



ASSOCIATION of TRAIN OPERATING COMPANIES

ORR Business Plan consultation: Financial Year 2013-14

20 February 2013

Introduction

ATOC provides a national voice for Britain's passenger train companies, helping to create, inform and shape the rail environment in Great Britain. We bring together all train companies to preserve and enhance the benefits for passengers of Britain's national rail network, which jointly we do by providing the following key services:

- A central clearing house for the train operators, allowing passengers to buy tickets to travel on any part of the rail network, from any station, through the Rail Settlement Plan
- A customer service operation, giving passengers up-to-the-minute information on train times, fares, reservations and service disruption across the country, through the National Rail Enquiries (NRE)
- A range of discounted and promotional rail cards, cutting the cost of travelling by train for groups including young people, families, senior citizens and people with disabilities
- Operational and engineering expertise, promoting safety, setting standards and encouraging excellence across the sector.

ATOC's mission is to work for passenger rail operators in serving their customers and supporting a safe, reliable, attractive and prosperous railway.

ATOC Viewpoint

1. The ORR Business Plan provides proposed activities and objectives for 2013-14 as well as showing what ORR aims to achieve by 2020, with a direction of travel to 2030. ATOC calls upon ORR to provide a fuller picture of its intended direction of travel; to confirm that it will not seek to take on regulation of TOC franchise contracts; and provide re-assurance that its primary focus will be on safety and Network Rail's regulated outputs.

Future role for ORR – the 'whole picture'

2. ATOC has raised significant concerns as to the direction and apparent growth of ORR as an economic regulator. We continue to respond to ORR activities and proposals with no sight of the whole regulatory policy position, only being able to judge the business impacts and risks as each individual component comes out. Through formal letters, Board-to-Board contact and the recent Business Plan consultation workshop, ATOC has explained that train operating companies are unable to see the full picture, have not been shown the path that ORR is taking and cannot see where the current DfT regulation of franchising finishes and the evolving ORR role starts. ATOC members perceive that this opaque operating environment carries significant regulatory risk.

3. The ORR Business Plan consultation starts to explain the longer term ambitions and objectives of the ORR, but does not yet do enough to show the intended direction of travel or the milestones expected along the way. Without further clarity, the strategic objectives appear at odds, with, for example, objectives four and five indicating an ORR wish only to regulate and intervene where the market is failing, whilst objectives two and three (and page five) offer increased use of regulation, new regulatory targets, additional KPIs and interventions. This ambiguity reinforces perceptions of regulatory creep and uncertainty. We have asked that ORR engage and involve ATOC and owning groups as quickly as possible, to develop a shared understanding before the production of the Long Term Regulatory Statement. At the consultation workshop and in subsequent discussions, ORR has indicated its willingness to work together prior on this statement.
4. More generally, the ORR Business Plan does not indicate the kind of close working with funders that is needed to create an effective system of regulation, given the close influence that they have on so much of the rail industry. This occurs not just through franchises, but also with HLOS and performance monitoring. Indeed, the continued references solely to ORR's 'vision for rail' seem to indicate a direction of travel that is fully independent of the DfT Command Paper. We understand from the ORR consultation workshop that this is not correct, and that the Business Plan is primarily about ORR playing its part in delivering the objectives of the Command Paper. Given the value of this oral clarification, we would ask that it is now made explicit within the wording of the final Business Plan document.
5. In December 2011, ORR and DfT published a joint consultation document 'A greater role for ORR regulating passenger franchisees in England and Wales'. The purpose of this consultation was to seek views for an expanded role for ORR and for changing the allocation of functions between the DfT and ORR. ATOC responded (March 2012) indicating very serious concerns with this approach, in particular that the proposals appeared to confuse accountabilities, could put upward pressure on costs and potentially divert ORR from its vital tasks within safety and regulating Network Rail.
6. At the Business Plan workshop, ORR stated that it genuinely aims to regulate less and will not, and should not, take on the regulation of TOC franchise contracts from DfT "for the moment". We were pleased to receive this oral confirmation and would now wish to see some statement to this effect within the Business Plan document. Being explicit as to ORR not seeking to take on regulation of TOC franchise contracts or the existing franchise role of the DfT, would be a significant step forward in terms of promoting transparency and a shared understanding of the regulatory environment.
7. With the recent DfT announcement on franchising, owning groups are now looking to embark on franchise bidding activity. Clarity in the area of regulation is therefore especially important. Concern over the ambitions of the ORR, and specific caution about regulatory double jeopardy, bring financial risk implications that would ultimately have to be priced into bid costs. We understand from the ORR team that this lack of certainty is not

intended or desirable. ATOC is ready to work in collaboration with ORR to build shared understanding and increase perceptions of certainty.

