public transport as a community service ?

16.1 Deliberately or otherwise, the consultation document is somewhat ambiguous as to whether it is discussing incremental but faster expansion of the kind of open-access activity seen so far in niche markets or whether it wants a great leap forward in the form of a forced transfer of a whole, presently-franchised, group of trains, with the clear implication that it sees that as the start of an all-OA railway. MVA modelled two strategies to illustrate this concept, one involving an OA company taking over alternate Edinburgh/Newcastle and alternate Leeds trains, the other a geographic split, with OA taking Edinburgh/Newcastle and a franchise running the Leeds service [see ORR, ¶16.20, options].

16.2 This is a frontal attack on the existing order. I am not opposed in principle to that being questioned – I have plenty of criticisms myself – but I am opposed to ORR presenting it with all the authority of a regulatory body on the basis of an ideologically-driven analysis as though it is the only possible course of action. To be fair, ORR does accept some risks: for example, if OA increases hugely in scale it is not certain that its costs would remain lower than those of franchisees [¶16.33].

16.3 However one does not get the feeling that ORR is keenly risk-averse in this case, for it cursorily treats [¶16.34] just three un-modelled matters, one the advantage of having more companies to benchmark (which is trivial but symptomatic of its mindset), the others that further fragmentation of relationships between Network Rail and TOCs could be offset by the power of multiple operators each driven by market forces. And in the summary ORR admits the possibility of wrong assumptions affecting the cost to government but with breathtaking self-confidence does not consider this to be an “insurmountable barrier” [¶17.4].

16.4 Of the impact on travellers or of the social and environmental effects there is no mention. If we are going to have yet another major change all possibilities must be on the table and the community at large must be alerted to what is going on and involved in the debate. There is little sign in this document that that is going to happen. This section therefore discusses a fundamental issue concerning the very purpose of our railway.

16.5 In recent times two notably different concepts of railway services (and public transport generally) have become apparent. Historically the core concept was to run trains as a public facility to enable people to access employment, education, shops, personal needs, leisure and holidays. It was not and could not be detached from the underlying market, but it emphasised transport as a derived good, a means to an end, and it was infused with a sense of supplying a service on a reasonably equitable basis, socially, geographically and temporally.

16.6 Gradually this approach has been modified as commercial disciplines have been brought to bear and costs have had to be cut, leading to withdrawal from the outer reaches of social provision. Yet it remains strong in principle in the provisions for securing services supplementing the commercial network of bus routes and in the way in which rail franchise specifications underpin basic standards of what is to be operated. However this has been paralleled by the rise of a different concept, what we might call the ‘supermarket railway’.

16.7 Here a train journey may still be a means to an end but it is packaged as just another commodity to be marketed using every available commercial tool in a consumers’ paradise of endless choice about how to spend money. Clearly there is a perfectly proper role for that (leaving aside here some grander questions about the sustainability of extravagant

consumerism), and insofar as the activity is directed at filling spare seats in standard trains operating (for good reasons) standard-hour timetables one cannot take too much exception.

16.8 But there are drawbacks, three in particular.

- Supermarket-style promotions have become so prevalent and so frenetic that they may be creating an impression that that is what the railway is nowadays about, especially since the companies are not collectively marketing the national railway as a convenient (and in many respects rather good) facility for getting about – which is somewhat odd when viewed against successive governments’ commitment to increasing rail’s share of the market and improving its ability to attract people out of cars and planes.
- Because the promotions emanate by definition from individual companies they are generally restricted to journeys exclusive to one company’s trains, leaving relations that happen to fall in the territories of more than one company, and especially those requiring changes of train, bereft of heavily-discounted deals and thus discriminated against.
- Increasingly promotions are explicitly encouraging trips that would not otherwise have been made at all in place of offering rail as a relevant mode for activities that people were contemplating anyway, which again may seem innocuous but is in fact laden with policy implications since it runs against the grain of the expressed need to reduce the amount of travel we all do.

