



Signalling Market Study

Final Report

May 2020

Summary

On 27 January 2020, we launched a market study into the signalling market in Great Britain. On 8 April 2020, we issued a notice of our decision not to make a market investigation reference. This market study report sets out our decision to close the study due to the COVID-19 crisis, the limited progress and analysis we have been able to make, and our proposed action to keep the market under review and to open a second market study at a later date.

We consider that crisis has made it too difficult for some key stakeholders to engage with the study, key evidence is unavailable, and continuing would place too great a burden on critical personnel. Therefore we consider that the onset of the crisis has prevented us from gathering the evidence we require to reach a decision on whether or not to consult on making a market investigation reference by statutory deadline of 26 July 2020. The signalling market remains a high priority, we will be continuing our work in this area without placing burdens on industry. It is currently our intention to open a second market study as soon as we consider circumstances will enable us to carry out the work that is needed and reach a conclusion in a timely manner.

Introduction

- 1.1 On 27 January 2020, we launched a market study into signalling in Great Britain (“**GB**”). Signalling systems are essential to the operation of the railway; they ensure trains do not come into conflict with each other and play a key role in freeing up capacity on our congested network. Spend on signalling is significant, accounting for over £4bn of Network Rail’s spend over the 5 year period between 2014 and 2019. Our aim was to explore how competition in the market was working and consider the need for intervention.

- 1.2 Market studies are one of a number of tools at our disposal to examine possible competition issues and address them if appropriate. In normal circumstances, studies can lead to a range of outcomes from a clean bill of health, recommendations to government, through to a Market Investigation Reference (“**MIR**”)¹ to the Competition and Markets Authority (“the **CMA**”). For reasons set out below, we consider that the onset of the COVID-19 crisis means it is not possible for us to determine the right course of action by the legal deadline of 26 July 2020.
- 1.3 Our decision to close the study is a direct result of the COVID-19 crisis and its impact on our ability to complete the study to the required standard. This decision should not be taken to mean that there are no substantive issues that may require remedial action.
- 1.4 The remainder of this document sets out:
- **Our approach** - a summary of the areas we were focussing on, and industry responses to our original Statement of Scope.
 - **Progress** - an overview of the work we have undertaken and areas we considered required further in-depth investigation.
 - **COVID-19 impact** - The impact of COVID-19 on our ability to carry out this work, and therefore complete the study.
 - **Our Decision not to make an MIR** - A statement that our formal decision to close the study, in effect, is a decision not to make an MIR to the CMA
 - **Next steps**

Our approach

- 1.5 The purpose and scope of our study was outlined in our Statement of Scope², which we published alongside our market study notice to launch the study³. We focused our work across four interrelated themes:
- Theme 1: Access to interlocking technology;
 - Theme 2: Ability of suppliers to compete with alternative interlocking technology;
 - Theme 3: Outcomes; and,

¹ A market investigation is a more detailed investigation into whether there is an adverse effect on competition (“**AEC**”) in the market(s) for the goods and services referred

² https://orr.gov.uk/_data/assets/pdf_file/0020/42374/railway-signalling-statement-of-scope.pdf

³ https://orr.gov.uk/_data/assets/pdf_file/0018/27216/market-study-into-the-supply-of-ticket-vending-machines-and-ticket-gates-notice-2018-03-14.pdf

- Theme 4: Impact of roll out digital railway.
- 1.6 We received eight responses to our request for feedback on our Statement of Scope. Respondents were a mixture of suppliers, infrastructure managers and industry associations. Seven respondents welcomed the study, with the other not expressing a view. Responses on the state of competition ranged from those setting out significant issues, through to statements that competition was robust and improving.
- 1.7 The majority of responses agreed with our proposed focus and themes. However, we noted some common submissions about a need to expand our focus to:
- Ensure we had regard to safety and sustainability;
 - To expand our focus from access to interlocking to other areas, notably control systems; and
 - Include consideration of the Rail Sector Deal⁴ and the challenge for industry to expand its capability and capacity to deliver an anticipated increase in renewals work in Control Period 7.
- 1.8 We agree with these points and had adapted the focus of the study accordingly. Finally, in response to one suggestion to expand the study beyond Network Rail, we met with other infrastructure managers in GB, and continued to look for opportunities to apply the lessons we learned in the study to those markets that involve infrastructure managers other than Network Rail.

Progress

- 1.9 We engaged with a large number of market participants including representatives from suppliers of signalling systems, potential entrants, Network Rail, HS1, HS2, Transport Scotland, and the Railway Industry Association.⁵ We held meetings with 19 stakeholders and gathered evidence from a range of sources, in many cases utilising our formal information gathering powers.⁶ We received responses to formal information requests and supporting evidence from 18 market participants, including suppliers and Network Rail.

⁴ The Rail Sector Deal sets out a new approach to the rail industry and the government working in partnership to transform the rail sector. It represents a push by industry to ensure that anticipated challenges, such as the need for significant increases in capacity and skills can be achieved, and the benefits of digital technology realised. This work is being led by the Railway Industry Association and through engagement with the government.

<https://www.gov.uk/government/publications/rail-sector-deal/rail-sector-deal>

⁵ A full list is at Annex A

⁶ Section 67(2C) of the Railways Act 1993 confers formal investigatory powers on ORR contained in section 174 EA02 in connection with deciding whether to make a reference under section 131 of EA02

1.10 Our analysis of the evidence highlighted a number of areas we wanted to investigate in greater detail, particularly:

- How signalling technologies, (particularly interlocking, traffic management and control systems), interface and interact with each other, the costs and challenges of interfacing and how issues with access to technology may constrain competition and/ or choice;
- The requirements for signalling technologies, and the ability of alternative technologies to meet these requirements;
- The existence and possible impact of 'boom and bust' cycles of investment on the ability of suppliers to engage with the market;
- The impact of changes in procurement methods or recent initiatives, for example, the three-tier framework approach in Control Period 6⁷, the partnership approach by Digital Railway for the East Coast Digital project⁸ and the Rail Sector Deal (see footnote 4 above); and
- The availability of remedies to address provisional concerns.

