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Issued by email: Rail@cma.gsi.gov.uk

Dear James

Competition in passenger rail services in Great Britain

Thank you for the opportunity to participate in your consultation of potential options to address passenger rail service competition, particularly on the three main intercity routes (the East and West Coast main lines and the Great Western route).

Objectives

I can confirm that the Scottish Ministers share and endorse the CMA's objectives of downward pressure on fares, enhanced quality, more innovation, greater operational efficiencies and better use of capacity, as set out in paragraph 13 of your consultation document.

Indeed, operating within the strictures of the existing regulatory regime, the Scottish Ministers have taken initial steps both within the ScotRail Franchise Agreement and through their encouragement of the nascent ScotRail Alliance, between the franchisee and Network Rail, to realise those objectives.

Initial Observation

We note that you are inviting responses to your options for reform, principally, on the three main intercity routes (the East and West Coast main lines and the Great Western route), to achieve the objectives.

Our initial observation is that all options, but more particularly two and four, have the potential to change significantly the provision of services, with consequent impacts across the industry.

We are also mindful that the industry has been subject to a number of recent studies – the Brown Review of the [DfT] Rail Franchising Programme and the Laidlaw Inquiry into lessons learned for the DfT from the InterCity West Coast competition - and that reviews are ongoing, for example, the Shaw review looking at the future organisation and financing of Network Rail and the ORR's review of track access charges.

Additionally, Network Rail, with support from the industry, is progressing with their long term planning process and individual route and market studies, to assess how the network can address future demand on what has become the fastest growing railway in Europe. Accordingly, we are of the view that the options will need to develop as reviews and plans inform industry structures and operations change.

Consequently, we welcome your recognition that any proposed changes require time for consideration and implementation so as to protect the rights of current franchisees and forthcoming scheduled franchise rounds; need to maintain the provision of socially valuable passenger rail services; do not jeopardise network investment; and do not create any adverse operational impact.

Scottish context

As you are aware the Scottish Ministers under the Railways Act 1993 and the Railways Act 2005 are responsible for funding and specifying the rail network in Scotland and for setting the long-term vision for rail in Scotland. This means that the Scottish Ministers specify and contract for rail passenger services and specify and fund the operations, maintenance, renewal and enhancement activities delivered by Network Rail within Scotland.

Under Section 26(4a) of The Railways Act 1993 the Scottish Ministers are obliged to issue a Franchising Statement prior to franchising rail services. In their last statement, which preceded the recent exercise to contract for services for ScotRail and the Caledonian Sleeper, the Scottish Ministers set out the aims of the specifications: to “*..support the development of Scotland’s railways as a source of national pride, with an international reputation for efficiency and service, supporting sustainable economic growth to make Scotland a better place to live and a more competitive place to do business*” and “*.. incentivise the operator to deliver quality services which meet the needs of passengers in Scotland against the broader policy and economic background*”. [<http://www.transportscotland.gov.uk/rail/franchising-statement-under-section-264a-railways-act-1993>]

Accordingly, the specifications for the ScotRail and Caledonian Sleeper franchises are built around a detailed analysis of how rail can support broader economic growth and social cohesion across all of Scotland. Indeed with passenger revenue contributing around one third to the overall cost of infrastructure and passenger service provision, it is unlikely that the Scottish railways could be considered to be economically commercial.

Competition landscape in Scotland

There is already a degree of ‘in market’ competition within Scotland with cross-border operators providing a limited range of services, particularly Virgin Trains East Coast and CrossCountry on the eastern spine of the Scottish network. These services are extensions of cross-border services and do not operate wholly and solely within Scotland. In addition to providing direct connections to cities and towns in England, these services also provide a complementary rather than competing role with ScotRail services through the provision of substantial, additional capacity, particularly on Edinburgh flows, at peak times.