16.9 Naturally people respond as consumers to these promotions, just as they do to the blandishments of the competing supermarkets. That does not mean though that that is what they would prefer in the longer term or that it chimes with their view of how the community should manage its affairs. Indeed there is copious evidence, both formal and informal, that many people would prefer a shift of emphasis back to the earlier model (it is a matter of emphasis, not a binary choice).

- Opinion polls indicate majority support for renationalisation of the railway, or at least greater government direction²⁰, probably not so much out of commitment to state ownership *per se* but out of sheer frustration at the deleterious and too-often-experienced consequences of fragmentation and a preference for a single entity.
- The ‘red-tape’ consultation has thrown up a barrage of criticism of the behaviour of train companies and calls for more control over them in response to tentative suggestions that the National Conditions of Carriage and the arrangements for network-wide ticketing under the Ticketing and Settlement Agreement between members of the Association of Train Operating Companies [ATOC] might be relaxed²¹.
- Similar feelings are commonly expressed by columnists in serious newspapers and in the on-line blogs, and while these are hardly dispassionate or demonstrably representative they cannot be dismissed as merely marginal blathering by people with axes to grind.
- Unsolicited and anecdotal comments about the complexity and pitfalls of fares and ticketing, often accompanied by ignorance about who does what, are commonplace, as are stories, often bordering on the uncomprehending, about the vagaries of connections between services.
- The reasonably good satisfaction measures in Passenger Focus research on which ATOC bases its belief that all is well relate only to actual customers, and even they regularly

²⁰ For example, www.politicshome.com/uk/majority_of_public_support_full_railway_nationalisation.html.

²¹ See: www.redtapechallenge.cabinetoffice.gov.uk/rail-transport-fares-and-licensing/.

score value for money at levels that major retailers would regard as disastrous. This might suggest, not just a monetary response, but also disenchantment. And we do not really know because the public at large get few opportunities to express their opinions.

16.10 *Prima facie*, the travelling public would expect a review of railway policy to include an evaluation of the potential benefits of a network operated as a coherent single system, with well-structured and stable timetables, frequencies that offer high levels of convenience vis-à-vis the car, better and more equal standards of connectivity, simpler fares and a sense that the railway is available as a public good and not primarily driven by the profit goals of private companies. Instead of exploring this issue, or encouraging DfT to do so, ORR has expended effort on abstruse models of how funds might be redistributed following a hypothetical and enforced transfer of services from the franchise sector to open access – at its behest and purely in the name of competition²² [see Chapter 5].

16.11 Other countries within the European Union appear to have been more successful in offering a public transport system in accord with a communal ethos. They have achieved higher market shares, a tangible sense that trains and buses should be the normal mode of travel and a deeper understanding of the role of public transport in ensuring civilised urban life. Parallels are hard to identify in Britain with its model based on competition, particularly where market shares are extremely low outside South East England. It is disappointing that there is so little discussion of these issues and no inclination even to sponsor comparative research. Instead we persist with an insular belief that only Britain has got it right.

16.12 Switzerland (*de facto* an EU country in this respect) has sustained its commitment to the public-service model for so long now that the national network visibly underpins everyday life and mobility to great effect. There are problems – for example excessive capital spending at the expense of maintenance – and on some routes the combination of the excellent service-offer with a generous pricing scheme has created levels of demand that are difficult to manage and may be unsustainable, but usage and market shares are among the highest in the world, consensus about the policy is striking and the integrated system maintains its quality.

16.13 The epithet ‘supermarket railway’ applies of course equally to state-owned (for now) East Coast, to Virgin as the brashest exponent and to the OAOs, and were refocused objectives to be adopted on the basis of their proven merit new policies would need to apply across all companies. Nevertheless, in the context of the consultation it must be stressed that open access in its current form would be barely compatible.

