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Network Rail's comments on ORR's impact assessment of the CMA's options for increasing on-rail competition

Further to the response we provided to CMA's consultation on competition in passenger rail services on 16 October 2015, we are writing to provide the following comments on ORR's impact assessments. We are, also, supportive of the RDG response to these impact assessments.

We welcome the opportunity to review and comment on the impact assessments. These have helped to inform our understanding of the options proposed in CMA's consultation. However, it would have been more helpful if this information was available when we were initially asked to comment on the options.

Summary

In commenting on ORR's impact assessments, we have not considered the specific details of the technical work. This is because there is a lot of information to consider in the document, and only limited time to respond.

Our key, high-level comments on ORR's impact assessments are summarised, below.

1. The current structure of the railway has been very successful in terms of increasing usage and safety.
2. Each of CMA's proposed options will change the structure of the industry.
3. ORR's impact assessments predict relatively minor financial changes resulting from each of the proposed options, with each having a range that includes a net detriment.
4. Any change to the status quo will introduce risk.
5. Therefore, CMA should be cautious about changing the current structure of the industry for relatively small benefits (unless there is compelling evidence that the change would be beneficial).

General comments

In addition to these high-level comments, we also make the following general comments on ORR's impact assessments.

- We note that safety has not been mentioned. It is really important that CMA considers the extent to which each option improves safety, in coming to its final recommendation.
- The industry is relatively successful but, as with any industry, there is room for improvement.
- There should be a reasonably high hurdle for change, given the cost of getting this wrong. This could easily wipe out the projected benefits of the options.
- The Net Present Values of the options seem relatively low when compared to total industry revenue of over £6bn, particularly when considered as annual improvements.
- There is also considerable uncertainty in the financial estimates of outcomes, with nearly all ranging from dis-benefits through to benefits. We would be grateful if CMA could clarify how it proposes to weigh up the potential benefits against the potential dis-benefits of each of the options.
- We would caution against CMA **only** relying on these financial estimates; it should consider the figures alongside the first round of responses as well as some 'common-sense' thinking about what options are realistically plausible. It would be helpful to know how much weight CMA will place on the impact assessments when deciding on what option(s) to take forward
- ORR states that its impact assessments exclude several potential impacts, such as service quality, capacity and reliability. However, the financial values of these impacts could potentially be quite significant, and could materially alter the outcome of the impact assessments.
- Two of the options appear to be almost the same (options 2 and 3), and there is no quantification of option 4 at all. Therefore, it seems that only two realistic options exist (option 1 and option 2/3) – and these two could be taken forward together.
- Impact assessments are helpful to understand the likely impacts of each option. However, a fuller impact assessment of the recommended option would need to take place before it was implemented.

Detailed comments

This section sets out some more detailed comments on ORR's impact assessments. As noted above, we have avoided getting into the specific details of the technical work due to time constraints.

- The impact assessments are split into several different scenarios (e.g. East Coast, West Coast and Great Western Main Lines). We would be grateful if CMA could

confirm if this means that it is considering applying different options to different geographic locations (i.e. merging some of the options).

- Some of the options are quite radical. Uncertainty of the future market structure can impact on willingness to invest, especially in the freight market, so it is important that we resolve this project as quickly as possible. We note that the potential impact on freight operators has not been mentioned, so we would urge CMA to bear this in mind in its final recommendation.
- This project should not be considered in isolation. There are many other industry reviews taking place, and the impacts of these should also be considered (e.g. the ORR review by DfT, Shaw review etc.)
- The way that users are charged should be consistent with their access to the infrastructure, i.e. operators should only be charged the same if they have similar access opportunities.
- Open Access entry into markets may be financially prohibited if they are required to pay fixed charges in the same way that franchised operators do in addition to a PSO levy

Comments on each of CMA's options

In this section, we provide some specific comments on each of CMA's options as highlighted in its original consultation document.

Option 1:

- The ORR document states that there are likely to be larger benefits if an OAO is given a larger share of the market. We would be grateful if ORR could confirm whether the impact assessment accounts for the possibility and potential dis-benefits of this capacity being left empty (e.g. if no OAOs use the available capacity).

Option 2:

- This option seems to produce the lowest risk for the benefits delivered. Also, it is worth noting that we have experience of this already on the network (e.g. East Coast Main Line).
- Options 1 and 2 are not mutually exclusive. There are already competing franchises on the West Coast Main Line (Virgin Trains and London Midland) and Open Access competition on the East Coast Main Line (Grand Central and Hull Trains).

Option 3:

- It is surprising that the 'low case' in this option is so largely negatively when compared to the 'medium case', given that this option is very similar to the status quo. We would have expected any potential losses to be small compared to other options (as well as any potential gains).

Option 4:

- All options, but especially options 1 and 4, rely strongly on the assumption that there would be appetite for more competition.



- Option 1 relies on more OAOs entering the market.
- Option 4 relies on a sufficient number of operators submitting reasonable responses to the franchise competition.

The market has significant barriers to entry, as a significant amount of money is required to enter the market for running train services (e.g. the cost of rolling stock). Therefore, this assumption may not be valid. It would be helpful if ORR could confirm if, and how, it has taken this into account in the impact assessments.

In conclusion, CMA should be cautious about recommending any changes to the current industry structure for the relatively small benefits which are quantified by ORR in the impact assessments. A recommendation for change should only be made if there is compelling evidence that such a change would be beneficial for the industry, tax-payers and passengers.

I would be happy to discuss any aspect of this response with you in more detail.

Yours faithfully,

Peter Swattridge