It would be remiss if we did not also acknowledge that the type of rolling stock used by cross-border operators was viewed positively by respondents to our public consultation to inform the ScotRail franchise specification. It was adjudged that future rolling stock ought to have the characteristics of those currently used on inter-city travel. Accordingly, the proposal of the new ScotRail franchisee to use from 2018 HST rolling stock, similar to that currently provided on Aberdeen to Edinburgh flows by Virgin Trains East Coast as part of its Scotland-London offer, has been well-received and is in part a reflection of on-track competition.

Observations

We have set out below some observations:

- The characteristics of the Scottish rail network are markedly different to the three main Britain-wide inter-city routes in terms not only of physical infrastructure and service mix but also in terms of its organisational structure and our acceptability of the levels of subsidy, as a consequence of providing socially valuable services across a large proportion of the network. Accordingly, the structural options which might be suitable for a subset (i.e. the inter-city routes) of the GB network which generates a significant proportion of revenue to the DfT may not have wider applicability.
- The management of the rail network is also markedly different in Scotland to elsewhere in Britain because there is a formal agreement in place between the principal operator, Abellio ScotRail, and Network Rail which encourages, through an alliance, greater organisational integration and operational alignment. The aim of the alliance is to be more responsive to customers' needs and more focussed on delivering operational efficiency for the benefit of the taxpayer. Accordingly, it is our assertion that in certain environments efficiency can be driven by greater collaboration rather than necessarily by competition and therefore a universal approach may not be applicable (in fact we acknowledge that your analysis recognises this to be the case because of the emphasis that the CMA has placed on applying its options principally on the major inter-city routes).
- In respect of the options we are of the view that Option 1 presents significant risk of cherry-picking routes/services and this is particularly so if the 'not- primarily-abstractive' test is removed. Whilst we acknowledge that there may be various mechanisms to mitigate the impact of a competing entity on the network we believe, in respect of the Scottish network, that since an Open Access Operator is not bound by the same obligations as a franchise operator, particularly in the security of service provision, there is a risk to the integrity of the network and the confidence of passengers in rail as a reliable mode of travel. It is worth noting the high value attached by passengers to the ScotRail brand, high passenger satisfaction figures and through the Alliance strongly co-ordinated operations and information. The latter is particularly valuable at times of service disruption.
- Given the size of our network and the lack of purely economic routes/services, it is difficult to envisage Options 2, 3 and 4 working at a practical level. Also, we do not have confidence, based on experience, that the industry has the capacity and/or the capability to deal with the additional operational complexity.
- It is worth noting that in our Rail 2014 consultation, <http://www.transportscotland.gov.uk/consultations/j203179-05.htm>, to inform future franchises in Scotland, we posited the notion of levels of service specification within a single franchise, which would have allowed us to define services where we consider there was a social requirement for their existence, whilst also allowing the franchisee to determine and develop the service requirements of the more commercial inter-city and commuter network. However, it was stressed that if adopted the approach would be to operate the franchise as two distinct managed units, where the franchisee would be able

to maximise the opportunities and flexibilities in meeting our objectives for economic and social rail. The dual-focus franchise proposition was not adopted as it was recognised that commercial rail routes were not truly present and that in its management the franchisee could place an undue emphasis on one element to the detriment to the other.

- It is also fair to state that we invest in rail infrastructure to support social and as well as economic aims, the main benefits of which are often beyond the railway. We don't invest to enhance the potential for competition but recognise that today there is always the option available to OAO, provided they address the current 'not-primarily-abstractive' test, to utilise any spare capacity on the Scottish network should they identify a commercial opportunity.

Conclusion

In conclusion, whilst we are supportive of the outcomes of your objectives and welcome the opportunity for debate and discussion we are unconvinced about the applicability of the proposed options to Scotland.

We appreciate that there may some applicability to the East and West Coast main lines which convey services to/from Scotland but would stress that we would not wish any arrangement that would have an adverse impact on connectivity, frequency, service reach within Scotland or quality.

I am content for this response to be made public.

Yours sincerely,

Aidan Grisewood