16.14 Experience has shown that finding paths for OA trains disrupts standard patterns, creates anomalies and forces sub-optimal distributions of paths and stops (as has happened on ECML²³). The legal process is slow and tortuous, it delays desirable enhancement of the franchised service and it introduces rigidities into timetabling that prevent sensible solutions. It is doubtful whether ORR’s appraisals encompass these effects. Equally, while the presence of an OAO may put downward pressure on fares, the disbenefits of a confusing multitude of fares, many with restrictive conditions, should not be ignored. And if OA were to be taken to the point where heavily-promoted company-specific discount tickets predominated and flexible

²² A report the present author made to ORR on the intricate relationship between capacity utilisation and timetable planning has been quietly forgotten: see www.rail-reg.gov.uk/upload/pdf/its_uleeds_app2.pdf.

²³ ORR’s process for limiting abstraction led to Hull Trains not being allowed to call at Newark or Peterborough. This is daft in terms of rational patterns of service and connectivity. Similarly, when the same calculations led to Grand Central running non-stop between York and London no one was responsible for ensuring that the places it served north of York would have decent connections with intermediate stations south thereof.

tickets were correspondingly expensive the impact on perceptions of the effective frequency of the service would need careful consideration.

This is not to reject OA altogether, or even the case for its extension. It is to propose that the evidence that alternative approaches recognising network benefits might deliver an even better railway is strong enough to justify a serious study. If that is rejected we can only conclude that ORR is behaving in an indefensibly ideological manner.

17 Does the analysis recognise the disbenefits of complexity and confusion ?

17.1 The previous section made the general point that open access adds an extra dimension to the consequences of fragmentation. Here it is worth briefly elaborating the point about fares. Naturally people welcome choice and keen pricing, but recent studies and commentaries have also made clear that they want simple fares and easy booking and are irritated (at best) by complex and restrictive rules. That the Government should have expressed concern and be considering intervention reflects poorly on the industry's ability to recognise negative perceptions (an attempt to simplify the system a few years ago has had negligible effect), particularly since the Government has made clear its determination to act against similar problems in the energy market.

17.2 Any benefits of extending competition must then be offset against the disbenefits of additional complexity and consequential (or even deliberate) confusion. While this is an issue for all train operators it is of special concern in respect of OA where such services are a small part of the total offer but account for a large number of fare variations. For example, a website enquiry for a journey from York to London shows about 40% of fares being exclusive to Grand Central, which only operates four trains/day, one tenth of the complete service.

17.3 To that must be added the problem that in the event of serious late running or if Grand Central cancels a train not all those affected will have understood that if they have a GC-only ticket they must buy a fresh East Coast ticket. In such situations the franchised service, by being there to take up the stranded passengers (few will opt not to travel or to wait many hours), is effectively providing a safety net at the public expense. The very unwelcoming impression given by on-train messages about the non-availability of other operators' tickets on the train in question is a further negative factor.

17.4 If ECML services were split as ORR envisages all these disadvantages would be magnified. At the high level an evangelical belief in the power and benefits of competition would have trumped the market, social and environmental case for frequent services with flexible access (since separation would only be meaningful with operator-specific ticketing) while at the everyday level one can foresee misunderstanding, mistakes and disputes.

The document seems reluctant to consider issues of this kind and to that extent is deficient. It would be interesting to conduct research among travellers who make little or no use of the railway to test my propositions and whether they perceive significantly increased competition or an integrated network as more likely to attract them to trains. Public policy should not be being made by an elite pursuing an agenda based on economic theories of arguable relevance to the community's real needs.

18 Does ORR propose to require of the industry any studies of alternative means of achieving the benefits claimed by OA applicants ?

18.1 Applicants for OA rights have made the provision of direct London services for towns not so served by franchised operators a significant part of their case. It has an obvious appeal both to potential passengers and to local councillors and business leaders who believe it will benefit their often-struggling economies. This argument should be carefully scrutinised.

18.2 First, unless one is to imply considerable incompetence on the part of generations of railway managers, the reason for the lack of through trains is usually that the level of demand makes it difficult to justify them in operational and financial terms. Whether the places concerned like it or not they happen to be disadvantaged by size of flow or geography or both. Obviously an entrepreneurial operator with a good local focus may be able to do rather better, but it is arguable whether they could close the gap without the free gift of a revenue transfer from the franchisee and a subsidy in respect of access charges. Even then they can only fill occasional small trains, which itself raises questions about the use of capacity [see §10].