Regulation of Network Rail

8. With the exception of rail safety, ATOC expect the ORR's prime focus within this Business Plan to continue to be the monopoly infrastructure provider, Network Rail. This is where the majority of the £3.5bn savings identified in the Command Paper can be accessed, and is particularly important with the current agenda of devolution within Network Rail as well as the development of alliancing arrangements. Strong, targeted and effective regulation is necessary to continue the pursuit of improved operational performance and reduced costs.
9. The references to increasing regulation, with additional KPIs and incentives for the 'industry' without making clear what is meant by this has caused confusion, and further added to the perception that ORR has ambitions to directly regulate franchising. We were re-assured at the workshop that the term 'industry' overwhelmingly meant Network Rail. Making this explicit in the Business Plan would help the train operating companies better understand the ORR intentions and direction of travel.
10. In relation to incentives, we support ORR reviewing the Schedule 4 and 8 regimes, so that all parties can understand whether they are effective in delivering the desired behaviour patterns in the market.
11. Owing groups are surprised that the ORR Business Plan indicated that just 14% of its workforce is deployed on "securing value for money from the railway for users and funders". We question whether this categorisation correctly reflects the ORR efforts but, if it does, believe that a much higher proportion should be involved in this objective, particularly given the importance of monitoring Network Rail and their £37bn request for funds in CP5.

Focus on the customer

12. At the Business Plan workshop, the ORR team explained a number of areas where they intend to apply resources to be at the forefront of consumer research and activity. ATOC and a number of operators sought assurances about the 'high-performing regulator' objective and more information on the perceived consumer issues that need resolving through increased regulatory intervention. Before ORR considers using further resources in this direction, we would expect to see a much stronger business case for intervention and a clear positioning of how any increased activity would complement that of the statutory passenger body, Passenger Focus.
13. Whilst we were re-assured at the workshop that any work is intended to be in full collaboration and coordination with Passenger Focus, we note that neither the ORR Business Plan nor Passenger Focus Business Plan demonstrates this. Without clear roles and clarity, there appears to be a significant opportunity

for duplication, increasing the overall costs of regulation and creating confusion.

14. We note the principal areas ORR expects to make changes are in transparency and quality of information (including real-time travel information); understanding what drives customer value; and maintaining pressure on the industry to work better together. Once again, the document provides no evidence for intervention from any failure in the existing market and appears to suggest further creep in regulatory scope. This is a fundamental concern.
15. Train operators, both directly and through ATOC and National Rail Enquiries, already provide significant levels of information to customers and continue to invest in improving real-time information. Provision of information regarding train times is scored highly in the Passenger Focus Passenger Survey, with the autumn 2012 edition suggesting 83% satisfied nationally (and 88% for long distance).
16. Current communication channels with passengers are also extensive, including telephone, text message, websites, mobile internet sites and smart phone apps. If ORR does believe there is a case of market failure in this area, we would have expected to engage in detailed discussion well before the launch of the Business Plan consultation, seen specific examples and had proposed interventions built around robust business cases, with supporting evidence.
17. Without such evidence, we expect to see ORR deliver on its promise to regulate less and not utilise its resources to get involved in areas that are already addressed within franchising. We believe that ORR should provide a clear statement on the full nature of the role it has in mind, with the reasoning for potentially increasing the information burden on train operating companies with the accompanying costs that this brings.
18. ATOC supports the principle of transparency as a means of enabling accountability, showing where public and passenger money is spent, reforming public services and generating economic growth. There is already a considerable amount of information publically available within the UK rail industry, and this transparency has helped produce positive outcomes for passengers including near record levels of performance, customer satisfaction and passenger numbers.
19. It would be helpful if ORR were to explain how it will measure the costs and benefits of its transparency initiatives. To maintain a level playing field, any developments in this area should fully reflect the ORR's statutory duties and objectives.
20. From the evidence available, ATOC believes the UK railway provides good quality information to customers, enabling them to make better choices about using rail, when compared to other modes and to rail in other countries. However, we are not complacent and work to achieve further improvements.

21. Passenger Focus has done a lot of good work on such consumer issues, including recent research into passenger experiences during periods of engineering work. This is another area where we would wish to see clear links to the role of the statutory passenger body and close partnership working with train operating companies.

Conclusion

22. ATOC continues to recommend that the ORR pursue earlier and more coherent discussions with operators and owning groups to address perceptions of regulatory 'mission creep'. Owning groups need to fully judge the protections and risks of any intended future regulatory environment.

23. We recommend that there is great value in building an early shared narrative about the role of independent regulation. It is important that train operators and ATOC inform the development of such a narrative, and that we see material engagement on this issue.

Enquiries

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