

12 September 2024

Dear Industry

Consultation on guidance on Open access – making a track access application and ORR decision making

In April we published our report [Assessing the costs and benefits of new open access services – initial findings and next steps](#).

As part of that review we:

- Spoke to industry stakeholders and government colleagues,
- Considered the development of our NPA test,
- Considered our approach to weighing our duties,
- Reviewed how European regulators approach the Economic Equilibrium Test,
- Developed and evaluated potential alternative policy options, and
- Considered the potential to use a benefit cost ratio (BCR) either alongside or in place of the NPA test.

We concluded that we should continue to conduct the NPA test to inform our open access decision making and that we would not use a BCR either in place of or as a supplement to the NPA test.

We also said that we would consult with industry on a proposal to introduce a routine approach to monetising the costs and benefits associated with open access applications.

When we spoke to stakeholders, we heard some stakeholders say that our NPA guidance could be improved by explaining our open access decision making more fully.

We have now prepared updated guidance for consultation.

Consultation on new guidance

We have now produced new draft [Open Access, Making a track access application and ORR decision making](#). This new guidance incorporates an updated version of our *The five stages we use to conduct the “not primary abstractive test* guidance.



The new guidance summarises ORR's existing policies which are contained in other guidance documents.

The guidance includes a proposal to monetise the costs and benefits associated with open access applications on a routine and consistent basis. Some background to this proposal is appended to this letter.

The guidance includes one change to the NPA test, which is to remove the benchmarking stage.

Benchmarking was one way we used to adjust our central forecast to account for MOIRA based forecasts tendency to under forecast the impact of new services that involve large changes in journey times or starting from a very low revenue base. We consider that the introduction of higher generalised journey times (GJT) elasticities in Passenger Demand Forecasting Handbook 5 and the use of direct demand forecasting methods such as gravity models provide more robust ways to adjust forecast to account for this.

Benchmarking, based on comparing previous growth rates on open access routes is less robust as it is unable to measure abstraction or account for other demand drivers such as changes in population or incomes.

We may continue to use benchmarking for small-scale applications such as for an additional service.

There are no further changes to ORR's existing policies or procedures, and will continue to conduct the NPA test.

Responding to the consultation

We welcome any comments on our proposed new guidance by 1 Nov 2024.

Responses can be submitted [online](#) or can be submitted in electronic form to Track.Access@orr.gov.uk. Please include 'Open access guidance' in the email header.

We plan to publish all responses to consultation. Further details about this are on the consultation page of our [website](#).

Yours sincerely

Esther Sumner

Annex 1 – Monetising wider costs and benefits

ORR [considered](#) our approach to assessing the wider costs and benefits associated with open access applications at the beginning of 2024. We decided not to adopt Benefit Cost Ratios (BCR) in place or in addition the NPA test. Instead we decided to undertake more routine monetisation of the type of costs and benefits that would have been considered in a transport focused BCR.

Our intention is to use this monetisation to inform the weighing of our duties, particularly in cases where the NPA test result is marginal.

Over time this approach will allow us to develop an evidence base on the monetised costs and benefits of open access.

Where possible, we prefer to use industry standard approaches to inform our decision making. In this case, we propose to use DfT’s [transport analysis guidance](#) (TAG) to inform our approach. This methodology would enable us to monetise the following factors:

- Social
- Economic
- Environmental
- Indirect tax transfers

ORR already weighs these issues in our decision making but we have not previously routinely monetised all of these factors, nor have we placed substantial weigh on them.

Factor	Relevant duties
Social	<ul style="list-style-type: none"> • to protect the interests of users of railway services • promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable
Economic	<ul style="list-style-type: none"> • contribute to the achievement of sustainable development
Environmental	<ul style="list-style-type: none"> • have regard to the effect on the environment of activities connected with the provision of railway services • We have a duty under the Natural Environment and Rural Communities Act 2006 to have regard to the purpose of conserving biodiversity. • We have a further duty under section 6 of the Environment (Wales) Act 2016 to seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so

	far as consistent with the proper exercise of those functions.
Indirect tax transfers	<ul style="list-style-type: none">• contribute to the achievement of sustainable development

ORR considers each case based on its merits and determines what weight to place upon each of our duties. We anticipate that the routine quantification of wider costs and benefits would be most relevant in cases where the NPA test result was marginal, and other factors (such as performance) were not decisive.

We have included a section in our draft [Open Access, Making a track access application and ORR decision making](#) guidance which says:

Monetising costs and benefits

In addition to generation, abstraction, viability and performance, we also assess wider the costs and benefits associated with the application to inform our consideration of our duties. We will base our assessment on DfT's [transport analysis guidance](#) (TAG). This will allow us to monetise the following factors:

- Social
- Economic
- Environmental
- Indirect tax transfers

We will provide this information to our Board to inform their decision making. We expect this to be most relevant in cases where the NPA test result is marginal.

We welcome views from industry on our proposed approach.