1.11 This analysis is key to our decision on the outcome of the market study. We need to understand the extent and scale of potential issues in the market, the impact of recent initiatives, and the potential appropriateness of remedies to address any emerging concerns. We are not able to set out detailed findings in relation to these issues in this report and in order to do so, we need to investigate these areas further. This will require extensive further stakeholder engagement with suppliers and Network Rail, which would involve key stakeholders committing significant time in responding to formal information requests and attending further meetings. We had also planned to hold workshops with industry players and signalling experts to test any emerging concerns and availability of remedies.

Impact of COVID-19

1.12 At the end of March 2020 the UK, Scottish and Welsh Governments issued public health advice in response to the coronavirus (COVID-19) outbreak. We consulted stakeholders involved in the study about how this advice would affect their ability to continue engage with us, particularly responding to information requests and attending meetings. In light of the responses we received, and in line with our own

⁷ In Control Period 6, Network Rail split its signalling procurement into three frameworks – Major, Signalling and telecoms, and Minor. Each framework had separate lots for each region. Suppliers could bid for one or more lots across the three frameworks.

⁸ The East Coast Digital team took a contracting approach which was innovative to Network Rail focusing heavily on partnership with suppliers, and design, build and maintain contracts.

approach in adapting how we work during the crisis, we concluded that it would be too difficult for certain key stakeholders to engage during this time, key evidence would be unavailable to the study, and continuing would place too great a burden on critical personnel.

- 1.13 The outcome of our study may have important commercial implications for industry. Given the limitations on our ability to gather evidence and engage with stakeholders, we consider that we would have not been able to gather the requisite standard of evidence, nor to otherwise sufficient engage with industry, to make a substantive decision on the outcome of the market study.

Decision not to make an MIR

- 1.14 ORR is able to make an MIR where the findings of a market study give rise to **reasonable grounds for suspecting** that a feature or combination of features of a market or markets⁹ in GB prevents, **restricts or distorts competition**, and an MIR appears to be an **appropriate and proportionate response**.¹⁰ We are legally required to make a decision on whether to consult on making an MIR by 26 July 2020.¹¹ As set out above, we do not consider we have acquired, or are able to gather sufficient evidence to answer this question to the required standard.
- 1.15 On 9 April 2020, we published a market study notice¹² setting out our decision not to make an MIR at this time. We took this decision on the basis that the evidence we had available or would have been reasonably able to collect by the statutory deadline would not have been sufficient to enable us to form a view on whether there were reasonable grounds to suspect a prevention, restriction or distortion of competition and whether an MIR was therefore required..

⁹ Section 131(2) of EA02 sets out what is to be construed as a feature for the purposes of Part 4 of EA02

¹⁰ Section 67(2A) of the Railways Act 1993 and section 131 of EA02 set out the powers of ORR to make a market investigation reference to the CMA. See also OFT511 for guidance on how we make references under Part 4 of the EA02

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284399/oft511.pdf

¹¹ Under section 131B(3) of EA02, ORR must publish a notice of its decision not to make an MIR within 6 months beginning with the date on which it publishes the market study notice. Sections 131B(2)(a) - (c) of EA02 state that ORR may publish such notice under 131B(3)EA02, where: (i) ORR has published a market study notice; (ii) no representation has been made to ORR within the period specified in ORR's market study notice that an MIR should be made under section 131 of EA02 in relation to the matter specified in the notice; and (iii) ORR has decided not to make an MIR

¹² https://orr.gov.uk/_data/assets/pdf_file/0016/42721/railway-signalling-market-study-notice-2020-04-08.pdf

Next steps

- 1.16 We do not consider the above decision prevents us from opening a future market study in the area, or from taking any action (including making an MIR) if we consider it necessary in future.
- 1.17 We continue to consider investigation of the signalling market a priority. We currently intend to open a second market study when we consider it is appropriate to do so, having regard to all relevant circumstances, and as soon as we consider we can carry out the necessary work and reach a conclusion in a timely manner. To avoid duplication we intend to utilise evidence already compiled and work we have completed prior to this closure decision.
- 1.18 The GB signalling market remains a key focus for ORR. Throughout the crisis, we will continue our work in this area without placing undue burdens on industry. If, however, any stakeholders are interested in continuing to engage with the team at this time, please contact a member of the team:

Email: SignallingMarketStudy@orr.gov.uk

Address: Signalling market study
Competition Team,
2nd Floor,
2 Rivergate,
Temple Quay,
Bristol,
BS1 6EH

Please note that due to COVID-19 restrictions, it may be a significant amount of time before post is picked up.

- 1.19 We would like to thank stakeholders for their significant engagement and cooperation with the study to date.

Annex A

List of stakeholders engaged with

- Network Rail
- Transport Scotland
- High Speed 1
- High Speed 2
- Railway Industry Association
- Competition and Markets Authority

Suppliers

- Alstom
- Amey
- Arup
- Atkins
- Babcock
- Balfour Beatty
- Bombardier
- Colas
- Hitachi (including Ansaldo)
- Kier
- Linbrooke
- Mott MacDonald
- OSL
- Resonate

- Siemens
- Thales
- Volkerrail



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