18.3 This presents a difficulty, since ORR's arcane methodology for calculating the benefit/cost ratio of their decisions can only be applied to the applications that happen to come forward. Its processes do not have scope for a more detached analysis. Since, plainly, not everywhere can have through trains and since there is not the capacity for OA trains to offer more than infrequent services (leaving aside the more far-reaching approach proposed in the document) it is desirable that a dispassionate analysis be conducted of alternative strategies.

18.4 At least two merit attention. One would be a comprehensive recast of the timetable to arrange for the short OA trains to run coupled over the common and most congested parts of the network. The objection will be that this would infringe the commercial freedom of the operators to choose their preferred paths, but it is distinctly possible that the system advantages of fewer trains and more passengers/path would outweigh this²⁴.

18.5 The other would go further in timetabling strategy. A national network with a high degree of connectivity would start from an understanding of which flows justify through trains and are (or could be) underpinned by suitable equipment to operate them effectively. All other flows would then be covered by systematic and frequent connecting services managed with brisk transfer times and well-ordered physical arrangements at the interchange stations.

18.6 This is the philosophy adopted in Switzerland, The Netherlands and shortly to some extent in France. It does, it is true, depend on transforming attitudes to changing trains that have become entrenched in Britain as a result of a poor record under British Rail and even worse practices since, and it is accepted that for sub-sectors of the market where people are less mobile and probably less time-sensitive it is not an ideal solution. In the long run, however, it could be the most effective overall.

Once again, the issue is that it would be wrong to dismiss such strategies just because they are not provided for in current policy or are problematic or suppressed in the prevailing institutional framework. The case for research – and for learning from other countries – is strong.

²⁴ It depends of course on sound technical equipment to make joining and splitting quick and reliable plus well-designed locations at which to perform the operations, but railways such as Nederlandse Spoorwegen do it regularly and effectively, with real passenger benefits in connectivity.

19 Will the suggested idea of auctioning paths take into account any negative impacts on the totality of the service perceived by the public ?

19.1 The idea of auctioning paths springs from economic theory. ORR has introduced the idea because it realises that it cannot decently propose a significant increase in OA activity while perpetuating the current arrangement under which OAOs only pay marginal track access charges [¶5.28]. That does not mean that it can function in any meaningful fashion in the real world of railways.

19.2 It is first helpful to deal with the terminology. ORR does at least talk of ‘paths’, but the idea has been carried over from its application to ‘slots’ for take-off and landing at airports. Now slots are a succession of brief events at a specific location that have to be spaced out but which otherwise have only limited interaction with each other²⁵. Paths on the other hand are geographically and temporally extended with a greater propensity to come into conflict. The ‘commodity’ being sold is therefore more difficult to package and sell. It would have been better if the railway industry had spoken out sooner against the tendency to substitute slot for path, for it has allowed simplistic notions to take root.

19.3 In the present context we need to examine what might happen. Suppose a number of OAOs bid for the bundle of paths that ORR has determined shall be auctioned. They will presumably have to be defined fairly precisely to enable bidders to put a realistic price on them. One bid will be selected following complex benefit/cost analysis (which will be subject to a host of contentious methodological weaknesses) [see Chapter 6], and ORR will deem that to reflect the correct market price and more than the marginal access charge will be levied. But then the difficulties may begin.

19.4 ORR and Network Rail will have acted as timetable planners in defining the paths, but ORR believes in the wisdom of the private company and should not be surprised if the OAO shortly returns and offers a higher bid in return for changes to the timetable – a tweak here, an extra or faster path there, perhaps some changes to stopping patterns. ORR would have to take this seriously, but it would be drawn ever-deeper into timetabling, it would be in potential conflict with DfT, it could well face acute dilemmas because of knock-on effects on other operators (some of whom might quite understandably prove recalcitrant), and it would become embroiled in arguments about how to judge the economic benefit of the upheaval.

