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Philip Willcox
Office of Rail Regulation
One Kemble Street
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9th August 2013

Dear Philip

Re: Consultation on options for change in open access

FirstGroup welcomes this consultation but does have some concern over timing, as the industry is shortly to embark on a fundamental review of the structure of charges. The questions posed in the consultation would seem to sit easier within this forthcoming review and therefore we would question the need to move away from the NPA test at this stage.

In our experience, the biggest barrier to open access operation is the availability of rolling stock. The lack of a market in available rolling stock that is suitable to run on main routes is a key constraint, arguably more so than the NPA test, which if you have a viable business proposition, is a relatively easy barrier to overcome. Increasing the number of paths subsequently is a more onerous test as you have to show that you have done what you promised in the previous application, something that Hull Trains has consistently achieved.

AS far as other barriers to entry are concerned, new technology has the power to increase capacity on the network but also has the power to constrain it, through the need to review braking distances from higher speeds as well as increasing junction margins, etc. So opportunities for more services may be further limited over time.

It also can increase ROSCO lease and maintenance costs so barriers to entry may actually be further raised as a result of technological change, as well as putting increased pressure on the need to protect existing public service contracts for franchised operators because they will face higher running costs as a result of having to include the new equipment into their existing operation.

A further barrier to entry is the current congested nature of large parts of the network, a situation that is unlikely to change for some years, if at all.

We feel Option 2 is a non-starter. Abstraction is not readily measurable, except in very rough modelling through tools such as MOIRA and the applicability of these

tools is a topic of much disagreement between operators, especially in bespoke situations. We strongly feel that any such mark-up should not be negotiated as this will place operators back in the invidious position they were placed in during CP1 and we wish to see the infrastructure provider held away from any position of negotiation on this aspect. They should be neutral on the TOC/FOC revenue generated as a result of any application.

Option 3 has merit in that costs are being attributed to operators correctly but we feel that it should have a relevant revenue effect included in it, probably by some relationship to the schedule 8 rates applicable on that route. The idea is that this would form a clear published line or route specific "tariff" that every aspiring OA operator would know they have to pay (on a per train mile basis) before they formulated their business plan.

That mark-up would then be distributed back through the regime to the affected parties, through the contractual mechanisms. But, as we said earlier, it is questionable whether such a major change should be effected before the more fundamental review of charges takes place and the subsequent requirement for other emerging ideas to be considered.

We do not agree with your suggestion that some OA operators would pay a charge and existing ones would not. As all such operators would effectively be in the same market for access, we feel that your position could result in others questioning the legality of such a position and, given the discussions in the "Sullivan" judgement, we would like to see everyone brought into line.

As this would result in an alteration to the assumption in existing operators business plans, as submitted to you as part of track access applications, we would see this being dealt with through term extensions to existing contracts.

FirstGroup would like to thank you for the opportunity for our representative to meet your team and discuss in detail all the issues raised in your consultation. It was felt the discussion was informative and useful. We hope our reply has helped you in your deliberations.

In summation, we would prefer you to retain the current NPA test (Option 1) pending the forthcoming Structure of Charges review.

Regards

A handwritten signature in black ink, appearing to read 'H. Clancy', with a horizontal line underneath.

Hugh Clancy
Commercial Director, Rail