

A railway fit for Britain's future – response from the Competition and Markets Authority

Background

1. The CMA is the UK's principal competition and consumer authority. It is an independent non-ministerial government department and its responsibilities include carrying out investigations into mergers and markets and enforcing competition and consumer law. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour.¹
2. As the government makes clear, free and fair competition and effective consumer protection support growth by driving forward innovation, increasing productivity, and encouraging investment.² It is therefore important that policy decisions are informed by their potential impacts on competition and consumers. To support this aim, the CMA has a role in providing information and advice to government and public authorities.³
3. As the government has set out in [Invest 2035](#), a resilient, safe and secure transport network is fundamental to business investment and location decisions. Reflecting its importance to the UK economy, and to the passengers and businesses that rely on it across the UK, the CMA has engaged closely with previous proposals to reform the rail sector.⁴ While the measures proposed in [A railway fit for Britain's future](#) differ from previous proposals, much of the CMA's past advice, particularly on ticket retailing, remains relevant.
4. Accordingly, this response:

¹ The CMA's statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers.

² [Draft Strategic Steer to the Competition and Markets Authority](#)

³ Under Section 7(1) of the Enterprise Act 2002, the CMA has a function of making proposals, or giving information and advice, "on matters relating to any of its functions to any Minister of the Crown or other public authority (including proposals, information or advice as to any aspect of the law or a proposed change in the law)."

⁴ See, for example, the CMA's [response](#) to DfT's consultation on legislative changes to implement the Williams-Shapps Plan for Rail.

- (a) Recaps our previous advice on promoting competition in ticket retailing, noting the importance of effective market design in supporting investment and innovation in this sector, consistent with government objectives.
 - (b) Notes the potential merits of giving weight to passenger outcomes in decisions on Great British Rail's (GBR) Access and Use policy.
5. More broadly, the CMA extends an ongoing offer of advisory support to government on how to harness the benefits of competition (for example through its Access and Use policy) and promote passengers' interests, as it takes forward reforms to the rail sector.

Ticket retail market (Question 14): What, if any, safeguards are needed to ensure a thriving and competitive rail retail market while also ensuring GBR can deliver a high-quality offer to its customers?

6. Despite significant differences in other areas of proposed reform, the proposals on ticket retailing in the consultation are similar to those in previous rail reform plans.⁵ In particular:
- (a) GBR will provide a new retail offering, replacing the multiple train operator retail operations;
 - (b) Government intends to retain competition from third-party retailers (TPRs), with GBR competing on a fair and open basis with such retailers, in order to drive innovation and help attract customers to the railway; and,
 - (c) GBR's other functions mean that it will be a decision maker in areas that will affect the market (retail ticketing) that it is competing in.
7. Combined with its broader responsibilities and powers, the role envisaged for GBR as a ticket retailer gives rise to the risk (either actual or perceived) that GBR will self-preference its own retail operation, or otherwise have advantages over TPRs that are not based on merit (for example better access to relevant information). This could undermine incentives for TPRs to invest and compete in this market. It is therefore important to give the right signals from the outset that TPRs will be competing on a level playing field with GBR - to encourage that competition and investment which will benefit passengers directly through the offerings of TPRs, and indirectly through the pressure on GBR to keep improving its retail offer.

⁵ [Great British Railways: Williams-Shapps plan for rail - GOV.UK](#)

8. The risks around actual or perceived self-preferencing are likely to be greater where the retail arm of GBR is more closely integrated with its 'core' operations. In a more closely integrated model, additional safeguards are likely to be required in order to achieve the government's aim to ensure the sector benefits from the effects of fair and open competition between GBR and TPRs.
9. The consultation recognises the need for safeguards to ensure a thriving and competitive retail market. Previous rail reform plans also recognised this and proposed that GBR would be structured so its online retailing activities were independent of wider decision-making about retail strategy.⁶ The CMA made the following comments on the Williams-Shapps plans, which we think remain relevant to the current rail reform proposals:

