

# **Association of Train Operating Companies response to the Office of Rail Regulation's 'Rail Retail Market Review' initial call for evidence**

## **Introduction**

This submission sets out the initial views of the Association of Train Operating Companies (ATOC) with regard to the Office of Rail Regulation's (ORR) Review of the Rail Retailing Market. Specifically it responds to the questions set out by the ORR in its letter of 19th February.

ATOC's response has been reviewed and agreed by its Train Operating Company (TOC) members and represents their consensus views on the questions posed by the ORR. Train companies and/or owning groups will also be submitting their own, individual responses, where they will make additional points specific to their own train company or owning group's business strategy in this area.

We have noted the ORR's intention to engage with stakeholders over the next few months and, in this, context, will be submitting a more detailed paper setting out our views on the rail retailing market in due course. This submission should, therefore, be seen as an initial response, focusing principally on the questions already posed by the ORR.

## **Questions posed by the ORR**

***(1) What additional drivers (if any) of the review should be considered?***

***(2) What is your view on the proposed scope of the review? What, if any, additional areas should be considered? What areas, if any, should not be considered?***

We will respond to these questions jointly.

In terms of the drivers of the Review, we believe that the Review should be centred around the overall efficiency of the market. In practice this means that the market should be able to satisfy the largest possible amount of consumer demand, at lowest cost and to quality standards that comply, as a minimum, with consumer law and the rail industry's specific regulatory framework.

This, in turn, means a market that is able to respond to changes in demand, supports innovation and choice, and is able to contain and reduce costs.

On this basis, the scope of the Review needs to be relatively wide, but also to recognise that train companies are not economic free agents in a conventional sense but operate within very proscriptive contracts with government, and within a market that is highly regulated.

As such, we believe that the scope of the Review should specifically address the interplay between franchising policy and the efficient operation of the market, and the efficacy of the current regulatory framework in market terms.

This latter point should focus on the Ticketing and Settlement Agreement in particular, which despite persistent attempts at reform by train companies, has remained substantively unchanged since 1996. The constraints that it imposes on the market are significant; the limited ability of train companies to change ticket office opening hours, or to charge fees in line with other retailers are two clear market distortions that need to be considered.

The ORR's introductory letter highlights ticketing as an area of interest and we believe that this may be worth considering as a specific case study in its own right. ATOC, with the support of TOCs, has argued for a fully integrated pan-industry ticketing strategy, jointly owned by government, the Department for Transport, Transport for London (TfL), TOCs/ATOC/Rail Delivery Group and others as the only way of achieving change at an acceptable pace.

This stems from the complexity of the retailing/ticketing landscape, where the combination of multiple players (including ticket issuing system suppliers), technology, franchising and the regulatory framework (coupled with the need to maintain common standards from a customer perspective) has led us to conclude that market change cannot be supported by single-player innovation alone. This co-ordinated and planned approach to change is at odds with the dynamic of more conventional markets.

In our view, analysis of the relationships between innovation, investment, market change and the other factors highlighted above may well provide worthwhile insights into the more general operation and efficiency of the retail market.

We do not believe that the existing scope of the Review, as outlined in the ORR's introductory letter should be narrowed, although we would like to understand better some elements of the Review, so that we can contribute more effectively over coming months. In particular, we do not believe that the retailing market per se constrains the creation of new products, although there are clearly issues around the extent to which innovative (or promotional) products are made available to all retailers or distributed in a more limited way (a reflection of competition in many markets).

We particularly welcome the inclusion of third party retailing arrangements within the Review. Britain has probably the most open rail retailing market in the developed world but an independent review of current arrangements would be helpful in addressing points of difference between train companies and third party retailers.

The rail retailing market is unusual in that collective arrangements exist for the licencing of third party retailers through ATOC. These arrangements, underpinned by the TSA, have meant that third parties have had to seek only one licence to enter the rail retailing market

(rather than contract with each TOC individually), facilitating market entry and, in the context of relatively short term franchises , providing greater stability than might otherwise have existed. Nevertheless, it has placed a considerable, quasi-regulatory burden on train companies, operating through ATOC, in terms of ensuring that the market operates efficiently and fairly.

***(3) What features of the GB retail market work well? What features of the rail retail market work less well for passengers and industry?***

In general, we judge the rail retailing market to have worked reasonably well since privatisation , although it can be improved.

Consumers have benefitted from a wide range of channels from which to obtain information and purchase their rail tickets. As already highlighted, we believe that choice is probably greater within the rail retailing market in Britain than in any other developed country.

The dual facts that the market has grown very significantly in volume terms since 1995/6 and that the average fare paid by passengers has changed little since privatisation, do not suggest that retailing has constrained the market, or that lack of information or choice has constrained consumers from finding good value fares.

In this context, we do not believe that there is any evidence of significant market failure. Nevertheless, there are clearly areas of the market that have worked less well. Exploitation of new technology, particularly in ticketing, is one area where progress has been significantly slower than might have been expected. Similarly the change in channel mix, whilst material, has been slower than might have been anticipated, with the regulatory framework constraining a faster and more significant shift from station ticket offices to other channels, with important implications for industry costs. Finally, customer information about fares, tickets and their associated conditions, has not always been as good as it could be (and is the subject of concerted industry effort at the moment).

***(4) Are there examples of particularly innovative approaches from rail markets elsewhere or other sectors that could be relevant to the GB rail market?***

Other railways (and TfL) have arguably been more successful in exploiting new technology than the GB rail market, although in almost all cases this at least partly stems from a significantly less complex market, with a single, dominant carrier able to introduce or impose change without the constraints that exist in Britain.

The air market, which in some ways is similar to the rail market, is worth considering as a comparative case study; in terms of market development, commercial structures, regulatory framework and innovation.

***(5) What are your views on the proposed timetable and approach to the review?***

The Review seems to be adopting a generally sensible and realistic approach in terms of methodology and timing, and we have no specific changes to suggest.

One point, however, that we would emphasise is the need to fully include the train operating community in the Review, on two bases: firstly through their collective involvement in the third party and more general retailing market through ATOC; and secondly (and equally, if not more, importantly) as significant retailers in their own right, with differing strategies and views on the market.

TOCs or owning groups should be free to submit their own, separate responses to ATOC at each stage, and should be fully involved in workshops, such as that planned for 8<sup>th</sup> May.

**Future engagement**

As we have already made clear verbally, we are happy to engage with the Review in whatever way is sensible and appropriate. As part of this, ATOC is willing to establish the collective view of train companies where it is relevant to do this.

ATOC  
20<sup>th</sup> March, 2014