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FAO Joe Quill
Office of Rail Regulation
One Kemble Street
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5th December 2011

Dear Joe,

Re: Response to ORR Paper on Competition & Open Access

First Group welcomes the discussion on this increasingly important area of PR13. Both the MVA report and your consultation paper have stimulated a fair amount of discussion within the industry, as witnessed by the views expressed at the recent workshop held at your offices.

As an operator of both Franchised and Open Access services, we can see how
Competition can give benefit to the customer. It allows market segmentation and tailoring the product for those particular flows or markets rather than the "one size fits all" approach that Franchises have to follow.

Competition doesn't have to mean lower fares. It depends in which market the product is being placed and there are yield premiums to be had if there is a substantial service offer included in the ticket price. Hull Trains has played for both the higher and lower ends of the market in the past and Open Access operations allow a "fleeter foot" approach to changing offers and prices in response to market demand.

But franchises have to meet wider and varied market needs (and funders specifications) and it is questionable that larger scale Open Access provision could be more efficient in meeting those needs. The use of Open Access on the GB railway system is limited by the constrained nature of the network, especially on regional networks. The economics of operating rail services means that increasing market segmentation or competing through low yield products may not be the best overall use of that type of network.

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In terms of track utilisation there is a balance to be achieved between train and track utilisation and there are sometimes a benefit to the overall use of the network in running one long train rather than two smaller ones.

Therefore we do feel that the MVA report over-emphasises some of the savings that can be made in moving to a more open access model on the core trunk routes. Franchised operators have specific obligations with regard to peak and other mandated services and this means that they will carry greater rolling stock and staff costs than an Open Access equivalent that will be more focussed on niche service provision.

First Group also feels that the cost savings that have been achieved in foreign administrations may reflect the timing of making such savings, rather than the potential for. In GB, there was a huge saving in operational expenditure during the late 1980's and early 1990's and the experience of the early years of privatisation show that the kinds of savings achieved then are now the ones being predicted in comparisons.

The role of on rail competition between franchises has been downplayed in the analysis. This type of competition has not been favoured by funders in recent years but where it did exist it tended to be fierce.

However, we feel that Open Access operations are a permanent feature of the GB railway scene and are likely to become an increasingly important one, given the constraints on Government Expenditure. We therefore think it is an opportune moment to review the way in which Open Access services are charged for track access as part of a general review and, hopefully, a simplification of the access charging regime.

At the moment the "upstream" market for track access is differentiated and we would welcome the move to abolish the NPA test and move everyone to a common regime. We contend, on looking at the "Sullivan" judgement (GNER v ORR and others 2006)), that Hull Trains could not safely be excluded from such a change and that it should be part of a common charging regime. Of course, in agreeing to such a regime we would be looking at an adjustment to our existing term to compensate us for any change in return from our original business plan, as agreed with you as part of our s.17 TAA.

"Sullivan" tested the reasonableness of your decision making in setting track access charges and the NR cost information (or rather the lack of it) you had at the time was a key point. It was widely accepted that when the cost information improved you would be able to levy charges that were more reflective of actual costs.

The move to separate NR regions with their own cost accountability gives the industry the opportunity to move towards a simple path charge regime where everyone pays the same charge (except for freight) for access onto the network, thus doing away with the majority of Network Grant. We see that there is a need to protect freight and that Network Grant should continue for the capital element of freight access charges, effectively giving NR the path revenue between a commuted charge for freight and the passenger equivalent.

We would propose that regional path charging should be modelled to see if this is the simple way forward that gives the correct business signals to operators, funders and NR, protecting (to a certain degree) the overall funding of the railway network while exposing all parties to normal business decisions, based on economic conditions.

We would propose that any regional charging should be done on a simple basis. So, in the case of the ECML, there would be one charge for the ECML itself, one charge for secondary lines and one charge for branch lines. If peak services are run into various locations, such as Kings Cross, a supplement could be raised. This regime would allow for some element of regional cross subsidisation of infrastructure and reduce the need for some of the current "money-go-round". It would give greater visibility & accountability to all parties.

This also raises the question of the variable charge and we would propose that a simple three stage banded system be investigated with a wide central band in which the operator pays no charge. This type of arrangement is used on the continent and we feel it would be easier to administer than the current system while still giving out the correct signals.

First Group is strongly of the opinion that open auctioning of track capacity is not desirable. We believe that could lead to perverse behaviour between parties and that the matter of determining capacity allocation is ultimately a matter for the ORR. In the case of conflicting applications the determination process should be on a wider set of objectives than pure value and there should be an emphasis on overall benefit, including investment levels, value to the UK economy as well as value to the Government purse. We also believe there should be greater use of Track Access Options in applying for long term paths.

In these circumstances there will probably be a role for continued competition for the overall market as currently exists for mainly regional and city services, where there is much less scope for on rail competition. Whether this is through Franchise, Concession, or direct Service Provision Contract we see as a matter for the relevant funders to determine but we do wish to see the costs of providing rail services becoming more transparent and any change to the charging regime should reflect that. We also still see the need for companies to bid for certain main line services and offer funders monies to do so.

However this market is also changing with the reductions in service specification and the move to quantum only rights. Franchise bidders for main line services place value on certain types of access and the risk of not achieving the certainty that the existing pattern of rights brings will be reflected in the bid premium offered.

In conclusion, First Group views the current work on increased on-rail competition as very much work in progress and would benefit from further modelling as described above. Given our long experience in running Open Access as well as franchised operations we would welcome the opportunity to be part of an industry working group to examine these and other ideas, perhaps with the ECML as the area to test these proposals against.

Yours sincerely,

Hugh Clancy
Commercial Director, Rail