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Joe Quill
Office of Rail Regulation
By email only

1st December 2011

Dear Joe,

NORTHERN RAIL RESPONSE – PR2013 ORR CONSULTATION ON RAIL COMPETITION

Northern Rail welcomes the opportunity to comment on ORR's consultation document in relation to On Rail Competition, and wishes to make the following observations;

Whilst Northern Rail is not adverse to the promotion of competition in the rail industry, we would argue that the current franchise model creates competition by considering the most efficient way to award a franchise in order to make best use of the tax payers' funds that are available to Department for Transport. It may be more appropriate for the industry to collectively consider how we should be promoting rail as the preferred mode of transport for the United Kingdom as opposed to creating competition between different operators within the industry.

Franchised operators currently pay significantly higher track access charges than open access operators. Northern Rail supports a review of existing charging mechanisms, with particular focus on reviewing charges that open access operators currently pay. Open access operators are seeking increased access to Network Rail's infrastructure, and therefore should be subject to the same charging mechanisms as franchised operators. In connection with this issue, Northern Rail also believes the industry needs to understand the cost allocation of each operating route, in order to establish the correct level of charges for each operator to pay. Northern Rail would also question the commercial viability of open access operator's business models should they be subject to the same level of charges as franchised operators.

Franchised operators are currently contracted to deliver a minimum service level commitment to the Department for Transport, therefore customers and the tax payers have a degree of certainty in relation to their local train service. As open access operators, operate as a commercial business there is no degree of certainty that they would be able to deliver a continuously reliable service to customers, as it could be withdrawn from the timetable at any point in time.

Northern Rail's view is that the ORR would actually be working in an anti-competitive way and not in the interest of the tax payer by supporting the introduction of more open access operators onto the network for the following reasons:

- By increasing the opportunities for open access, it is likely that future franchise bids will have to account for this significant revenue risk, which will increase

the cost to the public purse at a time where McNulty would seek to reduce costs.

- Even if it is found that Open Access operations are generative overall, the current structure makes open access heavily reliant on revenue abstraction from other operators (as a consequence of open access operators having a right to a share of franchised operator's revenue through ORCATS, whether passengers are carried by open access or not), whilst at the same time they enjoy cost advantages by not fully contributing to the cost of the infrastructure. To support open access in the current structure is therefore anti-competitive, since open access by definition is given a competitive advantage over franchise operators.
- Recent poor financial performance of open access operators, in spite of the current structure providing them with abstracted revenue and cost benefits, demonstrates that open access operations are not self-sufficient. If the advantages of ORCATS revenue share coupled with lower contributions to infrastructure costs are taken away, the financial performance would be worse and this demonstrates that the current continuity of open access is heavily reliant on support from franchised operators, and therefore the Government.

Northern Rail would like the ORR to consider the following issues as part of their appraisals process:

- ORR needs to consider alternative ways of improving the competitive offer to the passenger in a way that is less abstractive to the public purse, such as greater flexibility in SLC and fares regulation by influencing franchising policy?
- Has the ORR considered that the cost / fare benefits brought by open access lowers the average value generated by each rail passenger and could potentially adversely affect the future attractiveness of railway enhancements and investments, lowering investment business case value for money and return on investment?

In conclusion, If the ORR were to encourage the introduction of more open access operators, Northern Rail believes this needs to be considered in conjunction with significant franchise reform. Northern Rail has evidence that high lights that the introduction of additional open access operators onto the routes we operate over places significant risk onto the value of the Northern franchise, and therefore these issues would need to be addressed.

Yours Sincerely

Helen Cavanagh
Track Access Manager