19.5 And the matter could get messier still. Most inter-city franchises comprise several groups of relations: the dominant conurbation flows to and from London; important secondary flows between provincial cities and between the smaller places and London; and a long tail of tertiary flows between smaller towns or from and to minor stations that happen to lie on the main route and others through to and from off-route stations. It is accepted that that is the nature of a railway in a crowded country with multiple closely-spaced centres, and it is enshrined by DfT in Service Level Commitments.

19.6 Suppose that the OAO wanted to make greater profits by competing more strongly for the big-city business and that in order to do so it proposed withdrawing from lesser stations or from off-route places such as Sunderland and hence eliminating some of the tertiary and maybe even some secondary flows, as it is admitted would happen [¶6.10, point 2 and ¶6.17, 2]. ORR would have a choice. It could either reject the proposal, in which case it becomes a decision-maker on essentially socio-political matters in parallel with DfT (which

²⁵ Take-off slots at an origin airport have to be coordinated with landing slots at the destination, and in busy areas flight paths need planning, but the physical constraints on a railway are an order of magnitude greater.

would be constitutionally odd), or it could grant altered rights in the name of entrepreneurial innovation and pass the job of securing the lower-ranking journey-opportunities to DfT and the taxpayer (which would be difficult to defend, especially if, as would be likely, the quality of the timetable at certain places deteriorated). The issue is briefly mentioned in the summary but with little sign that its significance is understood [¶7.12]. It is also unclear what happens if a franchisee seeks to run extra services: such competition could not logically be blocked.

19.7 Auctions have no meaning unless what is being auctioned can be precisely specified. That does not hold for ORR's proposal, but the document fails to recognise the problem [see ¶7.9]. Paths in a railway network are dynamic in time and space and interact with each other in many ways, and that is before they have been rigidified by legal contracts in the pursuit of access regulation. If ORR is going – inevitably – to be drawn into ever-more complex evaluation of timetables and trade-offs then it is surely incumbent on it to consider what might be a considerably more straightforward solution. This is discussed in the final section.

A failure to understand that railway 'paths' are utterly different from airport 'slots' has led ORR into an intellectually incoherent proposal. There are better solutions that still maintain competitive elements.

20 Has ORR considered other forms of competition, for example central planning of the timetable and its delivery under contract ?

20.1 This paper has consistently argued that the attempt to introduce head-to-head competition into the railway industry must encounter a host of difficulties arising from the very nature of a railway in a country such as Britain. Were we dealing with discrete and profitable markets such as heavy-haul on a freight line or simple A <> B services between major cities the case might be stronger (although even on the proposed HS2 route with relatively few place-pairs the pressure on capacity is likely to exclude competition), but we are not. Britain's railway serves innumerable functions and carries an overlay of social and political expectations which need challenging at the edges but which are at root an essential component of the community fabric.

20.2 Competition in its present form sits uneasily in that context, and it is by no means proven that its limited and arguable benefits outweigh the disbenefits of fragmentation, confusion and disproportionate impacts. If competition is so important – and few would dispute what at best it can do – then it seems to me essential that we should break away from models that are grounded in misapplied economic theory and over-literal interpretations of EU legislation. Instead we should look for a model that respects the realities of our complex, multi-purpose, multi-customer railway and its setting in the wider transport market.

20.3 We have noted the strength of competition from other modes [§6]. We have stressed the non-commercial functions of the railway and the possibility (probability) that these will become more important as external socio-environmental pressures increase and alter expectations of the mobility service that the railway offers [§5]. We have questioned the wisdom of perpetuating the tension between the roles of DfT and ORR [§2], and we have drawn attention to the way in which ORR will inevitably be drawn into wider issues if it tries to auction paths, to the extent that it becomes *de facto* a timetable planner [§19].

20.4 We have proposed [§16], with strong support from mainland European exemplars, that the most attractive public transport offers a timetable that is as fast and frequent as appropriate for the many sub-markets, runs to a standard pattern through the day and every day, arranges each service in close association with others in order to secure a high degree of connectivity for all its (potential) users across the network – and that does not compromise the offer by fragmenting its presentation, complicating its fares, introducing unnecessary restrictions or obfuscating responsibility when things go wrong. And it may well be that that vision is the one most capable of meeting the enhanced role and securing the higher market share for rail that so many people want and some believe to be vital for true sustainability.