The CMA agrees that there should be a level playing field, so that third party retailers can compete with GBR. While ensuring that "Great British Railways' online retailing activities are independent of its wider decision making about retail strategy" may help with this, the detail of how that independence is achieved is important. Factors to consider around operational separation and the ability for third party retailers to compete with GBR include:

- (a) *How genuinely independent decision making is implemented and protected. The design of this should include the governance structure including the incentives introduced for different parts of that structure, reporting structures and the extent of information sharing between the online retail activities and other functions.*
- (b) *The extent to which GBR's online retail activities are financially independent. This might include the extent to which cost structures are shared or different functions are cross-subsidised within GBR. This may also include decisions on whether GBR online retail function has to pay a transfer price for the GBR branding and any retail advertising. Transparency around this point might potentially be achieved through distinct accounts for GBR's online retail activities.*
- (c) *The case for an equal access principle for all retailers. This could include equal access for all retailers (both GBR and independent operators) to relevant GBR information, such as on planned travel promotions. This information might be shared, for example, on fair, reasonable, and non-discriminatory (FRAND) terms.*

⁶ [Great British Railways: Williams-Shapps plan for rail - GOV.UK](#), paragraph 2.61

- (d) *That all retailers should be subject to the same provisions for redress.*
 - (e) *That there should be a transparent process for making any subsequent changes to the framework for or approach to retailing of tickets, to allow all relevant parties opportunity to influence decisions to ensure that innovation is not curtailed.*
10. The CMA's previous response highlights the importance of building 'ex ante' safeguards into the design of the retailing market, to reduce the opportunities and incentives for self-preferencing by GBR. Such safeguards are likely to support confidence and certainty for current and prospective TPRs that GBR's retail offering will not be favoured at the expense of their own. This, in turn, will help to support investment and innovation, in line with government's objectives. While 'ex post' appeal-based safeguards would also help to support confidence and certainty, there are limits to how effective these are in practice, due to:
- (a) inherent uncertainty as to the outcome of an appeals process;
 - (b) cost of taking forward an appeal; and,
 - (c) the time taken to see through an appeal, during which time the appellant (even an ultimately successful one) is likely to be incurring costs arising from an unlevel playing field.
11. As it looks to deliver its objectives for an open, competitive ticket retail market, we would also encourage government to consider how the licensing of ticketing retailers operates. The approach to the licensing of ticket retailers can affect whether TPRs are competing on a level playing field between themselves, particularly if different TPRs face differentiated licence conditions, as we understand they do currently. Standardising conditions for licensed retailers may promote competition between TPRs and make the market more attractive to any potential new entrants.

Access and Use Policy (Question 7): Does the proposed new access framework enable GBR to be an effective directing mind that can ensure best use of network capacity?

12. The consultation explains that an Access and Use policy (AUP) will be developed, and that this will be an important mechanism that should transparently outline how GBR will collaborate with all parties, including

devolved leaders, to deliver social and economic benefits, with key elements included in legislation.⁷

13. The AUP will set out decision-making criteria and form a major part of how GBR manages the sector and interacts with other operators (including potential competitors). It is expected to cover areas that could have a significant impact on the services and offerings available to passengers. Such areas might include: capacity allocation, access rights and charges including for open access operators; interactions with devolved, freight and international services; access to GBR facilities; and the performance regime for GBR for services provided to non-GBR operators on the network.
14. There are likely to be a variety of legitimate objectives pursued through the formation and application of the AUP. As DfT further develops its policy, the CMA would encourage it to consider how such objectives are reflected in the AUP and in the discretion afforded to GBR in its decision-making. In particular, the CMA would encourage DfT to ensure that weight is given to passenger outcomes in GBR's decision-making within the AUP. This should help mitigate the against the risk that government's passenger-based objectives are missed as GBR undertakes the complex task of managing and evaluating trade-offs and competing interests and offers regarding the rail network.

Competition and Markets Authority

April 2025

⁷ [A railway fit for Britain's future](#), paragraphs 3.19-3.21