

# **THE POTENTIAL FOR INCREASED ON-RAIL COMPETITION– A CONSULTATION DOCUMENT**

## **OFFICER RESPONSE BY THE CITY OF EDINBURGH COUNCIL**

We are pleased to submit comments on this consultation. We note that the ORR welcomes comments on any aspect of this document, and sets out specific areas of interest. Our comments address most of these areas. However, our response is structured to highlight what we consider to be the main issues, rather than necessarily following the order set out by the ORR.

### **Scope and parameters of the document**

The consultation document does not consider competition other than on-rail. Rail operators face substantial competition from other transport modes: air, road, bus, even cycle and electronic communication. These are almost certainly more significant than on-rail competition is likely ever to be. As illustrated by their marketing strategies, operators are fully aware of this competition.

We recognise that the ORR's remit is limited to rail. However, if this has caused the review of competition to ignore the context in which it exists, the underpinnings of the review are structurally flawed.

The document takes the view that 'Many industries...have seen competition drive value for money...and strong incentives to control and reduce costs, increased service quality, and innovation'. The energy supply industry was privatised and subjected to competition many years ago, yet even in October 2011 it was reported that the regulator criticised energy companies' rising profitability margins, and ministers urging 'genuinely fair and competitive markets' and lower household bills.

The consultation document does not ask the strategic question why the industry costs more now, with more competition, than when it was in the public sector?

It refers to the McNulty review, which noted how fragmentation of the industry drives up costs. Yet the document evidently proposes to increase the number of competing players, without considering how that would affect costs.

Taking these issues into account, It appears that the consultation indicates that the ORR is predisposed towards greater on-rail competition.

### **More detailed issues**

Notwithstanding significant reservations regarding the consultation's scope, we do not object in principle to open access. What must be identified is whether and how it improves the railway overall, controls costs, and does not disadvantage existing users. Where there is spare capacity and no likelihood of abstraction, there is a case for open access. However, these criteria have not been met on the ECML.

The consultation suggests that franchise operators have a form of 'first choice' of access, with open access operators being more restricted. The prolonged development of a standard pattern timetable on the ECML indicates that this is not the

case. It is not credible that, if as suggested franchise operators were 'first on the graph', it would have taken some two years to agree the ECML timetable.

The consultation suggests a system of capacity auctions, although it is not clear if franchisees would participate. If they were expected to do so, a franchisee could not freely participate whilst under franchise obligations. Auctions are, in any case, 'gamed'. It is not inconceivable, for example, that a competing transport group might bid solely to raise the cost of paths to a franchisee, for strategic reasons.

The ORR indicates that if open access operators faced the same fixed track access charges as franchised TOCs, they might be priced off the network. This suggests that open access cannot compete with franchises on a level playing field. If so, it fundamentally questions most of the premises in the consultation document.

The consultation discusses achieving greater competition by creating more overlapping franchises. The SRA reversed that approach in the light of experience, and no justification is given for reversing it again.

Physical capacity is probably the most important constraint (much more so than regulation, we consider). The consultation does not suggest a clear way forward to increase it if open access forms a greater proportion of services. It is not prudent, as suggested by the ORR, to hope that future technology will solve a specific current problem.

For example, practical progress with ERTMS has been slow, and much of its early promise not yet delivered. Similarly, cards like Oystercard essentially indicate when a particular cardholder crosses a gateline. It does not indicate which train he/she boarded.

The consultation considers whether to replace the Not Primarily Abtractive test by a wider assessment. In our view, a significant proportion of open access applications approved to date are abtractive. If a wider assessment is adopted, it has to be comprehensive. We recognise that Hull Trains and Grand Central services may well have brought local benefits. However, there is no indication whether their impact on benefits foregone elsewhere (if their paths had been used differently) has been considered.

The history of Hull Trains, Grand Central and WSMR suggests that open access operators are eventually taken over by the major transport groups which also compete for franchises. The implications should be considered.

It appears that no consideration was given to the scenario where an operator covers the cost of competition on one route by increasing fares on an uncompleted route.

### **MVA report**

The ORR refers to outcomes of an MVA report on competition. We are concerned that the ORR appears to align MVA's study with the ICEC franchise. For the record, the Council would strongly oppose any proposal to reallocate paths from the ICEC franchise to open access. 2 out of 3 'failed' franchises have been on the ECML, which is subject to most open access operations. This suggests a high degree of risk.

MVA suggests open access operators can better control labour and other costs. There is no structural reason why this should be the case. MVA's results depend on key assumptions; not realising these would alter the outcome, with the risk of an increased cost to government.

It lists key findings including the background being strong evidence that competition delivers:

1. more frequent, faster journey times for passengers
2. higher passenger growth
3. lower fares
4. increased passenger catchment areas for direct services to London.

For those travelling to and from Edinburgh, it has at the very least not delivered 1 and 3.

MVA claims that franchised operators are currently restricted by agreements and rolling stock availability. We strongly doubt this claim. As MVA expounds on rising staff costs, it is surprising that it ignores the cost of operating 2x5 car units compared to 1x10 car; or why OAOs should somehow be free of the constraints of the rolling stock market.

Neither, apparently, did it consider the costs of removing a franchised path (e.g. to Leeds) requiring additional stops on its other services in order to maintain service levels to intermediate stations.

### **Specific positions**

'greater on-rail competition would be likely to deliver improved value for money ...through a more passenger-focussed and response service and greater downward pressure on cost'. We consider this to be not proven.

The ORR suggests open access operators should contribute beyond the variable track access charge. We agree. However, we do not agree that applying a wider cost-benefit test to open access would necessarily be less 'restrictive'. Given the government's substantial funding contribution to the railway, it is reasonable for government-specified services to have priority.

There may be a case for open access filling gaps in service which franchised operators cannot or will not cover. Where (e.g. at Hull and Northallerton) the open access service level is clearly better than the franchised operation, there may be a case for allowing the franchisee to withdraw, and use its resources more productively elsewhere. However, managing such an arrangement would raise complex issues, and requires further analysis.

If you have any queries, please contact Chris Day on 0131 469 3568.