20.5 An alternative solution to these difficulties and challenges exists. We put it forward in the spirit of the consultation invitation [see ORR, p.10, last point]. Given the drawbacks of the present situation and the risks of the new proposals, it should be investigated with at least the same rigour that other ideas are receiving. It is a judicious mix of central planning and competitive forces undertaken in the best public interest. The model is the system of concessions widely practised in mainland Europe for the delivery of local public transport and found in Britain with London Buses. To reflect the particular characteristics of railways it would be more than the Quality Contract process for the partial re-regulation of buses, but it would be infused with the same objective – to end the results of fragmentation.

20.6 What is envisaged is a free-standing entity staffed to plan and evaluate timetable proposals from large capacity-relief projects to small adjustments to cater for a market requirement or alleviate an operating problem. It would receive these from national, regional and local government bodies, community interests, existing passenger concessionaires, freight train companies and Network Rail as the infrastructure manager. Its overarching remit would be laid down by the Department for Transport as an element of national policy. It is assumed that that would require it to optimise (not necessarily maximise) the use of capacity against set criteria, and by extension it would be expected to propose interim solutions and the creation of additional capacity where shortfalls plainly exist or can be foreseen.

20.7 Such a *National Timetable Agency* could be called upon to produce a -term timetable development plan of the kind that has driven Swiss policy so successfully for the last thirty years and is now looking forward with a similar horizon, but its principal work would be to design the railway timetable for the immediate future as an input to a delivery process managed by DfT. This would differ from franchising as currently organised.

20.8 Instead of a heavily specified requirement which the successful operator has to turn into a timetable through tortuous ORR procedures and which gives a spurious degree of commercial freedom, potential concessionaires would bid to deliver a fully-specified timetable and to take full charge of the everyday management of the services – in other words, competition *for* the market. We note that after any extensive review MVA accepts that there is no certain evidence in the literature that competition *in* the market is necessarily more effective in removing inefficiency [MVA, ¶2.9.14].

20.9 The scheme would recognise the reality of railway timetabling while making responsibilities clearer and the issues more transparent. It would not preclude the chosen bidder from proposing changes to meet its understanding of its markets, but they would be considered in their wider context. In regard to operational competence, regular marketing and the presentation of the service they would have considerable freedom, with arrangements for the allocation of risk and for profit-sharing, subject only to the stipulation that operations are perceived to be components of a single national system. Competition would have been introduced where it can be of obvious value and removed from where it hinders, in a step toward 'better capitalism'.

20.10 Other benefits would accrue. Because timetable planning would be brought together into one organisation it would be help to eliminate the confusion and consequent waste through abortive or misaligned projects that the McNulty Report identified between the DfT, Network Rail and the TOCs. The delivery system would also become more flexible. Instead of monolithic franchises for which only large corporations can bid the contracts could be for shorter periods and for smaller units: this would facilitate entry by a wide spectrum of enterprises, including new entrants from other service industries, and cooperatives and small-scale operators capable of taking on, for example, a local branch line. And planning the design and disposition of rolling-stock would become a great deal easier, in line with Network Rail's evidence that fragmenting responsibility is wasteful.

20.11 Naturally there would be many details to work out that lie beyond the scope of this consultation response. They include questions of staffing (it would help resolve the waste of scarce timetable planners inherent in the duplication caused by current arrangements), ways of incorporating the rights and needs of the devolved governments and the Integrated Transport Authorities (whose scope and powers may be extended) and whether to extend the system to embrace bus services with a strongly complementary role to rail services. It would also be necessary to redefine the function of the regulator as being primarily an independent referee there to ensure fair and non-discriminatory treatment of all the players.

The really important point is that this model has much to commend it from current practice elsewhere and its evident capability to remove some of the worst confusion and division that besets our railway. It is not a panacea, but its potential must be investigated. And it would channel competitive behaviour in a constructive manner rather than jeopardising the essential unity of a single national railway system.

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